

OREGON DEPARTMENT OF AGRICULTURE

STATE AGENCY COORDINATION PROGRAM

Prepared in accordance with ORS 197.180 and OAR 660, Division 30, for certification by the Oregon Land Conservation and Development Commission

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Oregon Department of Agriculture
State Agency Coordination Program

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SECTION I

EXECUTIVE SUMMARY

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

The Oregon State Department of Agriculture has prepared and developed this coordination plan to fulfill the requirements of ORS Chapter 197 with respect to its land use responsibilities. This is the first state agency coordination plan submitted to the Land Conservation and Development Commission by the Department.

With the assistance of Department of Land Conservation and Development staff, the Department has determined that two of its programs have the potential to significantly affect land use. These programs are the Oyster Plat Leasing Program and the Conservation Grants to local Soil and Water Conservation Districts Program. Both programs are described in detail in the following pages.

The Department's SAC Program, as approved by the Director of Agriculture, consists of two basic elements: Administrative Rules to assure compatibility and compliance (OAR Chapter 603, Division 5) and the SAC document itself. The SAC Program document details the procedures the department will follow to assure compliance with statewide planning goals and compatibility with acknowledged comprehensive plans.

SECTION II

INTRODUCTION

The Department of Agriculture is a state agency advised by the ten member State Board of Agriculture. Nine of the Board members are appointed by the Governor; the chairman of Oregon's Soil and Water Conservation Commission serves as the tenth member. Board members serve four year terms, for a maximum of two terms. ORS 561.130 requires seven of the Board members to be actively engaged in the production of agricultural commodities and two of the members to be representatives of consumer interests of the state. The function of the Board, as provided in ORS 561.140, is to establish policies for the administration of the Department in accordance with all applicable provisions of law. The Director of the department is required to review the activities of the department with the Board, to proceed in conference with the Board, to submit to policy direction by the Board and to outline to the Board the methods, policies and program of work of the department. The authority for rule adoption rests with the director.

The department is also advised on issues related to soil and water conservation by the Soil and Water Conservation Commission. This seven member body is appointed by the Director of Agriculture and provides for liaison between the department and Oregon's 45 Soil and Water Conservation Districts. It is strictly advisory and has no policy or rulemaking authority.

SECTION III

DEPARTMENT OF AGRICULTURE ENABLING STATUTES AND PROGRAMS

A. ENABLING STATUTES

The Oregon State Department of Agriculture was created by the Oregon legislature June 6, 1931, and is governed by Oregon Revised Statutes (ORS) Chapter 561. The executive officer of the department is the Director of Agriculture who is responsible for execution of all matters pertaining to the department, subject to policy direction of the Board. The Director is appointed by the Governor, subject to confirmation by the Senate. The Board of Agriculture is the department's policymaking body, and the Director is required by statute to confer with the Board regarding departmental activities and proceed with those activities based on the Board's policy direction.

The responsibilities of the department as to inspectional, regulatory and agricultural development work are set forth in ORS 561.020. The department has full responsibility and authority for all the inspectional, regulatory and market development work provided for under the provisions of all statutes the department is empowered and directed to enforce. The department is empowered to "encourage and work toward long-range planning to develop and promote the agricultural resources of Oregon that they may contribute as greatly as possible to the future economy of the state". The Director also is required to coordinate activities of the department related to watershed enhancement projects approved by the Governor's Watershed Enhancement Board with activities of other cooperating state and federal agencies.

Department of Agriculture Statutes

The activities and responsibilities carried out by the divisions of the Department are authorized by the following Oregon revised statutes. Copies of all the statutes are available for review in the Department's Salem offices. Copies of Chapters 561, 564, 568 and 622 are included in the appendix.

Chapter 452	Vector and Weed Control
Chapter 558	Weather Modification
Chapter 561	Department of Agriculture
Chapter 564	Wildflowers, Threatened or Endangered Plants
Chapter 565	Fairs and Exhibits
Chapter 568	Soil and Water Conservation
Chapter 570	Plants, Inspection, Quarantine, Pest and Weed Control
Chapter 571	Nurseries, Nurserymen, Christmas Tree Growers
Chapter 576	Agricultural Marketing and Warehousing
Chapter 577	Oregon Beef Council, Oregon Sheep Commission
Chapter 583	Milk Marketing, Production and Distribution
Chapter 585	Produce Dealers
Chapter 586	Warehouses, Grain Inspection
Chapter 587	Storage of Grain as Basis of Farm Credit
Chapter 596	Disease (Animal) Control Generally
Chapter 599	Livestock Auction Markets, Stockyards, Auction Sales
Chapter 600	Swine Feeding
Chapter 601	Dead Animals
Chapter 602	Bees
Chapter 603	Meat Dealers and Slaughters
Chapter 607	Stock Running at Large, Livestock Districts
Chapter 608	Fences to Prevent Damage by or to Animals
Chapter 609	Animal Control, Exotic Animals
Chapter 610	Predatory Animals
Chapter 616	Food and Other Commodities
Chapter 618	Weights and Measures
Chapter 619	Labeling and Inspection of Meat and Meat Food Products
Chapter 620	Sale of Horse Meat
Chapter 621	Purity, Grades, Standards and Labels of Dairy Products and Substitutes
Chapter 622	Shellfish (Oysters)
Chapter 625	Bakeries and Bakery Products
Chapter 628	Refrigerated Locker Plants
Chapter 632	Grades, Standards and Labels for Agricultural

	and Horticultural Products
Chapter 633	Grades, Standards and Labels for Feeds, Fertilizers and Seeds
Chapter 634	Pesticide Control
Chapter 635	Nonalcoholic Beverages

B. DEPARTMENT OF AGRICULTURE PROGRAMS

1. The Department of Agriculture has responsibilities in three general areas: agricultural marketing and development, natural resources, and regulation.

- a. Agricultural Marketing and Development

Oregon agriculture is highly dependent upon out-of-state markets, both foreign and domestic, for marketing its products. Researching markets, making business contacts around the world, gathering statistics on Oregon exports and exploring creative new ways to move Oregon goods are high priorities for the department. Market development activities are authorized under ORS Chapters 561, 576 and 577.

- b. Natural Resources

A second high priority of the department is natural resource conservation. The department is involved in statewide conservation issues that impact Oregon's croplands, forests, grasslands, and riparian zones. The department creates and manages conservation programs, oversees operations of 45 soil and water conservation districts, advises private landowners on specific ways to reduce soil erosion and carries out Oregon's threatened and endangered plant species program. The department's natural resource activities are authorized in ORS Chapters 561, 564 and 568.

c. Regulation

In the regulatory area, the department has responsibilities for enforcement of more than 800 regulations which are directed toward:

- (1) Food and dairy processors, bakeries, retail markets and food storage warehouses;
- (2) Preventing consumer fraud by licensing and inspecting weighing and measuring devices in the state;
- (3) Keeping plants and animals free from pests and diseases;
- (4) Monitoring use of pesticides, feeds and fertilizers in Oregon;
- (5) Deterring livestock theft.

2. The above activities and responsibilities are carried out through eight operating divisions, with three divisions--Business Office, Personnel, and Information--providing support services. Brief descriptions of these divisions and their activities follow:

a. Agricultural Marketing and Development Division

This division is responsible for expansion of existing markets and for development of new domestic and global markets for Oregon's agricultural products. Since 1982, the division's international marketing staff has helped more than 125 Oregon firms attend food shows in Japan, South Korea, Taiwan, West Germany, France, the Philippines, Hong Kong, Saudi Arabia, and Singapore. The division played a key role in 1987 in putting together Oregon's largest ever trade mission in Japan, South Korea and Taiwan and in coordinating Oregon products promotion at Neiman-Marcus and Bloomingdale's stores. These activities resulted in significant sales of

Oregon agricultural products in both domestic and foreign markets. Oregon seafood was recently added to the list of products actively promoted by the division.

In addition to its efforts in expanding markets for Oregon agricultural products, the Agricultural Marketing and Development Division serves as the business office for 11 of Oregon's 26 commodity commissions (listed in the appendix). Oregon's commodity commissions were created under ORS Chapters 576-579 as industry self-help groups. Funded by product assessment, these commissions generally carry out a program of activities in one or all of the following areas: promotion, research, marketing, and education.

b. Animal Health and Livestock Identification Division

This division has responsibilities in two areas involving livestock in the state.

(1) Animal Health Section

The Animal Health section's role is to prevent, control, and, if possible, eradicate livestock diseases harmful to humans and livestock and to ensure humane treatment of animals. The section maintains a high level of testing for animal diseases by analyzing blood, tissues and fecal samples from livestock at auction markets, slaughterhouses, and private operations. It monitors the movement of livestock in and out of Oregon through a permit system which requires importers to have health permits and health certificates covering all animals moved. The division investigates incidents of animal disease outbreaks and will test, treat, quarantine and even destroy infected animals, if necessary. The section has been very successful, through its quarantine, testing, and regulatory activities, in keeping serious animal diseases at an extremely low

level in the state. Its program of testing and vaccinating cattle for brucellosis has been particularly effective, with no diagnosed cases of the disease in Oregon since 1986.

(2) Livestock Identification Section

The primary responsibility of the Livestock Identification section is to deter theft of livestock in Oregon. The section records over 13,500 livestock brands and inspects brands on cattle and horses to verify ownership whenever animals are sold, before slaughter, or before shipment out of the state. The section works closely with the Animal Health section in tracing animals for prevention and control of animal diseases, and it inspects brands on stray livestock in order to return such animals to their rightful owners. The section also licenses and inspects livestock auction markets to assure buyers and sellers of the integrity of the market operators and that the facilities meet required standards of construction and sanitation. The division's brand inspectors also randomly check cattle at weigh stations on major highways at the state's borders to inspect brand certificates and health permits in a further effort to deter theft and reduce the possibility of livestock diseases entering Oregon from other states.

c. Commodity Inspection Division

The primary responsibility of the Commodity Inspection Division is to sample, inspect, and grade fruits, vegetables and nuts for the fresh market as required by Oregon law and federal marketing orders, and to sample and certify grades and standards for fruits and vegetables for processing. The division also samples, inspects, and grades such other Oregon products as hops, seed, fresh produce at dealer locations and

grain and other commodities at inland locations. The division is responsible for weed control activities including development of biological, chemical and cultural controls for noxious weeds, conducting surveys, and administering financial assistance grants to counties for weed control programs. The division also inspects bees and bee equipment for pests and diseases.

d. Food and Dairy Division

The primary responsibility of the Food and Dairy Division is to assure that Oregon consumers receive safe, wholesome, and properly labeled food. The division inspects and licenses food processors, dairy processors, dairy farms, retail food markets, meat markets and processors, bakeries, beverage plants, frozen food locker plants and food storage warehouses throughout the state. The licensing of these facilities, as per ORS Chapter 616, occurs following construction and relates exclusively to the performance of activities occurring within that establishment. Division employees obtain samples of food items for analysis for pathogens, chemicals and pesticide residues. Division employees also check labels on food items to assure compliance with state and federal labeling standards. The division works closely and cooperatively with federal agencies such as the Environmental Protection Agency, Food and Drug Administration, U.S. Department of Agriculture, and the Department of Commerce on food safety inspections, sanitation of food processing plants and handling of food items for compliance with state and federal standards.

e. Laboratory Services Division

This division provides analytical services for the Food and Dairy, Plant, Natural Resources, and Agricultural Marketing and Development divisions of the department and for other government agencies. The division tests samples of food and

other agricultural products obtained throughout Oregon for illness-causing bacteria such as Salmonella and Listeria monocytogenes, for pesticide residues, spoilage, adulterated or ineffective substances and label requirements. In activities related to export of Oregon food products, the division conducts a program to analyze Oregon food products destined for Japan for pesticide residues, food additives and preservatives under a program with the Japanese Ministry of Health and Welfare. As a part of this program, the division trains Oregon food processors in Japanese Agricultural Standards (JAS) quality control procedures and tests processors' products to assure they meet Japanese quality standards. The division administers the Pesticide Analytical and Response Center, a group of state agency representatives who receive and investigate reported incidents involving environmental and health injuries resulting from application of pesticides. The division also provides pesticide analytical services for the U.S. Environmental Protection Agency and for a number of state agencies including the Department of Environmental Quality, the Oregon Health Division, Forestry Department, Fish and Wildlife Department, and the Oregon State University - Veterinary Diagnostic Laboratory.

f. Measurement Standards Division

The primary responsibilities of the Measurement Standards Division are to prevent consumer fraud by ensuring that goods sold in Oregon, such as food items, fuels and most packaged products, are accurately weighed and measured and to deliver cost effective measurement standard services to Oregon businesses, schools and public agencies. The division inspects and tests the accuracy of supermarket scales, hardware and feed scales, meat and produce scales, and all similar weighing devices throughout the state which are used in the commercial sale of goods. Recent legislation adopted transfers responsibilities for inspection of railroad track

scales to the division from the Oregon Public Utilities Commission. The division also inspects and tests all commercial gasoline and diesel fuel pumps, pipeline terminal meters, oil delivery truck meters and propane and butane meters. The division samples prepackaged commodities such as cereals, building supplies, home care products, automotive chemical products, retail meats and poultry to verify that packages contain the amounts declared on the labels. The division also calibrates and certifies physical standards of mass, volume, and length for weighing and measuring devices for public agencies, schools, laboratories and industry.

g. Plant Division

This division has responsibilities for detection, control and eradication of insect pests and plant diseases which may seriously endanger agricultural and horticultural production in the state, for regulation of the sale and use of agricultural chemicals and for ensuring that nursery stock produced and moved into the state is healthy and free of pests and diseases. The division conducts surveys annually for insect pests such as gypsy moth, Japanese beetle and rangeland grasshopper, and plant diseases such as eastern filbert blight, chestnut blight and onion white rot. The division inspects nursery stock at all locations where such stock is produced, imported and sold and provides certification authorizing interstate and foreign shipment of plant materials.

The division registers pesticides, animal feeds and fertilizers sold and offered for sale in the state and obtains samples of the materials for analysis to determine compliance with label claims. The division also tests and licenses private, public and commercial applicators of pesticides in Oregon to assure they are sufficiently knowledgeable and trained to use and apply the materials properly and safety. The division investigates all reported

incidents of misuse or damage resulting from the application of pesticides in the state.

The division is also responsible for leasing of state lands in Oregon estuaries suitable for commercial oyster cultivation as authorized in ORS 622.210 to 622.350. In this program, the division provides information to persons interested in leasing such lands, including rules and guidelines to be followed in securing an oyster plat. Upon receipt of an application, along with required documents, maps, and notice of publication of the proposed action, the division forwards copies of all materials to interested and concerned local government, state and federal agencies for their review and comment. After thorough analysis of all comments received, the division will recommend to the Director of the department approval or denial of the application, including reasons therefor. For applications that are approved, a plat certificate is issued. This certificate may contain several conditions detailing the type of culture permitted, requirements to minimize environmental damage, etc. Once an oyster plat is issued, it may be retained by the lessee or his/her heirs, successors, or assignees as long as compliance with the provisions of ORS 622.210 to 622.320 is maintained.

h. Natural Resources Division

This division, whose name was changed by the 1989 legislative session to Natural Resources Division from Soil and Water Conservation Division, has recently been given increased responsibilities for natural resource programs affecting agriculture. The division's traditional role has been to work closely with Oregon's 45 soil and water conservation districts (SWCDs) in efforts to conserve, protect, and develop soil and water resources. This work includes providing grant funds to SWCDs for the planning and implementation of conservation projects.

Soil and Water Conservation Districts, formed under ORS Chapter 568, are governmental subdivisions of the state, governed by locally elected directors, with the power to "participate in effectuating" the conservation and development of the state's natural resources.

While continuing its responsibilities to SWCDs, the division is now responsible for additional programs dealing with issues such as Confined Animal Feeding Operations (CAFO), grass seed field burning in the Willamette Valley, and the protection and conservation of threatened and endangered plant species.

Under a Memorandum of Agreement with the Department of Environmental Quality, the division provides administrative assistance in issuing permits for confined animal feeding operations to prevent wastewater from polluting the waters of the state. The division receives and reviews permit applications from CAFO operators, ^{BASED ON THE DIVISION'S RECOMMENDATION, DEQ ISSUES A WASTEWATER DISPOSAL PERMIT TO} ~~and provides a permit to~~ operators whose facilities qualify, ~~for a DEQ wastewater disposal permit.~~ With respect to the division, this permit does not constitute permission to site a CAFO facility but is an official registration mechanism for existing and proposed facilities. Recently adopted legislation provides the division with enhanced responsibilities and authority in the CAFO Program. The responsibilities include the inspection of CAFO facilities for which wastewater discharge complaints have been received.

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The division, again through a Memorandum of Agreement with the Department of Environmental Quality, provides meteorological services to the field burning program and monitors daily burning operations. These services include providing the meteorological data upon which daily burning decisions are based.

ORS Chapter 564 gives the division the responsibility to

protect and conserve native plant species located on land owned or leased by the state of Oregon that are threatened or endangered. This responsibility includes conducting investigations to determine the status of plant populations, establishing a listing of threatened or endangered species, and establishing suggested guidelines for use by applicable state agencies to develop programs for the protection and conservation of these plants. Additionally, if it is determined that a proposed action on land owned or leased by the state may reduce the likelihood of survival or recovery of a threatened or endangered species, the department is required to recommend to the affected agency suggested alternatives to such action. The division works closely with state and federal agencies in the threatened or endangered plant species program.

i. Business, Personnel and Information Divisions

These staff service divisions provide support to all divisions within the department. The Business Office provides accounting, budgeting, purchasing, computer, and word processing services. The Personnel Office provides counseling to management and staff on personnel relations laws, rules and policies, assists in recruitment of professional, technical and support staff, prepares the department payroll and develops and administers the department's Equal Opportunity Employment and Affirmative Action plans. The Information Office manages the department's diversified program in public affairs, media relations, market promotion and advertising, public information and education and publications production.

A copy of the department's organizational chart is found in the Appendix.

SECTION IV

Administrative Rules and Procedures

- A. The Department of Agriculture has adopted administrative rules to carry out the directives provided in the various statutes it is authorized to administer and enforce. Rules are adopted in accordance with ORS 561.190 and ORS 183.310-183.550. The department's administrative rules are found in Oregon Administrative Rules (OAR), Chapter 603 are listed below. Copies of all rules are available for inspection at the Department's offices in Salem. In addition, copies of Division 5, Division 70, Division 72 and Division 73 are included in the appendix.
1. Division 1: Procedural Rules (Notice Requirements and Public Information);
 2. Division 5: Land Use Coordination
 3. Division 10: Animal Industry, General;
 4. Division 11: Livestock Health and Sanitation;
 5. Division 12: Livestock Auction Markets;
 6. Division 13: Slaughter of Animals and Processing of Animal Products for Animal or Pet Foods;
 7. Division 14: Livestock Identification and Theft Prevention;
 8. Division 15: Care of Pet and Captive Animals;
 9. Division 16: Eradication and Control of Pullorum and Fowl Typhoid in Turkeys;
 10. Division 17: Refrigerated Lockers;
 11. Division 21: Bakeries;
 12. Division 22: Eggs;
 13. Division 24: Definitions and Standards, Labeling and Other Regulations Relating to Margarine, Oleomargarine, and Dairy Products;
 14. Division 25: Food Establishment Standards and Standards for Retail Food Service Activities;
 15. Division 27: License Fees for Weighing and Measuring Devices;
 16. Division 28: Meat Products and Establishments;
 17. Division 31: Fees for Inspection, Grading, and Weighing of Grain and Other Commodities;
 18. Division 32: Warehouses and Grain;
 19. Division 40: Creation of Commodity Commissions;

20. Division 41: Election of Members of Commodity Commissions;
21. Division 42: Practices and Procedures for Commodity Commissions;
22. Division 50: General (Plant Industry);
23. Division 51: Produce Standards;
24. Division 52: Pest and Disease Control;
25. Division 53: Fees;
26. Division 54: Nurseries;
27. Division 55: Bees and Oregon Standards of Bee Colony Strength for Colonies Used in Commercial Pollination of Crops;
28. Division 56: Hay and Seed;
29. Division 57: Pesticide Control;
30. Division 58: Feeds;
31. Division 59: Fertilizers, Agricultural Minerals, and Limes;
32. Division 61: Definitions (Milk Audit and Stabilization);
33. Division 62: Licenses and Permits;
34. Division 63: Auditing;
35. Division 64: Market and Distributor Pools;
36. Division 65: Quotas;
37. Division 66: Market Pooling and Equalization;
38. Division 67: Producer-Handlers;
39. Division 68: Price Computations and Prices;
40. Division 69: Fluid Milk Product Cost Computations;
41. Division 70: Hearing Procedures (Soil and Water Conservation), Planning and Administrative Grants;
42. Division 71: Referendum and Election Procedures;
43. Division 72: Streambank Control and Stream Corridor Management Projects.
44. Division 73: Endangered, Threatened and Candidate Plant Species

B. ADMINISTRATIVE PROCEDURES

The department complies with provisions of ORS Chapter 183 in any proposed administrative rulemaking action. The department has adopted the Attorney General's "Model Rules of Procedure Under the Administrative Procedures Act" as to rules of procedure it follows in its rulemaking activities, declaratory ruling activities, and contested

case considerations. A copy of the Department's procedural rules are found in the appendix (OAR 603, Division 1).

C. ANALYSIS OF RULES AND PROGRAMS AFFECTING LAND USE

The determination of whether a Department rule or program is a "land use program" requires an evaluation of the potential of Department projects or actions to significantly affect land use.

As defined in OAR 660-30-005(2), "Rules and Programs Affecting Land Use" (include):

- (a) All state agencies 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 uses identified in acknowledged comprehensive plans.
- (b) Do not include state agency rules and programs ... if:
 - (A) An applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or
 - (B) The rule, program or activity is not reasonably expected to have a significant effect on:
 - (i) Resources, objectives or areas identified in the statewide goals; or
 - (ii) Present or future land uses identified in acknowledged comprehensive plans; or
 - (C) A state agency transfers or acquires ownership or an interest in real property without making any change in the use or area of the property. Action concurrent with or subsequent to a change of ownership that will affect land use or the area of the property is subject to either the statewide goals or applicable city or county land use regulations.

Department Programs Listed in Statewide Planning Goals

Only one Statewide Planning Goal lists or makes specific reference to Department programs. This is Goal 16--Estuarine Resources. The portions of Goal 16 applicable to the Department are as follows:

Implementation Requirement 3

State and federal agencies shall review, revise, and implement their plans, actions and management authorities to maintain water quality and minimize man-induced sedimentation in estuaries. Local government shall recognize these authorities in managing lands rather than developing new or duplicatory management techniques or controls.

Existing programs which shall be utilized include the programs of the Soil and Water Conservation Commission and local districts and the Soil Conservation Service, for the Agricultural Lands Goal.

The overall purpose of Implementation Requirement 3 in Goal 16 is to avoid creating duplicatory local land management regulations by directing cities and counties to rely on and use state and federal programs for maintaining water quality and minimizing man-caused sedimentation in estuaries.

Department of Agriculture activities related to estuarine water quality and sedimentation issues occur primarily under the auspices of the Department's Natural Resources Division and individual actions of affected local soil and water conservation districts. The state Soil and Water Conservation Commission, formerly an independent agency, was made an advisory body to the Department in 1981.

A review of Department programs reveals that the Conservation Grant Program to local Soil and Water Conservation Districts (discussed below) is the only Department program determined to affect land use on the basis of specific reference in the statewide planning goals.

Department Programs Reasonably Expected to Have Significant Effects

Based on the description of the Department's programs provided in Section II above, the following two programs have been identified as Department land use programs because of their potential to significantly affect resources, objectives and areas in the statewide goals and existing and future uses in acknowledged comprehensive plans [see OAR 660-30-005(2)(a)(B)].

These two programs and their potential land use effects are discussed below:

1. Oyster Plat Leasing Program

This program involves the process for reviewing and approving applications for plats for the commercial growing of oysters on state land in coastal estuaries in accordance with the provisions of ORS 622-210-622.992. Under this program the Department is responsible for conducting a review of applications submitted by private individuals who seek to produce oysters commercially.

The key steps in reviewing an oyster plat application are as follows:

- a. Circulate all applications for review and comment.
- b. Analyze and evaluate all comments.
- c. Determine if plat certification should be granted based on comments analysis and staff research.
- d. Incorporate recommended conditions into plat certificate, if appropriate, etc.
- e. Grant plat certificate with conditions, if needed.

To approve an oyster plat, the Department must find that the application meets the requirements in ORS 622.230, 626.250 and OAR 603, Division 5. Together these requirements provide:

- a. For the submission of a \$25 application fee.
- b. That the plat requested must be located on state land classified by the Department as suitable for oyster

production.

- c. That public notice be published in local newspapers by the oyster plat applicant detailing location and type of proposed operation.
- d. That maps sufficient to readily identify the area applied for be included with the application.
- e. That the plat complies with the statewide planning goals and is compatible with acknowledged comprehensive plans.

The Department has determined that the Oyster Plat Leasing Program will continue to have the potential to cause significant, long-term effects on resources and uses in the statewide goals and on existing and future uses listed in the estuarine portions of coastal comprehensive plans and land use regulations. Such effects may include impacts on local plan policies, requirements and provisions relating to the protection and use of estuarine areas and resources as well as the siting of boat moorages, log booms or other facilities that may impact oyster beds.

2. Conservation Grants Program to Local Soil and Water Conservation Districts

This program involves the provision of financial assistance grants to local Soil and Water Conservation Districts (SWCD). As authorized under ORS 561.400, the local SWCD grant proposal also includes Department financial assistance to support and carry out streambank control and stream corridor management projects pursuant to ORS 568.801. The general purpose of such assistance is to aid local districts in planning and implementing conservation projects and actions. Such projects include streambank stabilization, erosion control, watershed enhancement, riparian area restoration, etc.

The process for providing grants to local districts consists of the following steps:

- a. Distribution of application forms to SWCDs.
- b. Evaluation of completed applications and applicant interviews

- by the State Soil and Water Conservation Commission (SWCC).
- c. Recommendation of Grant Awards by SWCC to the Director of Agriculture.
 - d. Approval of Grant Recommendations by Director of Agriculture.
 - e. Release of Grant Funds to successful applicants.

In approving a grant to a local district, the Department must find that the grant application meets the requirements described in OAR 603, Divisions 5 and 70. Together, these requirements provide that all projects for which applications are submitted must:

- a. Be compatible with local comprehensive plans, and comply with the statewide land use goals; and
- b. Address one or more of the following priority areas to be considered for funding:
 1. Erosion control
 2. Water Conservation and Development
 3. Water quality enhancement
 4. Flood protection and flood control
 5. Streambank stabilization
 6. Other program priorities consistent with Oregon's Natural Resource Conservation commitment and policies.

The Department has determined that the conservation grants program to local Soil and Water Conservation Districts has the potential to significantly affect land use. This is because projects assisted by these grant funds may occasionally involve resources listed in the statewide goals or uses addressed in or regulated by comprehensive plans and their implementing ordinances. While small scale projects may have little or no impact on local plans, land use issues associated with or resulting from larger projects could have important effects on local plans.

Examples of these effects could include the creation of a wetland where one did not previously exist, a flood control project that makes new land available for development, or the stabilization of a river/streambank that may allow property to be used for purposes

not conforming to the existing land use designation.

3. Threatened and Endangered Plant Protection Program

The Department's Threatened and Endangered (T & E) Plant Program, adopted pursuant to ORS 564.100 and OAR 603, Division 73, only applies to state owned or leased land. It does not require the protection of any listed plant species occurring on private lands, and does not require any owner of private land to take action to protect a listed plant or its habitat.

Under the program, the Department is required to prepare guidelines for state agencies to use in developing plans to protect listed species on lands that they own or manage. Such guidelines are only suggested recommendations for the agencies to follow and are not regulatory in nature.

The Department has evaluated its plant program for protecting threatened and endangered plant species and has determined that this program does not affect land use as that term is defined in LCDC's SAC rule at 660-30-005(2).

This conclusion is based on the following facts and reasons. While the statutes require the Department to develop and maintain the state's official list of threatened and endangered plant species, the protection of such species occurs primarily through the actions taken by state agencies who own or manage lands on which the plants in question are located.

The Department's role is to provide technical assistance and prepare suggested guidelines for agencies to consider in developing their individual protection programs for any listed plant species identified on the agency's lands. The Department believes that nothing that it does in its technical advisory capacity to implement the T & E plant program will have a significant effect on a statewide goal resource or on existing or future uses in acknowledged comprehensive plans. The Department realizes, however, that T & E species lists, background

information and suggested protection strategies it provides to affected state agencies may also be useful to local governments in updating comprehensive plan inventories involving Goal 5 resources. The Department, to the extent the statutes and agency resources permit, will make available such information and assistance to interested cities and counties. (See Section VI--Department Program for Cooperation and Technical Assistance to Local Governments for further discussion.)

D. DEPARTMENT OF AGRICULTURE LAND USE PROGRAMS SUBJECT TO LCDC AGENCY PERMIT RULE (OAR 660-31)

The Department has determined that its program of issuing plats (leases) for growing of oysters on state lands currently is listed as a Class B permit under LCDC's agency permit rule [see OAR 660-31-012(2)(a)]. The Department's other program determined to affect land use, the Soil and Water Conservation Grant Program, does not involve the issuance of permits and therefore is not subject to the requirements of OAR 660-31.

In accordance with the requirements in 660-31-026(2)(a), the Department procedures assure that prior to approving an oyster plat, the proposed land use complies with the statewide goals and is compatible with the applicable acknowledged comprehensive plan and land use regulations. (See discussion of OAR 603, Division 5 in Section IV below.)

SECTION V

Department of Agriculture's Program to Assure Compliance with the Statewide Planning Goals and Compatibility with Acknowledged Comprehensive Plans

This section responds to the requirements of OAR 660-30-060(4) and describes how the agency's programs and actions affecting land use comply with Statewide Planning Goals and are compatible with acknowledged city and county comprehensive plans and land use regulations.

A. Exempt and Compatible Agency Land Use Programs

All of the agency's programs determined to affect land use fall into the category of a "compatible land use program" as defined in OAR 660-30-060(4)(a)(B). There are no applicable statutes, constitutional provisions or appellate court decisions which expressly exempt any of the agency's programs from compatibility with acknowledged comprehensive plans, but not from compliance with the statewide goals.

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

1. Department Rules

The Department's two programs affecting land use are described in Section III C and D above. These programs are:

- a. Oyster Plat Lease Program; and
- b. Conservation Grants Program to Local Soil and Water Conservation Districts.

The Department has adopted an administrative rule, OAR 603-05-001, to implement the state agency goal compliance and comprehensive plan compatibility requirements in ORS 197.180 and OAR 660, Divisions 30 and 31 for these two programs.

OAR 603-05-001 establishes the general finding requirement the agency will follow in approving projects under these two programs. The rule states:

OAR Chapter 603, Division 5, Land Use Coordination

OAR 603-05-001(1) This division is applicable to the approval of actions and projects described under the following Department programs. These are:

(a) Approval of lease applications for plats for commercial growing of oysters on state lands in coastal estuaries pursuant to ORS Chapter 622;

(b) Approval of planning and implementation financial assistance grants to local Soil and Water Conservation Districts pursuant to ORS Chapter 561.400 and 568.801 (streambank and stream corridor projects).

(c) Approval of any other action(s) under a Department program subsequently determined to affect land use pursuant to OAR 660-30.

(2) In order to approve an action or project under a program listed in OAR 603-05-001(1)(a)-(c), the Department shall find that the action or project complies with the Statewide Planning goals and is compatible with acknowledged city and county comprehensive plans and land use regulations. To make its goal compliance and plan compatibility findings, the Department shall comply with OAR 603-05-001(1)-(4) and shall also adhere to the procedures in the Department's state agency coordination program which is hereby adopted by reference.

State statutes and the SAC rule require the Department to find that each action or project affecting land use complies with the Statewide Planning Goals. In Section III above, the Department notes that only one statewide planning goal makes specific reference to Department of Agriculture programs. This reference is found in Implementation Requirement 3 of Goal 16 (Estuarine Resources).

As a state agency, Implementation Requirement 3 directs the Department to "review, revise, and implement their plan, actions and management authorities to maintain water quality and man-induced sedimentation in estuaries".

Included under the statutory policy in ORS Chapter 568.225 are the following duties to be performed by the Department, working with other agencies and local soil and water conservation districts:

- Conserve the renewable natural resources of the state;
- Control and prevent soil erosion;
- Control floods and conserve and develop water resources and water quality; and
- Assist in maintaining the navigability of rivers and harbors.

In view of the Department's obligation and commitment under ORS 568.225, and the absence of any additional directives or rules from LCDC establishing specific compliance requirements, it is the Department's determination that it is complying with Goal 16, Implementation Requirement 3.

Based on the above conclusion, and the fact that all comprehensive plans in the state have been acknowledged to be in compliance with the state goals, it is the position of the Department that when it acts compatibly with an acknowledged comprehensive plan, it is acting in compliance with the goals.

However, in the event that the Department is ever required to adopt compliance findings directly against Goal 16 or any of the other state goals, the Department shall adhere to OAR 603-05-001(4) and the corresponding procedures under section B.2 below.

OAR 603-05-001(4) states:

- (4) The Department shall adopt findings directly against the Statewide Planning Goals if a situation ever arises where the Department must approve a project, but is unable to rely upon or

is not provided with the appropriate land use compatibility information by the affected jurisdiction or project applicant. In this instance, the Department shall comply with OAR 660-30-065 and the applicable procedures in the Department's state agency coordination program to make the necessary goal compliance findings.

2. Department Procedures

The Department has adopted the following procedures if a situation arises for it to make direct goal findings as referenced in OAR 603-05-001(4). The procedures state:

The Department shall follow the steps below if it ever becomes necessary for it to adopt findings directly against one or more of the Statewide Planning Goals.

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

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

1. Department Rules

The Department has adopted OAR 603-05-001(2) (cited above) which requires it to find that actions and projects under the Department's two (2) programs which affect land use are compatible with acknowledged

comprehensive plans.

OAR 603-05-001 (3) provides that the Department will base its compatibility determinations on information provided by project sponsors and applicants. This section states:

(3) Except where the Department is required to address directly the Statewide Planning Goals under OAR 603-05-001(4), the Department shall make its goal compliance findings based on the land use compatibility information provided to the Department by the project applicant or sponsor. Such documentation shall be submitted to the Department in a manner established by the agency and in accordance with applicable procedures set forth in the Department's state agency coordination program.

2. Department Procedures

The Department has adopted OAR 603-05-001(2) and (3) referred to above which requires the Department to assure that projects and actions approved under its two (2) land use programs are compatible with acknowledged comprehensive plans.

The Department has developed separate compatibility procedures for each of its two land use programs.

Oyster Leasing Program

The Department will carry out the following procedures to assure that a lease granted to grow oysters on state owned lands in coastal estuaries is compatible with the city or county comprehensive plan for the area of the proposed oyster plat.

- a. Require applicants seeking approval of an oyster lease to provide the Department with information documenting the proposed plat's compatibility with the applicable acknowledged comprehensive plan and land use regulations for the area. Such documentation shall be submitted in a manner established by the Department and shall

include one of the following:

- (1) A copy of the local land use permit (e.g., conditional use permit, zoning clearance, etc.) demonstrating that the proposed oyster plat has received land use approval by the jurisdiction; or
 - (2) Written information from an authorized representative of the affected city or county affirming that the proposed oyster plat is compatible with the acknowledged comprehensive plan for the area, but does not require specific land use approval by the jurisdiction; or
 - (3) Other written information acceptable to the Department equivalent to (1) or (2) above demonstrating the proposed oyster plat's land use compatibility.
- b. Upon receipt of a completed application, the Department shall send copies of the application and accompanying information documenting the proposed plats' compatibility with the applicable acknowledged comprehensive plan and local land use regulations for verification of authenticity. Copies will also be sent to interested state and federal agencies for their review. The length of the review period shall not be less than 20 days.
- c. The Department shall evaluate all responses received from local, state and federal agencies.
- d. The Department shall review the application against the requirements in ORS Chapter 622, the land use compatibility information described in a. above, and any comments from local, state and federal agencies. The Department shall not issue an Oyster Plat Grant Certificate for any oyster plat which is not compatible with the applicable comprehensive plan for the area.

The Department has adopted the following procedures to assure that grants to local Soil and Water Conservation Districts are used only to support and carryout projects which are compatible with acknowledged comprehensive plans.

Soil and Water Conservation District Conservation Grant Program

The Department will adhere to the requirements in OAR 603-70 and the following procedures to assure that financial assistance grants provided to local Soil and Water Conservation Districts will be approved only for projects which are compatible with acknowledged comprehensive plans and land use regulations.

- a. The Department shall require that each Local Soil and Water Conservation district receiving grant funds from the Department shall agree in writing to disburse such funds only for projects which are compatible with the affected comprehensive plan(s) applicable to the area of the projects.
- b. Such agreements with each local Soil and Water Conservation District shall be documented in a manner established by the Department and shall include a description of the information the local District will use to assure each project's land use compatibility.
- c. At minimum, each local Soil and Water Conservation District's land use compatibility process shall require that district determination of a project's land use compatibility be based on one or more of the following:
 - (1) 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 project has received land use approval, or
 - (2) A letter from the local planning agency or governing body stating that the project in question is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval, or
 - (3) Other land use compatibility information provided in the grant application from the project sponsor or applicant equivalent to c. (1) and (2) above.
- d. Any proposed project which is not accompanied by the appropriate land use compatibility information shall not be approved by the

Department or the applicable local Soil and Water Conservation District.

D. RESOLUTION OF DISPUTES

The department intends to avoid or resolve any disputes which may arise involving land use questions in connection with proposed oyster plats or Soil and Water Conservation District grants through use of one or more of the following procedures:

1. Seek and identify alternative actions or modifications in the proposal which may be acceptable to the agencies or individuals involved.
2. Arrange meetings with representatives, affected agencies, the applicant, other interested persons or agencies, and the department. Whenever possible, such contacts shall be requested prior to the initiation of the local government's land use review process.
3. Request informal LCDC mediation or compatibility determination as provided in OAR 660-30-070(4-7).
4. Deny applications, if necessary.

E. Compliance or Compatibility of New or Amended Land Use Programs

The department also intends to submit notice of any new programs affecting land use it may undertake to the Department of Land Conservation and Development as per OAR 660-30-075. The department does not expect to make any changes in the present procedures dealing with processing of applications for proposed oyster plats or Soil and Water Conservation District grants. Should the need arise, however, the department will submit notice of any proposed amendments to the Department of Land Conservation and Development for review.

SECTION VI

Department of Agriculture Program for Coordination with the Department of Land Conservation and Development, State and Federal Agencies and Special Projects

A. AGENCIES COORDINATED WITH BY DEPARTMENT OF AGRICULTURE

The department coordinates with all appropriate local, state and federal agencies in its programs of reviewing and processing applications for oyster plats and soil and water conservation grants. These agencies include the following:

Local

Cities

Counties

Local Soil and Water Conservation Districts

Other Special Districts

State

Fish and Wildlife Department

Department of Environmental Quality

Department of Land Conservation and Development

Division of State Lands

Health Division, Department of Human Resources

Department of Water Resources

Governor's Watershed Enhancement Board

Federal

U.S. Fish and Wildlife Service

U.S. Coast Guard

U.S. Environmental Protection Agency

U.S. Department of Agriculture (and related subunits)

B. INTERAGENCY COORDINATION PROCEDURES

In its program of reviewing and processing applications for oyster plats, the department intends to follow its policy of communicating and working cooperatively with all local, state and federal agencies having an interest or responsibility in Oregon's estuaries, particularly those estuaries in which oyster cultivation may be undertaken. The

department encourages contact from any agency or individual having an interest or concern about granting of oyster plats. In regard to Soil and Water District grants, applications are available for review by these agencies upon request.

The department uses several methods to coordinate with other agencies regarding oyster plats, including the following:

1. Inviting agency participation in the review of applications for oyster plats.
2. Informal communications and discussions with department and other agency staff.
3. Participation in meetings which the department may arrange to review applications for oyster plats or investigate the possibility of oyster cultivation on the specific site requested.
4. Provision and preparation of reports, documents or other materials, upon request, relating to applications for oyster plats.

C. INTERAGENCY COORDINATION CONTACT

The department contact for interagency coordination relating to oyster AND SOIL AND WATER CONSERVATION DISTRICT GRANTS plats is the Director, or the staff person designated by the Director, to handle such matters. The Director's address and telephone number are:

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Director
Oregon Department of Agriculture
635 Capitol Street
Salem, Oregon 97310-0110
Telephone: 378-4152

SECTION VII

Department of Agriculture Program for
Cooperation and Technical Assistance
to Local Governments

A. DEPARTMENT OF AGRICULTURE PARTICIPATION AND COORDINATION WITH CITY AND
COUNTY LAND USE PLANNING

The policy of the Department of Agriculture is to participate in city and county planning programs only if requested or if specific issues arise relating to proposed oyster plats or SWCD grants or other issues in which the department has a special interest or can provide technical information. One area that fits into this final category is proposed plan and ordinance changes and individual land use actions that may affect the protection of agricultural land.

Since the department's land use programs are limited to leasing of state lands for commercial oyster cultivation and SWCD grants, little need exists for the department to become involved in most comprehensive plans. Input from the department in local plans, in any case, is usually limited to specific proposed oyster plats.

B. CONTACT FOR COOPERATION AND ASSISTANCE

The department's contact for cooperation and technical assistance on land use issues is the Director, or the staff person designated by the Director to handle such matters.

The Director's address and telephone number are:

Director
Oregon Department of Agriculture
635 Capitol Street NE
Salem, Oregon 97310-0110
Telephone: 378-4152

C. TECHNICAL ASSISTANCE AND INFORMATION AVAILABLE FROM THE DEPARTMENT AND METHODS USED TO PROVIDE SUCH ASSISTANCE TO LOCAL GOVERNMENTS

The department will make every effort to provide technical assistance and information to cities and counties when requested. The assistance available from the department will include documents and reports related to specific oyster plats, threatened and endangered plant species, analysis of particular projects and related production or statistical data. Additionally, technical assistance related to land (soil) productivity could be provided.

D. PARTICIPATION IN THE PERIODIC REVIEW PROCESS

The department will, where it deems appropriate, participate in the Periodic Review Process in jurisdictions where questions relating to commercial oyster production on state lands arise. The department will also participate, where appropriate, in the process relative to agricultural land use issues. The department will submit comments and recommendations to local governments, other agencies and DLCD as appropriate for consideration by local jurisdictions for incorporation into comprehensive plans.

E. COOPERATION AND TECHNICAL ASSISTANCE TO ACKNOWLEDGED COASTAL CITIES AND COUNTIES

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

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

Department Involvement in Coastal City and County Planning

The department shall provide upon request technical assistance and

planning information to coastal jurisdictions in the same manner as described in Section VI A-E above. Requests for assistance from coastal jurisdictions should be made through the director of the department.

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

Department Participation in Coastal and Ocean Planning Programs

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

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

Department Authorities Listed in the OCMP

The statutory authority upon which department involvement in the OCMP is based is ORS Chapter 622: Shellfish.

Department involvement in OCMP activities will be coordinated through the Director's office.

Federal Consistency with State Coastal Zone Management

Working in close coordination with the DLCD and other affected state and federal agencies, the department, when requested, will advise DLCD on the consistency of federal actions and activities related to the department which may affect Oregon's coastal zone. In carrying out its

responsibilities under the federal consistency process, the department will adhere to the procedures and requirements contained in LCDC's federal consistency rule (OAR Chapter 660, Division 35).

OCMP Strategic Planning

The department will participate with DLCD and other OCMP agencies, as resources permit, to develop and update a five-year strategic plan for Oregon's coastal zone.

Oregon Ocean Management Plan

The department will continue to be an active participant on the Oregon Ocean Management Task Force. Following adoption of the Oregon Ocean Management Plan by LCDC, the department will consider incorporating into the appropriate department rules and programs any aspects of the Ocean Plan which the department has authority to implement.

F. SPECIAL TECHNICAL ASSISTANCE TO LOCAL PUBLIC FACILITY FUNDING AND PLANNING, PERMIT ISSUANCE AND ECONOMIC DEVELOPMENT PURSUANT TO ORS 197.712(2)(F) AND 197.717(1-2)

These statutory requirements, the department believes, do not apply to the department, its commercial oyster plat leasing program, or its Soil and Water Conservation District Grant Program.

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