APPROVAL OF THE OREGON COASTAL MANAGEMENT PROGRAM

The Coastal Zone Management Act of 1972, as amended, hereinafter referred to as the CZMA, authorizes the Secretary of Commerce to make annual grants to any coastal State for the costs of administering a management program, if the program is approved in accordance with Section 306 of the CZMA.

The functions of the Secretary of Commerce under the CZMA have been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) under Department of Commerce Organization Order 25-5A. The functions have in turn been redelegated to the Acting Associate Administrator of NOAA for Coastal Zone Management under NOAA Circular 76-82.

Section 306 (a), (c), (d) and (e) of the CZMA requires that certain findings be made by the Secretary of Commerce prior to approval of a State management program. The Acting Associate Administrator for Coastal Zone Management, acting for the Secretary, hereby sets forth the findings on the Oregon Coastal Management Program (the program). These findings should be understood as constituting only part of the other review, comment, participation and technical requirements of the CZMA that have been met by the program through its planning processes. Demonstration that these and other requirements of the CZMA have been met is contained in the program document. This document is referenced in the following findings, as appropriate.

Findings Pursuant to Section 306 (a) of the CZMA:

The Secretary finds that the program meets the requirements of Section 305 (b).

In accordance with the provisions of Section 306 (a) (1) of the CZMA, the Secretary finds that the program meets the requirements of Section 305 (b), with the exception of subsections 305 (b) (7), (8) and (9), which requirements do not need to be met until October 1, 1978.

(1) The management program includes an identification of the boundaries of the coastal zone subject to the management program. (Section 305 (b) (1))

The boundary includes all territory of the State extending from the Washington border on the north to California on the south, seaward to the extent of State jurisdiction as recognized in Federal law, and inland to the crest of the coastal mountain range, with three exceptions on the east to include:

a) The Umpqua River Basin, where the coastal zone extends to Scottsburg,

Rec'd OCMP 18 Nov 09

b) the Roque River Basin, where the coastal zone extends to Agness, and

c) the Columbia River Basin, where the coastal zone extends to the downstream end of Puget Island.

The boundaries were first delineated by the Oregon State legislature in legislation establishing the Oregon Coastal Conservation and Development Commission (OCCDC) (ORS 191). The boundary is based on consideration of biophysical processes, problems confronting the coast, and social and political characteristics of the coast. The boundaries were re-examined by both OCCDC and the Land Conservation and Development Commission of Oregon (LCDC) for compliance with the CZMA, and were reaffirmed on the basis of inventories and meetings with the public and resource specialists.

In addition, the program excludes from the coastal zone "all lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents," for the purposes of Section 304 (1) of the CZMA.

(2) The management program includes a definition of what shall constitute permissible land uses and water uses, within the coastal zone which have a direct and significant impact on the coastal waters. (Section 305 (b) (2)).

The program includes a definition of land and water uses subject to planning and management. It identifies these uses as "uses to be managed" in accordance with the standards established in the planning goals and guidelines, other State statutes identified in Table II, and the local authorities cited in Chapter V of the program. This definition encompasses the specific use categories outlined in Table II, and all other uses that the program is able to control, direct, encourage, restrict or otherwise manage.

(3) The management program includes an inventory and designation of areas of particular concern within the coastal zone. (Section 305 (b) (3)).

In the development of the program, LCDC developed goals addressing beaches and dunes, estuaries and associated wetlands, and agricultural lands. Other areas of particular concern have been designated by special purpose statutes, including:

Rec'd OCMP 18 Nov 09

a) The Oregon Ocean Shores Act (ORS 390.600), providing for public access to and recreational use of beaches;

b) Oregon Kelp Fields (ORS 274.885 et seq.) regulating harvest of kelp beds; and

c) Department of Energy and the Energy Facility Siting Council (ORS 469), which has examined and set suitability standards and classifications for power plant siting.

Beaches and dunes, estuaries and associated wetlands, and kelp beds have been inventoried and mapped and are a part of the management program. Although the agricultural goal has been adopted, the inventory work and mapping is not complete in all areas in the detail needed for local management. The Oregon coastal headlands, a unique geologic and aesthetic resource, have also been identified as an area of particular concern. The Coastal Shorelands Goal requires that headlands be protected. The Energy Facility Siting Council, after public hearings, has inventoried and designated areas within the coastal zone that are suitable or unsuitable for use as energy facility sites.

(4) The management program includes an identification of the means by which the State proposes to exert control over land and water uses, including a listing of relevant constitutional provisions, laws and regulations. (Section 305 (b) (4)).

The principal means by which the State proposes to exert control over permissible land and water uses in the Oregon coastal zone is through Senate Bill 100 (ORS 197 et seq.), hereinafter referred to as SB100. This legislation established the Land Conservation and Development Commission (LCDC), gave it authority to adopt goals and guidelines by rule providing direction for development of comprehensive plans as well as for all land-use actions; established shared duties, functions and authorities for LCDC, local governments and State agencies; and provided for a petition process for resolving conflicts among competing uses of land and water. The goals adopted by LCDC have the force and effect of law and cover nineteen areas of concern to the State of Oregon.

The program relies on State statutes and regulatory authorities, in addition to SB100,which are cited in Table II of the management program.

The comprehensive plan in Oregon has the force and effect of law inasmuch as it is a mandatory requirement for local units of government.

Rec'd OCMP 18 Nov 09

Zoning and other development regulations must be in compliance with such plan. A body of Oregon case law has been built acknowledging the comprehensive plan as the guiding instrument of public policy in land use decisions of local government. Under SB100 the LCDC must approve local comprehensive plans as being in compliance with State goals, or prescribe a plan for a local jurisdiction in the event of non-compliance.

Prior to the approval of local comprehensive plans, the goals provide standards immediately applicable to land use actions, including granting of local government and State agency permits, licenses, and approval or disapproval of developments. Through this mechanism, land-use actions, such as State agency regulatory controls and permits, local government zoning and plan changes, and direct government development activities will be subject to the objectives of the program.

Other State statutes, cited in Table II (attached), provide specific standards for control of land and water uses which complement those in the goals. Regulatory agencies are required by SB100 to examine their standards and procedures for consistency with the goals. While the goals and guidelines would not detract from any State permit authority, they may affect them by enlarging or expanding the considerations required.

Mandamus proceedings can be brought by the State Attorney General, at the request of LCDC, against any State or local action which the department considers to be inconsistent with the State goals.

Cities and counties in Oregon are required to adopt comprehensive plans and implementing ordinances consistent with State goals. City councils have the authority under ORS 227.215 et seq. to divide the city into districts for purposes of regulating the existence, size and scope of buildings, trades and industries. Subdivision platting control is through a set of subdivision platting statutes (ORS 92.010; ORS 92.160). Local planning commissions have the initial authority to regulate subdivisions.

State agencies have general authority to condemn property under ORS 281.210 et seq. The Department of Transportation and Division of State Lands have broad condemnation authorities for carrying out certain statutes that are part of the management program.

Under several statutes cited in the management program, local governments and ports have authority to acquire lands for roads, parks, bridges, recreational areas, pedestrian walks, port facilities and related facilities and services.

Rec'd OCMP 18 Nov 09

In addition, the State has special assessment authorities to maintain agricultural and forest lands. Counties have the authority to classify open space lands when designated in a comprehensive plan. Individuals may apply for classification of open space lands for the purpose of preserving scenic resources, protecting water supplies and promoting conservation of soils, wetlands, beaches and tidal marshes which are then valued as open space.

Under SB100 the LCDC can designate certain activities of statewide significance and recommend to the legislature for designation additional activities and areas of critical state concern for special management control.

(5) The management program includes broad guidelines on priorities of uses in particular areas, including specifically those areas of lowest priority. (Section 305 (b) (5))

Priority for use within particular resource categories are established by the Statewide Goals, particularly those for coastal resources (Goals 16, 17, 18, 19). These priorities are shown in Table III of the program. These priorities generally identify protection of coastal resources and water dependent uses as highest priority, water-related uses of lower priority, and non-related, non-dependent uses as lowest priority. State special purpose legislation (Table II) serves to complement the goals in establishing priorities of use.

(6) The management program contains a description of the organizational structure proposed to implement such program, including the responsibilities and inter-relationships of local, area-wide, State, regional and interstate agencies in the management process. (Section 305 (b) (6))

The State of Oregon is organized to implement its management program through the coordinated responsibilities of several State and local agencies, with LCDC assigned the central point of administrative responsibility and legal authority. Under the direction of LCDC, the Department of Land Conservation and Development is the staff agency to LCDC and serves as the lead agency for coastal zone management.

LCDC has the responsibility, under SB100, to develop and adopt goals and guidelines, provide financial and technical assistance to local governments, review and approve local comprehensive plans, review permits, licenses, grants, and activities for consistency with the goals and the program; assist local, State and Federal agencies in cooperation

Rec'd OCMP 18 Nov 09

and coordination efforts; and recommend policies for and manage activities of statewide significance and areas of critical state concern. Through these powers and duties LCDC can assure that the goals of the program are carried out.

Cities and counties in Oregon are organized to implement the program due to the requirements and responsibilities assigned to local government in SB100 and other State laws, (including ORS 227, ORS 215, ORS 92). City planning commissions are charged with recommending to the city councils plans for regulating future growth, development and beautification of the municipality, and have the authority to regulate subdivisions. City councils are authorized to appoint hearing officers to hold a public hearing after notice to the applicant and other interested persons on the issuances or denials of a permit for a proposed land use. City councils are given the authority to divide the city into districts for purposes of regulating the existence, size and shape of buildings, trades and industries.

County governing bodies are charged with adopting and revising a comprehensive land use plan. They may establish county planning commissions (ORS 215.020). County governing bodies are required to adopt not only comprehensive plans but also zoning, subdivision and other ordinances for the use of some or all land in the county. The governing body has the power to adopt interim or permanent zoning ordinances upon recommendation of the county planning commission.

Under SB100, counties will be responsible for 1) coordinating the planning efforts of all units of government within their boundaries, 2) conducting the initial review for compliance of all local comprehensive plans, and 3) initiating petitions for review.

Several State agencies are organized to implement the State authorities that have been incorporated into the overall management program (Table II). These State agencies are required to coordinate their needs with local governments. The regulating agencies are required to examine their standards and procedures for consistency with the goals. SB100 also required State agencies to carry out their planning duties, powers and responsibilities, and take actions that are authorized by law with respect to programs affecting land and water use, in accordance with statewide planning goals and guidelines. State agencies are also required to provide technical assistance to local governments as needed to carry out the inventory and comprehensive plan requirements of SB100.

Rec'd OCMP 18 Nov 09

Findings Pursuant to Section 306 (c) of the CZMA:

(1) The State of Oregon has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated on behalf of the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, State agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title, and is consistent with the policy declared in Section 303 of the Coastal Zone Management Act: (Section 306 (c) (1))

This program has been developed in accordance with, and meets the requirements, of the applicable rules and regulations (15 CFR parts 920 and 923) promulgated on behalf of the Secretary. These regulations are derived from and supplement the requirements of the CZMA. By virtue of the fact that the Acting Associate Administrator is able to make the findings herein, the program has been developed and adopted in accordance with relevant rules and regulations, as discussed elsewhere.

Extensive notice to the public and governmental agencies regarding the content of this program was provided during the development and passage of SB 100, the development of policies of the Oregon Coastal Conservation and Development Commission (OCCDC), the development of statewide goals and guidelines by LCDC, and the development of the program document. Opportunity was provided throughout this development process for full participation by relevant Federal agencies, local governments, regional organizations, port authorities and other interested parties, public and private.

SB 100 requires LCDC and local governments to ensure widespread citizen involvement in all phases of the planning process, and required LCDC to establish a Citizen Involvement Advisory Committee (CIAC). Under direction of LCDC, the CIAC drafted and LCDC adopted a goal and guidelines on the development and use of local citizens involvement programs.

In developing the statewide goals and guidelines, other than for coastal resources, LCDC held 56 public workshops, 17 technical advisory committee meetings, 17 public hearings and two open mark-up sessions, each with prior notice, before adopting the goals and guidelines. In addition, several meetings of the CIAC, the Local Officials Advisory Committee, and the Federal Agency Advisory Committee were held. Drafts of the goals and guidelines were widely circulated for review. In developing the State goals and guidelines for coastal resources, LCDC conducted 94 coastal awareness meetings, held 34 public hearings and 7 public mark-up sessions with prior notice, and met on several

Rec'd OCMP 18 Nov 09

occasions with the State Agency Advisory Committee, and the Federal Agency Advisory Committee. Numerous drafts of these goals and guidelines were widely circulated for public and agency review.

Upon completion of their Coastal Policies Plan in 1975, OCCDC transferred its responsibilities to LCDC. The Coastal Goals and Guidelines of the program were, in part, derived from this Policies Plan. In developing these policies OCCDC developed inventories of coastal resources which were widely circulated for review by the public and governmental agencies. Draft policies were developed and widely circulated. OCCDC conducted 21 public workshops, 34 public hearings with prior notice and held two sets of open mark-up sessions prior to adopting final coastal policies to recommend to the Governor and legislature. Twenty-four local officials from the coastal communities and ports of Oregon were represented as members of the 30-person commission. The remaining six members were appointed by the Governor.

During the preparation of the program document, the staff of LCDC consulted extensively with Federal agencies, State agencies and local units of government. Two drafts of the document were circulated widely for public and agency review and comment.

Further details regarding opportunities for full participation are contained in the program document in Appendices 8, 9 and 10.

Through the goals and guidelines and the policies of SB100 and other implementing authorities of Table II, the Oregon program is consistent with the national policies of Section 303 of the CZMA by: (1) "developing, implementing, and continously improving a management program that will preserve, conserve, develop and restore the natural resources of the Oregon coastal zone," (2) "creating and maintaining a balance between conservation and development, and between conflicting public and private interests, that will assure the greatest benfits to this and succeeding generations of Oregonians;" (3) "guiding public and private uses of natural resources of the coastal zone to avoid irreversible change;" (4) "protecting the unique character of life on the coast," and (5) "managing the natural resources and uses of the coast on an evolving and flexible basis so that as experience with and knowledge of the coastal zone increases, the program can be revised accordingly." (page 4 of the program)

(2) The State of Oregon has:

(a) <u>coordinated its program with local, and areawide plans applicable to areas within the coastal zone existing on January 1, 1977, the year in which the management program was submitted, which plans have been developed</u>

Rec'd OCMP 18 Nov 09

> by a local government, an areawide agency designated pursuant to regulations established under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency or interstate agency. (Section 306 (c) (2) (A))

Throughout the development of the Oregon program, LCDC involved State agencies through a State Agency Advisory Committee, and through individual agency meetings. State agencies, areawide agencies and local agencies participated in the hearings, workshops and public mark-up meetings noted above.

The principal instrument for implementation of SB100, and the goals and guidelines adopted by LCDC, is the "Coordinated Comprehensive Plan." By definition in SB100 (ORS 197.015) a plan is "coordinated" when "the needs of all levels of government, semi-public and private agencies and the citizens of Oregon have been considered and accommodated as much as possible." The commission shall, under SB100, "cooperate with the appropriate agencies of the United States, this State and its political subdivisions, any other State, any interstate agency, any person or groups of persons with respect to land conservation and development." (ORS 197.040 (c)).

SB100 provides the assurance that all parts of the program will be coordinated with local and areawide plans and the State goals and guidelines. Sections 197.180 requires State agencies to "carry out their planning duties, powers and responsibilities and take actions that are authorized by law with respect to programs affecting land use in accordance with statewide planning goals and guidelines."

Under the Act, each county is responsible for coordinating all planning activities affecting land uses within the county, including those of the county, cities, special districts and State agencies, to assure an integrated comprehensive plan for the entire area of the county (ORS 197.190).

Prior to submission of the management program to NOAA, the LCDC circulated the program through State and local clearinghouses. Objections to the program have been satisfactorily addressed by the State in revisions and modifications between the draft and final program.

Rec'd OCMP 18 Nov 09

(b) established an effective mechanism for continuing consultation and coordination between LCDC and with local governments, interstate agencies, regional agencies and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of the CZMA. This consultation mechanism provides notice to local governments of any management program decision that would conflict with any local zoning ordinance, decision or other action; provides for a 30-day comment period provided an affected local government takes no action that would conflict with the management program decision during this same time period, and further provides for a public hearing on comments by affected local governments. (Section 306 (c) (2) (B))

Continuing consultation and coordination between LCDC and the above agencies is assured through the provisions of SB 100 requiring that the "coordinated comprehensive plan" consider and accommodate, as much as possible, the needs of all levels of government, semi-public and private agencies and the citizens of Oregon. LCDC cannot approve local government coordinated comprehensive plans until this requirement has been met.

The responsibilities of counties for coordinating all planning activities affecting land uses within the counties, required by ORS 197.190, have been described in Section 306 (c) (2) (A). The LCDC petition process established by ORS 197.300 assures that conflicts among agencies in implementing the goals and guidelines of the program are resolved by LCDC.

LCDC has established advisory committees for Federal agencies, State agencies, technical experts and citizens, and local officials to insure consultation and coordination between LCDC and various levels of government.

LCDC has established county coordinator positions in each county for the purpose of coordination and consultation between units of local government, State agencies, Federal agencies and regional agencies in the development and implementation of the coordinated comprehensive plans.

Rec'd OCMP 18 Nov 09

Oregon has entered into agreements with and has participated in the Columbia River Estuary Study Team, which was established for interstate and regional coordination and cooperation in the study, planning and management of the portion of the State's coastal zone that is contiguous with the State of Washington. Oregon and other western State coastal management programs have participated in interstate coordination activities, with the assistance of the Office of Coastal Zone Management.

In preparing, revising, updating or expanding statewide planning goals and guidelines, which shall be considered major management program decisions for the purpose of this requirement, the department is required under SB100 to hold at least 10 public hearings, with no less than 30 days prior notice published in a newspaper of general circulation in the area of the hearings. Upon receipt of the proposed statewide planning goals and guidelines prepared and submitted to it by the department, LCDC shall hold at least one public hearing on the proposed planning goals and guidelines, with at least 30 days notice prior to the date of hearing. No action can be taken by LCDC on the adoption of new goals and guidelines or changes which revise, update or expand the initial statewide goals and guidelines until the public hearing and 30-day notice requirements have been met.

Rec'd OCMP 18 Nov 09

(3) The State has held public hearings in the development of the management program: (Section 306 (c) (3))

The Oregon Coastal Conservation and Development Commission held 34 public hearings in the development of coastal policies that were recommended to the Governor, legislature and LCDC.

LCDC conducted 34 public hearings in coastal communities in the development of drafts of the statewide goals and guidelines for coastal resources, and another 17 public hearings in developing the other statewide goals and guidelines that are a part of the program.

On December 18, 1976, a public hearing was held in Salem, Oregon on the entire Oregon Coastal Management Program, after notice was provided in the news media on November 18, 1976, and again on December 13, 1976.

(4) The management program and any changes thereto have been reviewed and approved by the Governor. (Section 306 (c) (4))

On January 14, 1977, Governor Robert W. Straub approved the Oregon Coastal Management Program and certified that the program meets the requirements of the CZMA.

The Governor's letter submitting the program is included as Appendix 1 of the program.

(5) The Governor of Oregon has designated a single agency to receive and administer the grants for implementing the management program. (Section 306 (c) (5))

In his letter of January 14, 1977, Governor Straub designated the Department of Land Conservation and Development, under the direction of LCDC, as the responsible State agency for developing, coordinating, and administering the Coastal Management Program.

(6) The State is organized to implement the management program required under paragraph 306 (c) (1) of the Act. (Section 306 (c) (6))

The organization of LCDC and the department, as described in detail under 305 (b) (6) above, was prescribed by SB 100.

Other agencies of State and local government are organized to implement the management program as described under 305 (b) (6) above, and must carry out their duties and responsibilities in accordance with SB 100 and the statewide goals and guidelines.

Rec'd OCMP 18 Nov 09

(7) The State has the authorities necessary to implement the program, including the authority required under Subsection 306(d) of the CZMA. (Section 306(c)(7))

The central authority by which Oregon will implement the program is SB 100. Other state statutes, as indicated previously, will supplement the authority of SB 100 and will be implemented in conformance thereto. Authorities of local units of government, discussed previously, are adequate to implement the program.

These authorities are fully discussed under Section 305(b)(4) above, and in Chapter V, Table II and the appendixes of the management program.

(8) The Oregon management program provides for adequate consideration of the national interest involved in planning for, and in the siting of facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. Although no applicable interstate plan or program presently exists, the LCDC has the means to give consideration to any applicable interstate energy plan or program. (Section 306 (c) (8))

Adequate consideration of the national interest in planning for and siting facilities has been assured by open and repeated exchange with Federal agencies having an interest in the coastal zone. Continued participation by these Federal agencies will be necessary for the adequate development and administration of coordinated comprehensive plans. Since these plans must accomodate the needs of all levels of governments - "as much as possible" (ORS 197.015(4)), this assures the adequate consideration of the national interest in siting of facilities necessary to meet requirements which are other than local in nature.

Through OCCDC and LCDC formal requests to Federal agencies to identify the national interest considerations from their perspective, and Federal agency participation in public meetings and advisory committees the program incorporated an awareness of the national interest throughout its development.

There are continuing opportunities for assuring that national interest considerations will be included in the implementation of Oregon's program. These include: Federal involvement in the development of Local Comprehensive Plans, LCDC review of these plans after prior notice to the Federal agencies that plans are undergoing review, petition for review to LCDC if an agency feels

Rec'd OCMP 18 Nov 09

that the national interest is omitted from a plan, and future revisions, modifications or update of local comprehensive plans.

Special purpose legislation exists for considering the siting of electrical energy production facilities through which appropriate areas within Oregon's coastal zone are designated as potentially suitable, less suitable, and unsuitable for siting fossil and nuclear fueled power plants.

In the event interstate energy plans or programs are developed, SB 100 requires coordination of regional plans and interstate planning activities.

Table IV of the program identifies the national interest considerations of the program in relation to the goals.

> (9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological or esthetic values. (Section 306 (c) (9))

Areas for preservation or restoration have been distinguished as one special category of areas of particular concern. Nominations for these areas will occur through the comprehensive plan development process.

Several of the goals (especially No. 3, Agricultural Lands, and No. 5, Open Spaces, Scenic and Historic Areas, and Natural Resources) require that certain kinds of areas be considered for preservation or protection. These areas will be identified in the inventories required during plan development. The Estuarine Resources, Coastal Shorelands and Ocean Resources goals also designate specific areas that must be preserved. Specific requirements of the Estuarine Resources goal, for example, include the protection of major tracts of salt marsh, tide flats and seagrass and algae beds.

Several basic tools are available for the preservation of special areas. If the land is in public ownership the land can be designated for preservation or natural area purposes. State-owned lands can be placed in the Oregon Natural Area Program. Designation of an Area of Critical State Concern, under the authority of SB 100, can be used for preservation or restoration of an area, or special tax assessment policies can be used.

Several areas of the coast have been acquired for special purposes, including the recently designated South Slough Estuarine Sanctuary for scientific and educational uses.

Rec'd OCMP 18 Nov 09

Findings Pursuant to Section 306(d) of the CZMA:

The State, acting through its chosen agency or agencies, including local governments, areawide agencies designated under Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority includes the power:

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses;

Oregon has the authority to administer land and water use regulations and control development to assure compliance with its coastal management program through a combination of direct state regulatory controls and local government authorities. Certain activities which have a significant impact on lands and waters within the coastal zone require a permit from the state. Examples of this type of activity are: proposed improvements on the ocean shore (ORS 390.640 et seq.), placing materials in or removing materials from waters of the state (ORS 541.605 et seq.), and constructing, installing, modifying or operating any waste disposal system (ORS 468.740 (2)). State agencies with permit authority in the coastal zone cannot authorize actions in the coastal zone which would conflict with the statewide planning goals (ORS 197.180). Inconsistent actions of state agencies are subject to corrective order by LCDC pursuant to a petition for review submitted to it by a city or county governing body (ORS 197.300 (1)(b), (ORS 197.310 (3) and (6)).

City and county authorities will also administer land and water use regulations to implement coordinated comprehensive plans. These plans and regulations must conform to the criteria and standards established by the planning goals and guidelines within one year of their adoption by LCDC. Until LCDC acknowledges the plans to be in compliance with the goals, the land-use actions of city and county governments, such as zone changes or plan amendments, have to be consistent with the new goals (ORS 197.285), (ORS 215.055 (2)). Actions taken by local governments that conflict with the goals are also subject to corrective order on petitions for review brought before LCDC (ORS 197.300; ORS 197.310). In addition, LCDC can enforce compliance with the goals through mandamus proceedings (ORS 34.110; ORS 180.060 (1)(d)).

The direct application of the policies contained in the goals to the development of local comprehensive plans and to land-use

Rec'd OCMP 18 Nov 09

actions and decisions of State and local agencies will provide the mechanism for resolving conflicts among competing uses. This resolution will also be accomplished through the process of bringing petitions before LCDC for review of actions and adoption of plan provisions, which are alleged to be inconsistent with the goals. LCDC and the courts will be the final arbitrators for conflict resoltuion.

(2) to acquire fee simple and less than fee simple interest in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

Oregon has the authority to acquire and condemn lands which can be exercised when necessary to achieve conformance with the program. This authority is shared by State and local governments, as indicated in the finding pursuant to Section 305 (b) (4), discussed above.

Findings Pursuant to Section 306 (e) of the CZMA:

(1) The program provides for the following general techniques for control of land and water uses within the coastal zone:

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance; and

(B) direct State land and water use planning and regulation.

The program is based on both of the control techniques listed in Sections 306 (e) (1) (A) and 306 (e) (1) (B). Pursuant to SB100, LCDC adopted 19 statewide planning goals and guidelines which establish the standards for management of land and water uses, set priorities for use of various resources and define inventory requirements for sound planning. Each coastal city and county has to prepare and adopt a comprehensive plan, consisting of generalized land use map and policy statement, consistent with the approved goals. Local governments are also required to enact zoning, subdivision and other ordinances or regulations to implement the comprehensive plans (ORS 197.175).

Local comprehensive plans have to conform to the goals within one year from the date of the adoption of the goals (unless a planning extension is granted by LCDC to a city or county on a satisfactory compliance schedule). LCDC, in conjunction with interested government agencies and the public, will review the plan submitted by a local jurisdiction and issue or deny an acknowledgement of compliance.

Rec'd OCMP 18 Nov 09

If a city or county adopts a comprehensive plan provision or implementing measure which conflicts with a goal, LCDC can issue a corrective order upon the petition for review brought by another state agency, local jurisdiction or affected private persons (ORS 197.300; ORS 197.310). LCDC can enforce its orders in appro-private judicial proceedings. If a petition for review is not presented to LCDC, the Commission can request the State Attorney General to bring a mandamus proceeding to enforce compliance (ORS 34.110; ORS 180.060 (1)(d)).

Direct state land and water use planning and regulation also will be exercised in implementing the coastal management program. Many state agencies, with specific permit and resource responsibilities, exercise authority pursuant to state statutes with specific standards that complement those in the goals. (These statutes are listed in Table II and their standards are summarized in Appendix 6 of the program). Actions taken by state agencies that conflict with the goals will be subject to the corrective order of LCDC after a proceeding pursuant to a petition for review brought by a local government (ORS 197.300; ORS 197.310). LCDC can also initiate mandamus proceedings through the Attorney General's office to correct inconsistent actions of state agencies.

Another manner in which Oregon may exercise direct state control is provided in SB 100. If a local government fails to adopt a comprehensive plan in accordance with the goals and guidelines, LCDC must prescribe and may administer a plan for the non-complying jurisdiction (ORS 197.325).

Until the local comprehensive plans are approved by LCDC, the standards contained in the goals are immediately binding on the actions of state and local governments. To assure compliance in this interim period, LCDC will review actions alleged to be in conflict with the goals through the mechanism of SB 100's petition process. Any state, local government body or private citizen may intervene and be made a party to the review proceeding (ORS 197.305). LCDC will conduct hearings on each petition for review and has the authority to issue corrective orders enforceable by the courts (ORS 197.310).

(2) <u>The program provides for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit</u>.

Oregon identified uses of regional benefit during the process of selecting its goal topics. The goals essentially reflect a

Rec'd OCMP 18 Nov 09

determination that certain uses, activities and resources are of greater than local interest and benefit and, therefore, state standards should be established for their management. The goals on Agriculture Lands, Open Spaces, Scenic and Historic Areas, and Natural Resources, Recreational Needs, Housing, Public Facilities and Services, Transportation, and Ocean Resources particularly address this concern.

The policies established by these goals must be taken into account by city and county governments during the development and implementation of local coordinated comprehensive plans. This mandate, accompanied by the review of these plans by all government and public interests, and their approval by LCDC, as well as the opportunity for government bodies to petition LCDC for the review of either plans or individual siting actions (both affirmative and negative, which they consider to be in conflict with the statewide planning goals), will ensure that uses of regional benefit will not be unreasonably restricted or excluded. The requirement that plans be regularly reviewed and revised will provide an additional opportunity to identify and accommodate regional needs unforeseen during initial plan development. The requirement that the local comprehensive plans are to be "coordinated" prior to LCDC approval, as described in 306(c)(2)(a) findings provide further assurance that local regulations will not unreasonably restrict or exclude uses of regional benefit.

LCDC is also authorized to designate certain activities of statewide significance which include the planning and siting of public transportation facilities, sewer systems, water supply systems, solid waste disposal sites and facilities, and public schools (ORS 197.400). An activity of statewide significance is a project which by its nature or magnitude will have substantial impact on areas outside the jurisdiction in which it is to be located. Once an activity of statewide significance is designated, LCDC would regulate the activity through coordination with affected government units and the issuance of a planning and siting permit.

There is a final method by which Oregon can exercise direct state control over regional facilities. Pursuant to state law, the Energy Facility Siting Council has designated appropriate areas within Oregon's coastal zone as potentially suitable, less suitable and unsuitable for siting fossil and nuclear fueled power plants (ORS 469.470). The Governor of Oregon makes the final determination on the issuance of an energy facility site certificate following a public hearing and recommendation by the Council. A certificate signed by the Governor is binding upon the state and all local jurisdictions as to the approval of the site and the construction and operation of the proposed facility (ORS 469.400).

Rec'd OCMP 18 Nov 09

Findings Pursuant to Section 307(f) of the CZMA:

The requirements of the Federal Water Pollution Control Act, as amended, and the Clean Air Act, as amended, are incorporated into the Oregon management program and are the water pollution control and air pollution control requirements applicable to the Program.

The air and water quality standards established by the Federal Water Pollution Control Act and the Clean Air Act are incorporated into the program. The Department of Environmental Quality has the responsibility for implementing Oregon's Clean Air Act Plan, which has been approved by EPA, and administers the NPDES permit system under the Water Pollution Control Act. The Department of Environmental Quality and the authorities it exercises are integral parts of the program. In addition to the Department's responsibilities, the state goal on Air, Water, and Land Resources directs local governments to adhere to the standards of applicable state and Federal environmental quality statutes in the development of their comprehensive plans. Appendix 11 of the program provides documentation to support this finding.

Federal Comments

Prior to making the findings contained herein, the Acting Associate Administrator, on behalf of the Secretary, adequately considered the views of Federal agencies principally affected by the Program.

On March 5, 1976, copies of the Draft Oregon Coastal Management Program and DEIS were distributed for Federal agency review and comment. NOAA extended the review period for the program beyond the initial 45-day period to July 15 as a result of revisions in the goals and guidelines for coastal resources. This period was again extended on September 9, to October 1, 1976. Public hearings were held on the program in Newport, Oregon on September 15, and in Portland on September 16, 1976. Comments were received from a number of Federal agencies. These comments on the draft program and EIS are included as Attachment I of the program EIS. Changes to the final program resulting from these comments are reflected throughout the final program document and are summarized in the Final EIS.

On March 25, 1977, NOAA distributed copies of the Final Oregon Program and EIS to principally affected Federal agencies. As of May 5, 1977, comments had been received from the Federal Power Commission, the Department of Agriculture, the Department of Transportation, and the Environmental Protection Agency. Draft comments (unsigned) were received from the Department of Interior and the Federal Energy Administration.

Rec'd OCMP 18 Nov 09

The majority of comments on the final program involve questions relating to the implementation of the program through local comprehensive plans, which have not been completed; Federal imvolvement in the development of plans and the effect of these plans on Federal Interests, the specificity of the procedures the State will use in implementing Section 307 of the CZMA, and the inland extent of the State's coastal zone boundary. An additional major concern was raised regarding the State's interpretation of the Assistant Attorney General's opinion on excluded Federal lands.

In individual responses to Federal agency concerns, NOAA will make the following points:

(1) The Oregon program has provided a basis of policies, standards and implementing procedures and authorities, which are adequate to carry out the program and will be used to determine the consistency of Federal activities, projects, assistance, licenses and permits, prior to the completion of local comprehensive plans.

(2) Federal agencies are assured that the national interests and the needs of their agencies are considered and accomodated as much as possible in the development of local comprehensive plans, through the requirements of SB100, and the provisions of Section 307 of the CZMA allowing Federal agencies to seek mediation by the Secretary of Commerce. Federal agencies have the opportunity to seek the mediation by the Secretary in the event of serious disagreement with the State approval of these plans or subsequent actions of a local government.

(3) The requirements for Federal consistency, (become effective) pursuant to Section 307 of the CZMA, upon approval of a State management program. NOAA is in the process of issuing regulations to clarify and interpret the Federal consistency requirements in order to assist affected parties in implementing Section 307. Whatever procedures may be adopted by the State for administering the Federal consistency provisions will be governed by the CZMA, and can be refined, if necessary, to conform to NOAA's regulations. Accordingly, the absence of NOAA regulations and State procedures does not warrant postponement of program approval. Any issues of serious disagreement between LCDC and a Federal agency that are raised during the actual course of Federal consistency determinations can be brought to the attention of the Secretary of Commerce for mediation pursuant to Section 307 (h) of the CZMA.

Rec'd OCMP 18 Nov 09

(4) Through inventory and resource analysis completed during program development, the State defined its inland boundary in a manner which is consistent with the CZMA and NOAA Regulations.

(5) The State and the Office of Coastal Zone Management have adopted the opinion of the Assistant Attorney General regarding the exclusion of all lands owned by the United States from the State's coastal zone pursuant to Section 304(1) of the CZMA. Both the State and OCZM concur that all lands owned by the United States are excluded from Oregon's coastal zone, irrespective of the jurisdictional status of such lands.

These and other concerns raised by principally affected Federal Agencies have been considered by the Acting Associate Administrator.

Several of the concerns raised in the final review of the program will be addressed in the administration of the State's first year work program. The first program administration grant to the State will be conditioned to require that the legitimate substantive and procedural concerns of Federal agencies be addressed. The adequacy of the State's response to these concerns will be a factor in the OCZM evaluation of the performance of the State's program pursuant to Section 312 of the CZMA.

The consideration of these views expressed by principally affected Federal agencies has led to a determination that the views expressed by such agencies do not provide sufficient basis to deny approval of the program.

Having made the findings set forth above, and having determined that the Oregon Coastal Management Program meets the requirements of the Coastal Zone Management Act of 1972, as amended, and its implementing regulations, the Program is hereby approved on behalf of the Secretary of Commerce.

May 6, 1977
Date

Robert W. Knecht
Robert W. Knecht
Acting Associate Administrator for
Coastal Zone Management
National Oceanic and Atmospheric Administration

Rec'd OCMP 18 Nov 09

TABLE II
CONTROLLING AUTHORITIES

Uses to be Managed	Applicable Controlling Authorities	
	LCDC Goal	Other State Statutes
1. Navigation and Transportation	Transportation Estuaries Shorelands Ocean Resources	Ports Division, Department of Economic Development (ORS 777.835) Significant Activity Permits, LCDC (ORS 197.400) Division of State Lands (ORS 541.605-541.630)
2. Urban/Industrial Including Energy Production	Land Use Planning Energy Conservation Estuaries Shorelands	City and County Planning and Zoning (ORS 215 and ORS 227) Department of Energy (ORS 469.300-469.570) Division of State Lands (ORS 541.605-541.665) Department of Environmental Quality (ORS 454.605-454.755) (ORS 459.410-459.510) (ORS 468.005-468.345, 468.700-468.995) Department of Water Resources (ORS 537.010-537.990--Appropriation of Water) (ORS 543.010-543.620--Hydroelectric Power Projects)
3. Agriculture and Forestry	Agricultural Lands Forest Lands Shorelands Estuaries	Exclusive Farm Use Zoning (ORS 215) Department of Forestry (ORS 527.610-527.730 and 527.990)
4. Recreation	Recreational Needs, Open Spaces Scenic & Historic Areas & Natural Resources, Estuaries, Shorelands, Beaches & Dunes, Ocean Resources	Division of State Lands (ORS 273.551 and 273.775-273.780) Department of Transportation (ORS 377.505, 377.510, 377.530, 390.010, 390.110,390.605-390.760, 390.805-390.865)

Rec'd OCMP 18 Nov 09

TABLE II
CONTROLLING AUTHORITIES
(continued)

5.	Fish and Wildlife Production and Utilization	Open Spaces Scenic & Historic Areas & Natural Resources, Fish and Wildlife Resources, Estuaries, Shorelands, Ocean Resources	LCDC, Significant Activities (ORS 197.400) Department of Fish and Wildlife (ORS 496.012-496.162--Policy and Powers) (ORS 501.005-501.045--Refuges & Closures) (ORS 506--Food Fish Management) (ORS 509.505-509.510--Shellfish) (ORS 509.600-509.640--Fishways) (ORS 506.750-506.755--Fisheries Conservation Zone)
5.	Public Facilities	Air, Water and Land Resources Quality	Department of Environmental Quality (ORS 454.605-454.755, 459.410-459.510,468.005-468.345, 468.700-468.995)
7.	Mineral Extraction	Open Spaces Scenic & Historic Areas & Natural Resources	Department of Geology and Mineral Industries (ORS 516.030, 517.750-517.790,520.005-520.095) Division of State Lands (ORS 273.551-273.592, 273.702-273.711, 273.775-273.780, 274.005-274.940) Department of Environmental Quality (ORS 468.780-468.815)

Rec'd OCMP 18 Nov 09

ADDENDUM 1 TO OREGON FINDINGS

Summary

Subsequent to the May 6 approval of the Oregon Coastal Management Program (Program) and prior to the award of a grant to the Program under Section 306 of the CZMA, the Attorney General of Oregon, on May 20, 1977, signed an opinion concerning the applicability of the planning provisions of the Coastal Shorelands Goal (Goal 17) to building permit decisions of local governments prior to the expiration of one year from the effective date of the Goal. (Oregon Department of Justice, No. 7456) The Acting Associate Administrator of NOAA for Coastal Zone Management determined that this opinion could affect the approvability of the Program at the present time due to potentially inadequate interim authority prior to the expiration of this one year period. He directed his staff to undertake a thorough review of the consequences of the opinion on the 306 approval of the Program. That review has now been completed and OCZM is satisfied that, on the basis of certain understandings and conditions delineated below, which have been acceded to by the State of Oregon, the Program continues to meet the Federal requirements for approval under the CZMA. As a condition of the grant award, Oregon will be required, by July 29, 1977, to submit a refinement to the Program which reflects the situation described in this Addendum. Oregon will, in particular, identify in this submission those provisions of the Coastal Goals which can be implemented immediately and those which require planning as a prerequisite for implementation.

Findings

In response to a request from State Senator Del Isham on behalf of the City of Florence, Oregon, Attorney General James A. Redden issued an opinion that the City was not required during 1977 to apply the planning provisions of the Coastal Shorelands Goal (Goal 17) before approving a building permit for the construction of retail and professional office space on coastal shorelands provided the use was a permitted use under an existing plan and zoning ordinance in effect on the effective date of the Goal. This decision was based on the following rationale: (1) Oregon's Land Use Law (SB 100, ORS 197.250) provided one year for cities and counties to conform their existing comprehensive plans and ordinances to the statewide planning goals, following the goals' approval by the Land Conservation and Development Commission (LCDC); (2) Goal 17 was duly adopted by LCDC on December 18, 1976 with an effective date of January 1, 1977; (3) to apply the provision of Goal 17 - requiring local jurisdictions to limit the use of urban areas in coastal shorelands to water-dependent uses if the shorelands are especially suited for such purposes - to the development project under consideration could require the City to do a considerable amount of planning; (4) the City has already planned for the subject matter of the proposed use in the adoption of its existing comprehensive plan and implementing ordinances; (5) citizens are entitled to rely on existing plans and ordinances unless the legislature indicates clearly otherwise; (6) therefore, the City is not required, during the one year after the adoption of the Goal, to

Rec'd OCMP 18 Nov 09

apply the Goal's planning provisions to permit decisions authorized by existing plans and ordinances. The Attorney General specifically reserved the question of the applicability of the Goal to building permit decisions made after the expiration of one year but prior to the completion of the City's amended plan and ordinances in the case where LCDC has granted the City a planning extension under ORS 197.325.

The Oregon Land Conservation and Development Commission (LCDC) and OCZM have accepted the Attorney General's interpretation of SB 100 as to the immediate applicability of the planning provisions of the Coastal Goals. This new interpretation has the effect, therefore, of altering the interim authority that Oregon can exercise in implementing the Program prior to the completion and approval of local comprehensive plans. City and County governments will not be required, in 1977, to apply the planning provisions of the Coastal Goals prior to approving building permits for uses permitted under existing plans and ordinances. However, local government planning actions, such as zone changes or plan amendments, must be consistent with the Coastal Goals even prior to the approval of local comprehensive plans. (ORS 197.285, 215.055(2)) In addition, those implementation requirements of the Coastal Goals, which do not require additional planning, are immediately binding on local governments. OCZM therefore concludes, that both through the direct application of SB 100 which requires all comprehensive plans and regulations to be in conformity with the Goals within one year from their approval (ORS 197.250) and through the conditions to be imposed by LCDC on the planning extensions it may grant to local governments (ORS 197.325, hereinafter described), all local land use actions, including the issuance of building permits, must comply with the policies contained in the Coastal Goals as of January 1, 1978.

The Attorney General's opinion does not address the related issue of the immediate applicability of the Coastal Goals to the land use actions of State agencies. For purposes of making this finding of adequate interim authority, OCZM understands that state agencies are presently bound to carry out their land and water use planning activities and take actions authorized by law in accordance with the standards contained in the Coastal Goals. (ORS 197.180) Certain State agencies implement significant State laws which complement SB 100 and are an integral part of the Oregon Program (Table II). These agencies will also play an important role in carrying out the policies of the Coastal Goals prior to the completion of the local comprehensive plans. For example, the Division of State Lands can implement the critical policy of the Estuarine Resources Goal (Goal 16) to mitigate the effects of dredge and fill activities by conditioning the issuance of state dredge and fill permits on the creation or restoration of estuarine areas of similar biological potential. (ORS 541.625)

Oregon and OCZM understand the Attorney General's opinion to address solely the issue of the applicability of the planning

Rec'd OCMP 18 Nov 09

provisions of the Coastal Goals. The issue of the interim applicability of the implementation requirements of these Goals is specifically left unanswered by the opinion. We conclude, therefore, that the Goals' implementation requirements presently apply to all State and local land use actions, including the issuance of building permits, when planning is not a prerequisite for these decisions. In its refinement to the Program, Oregon will identify those provisions of the Coastal Goals which can be implemented immediately and those which require planning prior to implementation.

Certain critical policies of the Coastal Goals, which may be affected by the issuance of building permits under local ordinances, can be carried out in the interim compliance period through the direct application of the implementation requirements. For example, a local government will be constrained in the issuance of a building permit for development on active foredunes inasmuch as the Beach and Dunes Goal (Goal 18) requires local governments to prohibit residential, commercial and industrial development on such dunes. Another example of an implementation requirement in a Coastal Goal, which is dependent to a degree on local government action, is the requirement in the Coastal Shorelands Goal (Goal 17) to maintain riparian vegetation. This requirement can also be carried out immediately by local jurisdictions to the extent that planning is not a prerequisite.

This distinction between the effect of planning and implementation requirements of the Coastal Goals will be underscored by LCDC through a process of conditioning planning extensions for coastal communities. Cities and counties are given one year in which to conform their existing plans and ordinances to the statewide goals but LCDC may grant a reasonable extension of time to a community making satisfactory progress toward the completion of such plans and ordinances. (ORS 197.250; ORS 197.325(2)) Most coastal jurisdictions are presently on compliance schedules pursuant to LCDC-granted planning extensions. On May 21, LCDC resolved to place certain express conditions on local planning extensions designed to accomplish the following objectives:

(1) affirm the immediate applicability of the implementation requirements of the Coastal Goals to local land use actions;

(2) require that, prior to January 1, 1978, local governments apply the relevant policies of the first fifteen statewide goals adopted earlier to building permit decisions which may affect the planning policies of the Coastal Goals;

(3) require that, on or after January 1, 1978, the coastal jurisdictions apply the planning policies and implementation requirements of the Coastal Goals to land use actions, including building permit decisions.

LCDC resolved to adopt the exact language of these conditions at its June 10 meeting, following notice to coastal communities. The Department of Land Conservation and Development, staff to LCDC, has drafted the conditions for LCDC's review and adoption. The Department has proposed, for example, the following condition intended to assure that there will be available an adequate number of sites in

Rec'd OCMP 18 Nov 09

urban areas especially suited for water-dependent recreational, commercial and industrial use during the interim period until local building permits must conform to the planning provisions of the Coastal Shorelands Goal:

> "Authorizing Development in Shorelands and Estuarine Areas: to the extent that prior to January 1, 1978 any provisions of the Coastal Shorelands Goal and Estuarine Resources Goal may not be applicable, then cities and counties shall apply the requirements and considerations of the Open Space, Scenic and Historic Areas and Natural Resources Goal (Goal 5), as well as appropriate provisions of other statewide goals and the implementation requirements of the Coastal Shorelands and Estuarine Resources Goals, to decisions authorizing development."

The Department proposes to have LCDC impose this and similar conditions as a prerequisite for finding that (1) a coastal jurisdiction is making reasonably satisfactory progress under its planning extension toward the completion of its comprehensive plan and ordinances and (2) the jurisdiction remains eligible for Federal-State financial assistance. If a coastal jurisdiction fails to show satisfactory progress in completing its plan and ordinances after the expiration of one year from the approval of the goals, LCDC can prescribe and administer a plan for the jurisdiction. (ORS 197.325(1))

The Acting Associate Administrator has concluded that Oregon has the authority to implement its Program in the interim compliance period or until January 1, 1978, which is recognized in SB 100 and proposed LCDC conditions to planning extensions as the effective date of all the policies of the Coastal Goals. This will be accomplished through the application of the 14 statewide goals for which the one year compliance period has passed, through permit and development controls exercised by state agencies under state laws which supplement SB 100, and through conditions to be placed on extensions to the coastal communities' compliance schedules by LCDC.

This Addendum principally replaces, and should be substituted for, the following finding made on May 6, 1977: that prior to the approval of local comprehensive plans, the goals provide standards immediately applicable to land use actions, including granting of local government permits (pursuant to Section 305(b)(4)). To the extent that this Addendum modifies the interpretation of any other finding made on May 6, it should be considered as superseding that finding.

June 6, 1977
(Date)

Robert W. Knecht
Robert W. Knecht
Acting Associate Administrator
for Coastal Zone Management
National Oceanic and Atmospheric
Administration

Rec'd OCMP 18 Nov 09