

DEPARTMENT OF STATE LANDS

STATE AGENCY COORDINATION PROGRAM (SAC): A PROGRAM FOR COORDINATING DSL'S ACTIVITIES WITH CITIES AND COUNTIES, TRIBAL GOVERNMENTS, FEDERAL AND STATE AGENCIES, AND SPECIAL DISTRICTS



**Adopted by Oregon State Land Board
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**Adopted by Director, Oregon Department of State Lands
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Department of State Lands
Agency Coordination Program

July 2006

This publication describes the Department of State Lands (DSL) coordination with our local, state, federal and tribal partners.

Under Oregon planning law, all state agencies whose actions and programs affect land use must adopt and submit agency coordination programs to the Land Conservation and Development Commission (LCDC). The primary purpose of a coordination program is to assure that state agency programs and actions related to land use, to the extent legally permissible, comply with the statewide planning goals and are consistent with the acknowledged comprehensive plans of cities and counties.

DSL's most recent coordination program was certified by LCDC approximately 15 years ago.

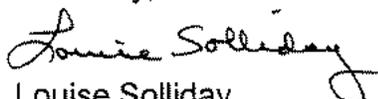
Since that time, much has occurred affecting DSL's relations not just with local governments, but also with state and federal agencies and tribal governments. It was this degree of change and the increased emphasis on inter-agency and inter-governmental cooperation and collaboration that caused us to include updating our coordination program in DSL's 2004-2008 Strategic Plan.

In undertaking this revision, the scope of the department's coordination program was expanded to demonstrate a stronger commitment to customer service, streamlined procedures and strengthened relations with all of DSL's public, private and tribal partners.

The department is grateful to many individuals and organizations for their assistance in revising our coordination program. Those using the program are encouraged to share it with others and reproduce pertinent sections to enhance public understanding and support of DSL's plans, programs and services to the people of Oregon.

Please feel free to write or contact the department for questions or further information about our revised coordination program. Comments and suggestions for using our program to improve our service to the public through strengthened coordination with local governments, state and federal agencies and tribal authorities are encouraged.

Sincerely,



Louise Solliday
Director

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Acknowledgments

The Department of State Land (DSL) thanks the various agencies, organizations, jurisdictions and individuals for their time and assistance in updating our coordination program. We are especially appreciative for their suggestions and comments for improving our procedures and practices regarding land use and working with other agencies and local and tribal governments.

Preface

What is Coordination?

“Coordination” – a term used every day by those who work in government. Yet it resists a single definition even though most of us assume everyone shares a common understanding of what it means.

For some, coordination simply stands for effective, on-going communication and providing comment opportunities for agencies and organizations aimed at resolving inconsistencies and conflicts. In other settings, coordination emphasizes cooperation among agencies and interests that employ formalized agreements and procedures to produce an agreed-upon outcome such as a plan or project. A third concept of coordination focuses on consultation in which a law or regulation mandates one agency to provide an opinion or advice to another, such as between federal agencies. Finally there is collaboration where interested parties work together to seek solutions that hopefully will result in agreement. Often collaboration mandates particular methods, not specific outcomes, and does not assume that the parties will always achieve complete consensus.

Coordination in Oregon

In Oregon, coordination takes on a further meaning for those state agencies whose plans and programs affect land use. These agencies are required by state law to prepare and adopt state agency coordination or SAC programs. SAC programs are a key element in the state’s comprehensive land use planning program. A SAC program contains an agency’s rules and procedures explaining how it will comply with Statewide Planning Goals, act compatibly with acknowledged local comprehensive plans and land use regulations, and provide information and technical assistance to cities and counties.

In addition to local governments, the SAC program spells out how the agency generally interacts with state and federal agencies and special districts. Also, in 2001 a law passed by the Oregon Legislature directs state agencies to coordinate closely with tribal governments.

Purpose of this Document

The Department of State Lands (DSL) views its SAC program as a critical element in defining and carrying out the agency’s relationships with all of its local, state, federal and tribal partners. This document updates DSL’s current state agency coordination program prepared approximately 15 years ago.

Although there is no legal requirement mandating state agencies to update their SAC programs, much has occurred, both externally and internally, since the department's 1990 SAC program was prepared. Key among these developments were:

- Amendment of laws and rules pertaining to wetland planning and protection and the state's Removal-Fill program
- Passage of legislation requiring state agencies to coordinate their plans and programs with tribal governments
- Enactment of important changes to the state land use program, particularly those relating to wetlands, economic development, ocean resources and periodic review of comprehensive plans
- Increased DSL involvement in the state's coastal and ocean planning efforts, including the Ocean Policy Advisory Council (OPAC)
- Addition of the department to the state's Economic Revitalization Team (ERT)
- Initiation of major internal management improvements, including adoption of a department strategic plan, revision of the State Land Board's Asset Management Plan and preparation of additional area management plans for state-owned lands, development of a major reorganization proposal, establishment of department performance measures and completion of an agency sustainability plan

Revision of the SAC program provides DSL the opportunity not only to address the changes above, but also to broaden the scope of the department's coordination program beyond the minimum statutory requirements. This 2006 SAC program update, in conjunction with related DSL initiatives, is designed to demonstrate the department's continuing emphasis on customer service, a renewed commitment to Oregon's land use program, and provide greater efficiency and effectiveness in carrying out the department's constitutional and statutory mandates and programs that affect land use.

Introduction

Background of State Agency Coordination

In Oregon, state agency coordination (or SAC) is one of the key elements in the state's land use planning program. Over 30 years ago in drafting the program's landmark enabling act, SB 100, the Legislature recognized that the absence of coordination posed a serious threat to the citizens and land of Oregon.

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. Oregon Revised Statutes (ORS) 197.005 (1)

To address this concern and to ensure that land use planning in Oregon is truly comprehensive, ORS 197 was written to apply not only to the plans of cities, counties and special districts, but to the plans and programs of state agencies as well. Under the law, state agencies must comply with the Statewide Planning Goals and be consistent (referred to as "compatibility" in statute) with the acknowledged comprehensive plans and land use regulations of cities and counties.

ORS 197.180 establishes the SAC requirements for state agencies. This statutory provision, together with Oregon Administrative Rules (OAR) Chapter 660, Divisions 030 and 031 adopted by the Land Conservation and Development Commission (LCDC), comprise the legal foundation for state agency coordination. The principal features of these directives do the following:

- Declare that state agencies in carrying out their programs affecting land use must comply with the Statewide Planning Goals and be compatible with city and county comprehensive plans and land use regulations acknowledged (i.e., approved) by LCDC.
- Require each state agency to prepare and adopt a SAC program detailing how the agency will fulfill its obligation to assure goal compliance and comprehensive plan compatibility.
- Establish the scope of the SAC process by defining the term, "agency rules and programs affecting land use."
- Provide exemptions for certain agency programs from state agency coordination.
- Specify the four (4) elements required to be in each SAC program.
- Assign to LCDC, along with its administrative arm, the Department of Land Conservation and Development (DLCD) the responsibility to schedule, review and approve (i.e., certify) SAC programs.

- Describe the circumstances under which an agency can comply with the Statewide Planning Goals by acting compatibly with an acknowledged comprehensive plan.
- Explain how agencies are to assure goal compliance and plan compatibility for new or amended agency land use programs adopted after the agency's SAC program has been certified by LCDC.
- Create an alternative method for local governments to comply with one or more statewide planning goals (or individual goal requirements) by relying on a certified state agency coordination program.

Since the state land use program began, LCDC has undertaken several rounds of certifying limited numbers of SAC programs. Following the adoption of its primary SAC rule (OAR 660-030) in 1986, LCDC went through an ambitious period reviewing new and revised coordination programs of 26 state agencies, including DSL's. Since that time, no agency (either voluntarily or as directed by LCDC) has undertaken a comprehensive update of its SAC program.

Previous Department of State Lands SAC Programs

The DSL's first state agency coordination was developed in 1977 and approved by LCDC the following year. DSL's most recent program was adopted by the State Land Board in the fall of 1990 and certified by LCDC in 1991.

Every SAC program must contain four (4) required components. These elements are the agency's:

- Rules and programs determined to affect land use;
- Rules and procedures to assure goal compliance and compatibility with acknowledged city and county comprehensive plans and land use regulations;
- Program to coordinate with federal and state agencies, and special districts; and
- Program for cooperating with and providing technical assistance to local governments.

DSL's 1990 SAC program was organized into six sections with extensive appendices to address the above four requirements.

Section 1 of the document provided a concise overview of the department's four administrative units and their respective areas of responsibility: 1) range management, 2) resource management, 3) environmental planning and permits, and 4) fiscal/administration. Within these units were described various other sub-programs.

In Section 2, based upon the terms and definitions in statute and LCDC's administrative rules, DSL identified six (6) broad programs determined to affect land use. These were:

- Forest management (Common School Fund forest lands managed under agreement with the Oregon Department of Forestry.

- Range management (issuance and renewal of grazing leases on state-owned range lands).
- Resource management (included nine (9) lease programs, plus the adoption and amendment of management plans such as the plan for the Lower Willamette River).
- Environmental planning and permits (issuance of Removal-Fill permits).
- Fiscal/Administration (approval of loans made under Oregon Rehabilitation Local Fund).
- South Slough National Estuarine Research Reserve (covering various planning and management activities).

Section III set out the procedures for assuring goal compliance and plan compatibility. Different procedures were established depending on the type of program (e.g., regulatory, proprietary, etc.) and whether or not the program was specifically referenced in a statewide planning goal.

The remaining three sections (IV, V and VI) of the 1990 SAC program dealt with dispute resolution, assisting local governments and inter-agency coordination.

Complete copies of both the 1990 SAC program as well as this revised 2006 program can be viewed at the department's Salem office, on-line at www.oregonstatelands.us and at the Department of Land Conservation and Development (DLCD), also in Salem.

Reasons for Updating DSL's 1990 SAC Program

The department's 1990 SAC program was developed 15 years ago. Since that time, a number of changes and expectations have arisen affecting DSL's relationships with its various local, state, federal and tribal partners. Some of these shifts are clearly visible and are the direct result of new or amended laws and administrative rules.

Others are less defined and reflect current citizen attitudes about the role of government, taxes, property rights, managing natural resources and general expectations for the department and other agencies.

Updating the SAC provides DSL the opportunity to address many of these changes in a systematic, positive way and to incorporate them into the department's coordination procedures and practices.

Promote Public Understanding of DSL and its Programs

Complementing the department's recently adopted strategic plan, a major purpose for updating the department's SAC program is to increase public awareness and support for DSL's mission and programs. A revised SAC program provides a valuable opportunity for an agency to compile an updated overview of its statutory (and in the

case of DSL, constitutional) mandates and programs, and to review its coordination procedures with partner agencies and organizations. Such information should be particularly beneficial to local planning officials and staff, interest groups and the public.

Improve Communications

DSL's updated SAC will emphasize the value of frequent, more effective communication between the agency and local governments as well as with other agencies, tribal governments and interest groups.

Maintain Compliance with SAC Laws and Rules

The department's update will ensure that the agency's SAC program will continue to comply with ORS 197.180 and rule requirements (OAR 660, Divisions 030) for state agency coordination, including any changes enacted since certification of DSL's 1990 program.

Streamline Procedures

A revised SAC program will work in conjunction with and complement ongoing DSL practices and procedures aimed at "streamlining" decision-making, and where possible eliminate duplication, thereby increasing certainty and saving time and money for agencies, permit applicants and land owners.

Build Stronger Ties with the State Land Use Program

Updating the department's SAC program will strengthen ties between DSL and the state land use program, particularly with regard to mutual interests in ocean and coastal management, wetland and waterway protection, economic planning, and the post-acknowledgment amendment and periodic review of city and county comprehensive plans.

Enhance DSL Participation in the State's Economic Revitalization

The updated SAC program will aid the department's efforts to bolster Oregon's economic recovery, particularly through DSL's membership on the state's Economic Revitalization Team (ERT) and the certification of "project-ready" and "shovel-ready" industrial sites.

Improve Customer Service

An updated SAC program will promote greater efficiency, effectiveness and consistency by DSL staff in carrying out rules and programs affecting land use in coordination with acknowledged city and county comprehensive plans.

Department Actions After Adoption of the Updated SAC Program

Following Land Board and Director adoption, the Department will take steps to ensure that copies and summary information of the updated SAC program and implementing SAC administrative rule (OAR 141-095) are provided or otherwise made available to local governments, affected state and federal agencies, tribal governments, interest groups and organizations and the public.

The Department will also take steps consistent with the department's approved budget and legal authority to implement the actions and recommendations contained in the revised SAC program and rule. An immediate priority will be to ensure that affected DSL employees receive regular training and information about the department's revised SAC program and fulfilling the department's land use coordination duties and responsibilities described within it.

SECTION 1

Coordination Principles and Issues

To be successful, the development and implementation of a state agency coordination program should be based on principles that are rooted in the agency's core interests and objectives to coordinate relationships with local governments, other agencies and tribal authorities.

For DSL, the revision of its SAC program provides a unique opportunity to assess its overall performance in interagency and intergovernmental coordination and make adjustments in the department's coordination procedures and practices. This 2006 update will generally describe how DSL will:

- Accommodate, support and act consistently, to the extent legally required, with the interests and policies of state and federal agencies and local and tribal governments in carrying out the department's plans, programs and actions, and
- Actively participate, consistent with available staff and budget resources, in the development and implementation of the plans, programs and regulations of other agencies and governments.

To help ensure that the department can achieve this higher level of coordination, the development (and implementation) of this updated SAC program is guided by the following principles:

Be integral to fulfilling DSL's mission and vision statements.

The department's 2004-08 Strategic Plan declares that the mission of the department is to "...ensure a legacy for Oregonians and their public schools through sound stewardship of lands, wetlands, waterways, unclaimed property, estates and the Common School Fund." The department's vision statement commits DSL to "...work responsively and collaboratively with citizens, tribal and local governments and other agencies and organizations."

Seek public support and participation.

The department will continue its long-standing practice of soliciting the views and input of interested agencies, groups and individuals in carrying out its programs and fulfilling its constitutional and statutory responsibilities. In September and October of 2004, the department conducted a survey as a first step in updating its SAC program. The survey was sent to all cities and counties, key state and federal agencies, all tribal

governments, and various other groups and organizations. In May 2005, the first draft of the revised SAC program was released for statewide review and comment.

Promote the department's commitment to a high level of customer service.

The SAC program will be a key component along with other related department efforts in serving DSL's various customers efficiently and effectively.

Renew and strengthen the department's relationship with the state land use program and DLCD.

Close coordination and cooperation between DSL and DLCD is critical for addressing mutual issues and interests. These include protecting resource lands (particularly wetlands), implementing the state's coastal and ocean management programs and territorial sea plan, working with other agencies to aid the state's economic recovery, supporting the orderly administration and amendment of acknowledged city and county comprehensive plans and land use regulations and providing timely technical assistance, information and training to local officials and planning staff.

Improve the department's coordination, collaboration with and assistance to tribal governments and Indian communities.

Although not a requirement under ORS 197.180, state agencies are now obligated pursuant to ORS 182.162-.168 (SB 770 in 2001) to take various steps aimed at promoting positive government-to-government relations with tribal authorities. Therefore it is appropriate that DSL's SAC program with other agencies and local governments should also include the department's coordination and consultation activities with tribal governments.

Describe DSL's relationships with key federal and state agencies.

DSL's updated SAC program lists the principal state and federal agencies the department interacts with and describes the nature and extent of these relationships, the principal coordination method(s) used, key issues and concerns and contact information for those wishing to communicate with the agencies.

Complement and enhance DSL outreach and communication efforts by serving as an ongoing "updatable" inventory of new or amended department programs, rules and coordination procedures and practices.

Like any plan, an agency's SAC program quickly becomes dated with the passage of time, and therefore more likely to be overlooked by affected partner jurisdictions, agencies and organizations, as well as by the agency's own managers and staff.

However, unlike the SAC programs certified 15 years ago, it is possible now through web pages and internet links to keep an agency's SAC program regularly up to date and instantly accessible by local and tribal governments, state and federal agencies, interest groups and citizens.

Important Programs and Coordination Issues

Successful management and operation of virtually all of the department's constitutional and statutory responsibilities involves significant, ongoing coordination with affected local governments, tribal authorities and various state and federal agencies. Presented below is a list of key DSL program responsibilities and issues. Each of these items poses both challenges and opportunities for DSL. Those marked with an asterisk (*) indicate ones where the policies and procedures in this SAC program will play a particularly important role in guiding the department's decisions and actions in the future.

- Wetland Conservation Planning*
- Certifying the "Project-Ready" Industrial Sites and DSL Participation in the State's Economic Revitalization Team (ERT)*
- Navigability Determinations/ Public Use Of Oregon's Waterways
- Regulatory Streamlining, Including State Programmatic General Permit (SPGP) and 404 Assumption
- Acquisition and Disposal of State Land
- Government-to-Government Relations Pursuant to ORS 182.164 to 182.168*
- Planning/Management of Common School Fund Forest Lands*
- Planning/Management of State-Owned Agricultural and Range Lands*
- Planning/Management of State-Owned Commercial, Industrial and Commercial Lands*
- Planning/Management of State-Owned Waterways and All Other Submerged and Submersible Lands, Including State Territorial Sea*
- Area Management Plans*
- Removal-Fill Program*
- Oregon Natural Heritage Program

- South Slough National Estuarine Research Reserve*
- Department Coordination and Cooperation with State Land Use Program and Oregon Coastal Management Program*
- Compliance with the requirements and processing of compensation claims filed with DSL under Ballot Measure 37 passed by the voters in November 2004*

Section 2

Department Overview

This section responds to the SAC rule's requirement to provide a brief overview of DSL's background, programs and authorized responsibilities.

REQUIREMENT

LCDC's state agency coordination rule at OAR 660-030-0060(2) lists the four required elements of a SAC program.

As the first step in determining which of its rules and programs affect land use, 660-030-0060(3)(a) requires an agency to first:

- (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;

Please refer to the Appendices section for sources and references to the department's constitutional requirements, statutes, administrative rules, plans and additional program information.

DSL RESPONSE TO OAR 660-030-0060(3)(a)

Background of State Land Board and Department of State Lands

Beginning with Ohio in 1802, the U.S. Congress awarded specific sections of land to states when they entered the Union with the stipulation that the proceeds from these lands be used for educational purposes. The Oregon Admission Act (approved by Congress on February 14, 1859) granted sections 16 and 36 in every township "for the use of schools." The decision to provide land for education was a practical solution for a developing nation that was land rich, but cash poor.

For the newly admitted Oregon, the action by Congress granted roughly six (6) percent of the state's land – nearly 3.4 million acres – for schools. Over the years, many of the original school land sections were sold. Today, 773,000 acres of school land remain in state ownership.

In addition to the land specifically granted for schools, the state also received from Congress ownership of all of the submerged and submersible lands underlying the state's tidal and navigable waterways. All of these lands, together with their mineral and timber assets and other resources, along with the income from these lands, were dedicated by the state constitution to the Oregon Common School Fund (CSF).

The CSF is a trust for the benefit of the state's K-12 schools. The constitution established the State Land Board composed of the Governor, Secretary of State and the State Treasurer to serve as trustee of the Fund. The Land Board is empowered to dispose of and manage these lands and "other lands owned by this state that are placed under their jurisdiction by law."

In performing its trust responsibility, Article VIII, Section 5(2) of the Oregon constitution, specifies that the Land Board

... shall manage lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management.

The Department of State Lands (DSL) is the administrative arm of the Land Board, handling the day-to-day work of the board in managing the land and other resources dedicated to the CSF. First established in 1878 as the Office of the Clerk of the Land Board, DSL is one of Oregon's oldest state agencies. It was renamed and elevated to executive agency status by the 1967 Legislature. In 2003, the Legislature changed the agency name from the Division of State Lands to the Department of State Lands. The Land Board appoints the DSL director. As of the 2005-2007 budget the department has a staff complement of 93.5 employees and an operating budget of \$28.1 million (\$18.1 million for DSL and about \$10 million for the Oregon Department of Forestry to manage DSL's forestlands).

The department's current organizational chart is attached (see Appendices).

The Department will distribute about \$87.7 million to the state's K-12 schools during the 2005-2007 biennium.

Together, the Land Board and DSL manage approximately 2.3 million acres of land owned by the state of Oregon. State-owned lands are divided into two broad categories, Trust Lands and Non-Trust Lands.

Trust Lands are those lands granted to the state upon its admission to the Union specifically to support public schools. Trust Lands also include those lands: 1) obtained by the state as a result of an exchange of Trust Land, 2) obtained in-lieu of originally granted Trust Land or purchased with Trust funds, and 3) lands obtained through foreclosure of loans using Trust funds.

Currently there is slightly less than 775,000 acres of Trust Lands, the vast majority of which are comprised of range and forest lands.

Non-Trust Lands include state-owned Swamp Land Act land and submerged and submersible land below ordinary low water under navigable waterways.

Today there are about 800,000 acres of Non-Trust Land made up of the state's Territorial Sea, navigable waterways, Swamp Land Grant Act lands, the South Slough National Estuarine Research Reserve and various other miscellaneous holdings.

The Common School Fund is a constitutionally mandated permanent fund managed by the Land Board to provide revenue to public schools. As a trustee, the Land Board has a legal obligation to manage Trust Lands for the maximum long-term benefit of the public schools and must exercise prudence, skill and diligence in keeping the lands and the CSF productive.

The CSF contains two types of assets: financial and real property. Non-Trust Lands are not considered assets under the Common School Fund. However, revenues from the management of Non-Trust Lands are deposited in the fund.

Two revenue streams support the CSF. One stream is constitutional revenue. These are monies derived from sources granted by the federal government at statehood, principally from the management of state-owned forest and rangeland and investment earnings.

The other stream is statutory revenue that comes from programs created statutorily by the Oregon Legislature. These include:

- Waterway use leases such as sand and gravel extraction, houseboats, marinas and log rafts
- Removal-Fill permit fees and civil penalties
- Proceeds of certain forfeitures
- Revenue from mineral and geothermal resource rights on non-Admission Act, state-owned property
- Escheated estates under which property reverts to the state on an individual's death because no heir or will exists or can be found
- Unclaimed property held in trust while DSL searches for the rightful owner
- Gifts to the state not designated for some other purpose
- Revenues from the production, storage, use, sale or distribution of oil and natural gas
- Five (5) percent of the proceeds from the sale of federal lands.

The land and minerals managed by DSL today totals approximately 2.3 million acres and is comprised of the following:

• Forest Lands (including Elliott State Forest)	131,000
• Agricultural Lands	5,700
• Rangelands	634,000
• Industrial/Commercial/Residential Lands	695
• Special Interest	4,800
• Waterways (Submerged and submersible land under navigable rivers and lakes, estuarine tidelands and Territorial Sea)	800,000
• Mineral Lands (Subsurface rights only; does not include 410,000 acres of land with both surface and subsurface rights or approximately 2.1 million acres of subsurface rights managed by DSL for other state agencies, e.g., parks, Forestry)	753,000

From these lands, DSL administers approximately 2,400 leases, permits, easement, registrations, and other approvals. The estimated value of these lands in 2005 was about \$681.7 to 898.5 million. The 2004-2005 Net Operating Income for these activities was about \$16 million.

Twice a year distributions from the Common School Fund to K-12 schools are based on the year-to-year growth of the fund and range from 2 to 5% of the CSF principal depending upon the amount of increase in the CSF value.

Department of State Lands Programs

The department's various program responsibilities can be grouped under three general headings: Property Management, Regulatory and Other Department Programs.

Property Management

1. Asset Management Plan and Area Management Plans (Oregon Admission Act, Oregon Constitution Article VIII, ORS 273.245 and OAR 141-080)

In 1995, the Land Board adopted its Asset Management Plan designed to bring a proactive approach to managing the state's lands and resources. The plan establishes:

- An overall, comprehensive process for managing state-owned lands and resources

- An investment strategy and policies for guiding land sales, acquisitions, exchanges and development
- Standards to measure, and sets strategies to obtain a reasonable return on the investment and use of state lands
- A Land Classification System (LCS) for all state-owned lands and resources, including forest land, range and agricultural land, industrial/commercial/residential lands, waterways and minerals
- Guidelines for the preparation of area management plans for specific types or units of state-owned lands

The department is currently engaged in a review and revision of the Asset Management Plan. Adoption of the revised plan is anticipated for October, 2006.

Implementation of the Asset Management Plan occurs through the preparation of Area Management Plans (AMPs). AMPs establish potential land uses within specific areas of state-owned land. The department develops AMPs for adoption by the Land Board. To date, four (4) area management plans have been adopted or otherwise approved. They are plans for the Elliott State Forest Plan, the Lower Willamette River, South Slough National Estuarine Research Reserve and the Territorial Sea. Because of their significant effect on land use, the department coordinates closely with affected agencies and local governments in developing AMPs. See pages 22-23 below for further information about the South Slough National Estuarine Research Reserve.

2. Forest Land Management (ORS 273 and OAR 141-067, 141-088, 141-122)

DSL, on behalf of the Land Board, administers approximately 131,000 acres of forest land. All of these forest lands are Trust Lands. Most state-owned forest land owned by the Land Board is managed through a contract with the Oregon Department of Forestry. These lands, located primarily in western Oregon, are known as Common School Forest Lands. The largest block includes 85,000 acres in the Elliott State Forest in Coos and Douglas counties. Most of the balance is in the Sun Pass State Forest or on Yainax Butte in Klamath County. The remainder (about 8,400 acres) consists of scattered, marginal holdings in eastern Oregon.

Assuring statewide goal compliance and comprehensive plan compatibility for these forest Trust Lands is achieved through reliance on procedures in the Oregon Department of Forestry's own state agency coordination program. In those cases where DSL actions involve forest land not managed by ODF, DSL will conform to the local government's zoning (usually agricultural or forest) for the area in question.

3. Agricultural and Rangeland Management (ORS 273 and OAR 141-067, 141-088, 141-110, 141-122, 141-125)

The Land Board administers and leases 5,700 acres of agricultural lands in central and eastern Oregon. Most of these holdings are Trust Lands. Use of these lands is governed under 11 leases that range in size from 40 to 2,000 acres.

The state-owned rangelands include 634,000 acres most of which are located in Lake, Harney and Malheur counties. The balance lies in scattered, isolated parcels. Approximately 96% (613,000 acres) are Trust Lands. DSL issues grazing leases for about 617,000 acres, with 43 large-parcel leases on its blocked lands and 100 smaller-parcel leases on the remaining isolated tracts.

Generally, DSL manages the Land Board's rangelands and agricultural lands through lease agreements with ranchers and farmers. The term of range land leases is 15 years with a right of renewal for another 15 years. The length of agricultural leases varies. These range and agricultural lands are also used but not managed for dispersed recreational activities.

In addition to producing revenue for the CSF, the rangeland program has three main objectives: 1) protect the land from damage by fire and improper use, 2) manage and improve the range for optimum productivity, and 3) improve livestock management practices for maximum forage use. Range improvement activities include prescribed burning to eliminate competing vegetation, seeding and fertilizing desired forage species, installation of water developments, and fencing. Lease applicants must provide a rangeland management plan for large block leaseholds. Such management plans address livestock carrying capacity (animal unit months or AUMs), the nature, timing and location of permissible uses and activities, stocking and rangeland health conditions and various rangeland improvements.

4. Industrial/Commercial/Residential (ICR) Lands (ORS 273 and OAR 141-067, 141-088, 141-122, 141-125)

The Land Board owns approximately 695 acres of ICR lands. The North and South Tongue Point industrial sites in Clatsop County and DSL's headquarters building in Salem are under lease. ICR lands are a mixture of Trust and Non-Trust Lands, the income from which goes to the CSF.

5. Waterways (ORS 274 and OAR 141-067, 141-082, 141-083, 141-087, 141-088, 141-122)

The Land Board has classified its 800,000 acres of waterways into two categories: 1) the state's Territorial Sea, and 2) submerged and submersible lands. All waterways are Non-Trust Lands.

As has been mentioned previously, the Land Board has considerably more latitude in managing Non-Trust lands than it does in managing Trust Land. Neither the Oregon Constitution nor statutes require that Non-Trust land be managed to generate revenue, allowing such lands to be used for a variety of purposes. However, any income produced from these lands is deposited in the Common School Fund.

The state's waterways are managed to avoid unreasonable interference with public navigation, fisheries and commerce. Thus, there is a need to apply sound stewardship, conservation and business management principles in managing Non-Trust Lands.

The Territorial Sea extends three (3) miles off the coastal shoreline. Submerged and submersible lands include all navigable and tidally influenced waterways and navigable lakes.

DSL authorizes through lease and registration the use of waterways for commercial, private and public purposes. These authorizations cover a variety of uses: 1) log raft storage; 2) marinas; 3) houseboat moorage; 4) barge moorage, 5) various commercial activities such as restaurants, fish processing facilities, marine industrial facilities and sand and gravel removal; private docks and boat houses and 7) public boat ramps and public transient docks. The greatest concentration of leasing activities occurs on the Willamette and Columbia Rivers and along coastal waterways.

DSL, working in cooperation with other agencies and organizations, develops management plans for a state-owned waterway such as has been done for the Lower Willamette River.

Pursuant to ORS 274.400 – 274.412 and OAR 141-121, the Land Board has the sole authority to assert title to state land underlying Oregon's waterways. A navigability determination (or study) is the process of collecting and analyzing data, preparing reports and hold public review meetings to ascertain whether a particular waterway is navigable.

The department issues various leases, easements and rights-of-way for a variety of uses, e.g., pipelines, fiber optic cables, access, etc., on state-owned submerged and submersible lands. Issuance of these leases does not remove the obligation of the lessee to obtain all applicable government approvals.

6. South Slough National Estuarine Research Reserve
(ORS 273.533 and OAR 142-010-0020)

Congress created the National Estuarine Research Reserve Program in 1972 as one of the elements of the federal Coastal Zone Management Act. Enacted by the 1975 Oregon Legislature, the South Slough National Estuarine Research Reserve (the Reserve) in Coos County on the south coast was the first of its kind in the nation to be established. Since then, 22 other such reserves have been established around the country.

In addition to protecting a nationally significant example of northwest coastal habitat, the Reserve's mission is to gather scientific information essential to coastal zone decision-making and to heighten public awareness of the importance of estuaries.

South Slough is a 1,000-acre tidal inlet of the Coos River Estuary bounded by 3,800 acres of uplands. The Reserve represents a “drowned river mouth” type of estuary and is the only one of its kind in Oregon. The Reserve is managed to preserve for research and education the natural values of the slough.

DSL administers the Reserve in partnership with the U.S. National Oceanic and Atmospheric Administration (NOAA) and the U.S. Office of Coastal and Resource Management (OCRM). An eight (8) member commission appointed by the governor implements the Reserve’s management plan. The director of the Reserve reports to the director of DSL.

Activities conducted at the Reserve include research and monitoring programs, educational outreach, on-site interpretive and stewardship programs, and physical facilities and maintenance. The Reserve has played a key role in the Governor’s Coastal Salmon Restoration Initiative and has contributed to the state’s Territorial Sea Plan.

The department provides administrative support for the Reserve and its commission. The State Land Board formulates the policies under which the commission acts and reviews all commission actions to ensure compliance with the Reserve’s enabling legislation.

7. Mineral Lands (ORS 273 and OAR 141-010, 141-014, 141-067, 141-070, 141-073)

The department manages the mineral rights on state-owned land, not just Land Board and DSL-owned properties. DSL also is responsible for the administration of all activities relating to the sale, exchange or lease of upland, state-owned hard minerals, oil and gas, sand and gravel, and geothermal resources. On department-owned uplands, most mineral lands are Trust Lands.

The Land Board also administers approximately 753,000 acres of subsurface mineral rights, not including 410,000 acres of land with both surface and subsurface rights that are otherwise classified. DSL currently maintains a registry of the mineral and geothermal resource rights under the jurisdiction of the Land Board.

As directed by statute, the issuance of permits and leases for mineral rights on state-owned land requires that opportunity be provided for comment by all affected state agencies, local governments, public interest groups and individuals and tribal governments. Department staff also responds to inquiries and requests received from the mining industry.

DSL plays a significant role in the ocean resources management program enacted by the 1987 Legislature. Under this statute (ORS 196.405 – 196.515), DSL is required to participate in the development of the Territorial Sea Plan for managing state-owned resources within the three-mile territorial sea. The plan addresses oil and natural gas

resources, hard mineral resources, aquaculture projects, and numerous other competing ocean uses. In addition, the department is required to develop a program and rules for the exploration and leasing of hard mineral deposits within the Territorial Sea.

The department also issues various (i.e., geophysical, geological and seismic) permits and leases for the exploration and development of potential oil, natural gas, mineral and geothermal resources on on-shore state-owned land. Prior to issuance of lease approvals for oil and natural gas rights, the applicant must prepare an environmental impact assessment (EIA) pursuant to OAR 142-070 describing how the lessee's proposed activity will affect natural resources, recreational opportunities and scenic resources as well as describing proposed mitigation measures. Issuance of the permits and leases does not remove the obligation of the applicant to obtain all applicable government approvals.

Leases for obtaining sand and gravel from state-owned lands are governed through application for a DSL Removal-Fill permit. All applicants for sand and gravel leases must demonstrate that they have secured all applicable permits, including Removal-Fill permits (OAR 196.800 and 196.900) before the department will issue a lease. A sand and gravel lease is predicated on issuance of a Removal-Fill permit that includes a determination of consistency with other local, state and federal requirements. (Note: In some instances, a Removal-fill permit is not required prior to authorizing a sand and gravel lease.)

8. Other Property Management Activities (ORS 273 and 274 and OAR 141-010, 141-014, 141-067, 141-070, 141-073)

The department is authorized by OAR 141-87 to grant leases and easements on state-owned land for the purpose of hydroelectric projects. The department reviews each application to determine if the proposed lease or easement is consistent with the conservation of the resource under sound techniques of land management. Hydroelectric leases and easements cannot be issued in areas classified as scenic, recreational or environmentally sensitive. Prior to its decision, the department must circulate a notice of its jurisdiction and the application to affected agencies, local governments and interested parties.

DSL also administers leases on state-owned land for communication facilities (e.g., microwave towers, transmitters, etc.) and other special uses.

Regulatory Programs

1. Removal-Fill Program (ORS 196.795 – 196.990, 390.805 – 390.925 and OAR 141- 085, - 089)

The Oregon Legislature in enacting the Removal-Fill law declared that the protection, conservation and best use of the water resources of Oregon are matters of utmost public concern. The fundamental purposes of the Removal-Fill law (ORS 196.795 – 196.990) are to protect public navigation, fishery and recreational uses of the waters of the state.

“Waters of the state” as defined in statute (ORS 196.800(15)) means “natural waterways including all tidal and nontidal bays, certain intermittent streams, constantly flowing streams, lakes, wetlands, certain unnatural waters, and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean that is in the boundaries of this state.” DSL also regulates certain artificially-created water bodies and wetlands. The law applies to all landowners, whether private individuals or public agencies.

Under the law, individuals who plan to remove or fill material in waters of the state must obtain a permit from the Department of State Lands. Permits (and General Authorizations – see below) are required for:

- Projects requiring the removal or fill of 50 cubic yards or more of material in waters of the state.
- The removal or fill of any material regardless of the number of cubic yards in a stream designated as “essential salmon habitat.” (DSL designates waterways as “essential salmonid habitats” in conjunction with the Oregon Department of Fish and Wildlife.)
- The removal or fill of any material from the bed and banks of any of Oregon’s State Scenic Waterways (see ORS 390.805 – 390.925).

The origin of the Removal-Fill program started with the passage of legislation in 1967 to regulate the removal of gravel from river beds to protect anadromous fish. In 1971, that law was revised to become the Removal-Fill law and expanded the state’s authority to regulate filling in estuaries.

Subsequent amendments to the Removal-Fill and wetland statutes have added a number of additional elements. Among the more significant enactments did or required the following:

- Land Board approval required for R-F permits in State Scenic Waterways (1973)
- Mitigation for estuarine fills and removals (1979)

- Compatibility of R-F permits with local government comprehensive plans (1983)
- Authorized the establishment of wetland mitigation banks (1987)
- Established a comprehensive freshwater wetlands management program at DSL including the following key elements: 1) adopted legislative findings and policy on the importance of wetlands to Oregon; 2) directed DSL to maintain a stable wetlands resource base; 3) directed DSL to develop, maintain and distribute a statewide wetlands inventory; 4) created as an alternative to Statewide Goal 5 a wetlands conservation planning option for local governments to resolve conflicts between wetland protection and urban growth; 5) established a wetland land use notification requirements for linking local government land use actions with state wetland permits; 6) a wetlands public information program at DSL; and 7) required compensatory mitigation for freshwater wetland fills (1989)
- DSL and the Oregon Department of Fish and Wildlife to identify and map "essential indigenous salmonid habitat" (ESH) and required a R-F for any fill or removal with an ESH, with an exemption for agricultural activities (1993)
- DSL to adopt criteria for local government to use in conducting mandatory wetland planning activities under Statewide Planning Goal 5 and 17 (1995)
- Allowed for approval of watershed enhancement program as a wetlands mitigation bank if it complied with DSL's mitigation bank rules; also expanded circumstances under which a person could use a bank for mitigation credit (1997)
- Made numerous changes to the R-F law to parallel the federal Clean Water Act (CWA); such changes will become effective only if DSL assumes implementation responsibility for Section 404 of the CWA and the Oregon Legislature approves the changes and state's application to U.S. Environmental Protection Agency to assume the program (2001)
- Adopted various procedural modifications to the R-F law including setting timeframes for DSL to determine if a R-F application is complete and for issuing a final decision on a completed application; and exempting from the R-F law removal or fill of less than one cubic yard in ESH areas for non-motorized activities as well as for prospecting (2001)

Mitigation

To offset the reasonably expected adverse impacts of removal and fill projects, the law requires mitigation as part of all removal and fill permits in wetlands and estuaries and for alterations in most other "waters of the state."

Mitigating the environmental impacts of necessary development actions on wetlands is a central premise of Oregon's (and the federal government's) wetlands conservation

programs. Primarily the Environmental Protection Agency (EPA) and the Army Corps of Engineers (USACOE) under Section 404 of the federal Clean Water Act oversee federal wetland regulation.

Oregon and the federal government define mitigation as the reduction of adverse effects of a proposed project by considering the steps below in the following order:

- Avoiding the impact altogether by not taking certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact of the action by repairing, rehabilitating or restoring the affected environment.
- Reducing or eliminating the impact over time by preservation and maintenance operation during the life of the action by monitoring and taking appropriate corrective measures.
- Compensating for the impact by replacing or providing comparable substitute wetlands or water resources in situations where damage to wetlands cannot be avoided.

Compensatory mitigation actions typically include: 1) creating a wetland where one did not exist before; 2) restoring a former wetland; 3) enhancing an existing but degraded wetland; and 4) in exceptional cases, preserving an existing healthy wetland.

Mitigation banking is an element of the Removal-Fill program. Under the mitigation bank concept, an applicant has the option of conducting mitigation as part of the proposed development or purchasing credits from the mitigation banker who has performed the mitigation already.

Mitigation banks are used when wetland compensation is not feasible and/or desirable near the development site. Some mitigation banks are actually networks of bank sites distributed throughout a watershed or planning area. Mitigation banks typically result in the consolidation of what would otherwise be small, fragmented wetland mitigation projects into one or more larger contiguous area(s).

In a mitigation bank, restored, created, enhanced and preserved wetlands generate "credits" which may be subsequently withdrawn to offset "debits" incurred at a number of project development sites. Ideally, mitigation banks are constructed and functioning in advance of development impacts, and are seen as a way of reducing ecological uncertainty by demonstrating achievements of successful performance standards in advance of credit withdrawals. Banks also provide economies of scale relating to the planning, implementation, monitoring, and management of mitigation projects.

A key difference between a wetland mitigation bank and other wetland mitigation approaches is that a wetland mitigation bank is always linked to Oregon's Removal-Fill law and the federal Clean Water Act. There must be applicants for permits to fill,

excavate, and otherwise alter wetlands in the vicinity in order for wetland banking to be warranted.

OAR 141-085-042 sets out the requirements to establish a mitigation bank. 141-085-0421(2)(s) requires that any mitigation bank proposal demonstrate that the proposed bank is consistent with all applicable comprehensive plans and land use regulations for the mitigation bank site and surrounding lands.

Presently, seven of the mitigation banks approved by DSL are actively selling credits in six counties to offset development actions in adjacent or nearby wetlands.

Exempt Activities

The law also provides that certain projects may be exempt from the requirement to obtain a Removal-Fill permit. Included here are projects that involve:

- Less than 50 cubic yard of material (except in essential salmonid habitats and State Scenic Waterways – see ORS 196.810(b)).
- Forest management practices regulated under the Oregon Forest Practices Act.
- Filling for certain dams or diversion structures (see OAR 141-085-0020(2)).
- Normal farming and ranching activities on converted wetlands as defined in ORS 196.905(8)).
- Activities on land zoned for exclusive farm use in accordance with ORS 215.203 and 196.905(8)).
- Less than 50 cubic yards of material for activities customarily associated with agriculture conducted on essential salmon habitat streams.
- Maintenance or reconstruction of existing serviceable structures such as dikes, dams, levees, groins, riprap, tidegates, drainage and irrigation ditches and tile drainage systems.
- Maintenance, including emergency reconstruction of recent damage of currently serviceable roads and transportation structures.
- Fish passage and fish screening structures.
- Non-motorized activities affecting less than one cubic yard per site, and cumulatively not more than five cubic yards within a designated essential salmonid habitat segment in a single year.
- Maintenance, repair, removal and replacement of culverts as provided in OAR 141-085-0020(9)).
- Certain push-up dams built before 1967 or which have been previously permitted.
- Removal-Fill activity on the ocean shore but which still requires a permit from the Oregon Parks and Recreation Department under ORS 390.610.
- Non-motorized recreational prospecting, stream gauging facilities and fish and wildlife management facilities within State Scenic Waterways.

Detailed explanations of the above exemptions from Removal-Fill permits are provided in DSL's Removal-Fill rules (see OAR 141-085-0020).

General Authorizations

For certain types of activities, DSL issues a streamlined type of authorization called a General Authorization. "Letters of authorization" are issued for smaller projects that are substantially similar in nature, will cause only minimal and cumulative environmental impact, and will not result in long-term harm to the water resources of the state.

General Authorizations are issued for:

- Fish habitat enhancement
- Streambank stabilization
- Certain transportation-related structures,
- Wetland restoration and enhancement
- Recreational and small scale placer mining within Essential Salmon Habitat
- Sediment removal behind tidegates for channel maintenance
- Piling replacement or removal
- Minimal disturbance activities (less than two cubic yards) in Essential Salmon Habitat
- Oregon Department of Transportation bridge replacement and repair projects
- Minor impacts to freshwater wetland located within urban growth boundaries or urban unincorporated communities.
- Installation and Repair of Utility Lines (adoption pending as of January 31, 2006)

Requirements and procedures governing General Authorizations for the above activities are listed in DSL rules, OAR 141-085-0075, and 141-089-0100 to 141-089-0615.

Under state law, DSL is required within 30 days of receipt to determine whether a Fill-Removal application is complete and to issue a decision with 90 days of the completeness determination. The applicant may request an extension of the deadline.

Emergency Authorizations

In emergency situations, DSL can verbally authorize work in advance of a permit as soon as the department has all the necessary information about the project. Emergency authorizations are issued only in very limited, unforeseen circumstances such as repairing storm damage to an eroding bank next to a state highway. (See ORS 196.810(4)).

Individual Permits

As mentioned above, Oregon's Removal-fill Law (ORS 196.795 – 196.990) requires all land owners, whether private individuals or public agencies, who plan to remove or fill

material in “waters of the state” to obtain a permit from the Department of State Lands. Applicants for a Removal – Fill permit must provide detailed information how the project will affect a wetland, how the project design will minimize the impacts and how any remaining wetland impacts will be mitigated.

Many projects that require a state Removal – Fill individual permit (or General Authorization) also will require a federal permit from the U.S. Army of Corps of Engineers. To assist applicants, the department has developed a joint DSL/Army Corps of Engineers (USCOE) application for both federal and state permits.

The permit review process involves coordination with the applicant, adjacent land owners, federal and state resource agencies, interest groups and local governments. DSL provides limited assistance to the applicant in addressing the various local, state and federal permit requirements and procedures. DSL and the Corps each review the application and issue separate permits that may contain different requirements. Either agency may require a permit when the other does not.

To ensure coordination of the project with the local land use authority, the application includes a signature block where the local planning official must certify that the proposed removal-fill project is consistent with the affected local government’s comprehensive plan, or that the project’s consistency cannot yet be determined until the required local land use approval(s) have been obtained.

Depending upon the specific land use circumstances pertaining to the project, the application requires the local planning official to certify to one or more the following determinations:

- The project is not regulated by the local government’s comprehensive plan and land use regulations.
- The project is consistent with the comprehensive plan and land use regulations.
- The project will be consistent with the comprehensive plan and land use regulations when the following local approval(s) are obtained: 1) conditional use approval, 2) development permit, or 3) other.
- The project is **not** consistent with the comprehensive plan until the following have been obtained: 1) plan amendment, 2) zone change, and/or 3) other.

The application also requires the planning official state whether or not the applicant has filed for the required local land use approvals identified above.

Local governments may issue local land use approvals contingent on the applicant securing any necessary state or federal permits. However, in practice, applicants often seek both local and state approvals simultaneously, and they may modify the proposed project in response to initial review comments. For example, the information provided in the application can help identify a situation where a R-F project may be proposed in a location within a local wetland protection overlay zone. Although resolving all

differences between federal, state and local approvals affecting wetlands can be involved, it remains the applicant's responsibility that the final project design is in compliance with local land use requirements as well as with state and federal regulations.

The department issues about 600-700 individual Removal-Fill permits and General Authorizations annually. If DSL denies a permit, an applicant may appeal the denial through the contested case hearing process and then to the Oregon Court of Appeals. The department is responsible for Removal-Fill permit enforcement.

2. Wetland Conservation Program (ORS 196.600 – 196.692 and OAR 141-085 and 141-089)

Before statehood, wetlands covered large areas of what is now Oregon. Since then wetland acreage has decreased significantly as a result of the conversion of wetlands to agricultural uses by diking, draining, or both.

Other causes of wetland loss or degradation have been urbanization, industrial development, flood-control projects, surface-water diversion, and ground water pumping for irrigation, stream snagging, land clearing, grazing and beaver trapping. The greatest wetland losses were estuarine marshes, eastern Oregon riparian wetlands, Willamette Valley wet prairies and riparian wetlands, and Klamath Basin marshes.

However, over time, public awareness began to change to recognize the value of protecting wetlands in terms of flood control, improving water quality and protecting wildlife habitat. In Oregon, this realization was expressed with the enactment of the state's Removal-Fill law in 1971 that found that unregulated filling in "waters of the state" (including wetlands) might result in interfering or injuring public navigation, fishery and recreational uses of these waters.

In 1973, the passage of the state's comprehensive land use planning act (SB 100) and the subsequent adoption of the statewide planning goals (particularly Goals 5, and 15-17) brought about further attention to wetland protection in city and county comprehensive plans.

Then in 1989, the state legislature took a significant step with the passage of SB 3. This comprehensive legislation (now codified as ORS 196.600 – 196.692) adopted a policy stressing the importance of wetlands and further integrated wetland protection into the Removal-Fill permit program.

In addition to recognizing the flood control, water quality and habitat benefits of wetlands, the Legislature's enactment of SB 3 also sought to respond to the many concerns voiced about the uncoordinated regulation of wetlands by local, state and federal agencies. This lack of coordination was a source of considerable confusion, delay and confusion for the general public. The lack of certainty for land owners and

developers caused by conflicting regulations between local land use authorities and state and federal agencies was cited as a particular problem.

To address these concerns, SB 3 (1989) made several major changes to the Removal-Fill law and also established the following elements, which taken together constitute the state's wetlands conservation program:

- Designated DSL as the state's lead agency for wetland conservation.
- Established a statewide wetlands inventory comprised of DSL-approved local wetlands inventories.
- Local wetland conservation plans (WCP) that when approved by DSL require DSL to issue Removal-Fill permits in accordance with the approved WCP. (See ORS 196.678 and OAR 141-086)
- Wetland land use notification by cities and counties to DSL and land owner of development applications on or within wetlands identified on the State Wetlands Inventory (see ORS 215418 and 227.350)
- Wetland determinations and delineation reports pursuant to OAR 141-090
- Directed DSL to establish an expedited process for identifying and mitigating the loss of wetlands or other "waters of the state" identified for industrial or other economic development (added by 2003 Legislature – see ORS 984.560)
- Wetland management studies and techniques such as wetlands status and trends studies and wetland functions and values assessment methods
- Public information and training

(See 26-27 under the Removal-Fill program for discussion of wetland mitigation and mitigation banking.)

Under the wetland program, DSL provides city and county planning departments with wetland inventory maps and assists local governments in the development of local wetland protection programs pursuant to the requirements of Statewide Planning Goal 5.

Local governments within urban growth boundaries and urban unincorporated communities must conduct local wetland inventories (LWIs) that conform to DSL standards for determining significant wetlands. As of January 2006, 56 LWIs have been approved by DSL. Outside of these urban areas, local governments must adopt the statewide wetland inventory provided to them by DSL. (See ORS 196.674 and LCDC's Goal 5 rule at OAR 197-023-0100(3)-(5)).

The department previously administered a grant program (funded by the U.S. Environmental Protection Agency) to assist local governments with wetland planning. In addition to these grants, DSL's wetland assistance program to local communities, land owners and other interested groups includes sales of national and LWI wetland maps, wetland inventory user guides, rules and guidelines for conducting inventories, sponsoring or assisting with public meetings, workshops and training sessions, and dissemination of fact sheets and other education materials.

State Programmatic General Permit

In 1995, the Oregon Legislature directed the Department of State Lands (DSL) to streamline the removal-fill permit process. After extensive collaboration with state and federal partners, DSL and the U.S. Army Corps of Engineers are launching the Statewide Programmatic General Permit (SPGP), effective January 3, 2006.

The two-year *SPGP Pilot Program* is designed to make the state and federal wetland and waterway removal-fill permit application process a "one-stop shop" so that applicants have a single point of contact when applying for a permit.

Specifically, the process will:

- Assign lead-agency responsibility to DSL.
- Require more up-front documentation with the application to provide a more complete picture of the project upon submission.
- Reduce multi-agency involvement and follow-up questions of applicants.
- Maintain environmental stewardship.
- Help applicants better understand and meet regulatory standards.
- Provide more technical assistance for applicants from DSL staff.

Effective January 3, 2006, an applicant may receive a single DSL authorization for any of the eight covered activities, including:

1. Streambank stabilization
2. Water control structures
3. Utility lines
4. Road construction, repairs and improvements
5. Site preparation for construction or repair of buildings and related features such as driveways, parking areas and walkways
6. Stream and wetland restoration
7. Minor fills
8. Piling installation and/or removal.

At least 10 major state and federal statutes, programs and guidelines have all been integrated into the SPGP. These include:

1. State Removal-Fill Law
2. State Scenic Waterway Law
3. Federally Approved Oregon Coastal Management Program
4. Federal Clean Water Act Sections 404 and 401
5. National Environmental Policy Act
6. Federal Rivers and Harbors Act
7. Federal Endangered Species Act
8. Federal Magnuson-Stevens Fishery Conservation and Management Act

9. Federal Fish and Wildlife Coordination Act
10. Federal National Historic Preservation Act

The SPGP will be the only vehicle where applicants can simultaneously obtain approvals under all of these state and federal mandates in one, integrated package. Here are a few examples of the types of projects, that when properly designed, could be authorized by DSL for up to 0.5 acre of wetland fill and/or up to 1,000 cubic yards of fill or removal in all waters:

- Bank reshaping and slope grading
- Placement of engineered log jams for fish habitat
- Construction of barbs placed below bank full elevation
- Improvement to fish screens or diversions for fish hatcheries
- Installation of outfall and intake structures to support existing service
- Utility line installation, including pipelines, cable or wire transmission lines
- Road shoulder repair, sign installation, bridge maintenance or ditch cleaning
- Construction, repair or expansion of residential, commercial and/or institutional building foundations or pads and attendant features such as roads, parking lots, garages and utility lines
- Stream and wetland restoration techniques such as road decommissioning, setback levees, dikes and berms, removal of levees, dikes or berms and removal of other fish passage barriers
- Boat ramp cleaning and repair
- Survey activities including core sampling and seismic exploratory operations
- Repair, upgrade and/or replacement of existing piling

After a two-year trial period, the SPGP will be reevaluated to ensure that its dual purpose of streamlining and resource protection is being achieved.

Other Department Programs

1. Unclaimed Property (ORS 98.302 –98.436, 98.991 – 98.992 and OAR 141-045)

Pursuant to ORS 98, Unclaimed Property, the department holds in trust abandoned personal funds such as bank accounts and uncashed checks. The rightful owner may call for the funds at any time. However, all accrued interest goes to the Common School Fund. Department responsibilities in administering this program include reporting, advertising and payment of accounts; responding to requests for information about unclaimed and escheated money and property that has become property of the state as a result of payment or delivery; reviewing and approving claim payments by owners or their heirs; and auditing of compliance with the abandoned property laws and rules.

2. Estate Administration (OAR 141-025, 141-035, 141-040)

The Estate Administration Program acts on behalf of the DSL Director who is appointed as personal representative of the estates of individuals who die intestate and who have no known heirs. Department duties include searching for relatives; funeral arrangements; inventory of assets, filing of appropriate probate proceedings; payment of taxes, sales of assets; and property that has become the property of the state as a result of payment or delivery.

3. Department management and administration of Common School Fund (ORS 273.105)

4. Department disbursement of funds when made available by the Legislature under the Oregon Rural Rehabilitation Fund. Such funds are used to provide loans or grants to farmers for operating expenses, flood prevention or restoration projects, farm labor housing, education and youth activities. (OAR 141-060)

5. Department maintenance, minor betterment, upkeep and repair of department-owned lands and facilities, including any offices and grounds.

6. Natural Heritage Advisory Program (ORS 273.563 and OAR 142)

The Oregon Natural Heritage Program (OHNP) was enacted as a cooperative, interagency effort to identify plant and animal species and areas that represent the full range of Oregon's natural heritage resources. The program consists of four basic components:

- Natural Heritage Advisory Council
- Natural Heritage Databank
- Natural Heritage Plan, including the Register of Natural Heritage Resources
- Dedication of Natural Heritage Conservation Areas

Under an agreement with DSL, the program is managed by the Oregon Natural Heritage Information Center that is part of the Oregon State University's Institute for Natural Resources. The Natural Heritage Advisory Council, whose members are appointed by the Governor, oversees the program. DSL provides administrative support services for the Council.

The Council is charged with the development of the Oregon Natural Heritage Plan and for the maintenance of a data bank of potential natural areas within Oregon. Other duties of the Council include:

- Develops policy for the Natural Heritage Program through the Natural Heritage Plan
- Oversees the maintenance and use of the Natural Heritage data bank and includes information on species location, whether such species are threatened or endangered
- Provides information from the data bank to user groups and organizations
- Recommends to the State Land Board sites to be added to or removed from the Register of Natural Heritage Resources
- Participates in the evaluation of potential natural areas for dedication
- Advises the State Land Board on rules necessary to carry out the Natural Heritage Program
- Administers the state's Threatened and Endangered Invertebrate Program

The Natural Heritage Plan, created in 1981, and updated every five years, identifies and lists significant "natural heritage elements" on the Register of Natural Heritage Resources. As of January 2002, 90 sites were listed on the Register. Sites placed on the Register are selected to represent the full range of Oregon's natural heritage resources and are intended to be used for scientific research, educational purposes and nature interpretation.

The Council avoids selecting land used in commodity production. Sites on private land cannot be placed on the Register without written permission of the land owner.

Pursuant to ORS 273.586 and OAR 141-050, private individuals or organizations that are owners of a Registered Heritage Resource site may voluntarily agree to dedicate to the state of Oregon the site as a Natural Heritage Conservation Area subject to Land Board approval. The instrument of dedication shall be recorded with the county in which any or all of the Conservation Area is located.

Department Organization

The administration of DSL's programs is allocated among the following divisions/programs:

- Land Management Division is responsible for all property and waterway leasing and management programs.
- Wetlands and Waterways Conservation Division is responsible for all the Removal-Fill and Wetland Conservation programs.
- Finance and Administration Division is responsible for Unclaimed Property, the Fiscal Services section, Estates, Information Systems section, and agency-wide administrative rule coordination functions.
- South Slough National Estuarine Research Reserve is a partnership between the state (DSL) and federal government (NOAA) to improve the understanding and stewardship of Pacific Northwest estuaries and coastal watersheds. The 4,771 acre (Coos Bay) Reserve encompasses a mixture of open water channels, tidal and freshwater wetlands, riparian areas, and forested uplands. SSNERR actively supports and coordinates research, education, and stewardship programs which serve to enhance a scientific and public understanding of estuaries and contribute to improved estuarine management.

Section 3

Department Land Use Programs and Coordination

This section addresses the requirements in the Department of Land Conservation and Development rule on State Agency Coordination (SAC) Plan (OAR 630-030) to:

- Identify which of the department's rules and programs affect land use (referred to as land use programs), and
- Enact new or amended procedures for assuring that the department's land use programs will comply with the statewide planning goals and be compatible with local government comprehensive plans and land use regulations.

SAC REQUIREMENT 1

To comply with OAR 660-030-0060(3)(b) and (c), the agency must:

- (b) Using the definitions in OAR 660-030-0005(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 the administrative rules and procedures and an analysis of the relationship between the program and land use;

DSL RESPONSE TO OAR 660-030-0060(3)(b) and (c)

In determining which of its rules and programs affect land use, DSL applied the following definition found at OAR 600-030-0005(2):

- (2) "Rules and Programs Affecting Land Use":
 - (a) Are state agency rules and programs (hereafter referred to as "land use program") 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
 - (j) Present or future land use identified in acknowledged comprehensive plans.
 - (b) Do not include state agency rules and programs, including any specific activities or functions which occur under rules and programs listed in paragraphs (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 significant effects 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 or 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.

To identify its land use programs, the department applied the above definition and eliminated those programs that do not qualify as land use programs by virtue of: 1) being expressly exempt by law, 2) not reasonably expected to have any significant effect on the statewide goals or comprehensive plans, or 3) which involve a transfer or acquisition of ownership or interest in real property without making any change in the use or area of the property.

DSL Programs Expressly Exempt from Compliance with the Statewide Goals and Compatibility with Acknowledged Comprehensive Plans

There are no department programs that are expressly exempt by the Oregon constitution, state statute or appellate court ruling from statewide goals compliance and comprehensive plan compatibility. However, the Oregon Attorney General has advised that the Legislature cannot impose regulatory requirements on the Land Board's management of lands constitutionally dedicated to the Common School Fund if to do so would "unduly burden or unduly interfere" with the Land Board's responsibilities under Article VIII, section 5, of the Oregon Constitution. (See Attorney General Opinion # 8223, July 24, 1992, at pp. 35-38)

Whether a situation could arise where the Land Board's exercise of its trust responsibilities under Article VIII could be "unduly" restricted by its obligation under ORS 197.180 to comply with the statewide planning goals and act compatibly with acknowledged comprehensive plans cannot be generally known before-the-fact. Such a conclusion would necessarily have to be the result of a factual, case-specific determination requiring the consideration of both the Land Board's discretion in managing specific properties and the range of options available to it to satisfy the statutory land use coordination requirements as described in LCDC's SAC rules at OAR 660-030-0065 and 660-030-0070.

If in the future an instance does exist where the board's land management duty would in fact be unduly limited by compliance with the goals and/or compatibility with a

comprehensive plan, and efforts to resolve the dispute through the SAC process are unsuccessful, then the board will proceed to fulfill its constitutional responsibility.

Similarly, with respect to DSL non-trust land, a situation may arise where a state or federal law preempts or otherwise limits state and local land use regulations. For example, a hazardous substance investigation or cleanup under CERCLA (Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as the federal Superfund law) could, under certain circumstances, be authorized to proceed under federal authority or federal order, even if the activity conflicts or would be delayed by state and local land use requirements.

DSL Programs Not Reasonably Expected to Have Significant Effects on the Statewide Goals or Present or Future Uses Identified in Acknowledged Comprehensive Plans

The department administers various programs and carries out a number of programs that are not reasonably expected to have significant effects on resources or land uses identified in the statewide planning goals or acknowledged comprehensive plans. Programs and activities in this category involve accounting, financial administration, managing personal property and reporting, and property dispositions (e.g., sales, exchanges, purchases, etc.)

An example is department management of the Common School Fund. Here, the principal activities involve monitoring properties and funds, making investment decisions and reporting to the State Land Board and the Legislature. The department also administers proceedings for default actions on Common School Fund timber sale contracts.

Another example is the administration of personal property escheated or deposited with state institutions. DSL staff audits leases, negotiates legal instruments and manages funds or personal property left in the care of the department.

It is conceivable that managing accounts, exercising fiduciary responsibilities, overseeing tangible and intangible personal property left with the state, acquiring, disposing or exchanging land, and similar programs (listed below) might have an indirect or very minor effect on land use. However, the department finds that if any land use effect does occur, it will not be significant in terms of its impact on the statewide goals or acknowledged comprehensive plans.

Therefore, the department concludes that the following are not department land use programs because they are not reasonably expected to have significant effects on the statewide planning goals or present or future uses identified in acknowledged comprehensive plans:

- Department management and administration of Common School Fund (ORS 273.105)

- Department management of all state-held unclaimed tangible and intangible property (OAR 98.302 – 98.436, 98.991 – 98.992, OAR 141-045)
- Department administration of escheated monies and properties deposited with state institutions (OAR 141-025)
- Department management of estates including filing public notices, funeral arrangements, sales of tangible and intangible property, accounting and payment of taxes (OAR 141-035)
- Department disbursement of funds when made available by the Legislature under Oregon Rural Rehabilitation Fund (see OAR 141-060). Such funds are used to provide loans or grants to farmers for operating expense, flood prevention or restoration projects, farm labor housing, education and youth activities. While the use of such monies by private recipients could have effects on land use, department procedures for processing requests for these funds have no direct impact on the statewide planning goals or comprehensive plans.
- State Land Board determinations of navigability (see ORS 274.400 – 274.412 and OAR 141-121). The State Land Board has the sole authority to assert state title to land underlying Oregon's waterways. A navigability determination (or study) is the process of collecting and analyzing data, preparing reports, and holding public review meetings to ascertain whether a particular waterway is navigable.

While future land use decisions may be made by local governments or other agencies as consequence of a navigability determination by the State Land Board, the actual analytical activity by the department leading to such a determination does not have any significant effect on the statewide goals or acknowledged comprehensive plans.

- Department maintenance, minor betterment or repair of department-owned lands and facilities, including any offices, buildings and grounds.
- Adoption and amendment of the Land Board's Asset Management Plan pursuant to the Oregon Admission Act, Article VIII, Section 5(2) of the Oregon constitution and ORS 273.245. (However, adoption or amendment of Area Management Plans intended to implement the Land Board's Asset Management Plan is determined to be land use program subject to SAC requirements (see pages 44-45).
- Administration of estates pursuant to OAR 141-035 where the department sells real property as part of the probate process.

- Land sales, exchanges or acquisitions of Common School Fund land as authorized by the Oregon Constitution (Article VIII, Section 5(2), ORS 273.413 and 273.825, as well as other lands owned or acquired by the department.
- Mineral reservation and release (see OAR 141-073). Except as required by law, the state must retain mineral and geothermal rights on state-owned land. The Land Board may make a finding that the sale or exchange of such rights is for the greatest benefit of the state. Any sale or exchange of mineral or geothermal rights under this program does not grant approval that such resources may be removed from the ground.
- Property authorizations including easements, leases, temporary and special use permits, licenses and registrations that do not result in any change of use or area of the property. (See for example ORS 273.563 to 273.591; see also OAR 141, Divisions -070, -071, -073, -075, -082, -083, -087, -0110, -0122 and -0125; and OAR 142 -010).
- Administration of the Oregon Natural Heritage Program (see ORS 273.563 to 273.591) through agreement with Oregon State University's Institute for Natural Resources, including Land Board approval of the Oregon Natural Heritage Plan and any additions or deletions to the Register of Natural Heritage Resources and list of dedicated Natural Heritage Conservation Areas. (See pages 44-45 for discussion of the Register of Natural Heritage Resources under LCDC's Goal 5 rule.)

DSL Programs Involving the Transfer or Acquisition of Ownership or Interest in Real Property Not Making any Change in the Use or Area of the Property

As previously discussed in Section 2, the Land Board and DSL oversee large areas of state-owned land including rangelands and other uplands, submerged and submersible lands, and subsurface minerals and other subsurface resources (e.g., geothermal).

Under the Oregon Constitution and state law the Land Board and DSL hold title to, convey and otherwise manage these state-owned lands and properties. These land management duties are exercised in six broad areas:

1. Maintenance, minor betterment and repair of department-owned offices, buildings and grounds.
2. Preparation and adoption of area management plans that implement the Land Board's Asset Management Plan.
3. Issuance of property authorizations, including new authorizations and renewals of existing authorizations:

- a. Easements
 - b. Leases
 - c. Temporary and special use permits
 - d. Licenses
 - e. Registrations
4. Property dispositions including:
 - a. Sales, acquisitions, exchanges and purchases
 - b. Mineral releases and reservations
 5. Property ownership determinations including determinations of navigability under state waterways
 6. Making physical developments or improvements on land owned by DSL.

Property management duties: 1 (maintenance/minor improvement), 4 (property dispositions) and 5 (ownership determinations) have been judged (above) not to affect land use due to their minimal effect on the state goals and uses in local comprehensive plans. Management duty 2 (area management plans) and 6 (physical developments or improvements on DSL-owned land) are programs affecting land use (see pages 45-46 below).

The remaining property management duty 3 (authorizations) will only constitute actions affecting land use where the specific authorization results in a change in the use or area of the land in question.

However, in the event where it appears a local government land use regulation may be applicable to a pending DSL property authorization or disposition, the department will communicate with the affected local government to clarify whether or not any local land use requirements must be addressed. If confirmed, approval of the department's action will be made with the express understanding (usually through conditions) that obtaining any local land use clearance(s) may be required. In such cases, the department's action will not be effective until the applicant receives local land use approval.

DSL Land Use Programs

Listed below based on the definition at OAR 660-030-0005(2)(a) are DSL's rules and programs determined to affect land use because they are either or both:

- Specifically referenced in the statewide planning goals; or
- Reasonably expected to have significant effects on resources, objectives or areas identified in the statewide planning goals; or present or future land uses identified in acknowledged comprehensive plans.

DSL rules and programs specifically referenced in the statewide planning goals (and LCDC's administrative rules, OAR Chapter 660):

Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources (and OAR 660 –023)

The following references are cited in LCDC's Goal 5 rule (see OAR 660-023)

Wetlands (660-023-0100):

Local Wetland Inventory and Determination of Significant Wetlands pursuant to ORS 197.279(3)(b), ORS 196.674, and OAR 141-086-0110 to 141-086-0240 for areas within urban growth boundaries (UGBs) and urban unincorporated communities (UCCs)

Statewide Wetland Inventory pursuant to ORS 196.674 for areas outside of UGBs and UCCs

Notification of DSL of Local Governments Development Permits and Other Land Use Decisions (see ORS 215.418 and 227.350)

Wetland Conservation Plans (see ORS 196.668 and 197.279)

Natural Areas (660-023-0160):

Register of Natural Heritage Resources under Oregon Natural Heritage Program

Special Note:

It is the department's position that despite being listed in the Goal 5 rule, none of the programs listed above, with the exception of wetland conservation plans, is a land use program requiring DSL to enact procedures to obtain a compatibility determination from local governments.

The purpose for the references to the inventory steps cited in the Goal 5 rule (660-023-0100(3)-(6)) is to inform local governments to carry out their wetland planning obligations consistent with DSL wetland rules and procedures pursuant to OAR 141-086. Similarly, the reference in 660-023-0100(7) is to inform local governments of their land use notice requirement under ORS 215.418 and 227.350.

Under Natural Areas (660-023-0160), local governments are told at periodic review to consider sites on the Register of Natural Heritage Resources as "significant" resources under Goal 5.

Goal 16 – Estuarine Resources

Removal-Fill Law (ORS 196.800 – 196.990), [previously ORS 541.605 - 541.665]

Mineral Resources Leases (ORS 273.551; 273.775 – 273.780)

Submerged and Submersible Lands in estuaries (ORS 274.005 – 274.940)

DSL rules and programs reasonably expected to have significant effects on resources, objectives or areas in the statewide planning goals and present and future uses in acknowledged comprehensive plans include the following:

Property Management Programs

1. The adoption and amendment of Area Management Plans (e.g., Elliott State Forest Land Management Plan, Lower Willamette River Management Plan, South Slough National Estuarine Management Plan, etc.)
2. Authorizations that result in a change of the use and/or area of the property in question involving the following state-owned lands:
 - a. Agricultural and rangelands
 - b. Industrial/Commercial/Residential (ICR) Lands
 - c. Waterways (i.e., includes the state's Territorial Sea and all other submerged and submersible lands including all navigable and tidally-influenced waterways and navigable lakes.) Uses covered by waterway leases and related DSL authorizations include: 1) log raft storage, 2) marinas, 3) houseboat moorage, 4) barge moorage, and 5) various commercial activities such as restaurants, fish processing facilities, marine industrial facilities and sand and gravel removal.
 - d. Mineral lands (includes various mineral and geological resources including hard mineral, oil and gas, sand and gravel and geothermal)
3. Physical development and improvements on DSL-owned land including communication facilities and other special uses (e.g., siting and operation of microwave towers, transmitters, wind farms, hydropower, etc.)

Regulatory Programs

4. Removal-Fill Program (issuance and renewal of individual permits, emergency authorizations and general authorizations in "waters of the state"; approval of DSL wetland mitigation banks)

5. Wetland Conservation Program (approval of new and amendments to local wetland conservation plans)

SAC REQUIREMENT 2

To comply with OAR 660-030-0060(3)(d), an agency must:

- (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 660-030-0092(2);

DSL RESPONSE TO OAR 660-030-0060(3)(d)

LCDC's state permit compliance and compatibility rule (OAR 660, Division 31) establishes procedures and standards that require consideration of the statewide planning goals and acknowledged comprehensive plans prior to the approval of state agency permits. The rule provides a process for state agencies to rely on local determinations of compliance with the state goals and acknowledged plans when issuing certain permits.

The permit rule defines two categories of agency permits that are subject to this rule. Class A permits are those that affect land use that require public notice and public hearing at the agency's discretion prior to permit approval. Class B permits are agency permits affecting land use that do not require public notice or an opportunity for public hearing before permit issuance. (See OAR 660-031-0010(2) and (3))

The following DSL permits are currently subject to and are listed in LCDC's permit compliance and compatibility rule:

Class A Permits

Individual Removal-Fill permits (OAR 660-031-0012(1)(c))

Class B Permits

Geophysical and Geological Survey permits
(OAR 660-031-0012(2)(h))

Other Department Lands Use Actions To Be Treated as Class B Permits

In addition to the above permits, the following actions affecting land use will be treated by DSL in a manner similar to Class B permits and will, to the extent possible, be processed in accordance with the applicable provisions of the state Permit Compliance and Compatibility rule (OAR 660-031).

These actions are:

1. General Authorizations and Emergency Authorizations under the Removal-Fill program, and
2. Property Management Authorizations involving state-owned land where such actions are determined to affect land use. These actions include:
 - Issuance of new, renewed or modified easements, leases, temporary and special use permits, licenses, and registrations and all other property authorizations.

SAC REQUIREMENT 3

Once an agency has identified which of its rules and programs affect land use, it next must comply with OAR 660-031-0060(4)(a):

(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 program not listed under paragraph (4)(a)(A) of this rule;

DSL RESPONSE TO OAR 660-030-0060(4)(a)

Exempt Land Use Programs

There are no department land use programs that are expressly exempt from the requirement to be compatible with acknowledged comprehensive plans but not from compliance with the statewide planning goals.

Compatible Land Use Programs

All of the department's land use programs and actions listed on pages 44-47 in this section qualify as Compatible Land Use Programs pursuant to OAR 660-030-0060(4)(a)(B).

SAC REQUIREMENT 4

To comply with OAR 660-030-0060(4)(b) and (c), the agency must:

- (a) Adopt or amend agency rules to implement procedures for assuring the agency's goal compliance described in OAR 660-030-0065 for the land use programs listed under subsection (4)(a) of this rule;
- (b) 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 660-030-0070 for land use programs listed under paragraph (4)(a)(B) of this rule;

DSL RESPONSE TO OAR 660-030-0060(4)(b) and (c)

Overall Department Land Use Coordination Policy

The department hereby adopts the following policies and will adhere to the requirements in DSL's SAC rule, OAR 141-096, in the development, amendment and execution of its rules and procedures for assuring compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive plans when carrying out its programs and related actions determined to affect land use:

1. The department shall comply with ORS 197.180, OAR 660, Divisions –030 and –031, all other applicable statutory and administrative rule requirements and the provisions of the department's certified state agency coordination program in carrying out its programs and actions determined to affect land use.
2. In circumstances where it is necessary for the department to adopt direct findings of compliance with the statewide planning goals, the department shall comply with all applicable requirements in OAR 66-030-0065.
3. Whenever possible, the department shall comply with the statewide planning goals by assuring that its land use programs and actions are compatible with applicable acknowledged comprehensive plan(s).
4. In acting compatibly with acknowledged comprehensive plans, the department shall comply with all applicable requirements in OAR 660-030-0070, including dispute resolution with the affected local government(s) and mediation by the Land Conservation and Development Commission.
5. If a circumstance arises where a pending DSL decision or authorization affecting land use also requires the approval of another state agency, DSL shall, along with the other agency (or agencies), determine the primary or lead authority over the action. The lead agency shall be responsible for assuring the action complies with the statewide planning goals and is compatible with the applicable local government's comprehensive plan and land use regulations. If the lead is

not DSL, DSL will rely on and act consistently with the other agency's land use determination.

Department Land Use Compatibility Procedures

The department will employ the following three (3) procedures (called Type 1,2,3) for assuring the compatibility of DSL land use programs and actions with acknowledged city and county comprehensive plans.

Type 1 – Land Use Compatibility Determination Initiated by Applicant or Land Owner Requesting Department Permit or Other Approval

Under this procedure the department's land use compatibility determination is triggered by an application or similar administrative request to the department. DSL shall rely principally on the information and/or findings provided to the department by the applicant, land owner or affected local government(s).

Principal Steps:

1. The department receives a complete application (including appropriate documentation) from the applicant indicating one of the following:
 - a. The proposed action or activity is compatible with the affected local government's comprehensive plan.
 - b. The compatibility of the proposed action or activity with the affected local government's comprehensive plan cannot be determined until the necessary local land use approval(s) have been issued.
 - c. The proposed action or activity is not compatible with the affected local government's comprehensive plan.
 - d. The proposed action or activity does not require a local land use approval or compatibility determination.
2. Following review of the application, the department sends written and/or electronic public notice of the proposed activity or action to the affected local government. (Note: For certain programs, the public notice may also be sent to a standard mailing list of agencies and other persons requesting to be notified.)

The notice requests the appropriate local planning official to inform the department whether or not the proposed action or activity is compatible with the local government's comprehensive plan.

3. Following the close of the comment period, the department will review the comments received and determine if the proposed action or activity is or is not compatible with the local comprehensive plan. If it is not compatible, then the application will be denied.

If there is some uncertainty about land use compatibility, or if the applicant is still in process pursuing local land use approvals for the action or activity, the department may contact the affected local government for clarification. Based on the application, comments from the public notice and any clarification received from the local government, the department may condition its approval. The condition(s) shall state that the applicant must receive the necessary local land use clearances before the department's approval is effective and the applicant can commence the action or activity being applied for.

Note: The department may convene a public hearing to receive further information prior to making its final decision on the proposed action or activity.

Department Land Use Programs Subject to Type 1 Procedure

The department will utilize the Type 1 procedure to determine the land use compatibility for the following agency land use programs:

Property Management Programs:

All Property Authorizations Affecting Land Use (see page 45)

Regulatory Programs:

1. Individual Permits, Emergency Authorizations and General Authorizations under the Removal-Fill Program; approval of wetland mitigation banks
2. Approval of Local Wetland Conservation Plans under the Wetland Conservation Program

Type 2 – Land Use Compatibility Determination Initiated by Department in Conjunction with Management Planning for State- Owned Lands

Unlike the Type 1 procedure above, the department's land use compatibility determination in this case is initiated by the department as part of its (or the Land Board's) adoption of a new or amended resource or land management plan applied to state-owned lands. The department's land use compatibility determination for Type 2 shall rely principally upon information received in response to a department public notice and/or public hearing(s).

Principal Steps:

1. The department will give public notice, in accordance with established procedures, to the affected local government, agencies, tribal governments, interested organizations and individuals and the media and conduct one or more public hearings prior to adoption of the new or amended management plan.
2. The public notice and notice of the public hearing shall summarize the plan being considered for adoption, where a copy of the plan and additional information may be obtained, the deadline for receiving comments and the date and location of the public hearing (if any).

The notice sent by the department also shall clearly request comments to enable the department (or Land Board) to determine the management plan's compatibility with the affected local government comprehensive plan(s) that apply to the state-owned lands in question. (Note: For any management plans in the state's Territorial Sea, notices shall request comments on the proposed plan's compliance with applicable statewide planning goals, particularly Goal 19 and the state's Territorial Sea Plan.)

In the situation where comments received contend that the proposed management plan is not presently compatible with the affected comprehensive plan(s) or does not comply with statewide planning goals, those parties making such comments may be asked by the department to suggest changes to address the management plan's plan compatibility and goal compliance concerns.

3. Copies of the request for comment notice and public hearing notice shall be sent to the planning departments of all cities and counties whose comprehensive plans govern land use actions in the area covered by the proposed management plan.
4. Based on comments received, the department will adopt findings and conclusions demonstrating the management plan's comprehensive plan compatibility, and where applicable, compliance with the statewide planning goals and Territorial Sea Plan. If a situation arises where the department (or Land Board) is unable to act due to a major land use compatibility conflict with one or more local comprehensive plans, the department will seek to resolve the conflict with the affected jurisdictions through

dispute resolution, including reliance on procedures in LCDC's SAC rules at OAR 660-030-0070.

Department Land Use Programs Subject to Type 2 Procedure

The department will utilize the Type 2 procedure to determine the land use compatibility for the following agency land use programs:

Property Management Programs:

Adoption or amendment of Area Management Plans

Regulatory Programs:

None

Type 3 – Department Requests Local Land Use Approval

The department shall follow this procedure when it (DSL) is a land use applicant before a local governing body. This procedure will be used when the department, as a property owner, exercises its property rights and seeks local approval to site or erect a use, building or other structure on a specific site on state-owned land.

Procedure

1. The department shall submit an application to obtain the necessary local land use approval or compatibility determinations from the affected local government exercising land use approval over the site in question. If more than one local government has jurisdiction over a requested department action, then the department shall seek land use approval (or compatibility determinations) from each affected local government.
2. If the local government denies the department's application, or finds that its request is not compatible with acknowledged comprehensive plan, the department will take one or more of the following actions: a) withdraw its application, b) appeal the decision to the local governing body and/or the state Land Use Board of Appeals, c) modify its request and resubmit to the local government, or d) initiate dispute resolution with the affected local government(s), including those procedures in LCDC SAC rules at in OAR 660-030-0070.

Department Land Use Programs Subject to Type 3 Procedure

The department will utilize the Type 3 procedure to assure compatibility with local affected comprehensive plans for the following agency land use programs:

Property Management Programs:

Siting or erecting a specific use, building or other structure on state-owned land.

Regulatory Programs:

None

Provision of General Information and Notice of Upcoming Department Actions Pertaining to Agency Coordination and Land Use

In addition to the above three (3) specific land use compatibility procedures, the department will continue its practice of providing mailed and/or web-based or other electronic notice and copies to all affected local governments, agencies, tribal governments, and interested organizations and citizens who the department believes may have a general interest in the agency coordination and land use issues or effects associated with recent DSL publications (e.g., performance measures, strategic plan), monitoring reports summarizing recent proprietary and regulatory actions, and upcoming department or Land Board planning studies and actions such as rule making.

SAC REQUIREMENT 5

To ensure that new or amended agency land use programs comply with the statewide planning goals and are compatible with acknowledged comprehensive plans, an agency must comply with OAR 660-030-0060(4)(d) that states:

- (a) 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 660-030-0075;

DSL RESPONSE TO OAR 660-030-0060(4)(d)

The department will utilize the following procedures to assure that any new land use program or amendment to an existing land use program complies with the statewide planning goals and is compatible with acknowledged comprehensive plans.

1. The department shall not amend its certified state agency coordination (SAC) program, adopt new programs, or amend existing programs it determines may have a significant effect on land use without first notifying the Department of Land Conservation and Development (DLCDC) in accordance with OAR 660-030-0075.

2. The department shall provide prior written notice to DLCD in accordance with LCDC's SAC rules before DSL adopts a program or amendment to a program that DSL determines will have a significant effect on land use.
3. The notice described in 2 above shall demonstrate the proposed adoption or amendment:
 - (a) Does not affect land use; or
 - (b) Significantly affects land use, but that goal compliance and compatibility with acknowledged comprehensive plans shall be assured through adherence to the procedures in the department's certified SAC program' or
 - (c) Significantly affects land use, but is not covered by regulations and procedures in the department's certified SAC program. In this case, DSL's notice shall include an explanation of how the department shall assure goal compliance and compatibility with comprehensive plans in accordance with the applicable provisions in OAR 660-30-075.

Section 4

Coordination with State Land Use Program and Oregon Coastal/Ocean Management Program

This section addresses the requirement in OAR 660-030-0060(5)(a) to describe how DSL will coordinate its land use programs with the Department of Land Conservation and Development (DLCD). (See Section 6 below describing the department's coordination with other state and federal agencies and special districts.)

Emphasized here are the department's coordination, interests and intended actions with the state's land use planning and coastal/ ocean management programs. The department sees two principal benefits from such coordination:

- Strengthened relationships with local and tribal governments and various other local, state and federal partner agencies; and
- Improved management and implementation of the department's land use programs identified in Section 3.

SAC REQUIREMENT 6

Subsection (5)(a) of OAR 660-030-0060 requires the agency to:

- (a) Describe the procedures it will utilize to coordinate its land use programs with the Department [DLCD] and affected state and federal agencies and special districts;

DSL RESPONSE TO OAR 660-030-0060(5)(a)

Overview of State Land Use and Oregon Coastal/Ocean Programs

State Land Use Program

In 1973, the Oregon Legislature passed SB 100 that established the state's comprehensive land use planning program. The enactment of this landmark legislation (now codified in ORS Chapter 197) was prompted by growing concern in the 1960s and 1970s about the impact rapid population growth and development would have on the state's environment and economy.

Citizens and state and local leaders across Oregon realized a continuation of fragmented, uncoordinated development threatened the future of Oregon in terms of the loss of its natural resource base and the livability of its communities.

Unlike approaches taken in other states, land use planning in Oregon does not rely on the imposition of a single overall plan, nor does the state write local plans, zone land or issue land development permits. Instead the state's 240 cities, 36 counties and the Metro regional government in the Portland area are required to develop, adopt and implement comprehensive plans for each of their areas. The result is a coordinated mosaic of 277 comprehensive plans applied to the approximate 27 million acres of private and non-federal public land in Oregon.

The role of the state is to require that local governments adopt their comprehensive plans and implementing ordinances (e.g., zoning, land division, etc.) and to ensure that such local plans and ordinances comply with the Statewide Planning Goals and associated administrative rules. It is the state's primary land use statutes (ORS 195, 196, 197, 215 and 227) and the Statewide Planning Goals that form the regulatory and policy framework for the state's planning program.

The Statewide Planning Goals (and their rules in OAR Chapter 660) are the mandatory standards for comprehensive planning and in effect define the state's land use interests. The goals also apply to state agencies and special districts when they adopt plans and programs and make decisions affecting land use. On the coast, the statewide goals along with approved local comprehensive plans and various state agency authorities also serve as the basis for reviewing federal actions and projects for consistency with the state's federally approved Coastal Zone Management Program (see below).

The 19 Statewide Planning Goals can be grouped into five broad categories:

- Citizen involvement, coordination, local plan and ordinance content and organization, goal exceptions procedures (Goal 1 and 2)
- Farm and forest lands (Goals 3 and 4)
- Urban and rural development (Goals 9-12, 14)
- Natural resources and natural hazards (Goals 5-8, 13 and 15)
- Coastal and ocean resources (Goals 16-19)

The seven-member Land Conservation and Development Commission (LCDC) adopts the Statewide Planning Goals and the implementing administrative rules. The commission oversees all aspects of the state planning program. The Department of Land Conservation and Development (DLCD) is the administrative arm of the commission.

The commission adopts new and amended state goals and administrative rules and develops legislative and budgetary proposals in response to changes in land use laws,

direction from the Governor's Office, court decisions and legal advice from the state Department of Justice, and on-the-ground land use trends and problems.

Under the direction of the commission, DLCD provides financial and technical assistance to cities and counties and carries out various other obligations and actions through the Coastal/Ocean and Transportation-Growth Management (TGM) Programs. DLCD and the Oregon Department of Transportation (ODOT) jointly administer the TGM program.

The commission is charged with approving, or "acknowledging" city and county comprehensive plans for compliance with the goals. After acknowledgement, updates and individual amendments to comprehensive plans and land use regulations are reviewed under the periodic review and post-acknowledgment plan amendment (PAPA) processes. (See Section 7 for a more detailed discussion of periodic review and the PAPA process.) LCDC also reviews and certifies the land use coordination programs of state agencies pursuant to ORS 197.180.

The years 1977 to 1987 saw the completion and LCDC's acknowledgment of local government comprehensive plans throughout the state. By 1991, LCDC also completed certification of 26 state agency coordination programs.

Appeal of land use decisions by local governments, special districts and state agencies outside the statutory jurisdiction of the commission are heard by the state Land Use Board of Appeals or LUBA. Appeals from LUBA go directly to the State Court of Appeals and then to the Oregon Supreme Court. LUBA consists of three referees appointed by the governor and confirmed by the State Senate. Any decision by DLCD to file an appeal with LUBA must first be approved by the commission. Citizens, local governments, state agencies and interest groups also may appeal local, special district and state agency land use decisions to LUBA.

Although rarely used, the commission is authorized to bring enforcement action against local governments, state agencies and special districts pursuant to ORS 197.319 – 197.335. The purpose of such enforcement is to ensure compliance with the statewide planning goals, local comprehensive plans and land use regulations, SAC programs adopted under ORS 197.180 and special district agreements under 195.020.

Coastal/Ocean Management Program

The ocean shore has always been a vital resource to Oregon and its citizens. Before white settlement, native peoples lived on the Oregon coast for thousands of years supported by a rich supply of food from the ocean and coastal waterways. The state's long beaches were logical connections for travel between rivers. Early trappers and settlers followed and frequently used the ocean shore for travel and recreation long before the automobile came to the coast in the early 1900s.

In 1913 Governor Oswald West proposed and the State Legislature declared the ocean shore between low and high tide was a public highway to ensure that the ocean-front tidelands were retained in public ownership. In 1967, in reaction to assertions by certain beach front property owners, the Legislature passed Oregon's now famous "Beach Bill" that established a permanent public recreation easement across private dry sand and beach areas. Out of the various interests supporting the Beach Bill came increasing public concern about the loss and destruction of estuaries and coastal resources from development.

In response, the 1971 Legislature established the Oregon Coastal Conservation and Development Commission (OCCDC) and directed it to prepare a plan for the coast. The work of OCCDC addressed many issues including use of the ocean shore and the ocean waters off the continental shelf.

In 1975, LCDC began work to develop for federal approval the state's Coastal Zone Management Program or OCMP. The central components of the state planning program - - citizen involvement; reliance on coordinated local government planning; adoption of mandatory statewide planning goals; local and state agency compliance with the planning goals; and the approval of state agency land use coordination programs- -were incorporated into the state's coastal and later ocean planning efforts.

In 1976, LCDC adopted four statewide goals specifically related to coastal resources. They are: Goal 16 (Estuarine Resources), Goal 17 (Coastal Shorelands), Goal 18 (Beaches and Dunes) and Goal 19 (Ocean Resources). These goals along with the statutory authorities of state agencies and the other major elements of the state planning program serve as the basis of the Oregon Coastal Management Program (OCMP).

The OCMP was certified in 1977 by the U.S. Department of Commerce as complying with the federal Coastal Zone Management Act. Much of the policy foundation for the four coastal goals as well as the OCMP stands on the significant policy recommendations and inventory work of the OCCDC.

By 1987, LCDC completed acknowledgement of the comprehensive plans of the seven (7) counties and 36 cities lying within the state's coastal zone.

Federal Consistency

The federal Coastal Zone Management Act passed in 1972, contained a key provision to encourage coastal states to develop coastal management programs. The section of the act is called federal consistency. Under federal consistency any federal action occurring in or out of the state's coastal zone which affects coastal land or water uses or natural resources must be consistent with the state's federally-approved coastal management program.

The range of federal projects and actions covered by federal consistency is broad and includes the following:

- Direct federal plans, actions and projects taken by or on behalf of a federal agency such as construction of roads, recreation and navigation facilities, federal land transfers, dredging/disposal projects, federal agency resource management plans, etc.
- Federal permits and licenses including federal agency approvals of wetland fill and navigable waterway permits, pollution discharge permits, bridge permits, etc.
- Federal permits and licenses for exploration, development and production activities on the Outer Continental Shelf (OCS), including any related onshore facilities.
- Federal grants and other types of financial assistance to states, regional bodies, cities, counties, and special districts such as funds to help develop public facilities, tourism projects, economic assistance, etc.

DLCD is Oregon's designated coastal management agency and is responsible for reviewing proposed federal projects and actions for consistency with the state's coastal management program (OCMP). DLCD's process involves considerable consultation with local governments, state and federal agencies other interested parties in determining a project's consistency with the OCMP. DLCD's decisions are called "coastal concurrences" (i.e., approvals) and "coastal objections" (i.e., denials).

Objections, which are rare, can be based on an inconsistency with the OCMP's mandatory enforceable policies or a lack of sufficient information to determine consistency. The OCMP's policies are composed of the statewide planning goals, the acknowledged comprehensive plans and land use regulations of coastal cities and counties, and the various authorities of state agencies such as the state's Removal-Fill and Wetland statutes and rules administered by DSL. Under the federal Coastal Zone Management Act, federal agencies must be consistent to the "maximum extent practicable" with the OCMP unless it can be shown by the federal agency that other federal laws preclude compliance.

Administration of Oregon's federal consistency process is governed by LCDC's administrative rule, OAR 660, Division 035. This rule addresses the procedural aspects of federal consistency reviews including when reviews begin, information required for state reviews, public notices, review deadlines, making requests for additional information, etc. Reviews generally take about 45-90 days, but can take longer (up to six months) if significant issues are raised, if additional information requested by DLCD is not readily forthcoming, or if a permit applicant has failed to apply for or received required local and state permits.

Ocean Planning

Concerns over federal proposals to issue ocean leases for oil and gas on the continental shelf within the 200-mile U.S. Exclusive Economic Zone (EEZ), as well as private sector proposals to explore and develop heavy mineral resources within Oregon's three-mile jurisdictional limit, caused the 1987 Legislature to create the Ocean Resources Task Force. The task force was directed to prepare a broad framework plan to address Oregon's interests in the protection and management of ocean resources in the EEZ.

This plan, known as the Oregon Resources Management Plan or Ocean Plan, was completed in 1990. The Ocean Plan covered the entire EEZ and gave special attention to an "ocean stewardship area" which encompassed an area from 0 to 50 miles generally covering the continental shelf and slope. The Ocean Plan was later adopted by LCDC in late 1990 as part of the state's coastal management program. The commission later approved subsequent amendments to the Ocean Plan in 1995.

In response to the Ocean Plan and the recommendations of the Ocean Task Force, the 1991 Legislature passed the Oregon Resources Management Act (codified as ORS 196.405 to 196.515). Contained in this act was the formation of the Ocean Policy Advisory Council (OPAC).

Under the 1991 law, OPAC included the director of Department of State Lands and six other agency heads. The 1991 law also designated the Department of Land Conservation and Development (DLCD) as the lead state agency for ocean planning and tasked DLCD to provide staff support for OPAC.

In 2003, the Legislature altered OPAC's membership. The changes included making state agencies ex-officio, non-voting members, adding representatives from local governments and coastal interest groups and directing Oregon Fish and Wildlife, DLCD and other agencies designated by the Governor provide staff support to the council.

OPAC's initial task was to develop a plan for the state's territorial sea, the three (3) nautical mile-wide area off the coast that falls under the jurisdiction of the state of Oregon (approximately 1,000 square miles). Unlike the policy orientation of the Ocean Plan, the state's Territorial Sea Plan (TSP) has a management focus. The TSP provides detailed guidance to state and federal agencies to use in analyzing the effects of their respective regulatory, permitting and management actions on uses and resources in the state's territorial sea. The TSP also established a coast-wide strategy for protecting Oregon's valuable but vulnerable rocky shore areas.

The initial TSP was adopted by OPAC in 1994 and later, after a review against the applicable statewide planning goals, was approved by LCDC in 1995 as part of rule making for ocean planning (OAR 660-036). Following LCDC's action the TSP was submitted to the federal Office of Ocean and Coastal Resources Management that

approved it in 1995 as an amendment to the state's Coastal Zone Management Program.

Later, in 2000 and 2001, LCDC approved amendments to the Territorial Sea Plan to include policies on submarine telecommunication cables on the seafloor and added a new chapter on Oregon's overall ocean management goals and policies.

DSL Land Use and Coastal/Ocean Objectives

The state's land use program has been in existence for over 30 years. Its enabling statutes coupled with the statewide goals, acknowledged local comprehensive plans, and state agency coordination programs make up the policy, legal and regulatory framework for all land use plans, actions and decisions on private and non-federal public land throughout the state. And within the coastal zone, the federal consistency provision under the federal Coastal Zone Management Act requires federal agencies to be consistent with the enforceable policies of the state's approved Coastal Management Program.

DSL has been an active supporter of and participant in the state land use program. Similarly, the department has and will continue to play a significant role in the state's coastal and ocean planning efforts.

State law and administrative rules create opportunities for, and in some instances require, the involvement of state agencies in coastal and ocean planning. However, DSL believes that relying on the policies and procedures in its SAC program will bring about even closer coordination with the state's ocean and coastal planning efforts as well as help advance the department's efforts to carry out its constitutional and statutory responsibilities.

The specific interests the department shares with DLCD along with DSL's local, state, federal and tribal partners include the following:

- Protecting the state's natural, historic and cultural resources and sites
- Sustaining and improving the quality of life of the state's citizens
- Promoting the development of quality urban and rural communities
- Revitalizing the state's economy, including development of a strong telecommunications infrastructure throughout the state
- Providing clear communications, certainty, timely action, fairness, objectivity, consistency and integrity in carrying out DSL property management and regulatory land use programs, processes and procedures
- Ensuring the opportunity for early involvement and open communications among applicants, agencies, local and tribal governments, adjacent land owners and other affected organizations and individuals to reduce misunderstandings, avoid unnecessary disputes and litigation, and help applicants fully understand and comply with DSL's property management and regulatory requirements

- Working collaboratively and effectively with local and tribal governments, and other state agencies in representing and achieving the interests of Oregon with the federal government

To achieve the above interests and help carry out its program priorities, the department commits to work with its local, state, federal and tribal partners to see that the following land use and coastal/ocean objectives are met:

1. Successful implementation of the Statewide Planning Goals (and administrative rules), particularly Goals 1, 5, and 15-19.
2. Orderly implementation, amendment and updating of acknowledged city and county comprehensive plans and land use regulations.
3. Continued DSL compliance with statutory state agency coordination requirements (ORS 197.180) and LCDC SAC rules, OAR 660, Divisions –030 and –031.
4. Participate when appropriate in the post-acknowledgment plan amendment and periodic review processes of local comprehensive plans.
5. Further inform DLCD staff, local planning officials and others about DSL's constitutional and statutory responsibilities, SAC program and programs affecting land use.
6. Provide training and more information to DSL staff about the state land use and coastal/ocean programs, and local planning elements, requirements and procedures.
7. Participation where appropriate in existing and future regional problem solving projects pursuant to ORS 197.652 – 197.656.
8. Better integration of DLCD's coastal federal consistency process and local government compatibility reviews with DSL's Removal-Fill permit reviews.
9. Continued involvement in the implementation of, and any future revisions or modifications to the state's Ocean Resources Management Plan and the state's Territorial Sea Plan.
10. Continued cooperation with DLCD, affected tribes and other parties involving land use programs or issues of mutual concern that may arise under the Government-to-Government process.
11. Increased cooperation, coordination and assistance to DLCD and local governments to help further implement the state's wetland planning and protection requirements, including the delineation of wetland resources, the

completion of local wetland inventories and the preparation and adoption of local wetland conservation plans.

12. Continued membership on the state's Economic Revitalization Team and department assistance to increase the number of "project ready" industrial sites.

DSL, to the extent department budget and staff resources permit, will utilize the following methods to help achieve the above objectives:

- Entering into memorandums of understanding and interagency agreements with DLCD and/or other agencies to improve as necessary the coordination and effectiveness of DSL land use programs.
- Conducting joint DLCD/DSL staff meetings and training sessions
- Collaborating with DLCD in the development of the Statewide Programmatic General Permit (SPGP), as well as any standard permit conditions for various Removal-Fill activities and rule making related to the Removal- Fill law.
- Holding work sessions with DLCD staff to improve application forms and procedures for strengthening and clarifying local government land use compatibility determinations.
- Co-sponsoring with DLCD outreach sessions and information workshops in the field for local governments and the public about the two agencies' programs and how they are coordinated.
- Developing joint protocols, checklists, and similar technical measures to aid in complying with Goal 19 (Ocean Resources) and the Territorial Sea Plan for DSL regulatory and management actions within the state's territorial sea. (See also Goal 19 and TSP compliance discussion below.)
- Working with groups and organizations having interests in ocean resources to ensure compliance with the statewide planning goals and the Territorial Sea Plan.
- Joint authorship of technical assistance publications for local governments and others (e.g., DSL/DLCD Wetland Planning Guide).
- Cooperating in the design and posting of documents and notices on each agency's web pages.
- Providing advance notice and involvement in rule making projects undertaken by each agency.

- Developing and using procedures to resolve conflicts and disputes, either between DLCDC and DSL, or with local governments or other agencies where a DSL or DLCDC program may be involved.
- Support and expand efforts to promote inter-agency data sharing and integration, with emphasis on linking databases and geographic mapping systems between DSL, DLCDC and other appropriate agencies dealing with permits (e.g., Removal-Fill), leases and approvals in the coastal zone and Territorial Sea.

DSL Compliance with Statewide Planning Goal 19 (Ocean Resources) and the State’s Adopted Territorial Sea Plan

Statewide Planning Goal 19 (Ocean Resources) declares that Oregon’s primary ocean policy objectives are the long-term conservation and proper management of renewable ocean resources. The goal was originally adopted in 1976, and was amended in 1984 and 2000.

The current language of the goal’s heading statement reads:

To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations. To carry out this goal, all actions by local, state, and federal agencies that are likely to affect the ocean resources and uses of Oregon’s territorial sea shall be developed and conducted to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social values and benefits and to give higher priority to the protection of renewable marine resources – i.e., living marine organisms – than to the development of non-renewable ocean resources.

After this statement in the goal are the following sections: Ocean Stewardship Area, Information and Effects Assessment Required and three Implementation Requirements. The Implementation Requirements cover Uses of Ocean Resources, Management Measures and Contingency Plans.

Unlike the other statewide goals where state agency compliance is usually achieved by acting compatibly with the acknowledged local comprehensive plans, there are no comprehensive plans covering the near shore ocean implementing Goal 19. This means that state agencies such as DSL, must address the goal directly when taking actions such as issuing permits and leases affecting land use in the Territorial Sea.

However, because of the limited number of applications coupled with the broad range of potential uses and management activities that DSL regulates in the Territorial Sea, the department will rely on a two-prong process to comply with Goal 19.

First, the department will employ a "case-by-case" approach and apply the applicable requirements of Goal 19 based upon the specific nature of the use or activity being requested.

Second, to the extent possible, and working in close consultation with DLCD, other affected state and federal agencies and organizations having interests in ocean-related projects, DSL will comply with Goal 19 by adhering to the mandatory procedures and standards as set forth in the Territorial Sea Plan (Part Two - Making Resource Use Decisions).

To implement this approach:

- 1. DSL will use Statewide Planning Goal 19 Implementation Requirements 1-3 as performance standards to carry out the Goal's Information and Effects Assessment of proposed department actions and decisions in the state's territorial sea. In carrying out each assessment, the department will use the applicable information required in the state's adopted Territorial Sea Plan.**
- 2. DSL shall carry out its programs and related decisions affecting resources and uses in the state's territorial sea in a manner consistent with the mandatory policies of the adopted Territorial Sea Plan (Part Two: Making Resource Use Decisions)**
- 3. Pursuant to ORS 196.485, DSL incorporates by reference the Oregon Ocean Resources Management Plan and Territorial Sea Plan into this state agency coordination (SAC) program.**
- 4. DSL shall consult as needed with DLCD, other affected agencies and the Oregon Department of Justice in any situation where it is necessary to adopt findings demonstrating compliance with Goal 19 and the Territorial Sea Plan in acting upon any DSL permit, lease, easement or similar approval affecting uses or resources in the state's territorial sea.**
- 5. DSL shall provide technical and policy advice and assistance to agencies, groups and organizations having interests in projects and activities (e.g., laying fiber optic cables, development of wave energy generators, etc.) affecting uses and resources in the Territorial Sea.**

Section 5

Coordination with Tribal Governments

This section describes department efforts and procedures to coordinate its plans and programs with the nine (9) federally recognized tribal governments in Oregon. According to the 2000 Census, the total Indian population in Oregon was 45, 211, or approximately 1.6% of the state's population. As of July 2004, 22,441 were enrolled as members in Oregon tribes.

The nine tribes in Oregon are:

- Burns Paiute Tribe
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
- Coquille Indian Tribe
- Klamath Tribes
- Confederated Tribes of Grand Ronde
- Confederated Tribes of the Siletz Indians
- Confederated Tribes of Umatilla Indians
- Cow Creek Band of Umpqua Indians
- Confederated Tribes of Warm Springs

Background

In 2001, the Oregon Legislature passed SB 770 (ORS 182.162 – 182.168) that formalized the relationship of Oregon's tribal governments with state agencies. This legislation, known as government-to-government, directs all state agencies to take tribal governments into account when the agencies develop policies and implement programs that may affect tribal interests.

Key provisions of the government-to-government legislation requires every agency to develop and implement a written policy that:

- Promotes positive relations and communications with the tribes
- Identifies the agency's programs that affect the tribes
- Designates staff who are the agency's principal contact(s) on government-to-government matters
- Requires the agency to submit an annual report to the Governor and Legislature on the agency's activities to comply with ORS 182.162 to 182.168.

Tribal and state agency representatives meet from three to six times a year in small groups called "clusters," which are organized in six issue areas: 1) natural resources, 2) cultural resources, 3) education and work force training, 4) economic development, 5) health and human resources and 6) public safety and regulation. At cluster meetings, agencies and tribes share information, exchange viewpoints and devise strategies and methods of cooperation and joint action to address issues of mutual concern.

DSL Coordination and Cooperation with the Tribes

The department's government-to-government policy was originally established in August 1998 in response to the Governor's Executive Order No. EO 96-30 on state/tribal relations. This policy remains in effect and directs the department actions to fulfill its responsibilities under ORS 182.162. The policy commits DSL to do the following:

- Include affected tribal interests in the review/comment of agency actions likely to affect tribal members or resources of tribal interest.
- Carefully and thoughtfully consider tribal comments concerning pending decisions and actions.
- Provide materials to natural resource agencies within each tribal government that explain DSL's roles and responsibilities in natural resource management.

The department's primary government-to-government contact is the Assistant Director for Fiscal and Administrative Services.

Major DSL programs and issues of significant interest to one or more of the tribes include:

- Rangeland and forest land management
- South Slough National Estuarine Research Reserve
- Removal-Fill program
- Wetland and waterway protection (including local government compliance with the wetland planning requirements under Statewide Goal 5)
- Protection of archeological and historical sites and objects on state-owned land under the jurisdiction of the department and State Land Board.

Copies of the annual reports detailing the DSL's government-to-government activities can be obtained from the department or by contacting the state Legislative Commission on Indian Services in Salem (503-986-1067, or www.leg.state.or.us/cis/).

Section 6

Coordination with State and Federal Agencies and Special Districts

This section addresses the requirement in OAR 660-030-0060(5)(a) and (b) to describe how DSL will coordinate its land use programs with state and federal agencies and special districts. (See Section 4 describing the department's coordination with the Department of Land Conservation and Development (DLCD).)

SAC REQUIREMENT 7

Subsections (5)(a) and (b) of OAR 660-030-0060 requires the agency to:

- (a) Describe the procedures it will utilize to coordinate its land use programs with the Department [DLCD] 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.

DSL RESPONSE TO OAR 660-030-0060(5)(a) and (b)

The department interacts with a large number of state and federal agencies in carrying out its responsibilities with respect to its programs determined to affect land use (see Section 3). Maintenance of these relationships is vital to DSL for the following reasons:

- To successfully carry out its constitutional and statutory obligations
- To assure effective communications and coordinated action involving the same or shared interests and program responsibilities in land management and natural resource protection
- To save time and reduce costs by avoiding, minimizing and resolving interagency disputes and conflicts
- To provide the public a high level of customer service (i.e., timeliness, clarity, consistency, fairness, competence and integrity), particularly in those cases where state and/or federal regulatory authorities and regulations overlap or are closely related to the same property or resource
- To the extent possible, to assure close coordination with other agencies in acting compatibly with local government comprehensive plans, and federal consistency

with applicable provisions of Oregon's Coastal Management and Territorial Sea plans.

The connections between the department's land use programs and other state and federal agencies span a broad range of mutual actions and activities. Accordingly, the department's interests and methods of coordinating will vary depending upon the state or federal agency in question and the DSL program(s) at issue.

Listed below are the principal state and federal agencies DSL coordinates with in carrying out its land use programs. Under each agency are listed: 1) the major programs, projects or issues of mutual interest, and 2) the typical methods used to carry out coordination activities.

State Agencies

Listed below are the principal state agencies that the department coordinates with in carrying out its various land use programs identified in Section 3.

1. Governor's Office

Major Programs, Projects and Issues of Mutual Interest:

State Land Board responsibilities and actions; Willamette River restoration initiative; Economic Revitalization Team (ERT); industrial land certification; water permit streamlining project; DSL Sustainability Plan; budget and legislative agenda.

Coordination Methods:

State Land Board meetings; participation on ERT team at director and regional team level; Governor's cabinet meetings; Sustainability Board; informal contacts with staff of Governor's office

2. Department of Agriculture

Major Programs, Projects and Issues of Mutual Interest:

Oyster plat leasing program in estuaries; DSL management of state-owned agricultural and rangelands; SB 1010 (area-wide water quality management plans for agriculture); 404 Clean Water Act assumption proposal; Removal-Fill program enforcement; in-lieu land selection; Soil and Water Conservation Districts (SWCDs)

Coordination Methods:

Informal staff-to-staff contacts; comments on issuance and renewals of DSL leases; participation on ERT team at director and regional team level; Governor's cabinet meetings; interagency agreement with DSL

3. Department of Consumer and Business Services

Major Programs, Projects and Issues of Mutual Interest:

ERT Team; activities of Office of Regulatory Streamlining in Consumer and Business Services Department; Water Related Permit Improvement Team (WRPPIT)

Coordination Methods:

Informal staff-to-staff contacts; participation on ERT team; Governor's cabinet

4. Department of Economic and Community Development

Major Programs, Project and Issues of Mutual Interest:

Certification of "project-ready" industrial sites containing wetlands; ERT team; DSL management of state-owned commercial and industrial land

Coordination Methods:

Informal staff-to-staff contacts; participation on ERT team; comments on issuance and renewals of DSL permits and leases

5. Department of Energy

Major Programs, Projects and Issues of Mutual Interest:

Development of energy sources on state-owned land; overall coordination of Removal-Fill program with siting of energy projects under the state Energy Facility Siting Council (EFSC); review of proposed liquefied natural gas (LNG) projects.

Coordination Methods:

Informal staff-to-staff contacts; comments on issuance and renewals of DSL leases and permits to explore and develop energy resources on state-owned land; participation in EFSC siting process

6. Department of Environmental Quality

Major Programs, Projects and Issues of Mutual Interest:

Questions regarding DSL's authority to address DEQ comments on Removal-Fill permits; 401 Clean Water Act certifications; ERT team, development activities on state-owned land; Ocean Resources and Territorial Sea plans; issuance of Statewide Programmatic General Permit (SPGP) by Army Corps of Engineers; 404 assumption proposal; regulatory streamlining between DSL and DEQ; WRPPIT

Coordination Methods:

Informal staff-to-staff contacts; participation on ERT team; comments on DSL leases and permits; comments on new and amended DSL administrative rules; participation on Ocean Policy Advisory Council; interagency agreement with DSL; Mitigation Bank Review Team; Removal-Fill Technical Advisory Committee

7. Department of Fish and Wildlife

Major Programs, Projects and Issues of Mutual Interest:

DSL Removal-Fill permits and General Authorizations; Ocean Resources and Territorial Sea plans; Willamette River restoration initiative; wetland planning and protection; Oregon Natural Heritage Program; South Slough National Estuarine Research Reserve; area management plans; leases and easements on state-owned land on or near fish and wildlife habitats; SPGP; 404 assumption; implementation of federal Endangered Species Act (ESA); WRPPIT

Coordination Methods:

Informal staff-to-staff contacts; comments on DSL leases and permits; General Authorizations; easements and plans pertaining to “waters of the state” and state-owned lands; comments on and participation in DSL rule-making; participation on Ocean Policy Advisory Council; interagency agreement with DSL; Mitigation Bank Review Team; Removal-Fill Technical Advisory Committee

8. Department of Forestry

Major Programs, Projects and Issues of Mutual Interest:

State-owned forest lands owned by State Land Board but managed under contract with State Forestry; implementation of federal Northwest Forest Plan; ESA on state forest lands; fire protection on state-owned range and forest land in coordination with BLM; state Forest Practices Act; land sales and exchanges

Coordination Methods:

Informal staff-to-staff contacts; contract negotiations, and reliance on State Forestry's SAC programs to address land issues and requirements on state forest lands managed by ODF; interagency agreement and contracts with DSL and State Land Board; Removal-Fill Technical Advisory Committee

9. Department of Geology and Mineral Industries

Major Programs, Projects and Issues of Mutual Interest:

Issuance of easements, permits and leases for oil, gas, geothermal, hard mineral exploration and development on state-owned land, including Territorial Sea; gravel

mining regulation and questions regarding water quality enforcement jurisdiction at mining sites between Geology and DSL

Coordination Methods:

Informal staff-to-staff contacts; formal comments on new and renewals of easements, leases and R-F permits

10. Department of Housing and Community Services

Major Programs, Project and Issues of Mutual Interest:

ERT team

Coordination Methods:

Informal staff-to-staff contacts

11. Department of Land Conservation and Development

(See Section 4)

12. State Marine Board

Major Programs, Projects and Issues of Mutual Interest:

Development of boating facilities and related DSL permits, easements and leases in and along state-owned waterways; navigability studies and determinations; WRPPIT

Coordination Methods:

Informal staff-to-staff contacts; formal comments on new and renewal of easements, permits and leases

13. Military Department

Major Programs, Projects and Issues of Mutual Interest:

Acquisition and disposition of land from federal agencies (e.g., acquiring federal land from BLM in central Oregon); wetland planning and protection; Removal-Fill program

Coordination Methods:

Informal staff-to-staff contacts; formal comments on DSL Area Management Plans; commenting on DSL permits and property acquisition/disposition proposal

14. Department of Parks and Recreation

Major Programs, Projects and Issues of Mutual Interest:

Removal-Fill permits and General Authorizations affecting State Scenic Waterways; wetland planning and protection; protection of archeological and historic sites and artifacts on state-owned land managed by DSL; river navigability studies and determinations; ocean front leases and easements; Parks' Ocean Shore Permit program and determination of DSL and OPORD permitting jurisdictions along the ocean shore; Willamette River Greenway and Governor's Willamette River restoration initiative; land sales and exchanges

Coordination Methods:

Informal staff-to-staff contacts; interagency agreement with DSL; comments on DSL lease; Governor's Cabinet meetings; permit and easement notices and participation in DSL plans and studies (e.g., navigability)

15. Department of Transportation

Major Programs, Projects and Issues of Mutual Interest:

Wetland planning, protection and mitigation; Removal-Fill permits; General Authorizations and applications for Emergency R-F Authorizations associated with the construction; maintenance and repair of state transportation projects and facilities; certifying "project-ready" industrial sites; ERT team; establishment of ODOT wetland mitigation banks; Oregon Transportation Investment Act (OTIA 3) including bridge repair and replacement program

Coordination Methods:

Informal staff-to-staff communications; commenting on DSL permits and General Authorizations; funding by ODOT of two DSL Removal-Fill coordinators; ERT Team

16. Department of Water Resources

Major Programs, Projects and Issues of Mutual Interest:

Removal-Fill permits and General Authorizations; wetland planning, protection and mitigation; river navigability studies and determinations; DSL plans, permits, leases and easements for uses and activities on state-owned lands affecting water resources; water rights adjudication on intermingled public and private lands; WRPPIT

Coordination Methods:

Informal staff-to-staff contacts; interagency agreement with DSL; participation in DSL river navigability studies; comments on DSL lease, permit and easement notices; participation in DSL plans and studies

17. Watershed Enhancement Board

Major Programs, Projects and Issues of Mutual Interest:

Wetland restoration; watershed planning and protection; uses and activities on state-owned forest and rangelands; development and implementation of DSL area management plans; Removal-Fill program

Coordination Methods:

Informal staff-to-staff contacts; interagency agreement with DSL; comments on DSL lease, permit, and easement notices; participation in DSL area management plans and river navigability studies and determinations; participation on Oregon Plan interagency teams

18. Oregon Emergency Management (Oregon State Police)

Major Programs, Projects and Issues of Mutual Interest:

Emergency response to spills, wildfires, etc. on state-owned lands or where removal-fill permit is needed

Coordination Methods:

Participation on Emergency Response Center Council

19. Department of Administrative Services

Major Programs, Projects and Issues of Mutual Interest:

Budget development; expenditure tracking; legislative activity; maintenance of buildings and grounds (e.g. DSL headquarters building); office leasing (Bend); other activities typical of state agencies (e.g. Oregon Geographic Information Council, Printing Division, Rick Management, Motor Pool, etc.)

Coordination Methods:

Formal and informal contact through staff and director, as needed

20. Office of State Treasurer

Major Programs, Projects and Issues of Mutual Interest:

Investment of CSF assets; Asset allocation; coordination with Oregon Investment Council

Coordination Methods:

Meetings with Investment staff

21. Office of the Secretary of State

Major Programs, Projects and Issues of Mutual Interest:
Performance audits; rulemaking

Coordination Methods:
Formal and informal by staff, as needed

Federal Agencies

Listed below are the principal federal agencies the department coordinates with in carrying out its land use programs identified in Section 3.

1. Bureau of Land Management

Major Programs, Projects and Issues of Mutual Interest:
Management of state-owned range and forest lands; wild fire suppression on state-owned range and forest lands in coordination with ODF; river navigability studies and determinations; property exchanges, acquisitions and dispositions; cooperative land management involving adjacent federal and state lands; BLM land use plan development and implementation; exploration and development of oil, gas and mineral resources on public lands; in-lieu land selections; Removal-Fill program; In-lieu selection

Coordination Methods:
Staff-to-staff informal communication; DSL review and commenting on BLM resource management plans; interagency agreement on fire suppression

2. U.S. Army Corps of Engineers

Major Programs, Projects and Issues of Mutual Interest:
Removal-Fill program; planning, protection, restoration and mitigation of wetlands; assumption of Section 404 of federal Clean Water Act; issuance of State Programmatic General Permit (SPGP); DSL payment-to-provide program for wetland mitigation; WRPPIT; maintenance of navigation channels; civil works and projects; flood hazard mitigation

Coordination Methods:
Informal staff-to-staff communications; interagency agreement with DSL; commenting on R-F permits; Removal-Fill Technical Advisory Committee

3. Environmental Protection Agency

Major Programs, Projects and Issues of Mutual Interest:

Section 404 assumption of Clean Water Act from Corps of Engineers; SPGP; wetland planning, protection, restoration and mitigation; DSL grant requests to EPA

Coordination Methods:

Informal staff-to-staff communications; MBRT; Removal-Fill Technical Advisory Committee

4. Fish and Wildlife Service

Major Programs, Projects and Issues of Mutual Interest:

Endangered Species Act; 404 assumption; SPGP; Removal-Fill Program; wetland mitigation banking; land management; Oregon Natural Heritage Program

Coordination Methods:

Informal staff-to-staff communications; commenting on R-F permits; MBRT; Removal-Fill Technical Advisory Committee

5. Geological Survey

Major Programs, Projects and Issues of Mutual Interest:

Identification and mapping of state-owned lands and resources

Coordination Methods:

Informal staff-to-staff coordination

6. Natural Resources Conservation Service

Major Programs, Projects and Issues of Mutual Interest:

Wetland identification, planning, protection restoration and mitigation; rangeland surveys

Coordination Methods:

Informal staff-to-staff contacts; comments on DSL Removal-Fill applications and General Authorizations

7. National Marine Fisheries Service

Major Programs, Projects and Issues of Mutual Interest:

ESA; wetland mitigation banking; 404 assumption; SPGP; Territorial Sea Plan; Removal-Fill program; Standard Local Operating Procedures for Endangered Species (SOPES 3); Elliott Forest Plan; South Slough National Estuarine Research Reserve; Oregon Natural Heritage Program

Coordination Methods:

Informal staff-to-staff communications; MBRT; commenting on R-F applications; Removal-Fill Technical Advisory Committee

Special Districts

In Oregon there are over 800 special districts formed to provide a broad range of public and community services. Established pursuant to ORS 198.010 to 198.335, special districts are governed by boards of directors elected by the voters. Special districts are financed through property taxes, fees for services or a combination of both.

There are over two dozen types of special districts. Of these, the department's land use coordination efforts focus primarily on:

- Port districts
- Soil and water conservation districts
- Drainage districts
- Irrigation districts
- Diking districts

The department's principal methods of communication and coordination with these organizations include: 1) informal staff contacts, 2) providing and exchanging technical assistance and information, 3) assisting project applicants and conducting pre-application conferences, 4) issuing public notices and soliciting comments on department permits, easements and leases, 5) seeking input on department plans and rule making, and 6) consultation on department legislative proposals.

The department also works closely with the following special district membership organizations when necessary to address legislative and policy matters related to department programs:

Special Districts Association of Oregon
PO Box 12613
Salem, Oregon 97309-0613

Oregon Public Ports Association
565 Union Street NE, Suite 204

Salem, Oregon 97301

Oregon Association of Conservation Districts
3867 Wolverine Street NE, Suite 16
Salem, Oregon 97305

Department Coordination Unit

OAR 660-030-0060(5)(b) requires every agency's SAC program to designate a unit responsible for coordinating its land use programs.

At the Department of State Lands, day-to-day coordination of department land use programs is the responsibility of the manager of each program's designated manager. Questions and issues relating to overall coordination of DSL land use programs are to be directed to the department's Director in the department's Salem office.

Section 7

Cooperation and Technical Assistance To Local Governments

This section contains the department's response to OAR 660-030-0060(6)(a) – (g). This provision requires the department to describe its program for cooperation with and technical assistance to local governments in carrying out its land use programs.

SAC REQUIREMENT 8

Subsections (6)(a) through (g) of OAR 660-030-0060 require state agencies to provide the following:

- (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's 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 660-019-0055; (Note: The previous periodic review rule, OAR 660-019, was repealed by LCDC and replaced by the current rule, OAR 660-025.)
- (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 management program; and
- (f) A description, if applicable, of agency procedures to coordinate with other state agencies and local government 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).

DSL RESPONSE TO OAR 660-030-0060(6)(a) – (g)

Why DSL Cooperation with Local Governments is Important

The department considers its cooperation and technical assistance to local governments as one of its most important activities. For DSL (as well as other state agencies) the term, "local governments," is broad and includes all of Oregon's 36 counties, 240 cities, Metro (the Portland area's regional government) and seven (7) regional councils of governments (COGs). Through its contacts with county governments, DSL also interacts when needed with the state's several hundred urban and rural unincorporated communities. Finally, as discussed in Section 6, the department works with and assists various special districts, particularly ports, soil and water conservation, drainage, irrigation and diking districts.

The reasons for the department's local cooperation efforts are many and extend beyond the legal requirements in ORS 197.180. DSL believes that constructive relations with local governments are essential if the department is to effectively meet its constitutional and statutory responsibilities that relate to land use. In turn, the department also realizes that its cooperation with cities and counties is very important for the orderly amendment and implementation of acknowledged local comprehensive plans and land use regulations that are closely linked with or reliant on DSL land use programs.

DSL's cooperation and assistance to local governments contribute important benefits for the people and state of Oregon by helping to:

- Protect the state's historic and cultural resources, areas and sites
- Improve, protect and restore wetlands and other natural resources
- Develop quality, sustainable urban and rural communities
- Revitalize the state's economy
- Ensure sound management and protection of Oregon's coastal and ocean resources
- Promote efficient, consistent and coordinated administration of state agency plans, programs and regulations with local governments
- Represent and advance the state's interests in Oregon's relations with federal government agencies

Principles Guiding DSL's Local Cooperation and Assistance

DSL's relations with local governments are based on the following ten (10) principles. These principles will guide the department's actions and decisions as it carries out its programs affecting land use and other responsibilities of interest to local communities.

Consistent with legal requirements, available resources and department priorities, the principles will be adhered to at all stages of program administration beginning with legislative and budget development and continuing on through policy development, rulemaking, implementation and evaluation. These principles are viewed by department managers and staff as not just another set of administrative instructions but rather express the department's underlying philosophy to establish and maintain, to the extent possible, positive relations with all units of local government.

1. The department views local governments as a key partner critical to the success in carrying out the agency's constitutional and statutory mandates and programs. This partnership will be based on trust, mutual respect and integrity.
2. The department is committed to clear, consistent and frequent communication and consultation with local governments on all matters of mutual interest and concern, including those matters affecting local land use plans and requirements. Such contacts will not be limited to staff but will also engage, where appropriate, local elected officials and administrators.
3. The department will actively participate in and coordinate closely with local land use planning programs and will, to the extent legally permissible, act compatibly with acknowledged comprehensive plans in carrying out DSL land use programs.
4. The department will maintain accurate records of and notify in a timely manner affected local governments of permit and easement decisions and other regulatory and proprietary actions affecting their communities, land owners and citizens.
5. The department will be pro-active in its approach with local governments and stress early involvement and consultation, particularly on program matters such as the adoption of new or amended management plans and administrative rules affecting multiple jurisdictions or large portions of state-owned or regulated land and resources in one community or jurisdiction.
6. The department's staff will be fair, objective, helpful and accessible in carrying out DSL actions and programs affecting local communities.
7. The department will ensure that its staff and managers are given adequate training and knowledge about working with local governments, the critical role played by cities and counties in the state's planning system and the organization, administration and revision of local comprehensive plans and land use regulations.

Such training will include opportunities for occasional direct, face-to-face sessions in the field with local officials and staff, the public and other interested organizations.

8. The department will employ timely communications, meetings and other similar techniques where possible to avoid or at least minimize problems and conflicts with local governments involving DSL plans, programs and actions. Where conflicts do exist, dispute resolution measures will be utilized where appropriate in an attempt to avoid litigation and the imposition of regulatory or financial sanctions.
9. The department will train its staff, develop and disseminate written materials, hold workshops for local staff and officials, work collaboratively with all parties and respond in a timely manner to requests from local governments for technical assistance and information. The department will make a special effort to provide such assistance to smaller sized communities that may lack the expertise, knowledge and staff to address issues, permits and proposals relating to DSL programs, state-owned lands and related regulations and procedures.
10. The department will regularly consult with and seek the views of the Association of Oregon Counties and League of Oregon Cities in developing budget, legislative, policy plans and rules and regulations affecting local governments.

DSL Participation in Periodic Review Process

Periodic Review is a statutory process established under ORS 197.628 – 197.644. Under it, comprehensive plans and land regulations of applicable cities and counties are reviewed and, as needed, updated to remain in compliance with the Statewide Planning Goals and to ensure that the plans and regulations make adequate provision for needed housing, employment, transportation and public facilities and services. The Land Conservation and Development Commission (LCDC) has adopted an administrative rule (OAR 660, Division 025) to implement the periodic review statute.

Through periodic review, DSL has the opportunity to provide cities and counties new and updated information and to address planning issues related to DSL plans, programs and regulations. Working in close coordination with the Department of Land Conservation and Development (DLCD) and other affected agencies and organizations, DSL will focus its involvement on those local jurisdictions whose locations and land use plans and actions have the greatest potential likelihood of affecting lands, waters and resources owned, managed and/or regulated by the State Land Board and the department. If appropriate, the department may advise DLCD of specific jurisdictions DSL believes should be scheduled for periodic review in accordance with the population thresholds and time intervals described in ORS 197.629.

Each jurisdiction's periodic review is divided into two phases: 1) plan evaluation and work program development, and 2) work program implementation. DSL participation in

either or both phases in most cases will be limited and will be governed by the particular local government in question and the DSL issues or interests involved. DSL usually will not participate in periodic reviews where there are minor or no planning issues of interest to the department being addressed by the local government.

Jurisdiction for the review and approval of comprehensive plan and land use regulation amendments adopted to complete tasks on the local government's periodic review work program rests with DLCD and LCDC. Interested parties (i.e., individuals, organizations and agencies, tribes) who have standing as well as the affected local government can appeal DLCD's periodic review decisions to LCDC. An appeal of an LCDC periodic review decision is made to the Oregon Court of Appeals.

In terms of its two (2) land use program categories, DSL's involvement in periodic review where it occurs will likely focus on the following:

Property Management Programs

Adoption and amendment of Area Management Plans under the Land Board's Asset Management Plan.

Regulatory Programs

- Removal-Fill Program including permit streamlining and coordination of department and local government procedures for assuring compatibility of DSL permit decisions with local comprehensive plans. Also DSL approval of wetland mitigation banks and identification and protection of wetland mitigation sites.
- Wetland planning and conservation, including compliance with Statewide Planning Goals 5 and 17 for wetland resources. Also approval of local wetland conservation plans,

DSL Participation in Regional Problem Solving Process

In 1996 the Oregon Legislature established the Collaborative Regional Problem-Solving (RPS) process pursuant to ORS 197.652 to 197.652. RPS provides an optional, voluntary mechanism for local governments, state agencies and other affected stakeholders to work together in a common effort to devise solutions to land use problems in regions of the state.

Two RPS projects are currently underway in Jackson and in Lane counties. The department is participating in both projects.

The department is supportive of the RPS concept and will assist in future projects where DSL interests and programs are involved and where local governments, the

Governor (see ORS 197.658) and other agencies request the department's participation.

DSL Participation in Post-Acknowledgment Plan Amendment Process

For changes to acknowledged comprehensive plans and new or amended land use regulations not connected with periodic review, there is the Post-Acknowledgment Plan Amendment (PAPA) procedure. ORS 197.610 – 197.625 establishes the PAPA process. LCDC has adopted an administrative rule (OAR 660, Division 018) to implement these statutory provisions.

Under Oregon law, all adopted local government land use decisions (including plan and land use regulations amendments) are final and are deemed to comply with state law unless appealed to the state Land Use Board of Appeals (LUBA). LUBA is a panel of three "referees" appointed by the Governor and confirmed by the state Senate. See ORS 197.805.

Almost all appeals involving local land use decisions are heard by LUBA rather than by circuit or district courts. A party who appeals a local decision to LUBA is the "petitioner." In an appeal to LUBA a petitioner must show how the local decision violated the local plan and/or ordinances, state law, or applicable Statewide Planning Goal or LCDC administrative rule.

As provided in ORS 197.825, LUBA has exclusive jurisdiction to review any land use decision of a local government, special district or state agency. The scope of LUBA's review is limited to determining whether the local government, special district or agency has properly applied the relevant legal, local plan and statewide goal and rule standards to its decision and whether there is substantial evidence in the record to support the decision. Challenges to LUBA decisions are made to the state Court of Appeals. (Note: As mentioned above, review and approval of periodic review work tasks and any objections are decided by DLCD and LCDC, not LUBA.)

Under the PAPA process, cities and counties must notify DLCD of the proposed plan and/or land use regulation amendment(s) being considered for adoption. DLCD in turn notifies interested agencies, groups and individuals who have requested notice of the proposed amendment. Later, if the amendment is adopted, the local government must submit the plan changes along with the supporting findings to DLCD. In the same manner as done for proposed amendments, DLCD notifies interested parties of the receipt of the adopted amendments. Any decision by DLCD to appeal a local land use decision or amendment to LUBA must first be authorized by LCDC.

DSL is a subscriber to the DLCD PAPA notice service. Through these notices the department is able to monitor proposed local plan amendments to ensure that they do not conflict with State Land Board or department laws, rules, plans or regulations. The PAPA notices also provide the department an "early alert" to potential land use

coordination problems with DSL or other related state agency programs. In the case of a major issue involving a PAPA, the department may submit comments to the local government or request a meeting with the jurisdiction (and possibly including DLCD) to explore ways to address DSL concerns. Only in the most serious of disputes where all avenues to resolve the problem have been unsuccessful would the department consider an appeal to LUBA.

Incorporating New and Updated Department Programs into Acknowledged Comprehensive Plans

Subsection (6)(d) of the OAR 660-030-0060 in the SAC rule requires an agency to describe how it will assure that new or updated plans and programs mandated by state statute or federal law enacted after acknowledgement will be incorporated into local comprehensive plans.

In the event this arises, DSL will first conduct an analysis and seek advice from legal counsel to determine if it is legally necessary or desirable for one or more local plans to be amended to address a new or amended DSL plan or program. Such a review also may include discussions as needed with the affected local government(s), DLCD, other agencies, tribal authorities and interested organizations and groups.

If such a review concludes that one or more amendments to local plans are necessary, the department will seek such amendments either through the periodic review or the post-acknowledgment plan amendment processes discussed above.

DSL Participation in Local Plan Implementation

Under most circumstances the department does not anticipate becoming engaged in the routine implementation and administration of local comprehensive plans and land use regulations. However, when able to do so, the department will respond to limited requests for general information and assistance from citizens and local officials and planning staff.

DSL may become more involved in a case where either:

1) a local implementation action may seriously impact state-owned lands or waters or those regulated by DSL, or 2) DSL is made aware by DLCD or another agency or organization that DSL's reliance on the local government's land use approval or consistency determination may violate or otherwise conflict with a statewide planning goal requirement or pending DSL permit, lease or other similar approval.

DSL will undertake several steps to avoid a situation where DSL issues a permit or approval on the basis of an inadequate or unlawful local land use approval or determination. These steps include improved land use training for DSL staff,

maintaining ongoing communication and consultation with DLCD and other agencies having authority over or interest in the proposed action, and continuing to work closely with applicants and local governments to ensure that DSL's approval is made on the basis of properly applied local land use, and where appropriate, state land use goal and rule requirements.

DSL Provision of Technical Assistance and Information to Local Governments

As has been noted previously, Oregon's land use program relies on a working partnership between local governments and the state. The core of the program is the network of 277 acknowledged city and county comprehensive plans and land use regulations. These local plans, as a result of LCDC approval, have been found to comply with the Statewide Planning Goals and reflect and accommodate, to the extent possible, the interests of both local governments and state agencies at the time of LCDC's acknowledgment.

But over time, state and local interests change and new local, state and federal planning requirements are enacted. The Legislature has established the periodic review and post-acknowledgment plan amendment processes as the two principal methods for updating local plans and ordinances. The Regional Problem-Solving process also is available to accomplish plan changes to address issues and implement planning solutions in a regional context.

DSL provides technical assistance and information to help local governments address not only DSL programs and requirements but also the requirements of the Statewide Planning Goals, new or amended programs of other agencies and changed circumstances and conditions in local communities.

The department considers its assistance to local governments as one of its most important functions. Technical specialists located in the Salem and Bend offices provide assistance. In general, DSL assistance includes conducting or participating in local workshops, issuing technical bulletins and reports, producing public outreach materials and responding to written, phone and email requests for information, consultation, and advice.

The department also provides information to local governments and the public about plans and studies and changes to DSL statutes and administrative rules. The department's website (www.oregonstatelands.us) is updated regularly and provides current information in an easily accessible format about all of DSL's plans, programs and regulations. The website also provides an opportunity for anyone to self-subscribe to a number mailing lists that keep people informed about agency programs and initiatives.

Unlike DLCD and other agencies, DSL has very limited financial resources available to assist local governments. To the extent possible, and consistent with budgetary

constraints, the department will seek to provide, or partner with other agencies and organizations, to offer grants and other financial assistance to help local governments conduct inventories, revise plans and ordinances, and carry out special projects or studies related to DSL plans and programs.

Specific technical assistance and information available from the department includes the following:

Property Management Programs

- Data on the navigable waters of the state including heads of tides, mean high and low water, and the location of waterway leases issued by the department
- Natural resource inventory information gathered in conjunction with the development of waterway area management plans
- Data on the location, quality and quantity of state-owned aggregate and other mineral, oil, gas and geothermal resources, including areas under lease
- Digitized data on Common School lands and submerged and submersible lands
- Information about resources and management plans and activities at the South Slough National Estuarine Research Reserve

Regulatory Programs

- Identification of wetlands on the state inventory
- Delineation of wetlands regulated by the Removal-Fill program, or information on the availability of qualified, private wetland consultants who can carry out delineations
- General functions and values of wetlands
- Status and trends of wetlands
- Information regarding the location of Removal-Fill sites
- Establishment and location of wetland mitigation banks
- Data on the function and values of estuaries

Other Department Programs

- Information about the location and status of sites listed on the Register of Natural Heritage Resources and those dedicated as Natural Heritage Conservation Areas under the Oregon Natural Heritage Program

Department staff involved in providing the technical assistance described above include:

- Wetland inventory specialists
- Wetland conservation planners
- Removal-Fill coordinators
- Waterway planners
- Policy specialists

- Mineral and state-owned lands leasing specialists
- Engineering staff
- Communications Coordinator

DSL Participation on the State's Economic Revitalization Team (ERT) and Certification of Industrial Sites

One of the Legislature's stated priorities for the state land use program is ensuring adequate provision in city and county plans for employment. More specifically, the state's industrial Lands Task Force and others have determined that there is a significant lack of different types of "project ready" industrial sites in certain areas of the state.

DSL's role in responding to this need is carried out through its membership on the state's Economic Revitalization Team (ERT). Working closely with its ERT partners and affected local governments, land owners and industrial applicants, DSL efforts to increase the number of certified (i.e., "project ready") industrial sites occur in the following ways:

- Helping to verify the availability and suitability of sites in local land use inventories planned and zoned or otherwise designated for industrial uses.
- Serving on and supporting the efforts of regional ERT Employment Lands and Permitting teams.
- Participating when appropriate in local pre-application and project scoping meetings.
- Expediting the processing of permits, particularly for priority industrial sites involving multiple or overlapping requirements of federal, state and local agencies.
- Assisting if requested in the development and review of local government post-acknowledgment plan and zone amendments and periodic review work tasks related to industrial siting.
- Providing local governments, land owners and prospective industrial investors/applicants with inventory and other data about: 1) wetland resources and regulations, 2) navigable waters of the state, 3) the location, quality and quantity of state-owned lands and resources, and 4) Common School lands and submerged and submersible lands.
- Assisting land owners and applicants in obtaining specialized wetland consulting services.

It is primarily through its membership on the ERT team that DSL fulfills its obligation to coordinate with other agencies and local governments and provide local technical assistance on public facility planning and financing, permit issuance and economic development as required by ORS 197.712(2)(f) and 197.717(1).

DSL Cooperation and Technical Assistance to Coastal Cities and Counties

A number of the department's programs specifically affect or relate to coastal local governments. Statewide Planning Goal 16 (Estuarine Resources) specifically references the department's programs dealing with Removal-Fill, minerals leasing and submerged and submersible lands. The department owns and manages the South Slough National Estuarine Research Reserve near Charleston in Coos County and the Tongue Point site outside of Astoria.

The department is an ex officio, non-voting member of the state Ocean Policy Advisory Council or OPAC (see ORS 196.438). DSL has been actively involved on the Oregon Ocean Resources Management Task Force. Department staff also played a major role in the development of the state's Territorial Sea Plan.

The department cooperates with coastal cities and counties through its participation in the Oregon Coastal Management Program (OCMP). Under this program, the department advises DLCD on the consistency of federal activities related to DSL's authorities listed in the OCMP. As an OCMP member agency, the department participates with DLCD and other federal and state agencies in various plans and projects pertaining to coastal communities and resources and in the state's Territorial Sea.

Under the OCMP, department programs and responsibilities affecting coastal and ocean uses and resources include:

- Mining and drilling leases on state-owned lands
- Any coastal sites on the Register of Natural Heritage Resources or dedicated Natural Heritage Conservation Areas under the Oregon Natural Heritage Program
- Permits and leases for mineral and geothermal resources on state-owned lands
- Department leases and permits in the Territorial Sea (e.g., mining, undersea cables, etc.)
- Removal-Fill permits

In addition to the local technical assistance described above, the department provides coastal cities and counties information and assistance on the following programs listed in Statewide Planning Goal 16 (Estuarine Resources):

- Removal-Fill Law (ORS 196.800 – 196.990)
- Mineral Resources (ORS 273.775 – 273.780 and OAR 273.551)
- Submerged and Submersible Lands (ORS 274.005 – 274.940)

See also Section 4 for additional information about DSL's participation in the state's coastal and ocean programs.

Appendices

- A. Oregon Admission Act, Constitution and Law
- B. DSL Administrative Rules – OAR 141
- C. State Agency Coordination Statutes (ORS 197.180)
<http://www.leg.state.or.us/ors/197.html> and
LCDDC Administrative Rules (OAR 660, Divisions –030 and –031)
http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_030.html
http://arcweb.sos.state.or.us/rules/OARS_600/OAR_660/660_031.html
- D. 2006 DSL State Agency Coordination Rule (OAR 141-095-000)
- E. Major DSL Plans (Available at www.oregonstatelands.us or upon request)
 - 2004-2008 DSL Strategic Plan
 - Asset Management
 - Sustainability Plan
 - Communications Plan
 - Lower Willamette River Management Plan
 - South Slough National Estuarine Reserve Management Plan
 - Oregon Wetland Conservation Strategy
- F. Oregon Natural Heritage Program (Available at www.oregonstatelands.us or upon request)
- G. Agreements with Other Agencies and Organizations (Available upon request)
- H. DSL Organization Chart
- I. Letter from Lane Shetterly, Director, DLCD

Department of State Lands

Oregon Admissions Act, Sections 1,2 & 4

Oregon Constitution, Article VIII, Sections 2, 4, 5 & 7

ORS Chapter 98	Unclaimed Property
ORS Chapters 111 – 116	Estate Administration
ORS 196.600 -.692	Wetlands Protection
ORS 196.795 - .990	Removal/Fill Permits
ORS 215.418	Approval of Development on Wetlands
ORS 227.350	Wetlands Development
ORS Chapter 270	State Real Property
ORS Chapter 271	Use and Disposition of Public Lands
ORS 273.006 -.551 & ORS 273.715 - .990	State Lands Generally
ORS 273.553 - .558	South Slough Reserve
ORS 273.563 - .591	Natural Heritage Program
ORS Chapter 274	Submersible and Submerged Lands
ORS 327.403 - .484	Common School Fund
ORS 390.835	Removals and Fills in State Scenic Waterways
ORS 517.420 - .440	Mining Leases
ORS 530.110	Distribution of Revenues from Forest Lands
ORS 530.450 - .520	Common School Forest Lands
ORS 541.351 - .415	Oregon Plan for Salmon and Watersheds
ORS Chapters 543 & 543A	Licensing, Decommissioning and Hydroelectric Projects
ORS 777.347	Consent for Annexations

<http://www.oregonstatelands.us/DSL/statutes.shtml> or

<http://www.leg.state.or.us/ors/home.htm>

A

Department of State Lands

Oregon Administrative Rules, Chapter 141

Division 1	Procedural Rules
Division 5	Notice of Meetings of State Land Board
Division 10	General; Off Shore Geological, Geophysical and Seismic Surveys
Division 14	Rules of Administrative Procedure for Audit of Sand and Gravel Leases
Division 15	Procedures Governing Defaults on Common School Timber Sales Contracts
Division 16	Control Over the Export of Unprocessed Timber from Common School Forest Land and Other Board-managed Lands
Division 30	Rules of Procedure for the Recovery of Escheated Property
Division 35	Administration of Estates-Probate
Division 40	Unclaimed Property Claims/Finders Rules
Division 45	Administration of Unclaimed Property
Division 50	Oregon Natural Heritage Program Rules
Division 60	Oregon Rural Rehabilitation Fund
Division 65	Granting Easements Across Common School Fund Lands and other State Land Board-owned Uplands
Division 67	Sale of Common School Grazing Lands
Division 70	Leasing of Onshore State-Owned Oil and Gas Rights
Division 71	Onshore Minerals Prospecting and Leasing Rules
Division 73	Minerals Reservation and Release
Division 75	Geothermal Lease Regulations
Division 80	Lower Willamette River Management Plan
Division 81	Navigable Rivers of Oregon
Division 82	Rules for Leasing and Registration of Structures on, and Uses of State-owned Submerged and Submersible Lands
Division 83	Granting Easements for Fiberoptic and other Cables on State-Owned Submerged and Submersible Land within the Territorial Sea
Division 84	Managing State-Owned Submerged and Submersible Lands
Division 85	Removal and Fill Permits
Division 86	Wetland Conservation Plan
Division 87	Hydroelectric Projects
Division 88	Use of State-Owned Property
Division 89	General Authorizations
Division 91	Charges for Copies and Services
Division 92	Screening and Selection Procedures for Personal Services Contracts Entered into by the Department of State Lands
Division 95	State Agency Coordination Program
Division 100	Oregon Scenic Waterway Removal/Fill Permits including Recreational Prospecting and Placer Mining
Division 102	Oregon Essential Indigenous Anadromous Salmonid Habitat
Division 110	Management and Leasing of Rangeland Forage
Division 120	Wetland Conservation Plan Wetland resource Designations and Analysis of Alternatives
Division 121	Navigability Determination Process
Division 122	Granting Easements and Temporary Use Permits on Trust and Non-Trust Land

<http://www.oregonstatelands.us/DSL/adminrules.shtml> or
http://arcweb.sos.state.or.us/rules/OARS_100/OAR_141/141_tofc.html

**Department of State Lands
Division 95
State Agency Coordination Program**

141-095-0005

Purpose

- (1) This division adopts the Department of State Lands state agency coordination program entitled "A Program for Coordinating DSL's Activities with Oregon's Cities and Counties, Tribal Governments, Federal and State Agencies, and Special Districts" pursuant to ORS 197.180 and OAR Chapter 660, Divisions -030 and -031.
- (2) The four required elements of a state agency coordination program listed in ORS 197.180(3)(a) - (d) and OAR 660-030-0060(2)(a) - d) are an agency's:
 - (a) Rules and summaries of programs determined to affect land use (i.e., land use programs);
 - (b) Exempt and compatible land use programs and procedures for assuring that such programs will comply with the statewide planning goals and be compatible with acknowledged comprehensive plans and land use regulations;
 - (c) Procedures for coordinating its land use programs with state and federal agencies, and special districts; and
 - (d) Program for cooperation with and technical assistance to local governments.
- (3) Upon adoption by the State Land Board, this state agency coordination program replaces the department's previous state agency coordination adopted by the State Land Board on October 23, 1990.
- (4) This division becomes effective upon approval by the Department of Land Conservation and Development or upon certification by the Land Conservation and Development Commission.
- (5) Copies of the department's state agency coordination program are available at the following locations:
 - (a) Department of State Lands, 775 Summer Street, Suite 100, Salem, Oregon 97301-1279; DSL website: www.oregonstatelands.us; and
 - (b) Department of Land Conservation and Development, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 196, ORS 197, ORS 273 and ORS 274

Stats. Implemented: ORS 196, ORS 197.180, ORS 273 and ORS 274

141-095-0010

Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 273.006 and 274.005 shall apply. In addition, the following definitions shall apply:

- (1) "Acknowledgment" means that a local government comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the statewide planning goals.
- (2) "Board" means the State Land Board consisting of the Governor of Oregon, State Treasurer and Secretary of State.
- (3) "Certification" is an order issued by the Land Conservation and Development Commission finding that a state agency's coordination program satisfies the requirements of ORS 197.180(3)(a)-(d) and OAR 660-030.
- (4) "Commission" means the Land Conservation and Development Commission (LCDC). The staff of LCDC is the Department of Land Conservation and Development (DLCD).
- (5) "Compatibility with Comprehensive Plans" as used in ORS 197.180 means that a state agency has taken actions pursuant to OAR 660-030-0070, 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 a state agency's land use programs and actions must comply with the applicable requirements of the statewide planning goals pursuant to OAR 660-030-0065.
- (7) "Consistency with Comprehensive Plans" shall have the same meaning as the term "compatibility" as provided in section (5) of this rule and OAR 660-030-0070.
- (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) "Department" means the Department of State Lands (DSL).
- (10) "Director" means the director of the Department of State Lands
- (11) "Goals" or "Statewide Planning Goals" means the mandatory statewide planning standards adopted by the Land Conservation and Development Commission pursuant to ORS chapters 195, 196 and 197.
- (12) "Rules and Programs Affecting Land Use" or "State Agency Land Programs":
 - (a) Are a state agency's rules and 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 use 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 (12)(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 changes 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 program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR Chapter 660, Division 030.
- (13) "State Agency Coordination Program" or "SAC Program" is the program adopted by a state agency and submitted to the Department of Land Conservation and Development pursuant to ORS 197.180(3)(a) –(d) and OAR 660-030.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 196, ORS 197, ORS 273 and ORS 274

Stats. Implemented: ORS 196, ORS 197.180, ORS 273 and ORS 274

141-095-0015

Applicability of State Agency Coordination Program to Department Rules and Programs

- (1) This division and the applicable provisions of ORS 197.180 and OAR Chapters 660, Division 030 shall apply to all department land use programs referenced in the department's state agency coordination program adopted pursuant to OAR 141-095-005(1) and to any future or subsequently amended department rule or program determined to affect land use in accordance with OAR 141-095-0010(12).
- (2) Before taking any action to adopt, amend or implement a department land use program, the director shall confirm whether the proposed action will affect land use, and if so assure that all applicable provisions of the department's state agency coordination program are followed. Of particular importance is for the director to assure that the proposed action affecting land use is compatible with the affected local government(s) acknowledged comprehensive plan(s) and land use regulations, and where necessary, complies with the statewide planning goals and applicable rules in OAR Chapter 660.
- (3) The director shall review and take other actions as needed to ensure that all department land use programs, including applicable administrative rules in OAR

Chapters 141 and 142, are consistent with and will be carried out in accordance with the department's state agency coordination program and the provisions OAR 141-095.

(4) The director where necessary shall recommend revisions and other appropriate actions to the State Land Board to revise existing department land use programs and applicable administrative rules to comply with OAR 141-095-0015(3).

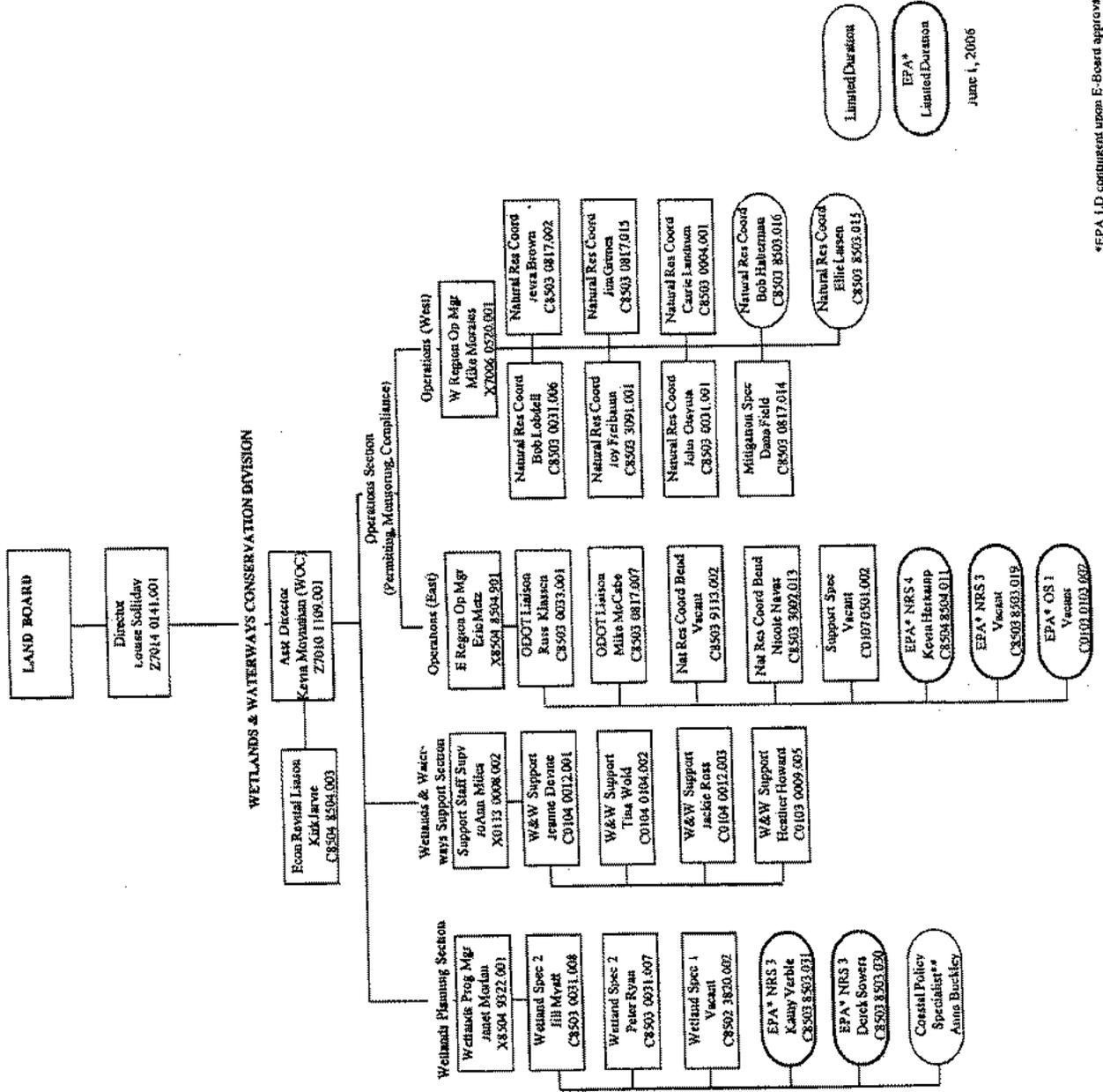
(5) The director as needed shall consult with and request assistance from the Department of Land Conservation and Development in carrying out OAR 141-095-0015(2) – (4) and any related sections of the department's state agency coordination program.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 196, ORS 197, ORS 273 and ORS 274

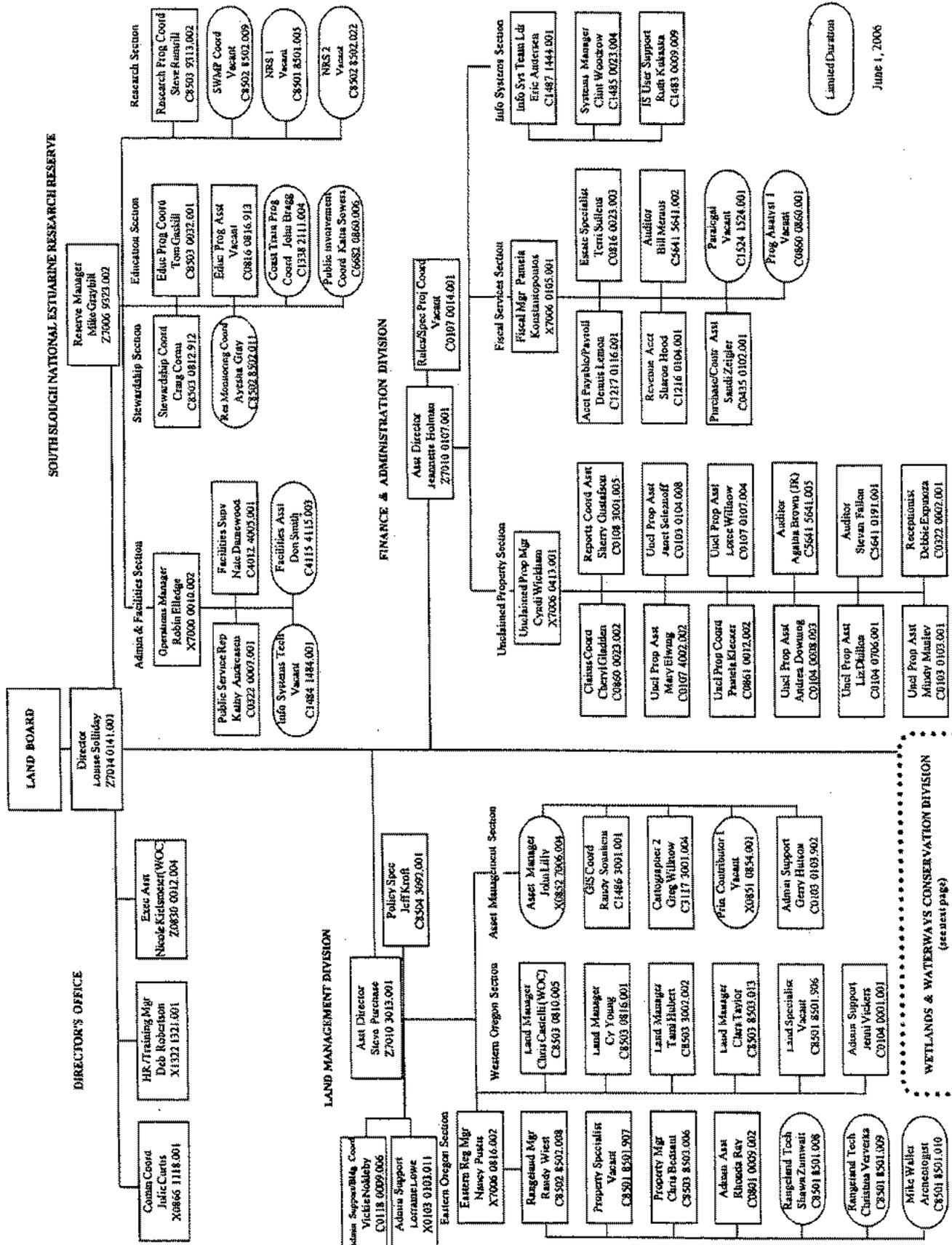
Stats. Implemented: ORS 196, ORS 197.180, ORS 273 and ORS 274

DEPARTMENT OF STATE LANDS: 2005-2007



*EPA LD contingent upon E-Board approval of grant acceptance
** Federal Sea Grant

DEPARTMENT OF STATE LANDS: 2005-2007





Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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Web Address: <http://www.oregon.gov/LCD>

September 26, 2005

John Lilly
Assistant Director for Policy and Planning
Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279



RE: Draft Update of DSL State Agency Coordination Program

Dear Mr. Lilly,

Thank you for your invitation to review the draft of the proposed Updated Department of State Lands (DSL) State Agency Coordination Program (SAC). We are aware of the significance of this update and congratulate DSL for undertaking this important effort. We apologize for our inability to provide formal comments prior to now, and we especially appreciate the opportunities you provided for DLCD staff to meet informally with DSL staff to discuss and suggest improvements to the proposed amended SAC. Our recommended improvements are reflected in the final draft, and as such we support the adoption of the revised State Agency Coordination Program. We find that the proposed update is exceptionally thorough in its approach to coordination with the statewide land use planning program.

This department and the Land Conservation and Development Commission (LCDC) are responsible for the review and certification of State Agency Coordination Programs under ORS 197.180 and related administrative rules. LCDC certified DSL's SAC program in 1991. We note that amendments and major updates to SAC programs do not require formal approval by LCDC, but do require notice to DLCD (and other agencies and interests) and the opportunity to comment. The department will advise LCDC of this pending proposal and the findings in DLCD's review, and will also indicate that DSL has met notice and other requirements in LCDC's coordination rules.

Please enter these comments into the record of proceedings at the October 11, 2005, State Land Board Hearing.

Sincerely,

Lane Shetterly
Director

Cc: Bob Rindy, DLCD
Bob Bailey, DLCD

2005 SEP 30 1 P 2:35
DIVISION OF STATE LANDS
RECEIVED

Secretary of State
Certificate and Order for Filing
PERMANENT ADMINISTRATIVE RULES

I certify that the attached copies* are true, full and correct copies of the PERMANENT Rule(s) adopted on February 14, 2006 by the State Land Board and on July 14, 2006 by the Director of the Department of State Lands

Date prior to or same as filing date

Oregon Department of State Lands 141
Agency and Division Administrative Rules Chapter Number
Nicole Kielsmeier 775 Summer St NE Ste 100, Salem, Oregon 97301 503-378-3805 X 239
Rules Coordinator Address Telephone
to become effective upon filing Rulemaking Notice was published in the July, 2005 Oregon Bulletin.**
Date upon filing or later Month and Year

RULE CAPTION

Rules adopt the Department of State Lands' revised state agency land use coordination program.
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

ADOPT: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

OAR 141-095-005; 141-095-0010; 141-095-0015;

AMEND:

REPEAL:

OAR 141-095-0000

RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

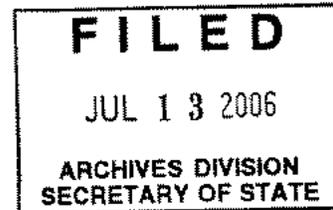
ORS 183—regarding administrative procedures and rules of state agencies; ORS 273—regarding state lands generally, including the creation and general powers of the State Land Board and Department of State Lands; ORS 273.045—providing the Department of State Lands shall “promulgate such rules as are necessary to carryout the policies of the department and to attain maximum efficiency in its administration.”

Stat. Auth.

Oregon Constitution, Article VIII, Sections 2 and 5—creating the State Land Board and the Land Board's management of common school trust lands and other lands owned by the state

Other Authority

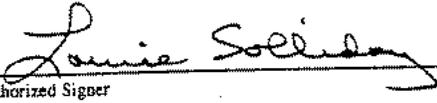
ORS 196—relating to ocean resource planning, wetlands, and removal-fill; ORS 197—relating to comprehensive land use planning coordination; ORS 197.180—requiring the preparation and adoption of land use coordination programs by state agencies
Stats. Implemented



DEPT OF STATE LAND
RECEIVED
2006 JUL 18 10 11

RULE SUMMARY

These rules adopt and implement the Department of State Lands' revised state agency land use coordination program pursuant to the requirements of ORS 197.180 and OAR 660, Division 030.



Authorized Signer

Louise Solliday, Director
Printed name

7/13/06
Date

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

K:\Nicole\Rules\141-095 SAC\Certificate of Filing Rule 141-095 SAC New form July 2006.doc