

Section 1

INTRODUCTION

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

The Portland Metropolitan Area Local Government Boundary Commission (hereafter referred to as the "Commission") has developed this coordination program to fulfill its land use responsibilities. Attorney General's Opinion No. 8091 determined that Commission actions must be compatible with applicable acknowledged comprehensive plans when considering a proposal to incorporate a new city for territory covered by that plan. Furthermore, boundary commission actions must comply with the state-wide planning goals and be compatible with acknowledged comprehensive plans.

The Commission's original SAC Program was approved by LCDC in March, 1978. However, since then, statutory and LCDC requirements for agency coordination have been revised substantially. The Commission's existing SAC Program will be considered rescinded upon certification of the Commission's revised program by LCDC.

Prior to 1983, the Commission was exempt from the rulemaking provision of ORS 183. However, in 1983, ORS 199.452 was amended to clarify which portions of ORS 183, the Administrative Procedures Statute, applied to boundary commissions. As a result, the Commission has adopted procedural and policy-related rules.

The Commission is a state agency which is comprised of 12 members appointed by the Metropolitan Service District. All members must be residents of Clackamas, Multnomah or Washington County. The Commission employs an executive officer and support staff. Its offices are located in Portland. The broad purposes of the Commission are outlined in ORS 199 as follows:

- A. Guide the creation and growth of cities and special districts;
- B. Prevent illogical extensions of local government boundaries;

- C. Assure adequate quantity and quality of public services and the financial integrity of each unit of local government resulting from boundary changes; and
- D. Reduce the fragmented approach to local government service delivery in urban areas.

Section 2

COMMISSION RULES AND PROGRAMS

This section addresses the requirements of LCDC's Oregon Administrative Rules (OAR), OAR 660-30-060(3). This section describes the Commission's statutory purposes, administrative rules, and programs. This section also identifies which of the Commission's responsibilities affect land use.

A. Enabling Statutes

The Commission was created by the Oregon legislature in 1969 and is governed by Oregon Revised Statutes (ORS) 199.410 to 199.534.

B. Commission Programs

The commission has only one statutory (and therefore one program) responsibility. It is the duty of the Commission to 1) review and act on proposals to create or alter the boundaries of cities and thirteen (13) separate types of special purpose districts; and 2) review and act on the formation of private sewer and water systems and the extension of sewer or water service outside governmental boundaries. The special districts falling under Commission jurisdiction are:

1. domestic water supply (ORS 264);
2. park and recreation (ORS 266);
3. metropolitan service (ORS 268);
4. highway lighting (ORS 372);
5. sanitary (ORS 450);
6. sanitary authority or water supply authority (ORS 450)
7. county service (ORS 451);
8. vector control (ORS 452);
9. rural fire protection (ORS 478);
10. geothermal heating (ORS 523); and
11. water supply corporations organized under ORS 554 or other districts organized to supply domestic water;
12. library (ORS 357);
13. special road (ORS 371).

The boundary changes are of two types:

1. Minor - annexation, withdrawal or transfer of territory to or from a city or district.
2. Major - formation, merger, consolidation or dissolution of a city or district.

Public Hearing Process. When a Commission receives a petition for a boundary change it must make a study of the

proposal, and conduct one or more public hearings (except for those proposals filed under the expedited process discussed below). Minor boundary changes must be decided within 90 days of filing. Only if every person present at a public hearing on the proposal consents to extending the deadline can the 90 days be extended up to one year from the date of filing. Major boundary changes must be decided within 120 days of filing.

When considering major or minor boundary changes the Commission may make one of three possible decisions after conducting a public hearing (ORS 199.461):

1. Approve the proposal as submitted;
2. Approve the proposal after modifying the boundary to include or exclude territory; or
3. Deny the proposal based on failure of the proposal to meet any one or more of the statutory standards in ORS 199.410 and 199.462.
4. Major boundary changes not acted upon within 120 days of receipt by the Commission shall be considered approved by the Commission. ORS 199.476 (3). Minor boundary changes or applications under ORS 199.464 not acted upon within 90 days of receipt by the Commission shall be considered approved by the Commission. ORS 199.490 (7).

When considering an application for sewer or water line extensions, the Commission pursuant to ORS 199.461(3) may alter the application to:

1. Include, or
2. Exclude line and connections thereto.

The Commission pursuant to ORS 199.461(3) may alter the application for formation of a privately owned sewer or water system, or allocation of territory to a community water system to:

1. Include, or
2. Exclude territory.

ORS 199 does not authorize the Commission to grant conditional approvals.

After reaching a decision based on its public hearing(s), the Commission issues a final order complete with findings and reasons supporting its action.

Expedited Process. The Commission has an "expedited" approval process which is allowed under ORS 199.466 and is used for processing routine, noncontroversial boundary change proposals without a public hearing. Annexations, water and sewer extraterritorial extensions, and establishment or expansion of water or sanitary sewer systems are the only types of boundary change proposals which can use the expedited procedure. To use this process, the applicant must specifically request its use at the time the petition is filed.

The Commission staff has 15 days from the date of filing within which to prepare a brief staff analysis which addresses all applicable statutory standards, including consistency with applicable comprehensive plan and land use regulations. A copy of the staff analysis is sent to Commission members, affected cities, counties, districts, state and federal agencies, and affected property owners. If within 25 days from the date of filing, none of the recipients of the staff analysis request a public hearing, the proposal is approved as submitted. Expedited proposals are final upon the 26th day from filing and are approved by "consent" of the Commission without the legal advertisement, posting, public hearing, findings, reasons, and final order which accompany non-expedited boundary change proposals.

If a staff analysis is not prepared, or if any of the recipients requests a public hearing on the proposal, it is scheduled for hearing and is treated as a non-expedited proposal.

All decisions of the Commission are appealable to the Oregon Court of Appeals (ORS 199.461 and ORS 183.482), rather than the Oregon Land Use Board of Appeals.

C. Oregon Administrative Rules (OAR's)

The Commission has adopted the following administrative rules in accordance with its own procedures and those required by ORS 183. The Commission's administrative rules can be found in OAR, Chapter 193:

1. Division 1: Procedural Rules;
2. Division 5: Policies;
3. Division 10: Service Charges
4. Division 20: Budget and Assessment; and
5. Division 1: Notice Rule

The policies in Division 5 have been adopted by administrative rule and are used by the Commission when evaluating proposed boundary changes.

D. Administrative Procedures

The Commission relies on no procedures other than those found in ORS 199.410 to 199.534, those found in OAR, Chapter 193, and those in other sections of the ORS which relate to boundary change enabling legislation for affected cities and districts.

E. Programs Affecting Land Use.

The Commission operates only one functional program. The Commission's actions do have effects on present and future land uses identified in acknowledged comprehensive plans. For this reason, and in view of the goal conformance and plan consistency language in the statutes the statutory program of the Commission is considered to be a "program affecting land use" under the definition of LCDC's OAR 660-30-005(3) and 660-30-060(3).

Decisions by the Commission on boundary changes and service extensions are critical to the orderly implementation of acknowledged city and county comprehensive plans. This important relationship is recognized in statute at ORS 199.410(2)(d) which requires that Commission decisions must be in conformance with the state-wide planning goals and consistent with comprehensive plans. This section of the ORS has been interpreted in the 1982 Attorney General's Opinion No. 8091 which requires that the Commission act compatibly with all acknowledged comprehensive plans.

F. Agency Programs Subject to LCDC Consistency Rule.

The commission does not issue permits and is not subject to OAR 660-31. All boundary changes require either: (a) action of the Commission following a public hearing, or (b) Commission approval using the expedited process. Any Commission decision may be appealed to the Oregon Court of Appeals. No Commission boundary change authority is delegated to the Commission's staff.

Section 3

COMMISSION PROGRAM TO ASSURE COMPLIANCE WITH STATE-WIDE GOALS AND COMPATIBILITY WITH ACKNOWLEDGED COMPREHENSIVE PLANS

This section responds to the requirements of LCDC's OAR 660-30-060(4). This section describes how the Commission's actions comply with the state-wide planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations.

The statutes at ORS 199.410(2)(d) and the Attorney General's Opinion No. 8091 require that the commission's determinations be in conformance with the state-wide planning goals and be "consistent" or "compatible" with comprehensive plans.

To avoid any potential confusion or conflict between the terms "consistency" and "compatibility", this SAC Program adheres to OAR 660-30-005(5) and (7) which define the words as having the same meaning; i.e., no remaining conflicts between the agency's program (that is the approval or denial of boundary changes or water and sewer proposals) and the applicable acknowledged comprehensive plan. In this SAC Program, wherever the Commission's rules and procedures require it to be "consistent" with comprehensive plans, consistent has the same meaning as "compatible" with those same acknowledged plans and land use regulations.

A. Exempt and Compatible Land Use Program

The commission's program falls into the category of "compatible land use program." There is no statute, constitutional provision or appellate court decision which would expressly exempt the Commission's program from compatibility with acknowledged comprehensive plans but not from compliance with LCDC's state-wide planning goals.

B. Agency Rules and Procedures to Assure Compliance with the State-wide Goals

1. Commission Rules

The statutes at ORS 199.410(2)(d), AG's Opinion No. 8091, and OAR 193-01-005(16)(N) require that the Commission's determinations be "consistent" with comprehensive plans and comply with the state-wide planning goals (This requirement applies regardless of whether a proposal is being processed as expedited or non-expedited.). The Commission is required to adopt findings and reasons when issuing a final order. ORS 199.461(4), OAR 193-01-005(14)(c).

OAR 193-01-005(16)(n) sets forth the requirement that Commission final orders be consistent with comprehensive plans and comply with the state-wide planning goals:

"(n) In order to adopt a final order approving a boundary change or service extension proposal, the Commission must adopt a finding or findings indicating that the proposal complies with the statewide planning goals (if the goals are directly applicable) and is consistent with the applicable acknowledged comprehensive plan(s) and land use regulations in accordance with the administrative rules and procedures contained in the Commission's State Agency Coordination Program, which is hereby adopted by reference.

ORS 197.180 requires that the Commission's determination be "consistent" with Comprehensive Plans and comply with the state-wide planning goals. The Commission's State Agency Coordination Program describes how this consistency and compatibility will be assured.

When the Commission acts consistently with acknowledged comprehensive plans, it is acting in compliance with the statewide planning goals. Since all comprehensive plans in the state have been acknowledged to be in compliance with the statewide goals, except with those situations described below the Commission does not anticipate having to adopt findings directly against the statewide goals.

(A) The situations where the Commission shall adopt findings based on the statewide goals when acting on a proposal include:

(i) When the acknowledged comprehensive plan

does not contain any specific or general policy direction for determining consistency with the boundary change proposal subject to Section (14)(b)(B) of these procedural rules; or

- (ii) When the proposal being reviewed by the Commission specifically relates to or is to occur in an area not subject to an acknowledged comprehensive plan; or
 - (iii) When the Commission is required to adopt goal findings based upon a new or amended state-wide goal or administrative rule under OAR Chapter 660 enacted by LCDC; or
 - (iv) When the Commission is required to adopt goal findings in response to an appellate court decision or change in statutes.
- (B) If goal findings are required, the Commission shall adhere to the following procedures subject to the time limits imposed by ORS 199.476 (3) and ORS 199.490 (7):
- (i) Confirm that a situation actually exists requiring the Commission to adopt findings of compliance with one or more of the state-wide goals; and,
 - (ii) Identify the specific state-wide goals which the Commission must address; and,
 - (iii) If necessary, consult directly with the affected local governments; and,
 - (iv) If necessary request interpretive guidance from the Department of Land Conservation and Development and the Attorney General's Office; and,
 - (v) Rely on any relevant goal interpretation for state agencies adopted by LCDC under OAR Chapter 660; and,
 - (vi) Adopt any necessary findings to assure compliance with the state-wide goals."

2. The Commission has no goal compliance procedures beyond those listed in OAR 193-01-005 (16)(n).

C. Agency Rules and Procedures to Assure Compatibility with Acknowledged Comprehensive Plans

1. Commission Rules

The Commission's statute at ORS 199.410(3)(d), 199.462(1) and 199.464(1) together require that determinations involving boundary changes and service extensions must be done in a manner consistent with comprehensive plans. This requirement is referred to or is restated in Commission rules at OAR 193-01-005(14) and (16). The Commission's administrative policies give further direction for assuring consistency with applicable comprehensive plans:

OAR 193-01-005(14)(c). When making its decision, the Commission shall adopt "the findings and reasons for the decision." One of the reasons that is required to support a boundary commission order under ORS 199.410(3) is compliance with local comprehensive plans and state-wide planning goals.

"(B) In order to determine that a boundary proposal is consistent with an acknowledged comprehensive plan and land use regulations, the Commission may rely on the interpretation of the adopting government of its applicable comprehensive plan and land use regulations or make its independent determination of compliance with the same.

In making the above determination the Commission may rely on any of the following:

- (i) Written information supplied by the applicants on Commission data forms. Where necessary the Commission shall assure the validity of the applicant's consistency information by evaluating it against the applicable comprehensive plan and land use regulations and consulting with the affected local government(s). In such cases, verifying a proposal's consistency may involve written or verbal confirmation to the Commission, or Commission acquisition and inspection of city or county land use plans, regulations and related documents; or
- (ii) A letter or other equivalent written documentation from the local planning agency or governing body stating that the boundary change proposal is permitted under the

jurisdiction's comprehensive plan; or

- (iii) A copy of the local land use permit or equivalent documentation from the city or county planning agency or the local governing body that the boundary change proposal has received land use approval; or
- (iv) Other information provided to the Commission equivalent to (i) through (iii) above including but not limited to testimony at a Commission hearing."

2. Commission Procedures

The Commission has no procedures for assuring compatibility with acknowledged comprehensive plans beyond those listed in OAR 193-01-005 (14)(b)(B) and other rules referred to above.

3. Dispute Resolution

The Commission provides an impartial forum for resolving boundary change disputes. The Commission allows representatives of federal, state, county, districts, cities, and any other interested persons to comment on boundary change proposals. The Commission also has the authority to initiate all types of boundary changes except public health hazard and island annexations (ORS 199.490(5)(a) and (b)). The Commission also directs its staff to participate in negotiating solutions to boundary change disputes. It is possible that issues including land use could be dealt with by this process. However, since the major issues dealt with by the Commission are not land use issues, typically this process is not used to resolve land use disputes.

Because of the nature of the Commission's unique statutory function, the specific timelines within which the Commission must make decisions and because the method of appealing boundary commission decisions is different from many other agencies covered by the OAR, the dispute resolution procedures provided in OAR 660-30-070 are not applicable to the Commission's review of boundary change proposals.

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

The SAC Program shall be amended, as determined necessary by the Commission, when any of the following occur:

1. Change in Oregon Revised Statutes;
2. Adoption of new administrative rules;
3. Appellate Court decisions; or
4. Attorney General's Opinions.

The SAC Program shall be amended in accordance with LCDC OAR 660-30-075 if a new program is added to the Commission's authority.

Section 4

COMMISSION PROGRAM FOR COORDINATION WITH DLCD, AFFECTED STATE AND FEDERAL AGENCIES AND LOCAL GOVERNMENTS (INCLUDING SPECIAL DISTRICTS)

A. Commission Coordination and Agency Procedures

The Commission coordinates with all cities, districts, private companies providing water and sanitary sewer service, and counties under its jurisdiction on a regular basis through the following: (a) letters, (b) budget review, (c) draft administrative rule development amendment, (d) notifications on proposals, and (e) meetings with officials, staff and citizens representing those agencies.

When reviewing proposals, particularly major boundary changes, pre-application meetings are encouraged. Upon receipt of a proposal, written notice to all affected parties is given, and a written referral is sent to all affected units of government, including local, regional, state, and federal agencies. When reviewing water and sanitary sewer system proposals, the Commission coordinates with the Oregon Health Division and the Oregon Department of Environmental Quality.

When reviewing boundary change proposals subject to state-wide goals (e.g., incorporation of a new city, proposed plan amendments or land use regulations not yet acknowledged,) or when reviewing proposed changes in state-wide policy applicable to the Commission, the Commission coordinates with the DLCD. Other state agency coordination occurs on a case-by-case basis depending on the magnitude of the proposal and the public interest. Any person or agency can be placed on the Commission's notification list for a specific proposal upon request.

Responses to the written notifications sent to all affected units of governments are incorporated into the Commission's staff reports prepared by staff which contain analysis of the proposal based on the Commission's standards and contain proposed findings and reasons for the recommended action on the proposal. Staff reports are sent to all affected parties and to any party requesting a copy. All parties are given notice of time and place of public hearing and are given an opportunity to testify before the Commission. All Commission actions taken after a public hearing must be supported with adequate findings and reasons. Final Orders of the Commission's action are filed in accordance with ORS 199.461(5) and (6).

The process for reviewing expedited proposals is explained previously on pages 4-5, Section 2.

All Commission and Advisory Committee meetings are subject to the Oregon Public Meetings Law and the Commission's Notice Rule* (See copy of OAR 193-01-010 attached). All Commission files are subject to Oregon Public Records Law.

All cities, counties, and special districts (refer to list in Section 2) listed in ORS 199.420 are considered to be affected parties for any proposal affecting territory within such city, county or special district and these are coordinated with as noted at the beginning of Section A.

When considering a non-expedited boundary change proposal, the Commission will adhere to the following procedures related to coordination with state and federal agencies and with local governments not listed in ORS 199.420:

1. Other local governments and state and federal agencies, determined by the Commission to be affected by a proposal, will be notified in writing of the proposal and sent applicable information about the proposal;
2. Information contact will be made by the Commission whenever a proposal raises a question possibly affecting another state or federal agency or "other local government";
3. Notification of a proposed change will be made whenever a proposal is determined by the Commission to affect another state or federal agency. Responses to notifications will be incorporated into staff reports and relevant findings;
4. "Other local government," state, and federal agency representatives will have an opportunity to submit testimony as part of the Commission's public hearing process;
5. All proposals requiring analysis of compliance with one or more state-wide planning goals will be referred to the Department of Land Conservation and Development for review and comment; and
6. Any interested party, or affected governmental unit or agency can request to be notified of a proposal filed with the Commission.

B. Commission Coordination Contract

The Commission can be contacted at the following address and phone:

Executive Officer
Portland Metro. Boundary Commission
320 SW Stark (#530)
Portland, OR 97204
(503) 229-5307

Section 5

COMMISSION PROGRAM FOR COOPERATION WITH AND TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS

This section describes the Commission's involvement in the local comprehensive planning process and the services provided to local governments by the Commission.

A. Commission Participation in and Coordination with the Local Planning Process Regarding Implementation of the Commission's Land Use Program

The Commission does not actively participate in the planning processes of any city or county within its jurisdiction. If requested to review a proposed plan policy or land use regulation amendment, the Commission staff may do so. The Commission bases its boundary change decisions on the comprehensive plans of cities and counties. The Commission takes the position that it would be improper for it to be directly involved in creating the plans on which it later bases its decisions.

The Commission's land use program commences once a proposal is filed with the Commission. Upon filing, the proposal review process dictates analysis of consistency with the acknowledged comprehensive plan and land use regulations and/or compliance with state-wide planning goals in the absence of comprehensive plan treatment of the proposal. Following a public hearing(s), all Commission decisions must be based on findings of consistency with comprehensive plans or compliance with the state-wide planning goals.

B. Technical Assistance and Information Available from the Boundary Commission and Methods Used to Provide the Information to Local Governments

The Commission uses a variety of methods to provide information and technical assistance to local governments, including the following:

1. Education and pre-application meetings with staff;
2. Maintenance of information sheets and instructions for various types of boundary change applications;
3. Review of response to notifications sent to affected governments.
4. Assistance with applications;

5. Notice of filing;
6. Official notification for responses on proposals;
7. Circulation of Commission staff reports;
8. Notice of final Commission action;
9. Coordination during legislative sessions;
10. Providing mediation services between disputing government on boundary change related issues; and
11. Other support as budget, time and staff limitations allow.

C. Involvement of the Commission in the Periodic Review Process, Particularly with Regard to Incorporating New or Amended Commission Program Into Acknowledged Comprehensive Plans

The Commission does not actively participate in the periodic review process of any city or county within its jurisdiction. If Commission review is requested, the Commission staff may do so. If a new Commission program relating to land use is added, the Commission will coordinate with local governments and DLCDC regarding the effect of the new program in maintaining consistency with acknowledged comprehensive plan and compliance with the state-wide planning goals.

D. Cooperation and Technical Assistance to Coastal Cities and Counties - Not Applicable.

E. Technical Assistance Pursuant to Local Public Facility Planning, Permit Issuance and Economic Development

The Commission does not actively participate in Public Facility Plan (PF) development. If requested to review a Public Facility Plan and its related policies, the Commission staff may do so. The Commission reviews PFP's as part of the acknowledged comprehensive plan, when making its decisions. The Commission does not issue permits. The Commission's actions on boundary changes and service extensions are a logical part of the economic development process. The Commission has attempted to streamline its procedures as much as possible to provide a clear and understandable method for achieving boundary changes within its statutory and rule framework.

F. Commission Coordination Contact

Executive Officer
Portland Metro. Boundary Commission
320 SW Stark (#530
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(503) 229-5307