

OREGON ADMINISTRATIVE RULES

CHAPTER 690, DIVISION 05

**Compliance with Statewide Planning Goals,
Compatibility with Comprehensive Plans,
and Coordination on Land Use Matters**

Purpose

690 - 05 - 010 As required by ORS 197.180, this rule establishes policies and procedures for: assuring agency compliance with statewide planning goals; assuring compatibility with local comprehensive land use plans; coordinating with local, state, and federal governments and special districts in land use matters; and resolving land use disputes.

Definitions

690 - 05 - 015 For the purposes of OAR 690 - 05 - 010 through 690 - 05 - 060:

(1) "Affected local government" means a local government, as defined in section (9) of this rule, which is directly impacted by and specified in a proposed Department action; meanings specific to programs identified in OAR 690 - 05 - 025 are defined in the rule divisions for those programs.

(2) "Commission" means the Water Resources Commission.

(3) "Department" means the Water Resources Department.

(4) "Director" means the Director of the Water Resources Department.

(5) "Land use approval" means a final decision or determination made by a local government that concerns the adoption, amendment, or application of: the goals; a comprehensive plan provision; implementing ordinance; or a new land use regulation. A land use approval does not include ministerial decisions of local governments (i.e., building permits) for which no right to hearing is provided. A land use approval is final when all corresponding appeal periods have expired.

(6) "Land use dispute" means a disagreement between the Department and a local government regarding plans, programs, policies, actions, or other matters relating to land use which exists after the Department has:

(a) Applied appropriate provisions of:

(A) OAR 690 - 05 - 030 (Compliance with Statewide Planning Goals); and

(B) OAR 690 - 05 - 035 (Compatibility with Acknowledged Comprehensive Plans); and

(C) Rules identified in OAR 690 - 05 - 025;
and

(b) Been informed by the planning director, other planning official or governing body of a local government, that the adoption, amendment, or implementation of a proposed Department land use program activity would not be allowable under, or would conflict with the policies or provisions of an acknowledged comprehensive plan; or

(c) Determined that the adoption, amendment, or implementation of a local government comprehensive plan does not conform to the Commission's state water resources policy, would harm existing rights, or would otherwise impair the public interest in water resources.

(7) "Land Use Planning Procedures Guide" means the non-rule text submitted by the Department as part of its SAC Program. This guide establishes criteria for the determination of land use programs and procedures for assuring comprehensive plan compatibility and coordinating with local governments.

(8) "Land use program" means an agency rule or program affecting land use, as defined by OAR 660 - 30 - 005 (2) and OAR 660 - 31 - 012(2)(f), and determined using criteria established in the Department's certified state agency coordination program.

(9) "Local government" means any city, county or metropolitan service district formed under ORS chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(10) "Planning department" means a local government department responsible for land use planning and the preparation, maintenance, and implementation of comprehensive plans.

(11) "Planning director" means the director of a local government planning department, an appropriate designee, or other local government official responsible for carrying out land use planning functions.

(12) "Special Districts" means any unit of local government, other than a city, county, metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190 authorized and regulated by statute and includes, but is not limited to: water control districts, domestic water associations and water cooperatives, irrigation districts, port districts, regional air quality control authorities, fire districts, school districts, hospital districts, mass transit districts and sanitary districts. For the purposes of this rule, water use authorities formed under ORS 450.660 are considered special districts.

(13) "State agency coordination program" means the submittal made by the Department to the Department of Land Conservation and Development pursuant to ORS 197.180(2)(a) - (d) and OAR Chapter 660, Division 30. The Commission's state agency coordination program consists of:

- (a) Rules in this division;
- (b) Rules identified or pertaining to programs listed in OAR 690 - 05 - 025 and adopted pursuant to ORS 197.180; and
- (c) The Department's Land Use Planning Procedures Guide.

(14) "Statewide planning goals" or "Goals" means the mandatory statewide standards adopted by the Land Conservation and Development Commission pursuant to ORS chapters 196 and 197.

Policy

690 - 05 - 020 (1) Land use and water management are integrally related. Statewide planning goals require comprehensive plans to include inventories of, and mechanisms to protect, important local water resources. State water laws require the Commission to protect the public interest in all waters of the state. Recognizing the responsibilities vested in both state and local government to manage and protect water resources, the Commission places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans.

(2) In any action pursuant to a program identified in OAR 690 - 05 - 025, the Commission and Department shall comply with the goals and be compatible with local comprehensive plans to the greatest extent possible, as required by and consistent with the full range of statutes governing land use and water management and as set forth in OAR 690 - 05 - 030 (Compliance with Statewide Planning Goals) and 690 - 05 - 035 (Compatibility with Acknowledged Comprehensive Plans).

Applicability

690 - 05 - 025 The provisions of OAR 690 - 05 - 010 through 690 - 05 - 060 apply to actions taken by the Department pursuant to the following land use programs:

- (1) Applications and Permits (OAR 690, Division 11)
- (2) Appropriation and Use of Water for Hydroelectric Power Projects (OAR 690, Division 51)
- (3) Water Right Transfers (OAR 690, Division 15) except for those:

- (a) Where existing and proposed water uses would be located entirely within lands zoned for exclusive farm use as provided in ORS 215.203 or within irrigation districts;
- (b) Which involve changes in place of use only;
- (c) Which do not involve the placement or modification of structures including but not limited to water diversion, impoundment, or distribution facilities, water wells, and well houses; and,
- (d) Which involve irrigation water uses only.

- (4) Water Exchanges
- (5) Applications for Uses in Addition to Classified Use (Division 82)
- (6) Use of Conserved Water (Division 18)
- (7) Instream Water Rights and Reservations of Water for Economic Development (OAR 690, Division 77)
- (8) Review of Applications for Minimum Perennial Streamflows (OAR 690, Division 76)
- (9) Initiation of Proceedings for Determination of a Critical Ground Water Area (OAR 690, Division 10)
- (10) Withdrawal of Water from Further Appropriation
- (11) Statewide Policy Formulation
- (12) Basin Planning
- (13) Payment for Public Benefits in Water Projects (OAR 690, Division 100)
- (14) Water Development Loan Fund (OAR 690, Division 90)
- (15) Scenic Waterway Coordination
- (16) Any future Department program or activity which may reasonably be expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 05.

Compliance with Statewide Planning Goals

690 - 05 - 030 (1) All Commission and Department actions pursuant to a program identified in OAR 690 - 05 - 025 shall comply with the statewide planning goals.

(2) Except as provided in section (3) of this rule, the Commission and Department shall comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans, as required by OAR 660 - 30 - 065(3) and provided in OAR 690 - 05 - 035 (Compatibility with Acknowledged Comprehensive Plans).

(3) The Commission and Department shall achieve goal compliance directly by satisfying the requirements of section (4) of this rule and by adopting written findings as provided in OAR 690 - 05 - 040 (4)(c), when one or more of the following situations, or other situations identified in OAR 660 - 30 - 065 (3), exists:

- (a) An acknowledged comprehensive plan does not contain:
 - (A) Requirements or conditions specifically applicable to a Commission or Department action; or
 - (B) General provisions, purposes, or objectives which would be substantially affected by the action.

(b) The Commission or Department takes an action that is not compatible with an acknowledged comprehensive plan after implementing all applicable measures described in OAR 690 - 05 - 035 (Compatibility with Acknowledged Comprehensive Plans).

(4) Prior to taking action pursuant to section (3)(a) of this rule, the Commission or Department shall notify the planning department of the affected local government:

(a) That, in the Department's assessment, the acknowledged comprehensive plan does not contain:

(A) Requirements or conditions specifically applicable to a Commission or Department action; or

(B) General provisions, purposes, or objectives which would be substantially affected by the action; and,

(b) That the Department intends to achieve goal compliance directly, not through compatibility with the applicable comprehensive plan; and,

(c) That the planning department shall have 30 days to respond to the notification with a request to initiate dispute resolution procedures as described in OAR 690 - 05 - 040.

Compatibility with Acknowledged Comprehensive Plans

690 - 05 - 035 (1) Except as provided in section (5) of this rule, Commission or Department actions taken pursuant to a program identified in OAR 690 - 05 - 025 shall be compatible with acknowledged comprehensive plans.

(2) The Department shall satisfy section (1) of this rule by applying:

(a) Provisions in the rule divisions identified in OAR 690 - 05 - 025; or

(b) Provisions of OAR 660 - 30 - 070; or

(c) Provisions of OAR 660 - 31 - 026 and OAR 660 - 31 - 035; or

(d) Procedures of the Department's Land Use Planning Procedures Guide.

(3) For water use approvals identified in OAR 690 - 05 - 025 (1) through (6), the Commission or Department shall satisfy compatibility requirements of ORS 197.180 by informing applicants that:

(a) The Department's issuance of a permit or other approval is not a finding of land use compatibility; and

(b) A land use approval may be required from the affected local government.

(4) In processing water use approvals in OAR 690 05 - 025 (1) through (6), the Department or Commission shall:

(a) Require land use information be submitted with applications or requests, or as otherwise specified prior to taking action on the water use approval. The information shall be sufficient to assess compatibility as specified on forms contained in the Department's Land Use Planning Procedures Guide.

(b) Except as provided in subsection (c) of this rule, the Department or Commission shall only approve the proposed water use if:

(A) All requirements of statutes and rules governing Commission and Department actions are met; and,

(B) The land use served by the proposed water use is allowed outright or does not require discretionary land use approvals under the applicable comprehensive plan; or,

(C) The applicant has already received necessary land use approvals for the land use served by the proposed water use.

(c) If local land use approvals are pending, place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals. The approval is allowed only if the use meets requirements in subsections (b) (A) of this rule. The Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department's needs.

(d) Not issue water use approvals, except when taking action pursuant to section (5) of this rule, if:

(A) The land use served by the proposed water use is not allowed by the comprehensive plan and the applicant is not pursuing necessary local land use approvals to the satisfaction of the planning department of the affected local government; or

(B) The land use served by the proposed water use is not allowed by the comprehensive plan and local approvals have already been denied.

(5) If the Commission or Department finds it necessary to take an action which is incompatible with an acknowledged comprehensive plan in order to meet statutory obligations, the dispute resolution procedures identified in OAR 690 - 05 - 040 shall be implemented prior to taking such action.

Resolution of Land Use Disputes

690 - 05 - 040 (1) The Department shall attempt to prevent disputes over land-use-related issues through early and frequent coordination with local governments.

(2) In the event of a land use dispute as described in OAR 690 - 05 - 015 (6) (b), the Department shall notify any affected Department applicant of the dispute and provide the following in writing to the planning director, other planning official, or the governing body of the affected local government:

- (a) Reasons for the Department's proposed action;
- (b) Those statutes, rules, or land use planning goals authorizing the Department's action;
- (c) Alternatives to the Department's action or modifications of the proposed action, if any, which would result in compatibility;
- (d) A proposal to discuss and resolve the dispute; and,
- (e) A request that the planning director, other planning official, or the governing body of the affected local government provide the Department with written information relating to the land use dispute. The written information shall be submitted to the Department within 30 days, unless otherwise specified by the Director, and shall describe:

- (A) The specific Department action which would not be compatible with an acknowledged comprehensive plan;

- (B) Comprehensive plan policies or provisions, or land use regulations which the planning director, other planning official, or the local governing body believe specifically apply to and preclude the Department action;

- (C) General provisions, purposes, or objectives in the comprehensive plan which would be substantially affected by the Department action; and,

- (D) Changes or alternatives to the Department's action that would result in compatibility.

(3) Based on the results of activities described in sections (1) and (2) of this rule, the Department shall consider, and undertake as appropriate, one or more of the following to satisfy compatibility requirements and the Department's statutory mandates:

- (a) Select an alternative action, including taking no action;
- (b) Modify the proposed action to achieve compatibility;
- (c) Apply for local land use approvals, including plan and land use regulation amendments, and explain why periodic review is not available to or sufficient for the Department in proposing the action;
- (d) Appeal denial of local land use approvals to the appropriate bodies;

- (e) Request necessary comprehensive plan amendments during periodic review;
 - (f) Request informal LCDC mediation, if subsections (a) through (e) of this rule do not resolve the dispute; or
 - (g) Request formal LCDC determination of compatibility as provided in OAR 660 - 30 - 070 (7), if subsections (a) through (e) of this rule do not resolve the dispute.
- (4) If actions described in section (3) of this rule do not resolve the dispute, the Commission shall:
- (a) Select an alternative action, including taking no action; or
 - (b) Modify the action to achieve compatibility; or,
 - (c) Proceed with the action, adopting written findings which include the following:
 - (A) A description of the dispute and measures taken in attempting to resolve the dispute;
 - (B) A citation of those statutes and specific statewide planning goal requirements compelling the Department to take the disputed action; and,
 - (C) A statement explaining how the action fulfills statutory obligations and complies with statewide land use planning goals; and,
 - (d) Inform the affected local government, any affected Department applicant, and the Department of Land Conservation and Development of the action taken, transmitting copies of any findings made under section (c) of this rule.
- (5) In the event of a land use dispute as provided in OAR 690 - 05 - 015 (6)(c), the Department shall:
- (a) Notify the planning departments of affected local governments in writing of the conflict between a local action and Department policies, plans, or programs; and
 - (b) Cite the statutes and rules which apply to, or are substantially affected by, the local action; and
 - (c) Suggest modifications or alternatives to the local action which would conform to Department policies, plans, or programs; and
 - (d) Offer to schedule discussions with the appropriate local planning official to resolve the dispute.
- (6) If procedures described in section (5) of this rule do not resolve the dispute, the Department may:
- (a) Request LCDC mediation or enforcement;
 - (b) Pursue local government conformance with Department policies, plans, or programs by:
 - (A) Applying for comprehensive plan amendments; or
 - (B) Participating in periodic review; or

(C) Applying the provisions of ORS 536.360 through 536.400.

Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans

690 - 05 - 045 The Department has fulfilled its goal compliance and comprehensive plan compatibility obligations required by ORS 197.180 when it has:

- (1) Applied the provisions of OAR 690 - 05 - 035 (Compatibility with Acknowledged Comprehensive Plans); and
- (2) Applied provisions of rules identified or pertaining to programs listed in OAR 690 - 05 - 025; and
- (3) Followed compatibility procedures in its Land Use Planning Procedures Guide; and
- (4) Taken action to comply directly with statewide planning goals, as necessary and as prescribed in OAR 690 - 05 - 030; and
- (5) Followed the dispute resolution procedures of OAR 690 - 05 - 040, if necessary.

Assuring Goal Compliance and Acknowledged Plan Compatibility for New or Amended Land Use Programs

690 - 05 - 050 (1) Except as provided in section (2) of this rule, the Department shall assure that new rules and programs which qualify as land use programs, or amendments to existing land use programs, comply with the statewide planning goals and are compatible with acknowledged comprehensive plans.

(2) The Commission may choose not to apply this rule to the adoption of temporary rules and programs.

(3) The Department shall examine new rules or programs to determine if they qualify as land use programs as defined by OAR 660 - 30 - 005 (2) and using criteria established in the Department's Land Use Planning Procedures Guide.

(4) If new rules or programs are found to be land use programs, the Department or Commission shall amend OAR 690 - 05 - 025, other sections of existing rule divisions pertinent to the program, and the Department's Land Use Planning Procedures Guide as needed to assure goal compliance and compatibility with acknowledged comprehensive plans.

(5) Amendments to existing land use programs shall be examined to determine if:

(a) They affect land use as determined by the criteria established in the Department's Land Use Planning Procedures Guide; and

(b) Provisions of OAR Chapter 690, Division 05 or the Department's Land Use Planning Procedures Guide are sufficient for assuring that actions allowed by the amendments comply with the goals and are compatible with comprehensive plans; or

(c) They modify the program so that it no longer qualifies as a land use program.

(6) If needed as determined after completing the examination prescribed in section (5), the Department or Commission shall amend administrative rules and the Department's Land Use Planning Procedures Guide to assure goal compliance and compatibility with acknowledged comprehensive plans. If needed, considering the provisions of subsection (4) (c) of this rule, the program shall be deleted from OAR 690 - 05 - 025 and the Department's Land Use Planning Procedures Guide amended accordingly.

(7) The Department shall provide written notice of any new rule or amendment determined to be a new land use program or affect the land use status of an existing land use program to the Department of Land Conservation and Development, persons on any Department mailing lists established for land use coordination purposes, and any local governments relying on the Department for goal compliance as described in OAR 660 - 30 - 085. The notice shall include:

(a) The date, time, and location of the Department's proposed action;

(b) The manner in which written and oral comment on the proposed action can be submitted to the Department;

(c) An explanation of how the new rule or amendment qualifies as, or affects the land use status of, a land use program; and,

(d) A description of any actions taken, or to be taken, pursuant to sections (3) through (6) of this rule.

(8) If no comment is received from the Department of Land Conservation and Development within the period specified in the notice described in section (7) of this rule, the Department may presume that the Department of Land Conservation and Development finds the new or amended rule or program to have satisfied requirements of ORS 197.180 and OAR Chapter 660, Divisions 30 and 31.

Land Use Program Coordination with State and Federal Agencies and Special Districts

690 - 05 - 055 (1) The Department shall coordinate activities related to the programs identified in OAR 690 - 05 - 025 with affected state and federal agencies and affected special districts by taking actions described in its Land Use Planning Procedures Guide.

(2) Beginning July 1, 1991, the Director shall transmit a report each biennium to the Water Resources Commission and the Director of the Department of Land Conservation and Development which includes:

(a) An assessment of the effectiveness of the Department's state agency coordination program during the preceding biennium; or

- (b) Recommendations for changes in Water Resources Department or Department of Land Conservation and Development rules and procedures to improve coordination between agencies and local governments; or
- (c) The status of any tasks identified for implementation in the certified state agency coordination program; or,
- (d) Discussion of any other subject relating to water resource management and land use.

Cooperation with and Technical Assistance to Local Governments

690 - 05 - 060 (1) The Commission and Department place a high priority on cooperating with and providing technical assistance to local governments.

- (2) Cooperation with local governments shall include:
 - (a) Informing planning departments of Department activities and local water resources issues;
 - (b) Participating in periodic review;
 - (c) Reviewing or pursuing comprehensive plan amendments; and
 - (d) Reviewing project proposals.
- (3) Technical assistance shall include:
 - (a) Providing existing water resources data and studies; and
 - (b) Assisting local governments in interpreting water resources data and studies; and
 - (c) Responding to questions, or undertaking research or monitoring projects, as requested by planning departments, as Department resources allow.

(4) Cooperation with and technical assistance to local governments and planning departments pursuant to sections (2) and (3) of this rule shall be guided and supplemented by procedures described in the Department's Land Use Planning Procedures Guide.

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