



OREGON ADMINISTRATIVE RULES
OREGON DEPARTMENT OF FISH AND WILDLIFE

DIVISION 405
STATE AGENCY COORDINATION PROGRAM

635-405-0000

Purpose

The purpose of these rules is to establish the procedures to be used by the Department in implementing the provisions of its State Agency Coordination Program, as required by ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. The State Agency Coordination program will assure that Department programs and actions determined to affect land use shall comply with the statewide planning goals and are compatible with acknowledged city and county comprehensive plans and land use regulations. It is not the intent of these rules to authorize local governments to prevent the Department from carrying out its statutory responsibility to manage wildlife and develop habitat protection standards.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0005

Definitions

For the purposes of OAR 635-405-000 through 635-405-045 only:

(1) "Acknowledged Comprehensive Plan" as defined in OAR 660-30-005(1) and adopted herein means a comprehensive plan and land use regulations or plan or regulations amendment which comply with the goals as provided in ORS 197.251, ORS 197.640 to 197.649, and ORS 197.625.

(2) "Agency Consistency with Comprehensive Plans" as defined in OAR 660-30-005(7) and adopted herein has the same meaning as the term "compatibility" as provided in section (9) of this rule and OAR 660-30-070.

(3) "Agency Coordination Program" as defined in OAR 660-30-005(3) and adopted herein means the submittal made by a state agency to the DLCD pursuant to ORS 197.180(2)(a) - (d) and OAR Chapter 660, Division 30.

(4) "Aquatic Habitat" means the waters which will support fish or other organisms which live in water. Aquatic habitat includes the adjacent land area and vegetation (i.e., riparian habitat) that provides shade, food, and/or protection for those organisms.

(5) "Big Game Range" means the geographic area occupied by deer, elk, cougar, black bear, mountain sheep, mountain goat, moose, silver gray squirrel, or antelope, often on a seasonal basis. Big game range consists of one or all of the following:

(a) "Summer Range" means a geographic area used by big game animals during the summer, usually at a higher elevation and generally covering a larger land area than winter range; and

(b) "Transitional Range or Travel Corridor" means a route or geographic area that is used by big game animals between summer and winter range, usually characterized as a band or belt of suitable vegetation and terrain that provides protective cover. Transitional range often overlaps both summer and winter range; and

(c) "Winter range" means a geographic area occupied by big game animals from late fall through early spring. Winter range is usually smaller in area and at lower elevations than summer range, and has vegetation and terrain that minimizes the effects of winter stress on big game animals.

(6) "Bird Habitat Site" means that portion of the territory of a bird species that is essential to survival and perpetuation of the species, either as individuals or as a population. "Territory," as used herein, means the total area used by an individual for feeding, reproduction, loafing, and/or rearing. Such sites include but are not limited to:

(a) Bald eagle nest sites

(b) Heron rookeries

(c) Band-tailed pigeon mineral springs

(d) Osprey nest sites.

(7) "Certification" as defined in OAR 660-30-005(4) and adopted herein means an order issued by LCDC which finds that a state agency's coordination program satisfies the requirements of ORS 197.180(2)(a) - (d) and OAR Chapter 660, Division 30.



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(8) "Commission" means the State Fish and Wildlife Commission.

(9) "Compatibility with Comprehensive Plans" as defined in OAR 660-30-005 (5) and adopted herein means that a state agency has taken actions pursuant to OAR 660-30-070, including following procedures in its coordination program where certified, and there are no remaining land use conflicts between the adoption, amendment, or implementation of the agency's land use program and an acknowledged comprehensive plan.

(10) "Compliance with the Goals" as defined in OAR 660-30-005(6) and adopted herein means that the state agency land use programs and actions must comply with the applicable requirements of the statewide planning goals as provided in OAR 660-30-065.

(11) "Coordination" as defined in OAR 660-30-005(8) and adopted herein means the needs of all levels of government, semi-public and private agencies, and the citizens of the State of Oregon have been considered and accommodated as much as possible.

(12) "County Coordinator" means the Department employee assigned to each county in Oregon who is responsible for coordinating the Department's land use activities with the county and its cities.

(13) "Department" means the Oregon Department of Fish and Wildlife.

(14) "Develop" means Department actions involving site identification and preparation, and the use, construction, improvement, and expansion of new or existing Department facilities.

(15) "Director" means the State Fish and Wildlife Director.

(16) "DLCD" means the Department of Land Conservation and Development.

(17) "Endangered Species" means:

(a) Any native wildlife species determined by the Commission to be in danger of extinction throughout any significant portion of its range within the state; or

(b) Any native wildlife species listed as an endangered species pursuant to the federal Endangered Species Act of 1973 (PL 93-205, 16 USC s 1531), as amended.

(18) "Facilities" means Department dwellings, offices, and other permanent structures or sites where Department administrative or program functions are performed or managed.

(19) "Fish" means all game fish as defined by ORS 496.009, food fish as defined by ORS 506.036, and aquatic shellfish which live or could live in the waters of this state, including mollusks, crustaceans, all freshwater and marine invertebrates, and all live eggs or larvae thereof, but not including aquaria species in aquaria.

(20) "Goal" means a philosophical statement and desirable direction of a Department program. Such goals may lead to agency policy and then to rules and operational plans for implementation.

(21) "Guideline" means a suggested direction or method.

(22) "Habitat" means a geographical area that can provide the environmental conditions suitable to perpetuate wildlife species or a population of such species.

(23) "Habitat Conservation Division Land Use Coordinator" means the Department employee responsible for coordinating statewide Department land use activities with the affected cities and counties.

(24) "LCDC" means the Land Conservation and Development Commission.

(25) "Manage" means to protect, preserve, propagate, promote, utilize, and control wildlife.

(26) "Management Plan" means a program of action designed to reach given objectives derived from Department policies or goals.

(27) "Objective" means a specific statement of planned results to be achieved by a predetermined date. Once achieved, such objectives represent measurable progress toward attainment of the broader goal.

(28) "Policy" means overall direction to embrace the goals and acceptable general procedures of the Department.

(29) "Riparian Habitat/Land" means land situated along the bank of a stream or other body of water characterized by vegetation and microclimate influenced by perennial and/or intermittent water associated with high water tables and soils which exhibit some wetness characteristics.

(30) "Rules and Programs Affecting Land Use" as defined in OAR 660-30-005(2) and adopted herein means:

(a) A state agency's rules and programs (hereinafter referred to as "land use 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



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- (ii) Present or future land uses identified in acknowledged comprehensive plans.
- (b) Do not include state agency rules and programs, including any specific activities or functions which occur under the rules and programs listed in paragraph (31)(a)(A) of this rule, if:
 - (A) An applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or
 - (B) The rule, program, or activity is not reasonably expected to have a significant effect on:
 - (i) Resources, objectives, or areas identified in the statewide goals; or
 - (ii) Present or future land uses identified in acknowledged comprehensive plans; or
 - (C) A state agency transfers or acquires ownership or an interest in real property without making any 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.
- (c) A final determination of whether or not an agency rule or program affects land use will be made by LCDC pursuant to ORS 197.180 and OAR Chapter 660, Division 30.
- (31) "SAC" means State Agency Coordination.
- (32) "Sensitive" refers to wildlife species, subspecies, or populations that are subject to a decline in number of sufficient magnitude to qualify their listing as Threatened due to loss in quantity or quality of habitat or other factors.
- (33) "Standard" means a specific level of attainment.
- (34) "Statewide Planning Goals" means the mandatory statewide planning standards adopted by LCDC pursuant to ORS 197.005 to 197.860.
- (35) "Threatened Species" means:
 - (a) Any native wildlife species the Commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state; or
 - (b) Any native wildlife species listed as a threatened species pursuant to the federal Endangered Species Act of 1973 (PL 92-205, 16 USC s 1531), as amended.
- (36) "Waters of this State" means all waters over which the State of Oregon has jurisdiction or joint or other jurisdiction with any other state or government, including waters of the Pacific Ocean and all bays, inlets, and ponds, lakes, rivers and streams within or forming the boundaries of this state, but not including waters in aquaria or in isolation facilities approved by the Department.
- (37) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.
- (38) "Wildlife" means fish, wild birds, amphibians, reptiles, and wild mammals.

Stat. Auth.: ORS Ch. 197 & 496
Stats. Implemented: ORS Ch. 197 & 496
Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0010

Applicability

- (1) The provisions of OAR 635-405-000 through 635-405-045 shall apply to actions taken by the Department when considering amendments to existing programs described in (3) of this section.
- (2) The provisions of OAR 635-405-000 through 635-405-045 shall apply to the Department programs and actions described below, and to any other programs or actions subsequently determined to have a significant effect on land use pursuant to ORS 197.180 and OAR 660-30-075.
- (3) The provisions of OAR 635-405-000 through 635-405-045 shall apply to the following Department programs and actions:
 - (a) Issuing permits for:
 - (A) Private salmon hatcheries
 - (B) In-water explosives or harmful substances



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- (b) Development of new, or improvement or expansion of existing Department facilities.
- (c) Feeding wildlife during the winter on private or non-federal public lands.
- (d) Applicable Department programs and actions to comply with Statewide Planning Goal 19 - Ocean

Resources. Specifically:

- (A) Goal 19, Implementation Requirement 1
- (B) Goal 19, Implementation Requirement 2.a.i
- (C) Goal 19, Implementation Requirement 2.a.ii
- (D) Goal 19, Implementation Requirement 2.b

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0015

Compliance With The Statewide Planning Goals and Compatibility With Acknowledged Comprehensive Plans and Land Use Regulations

Prior to undertaking any action or program listed in OAR 635-405-010, the Department shall find that the program or action complies with the statewide planning goals and is compatible with applicable acknowledged comprehensive plans and land use regulations. The Department shall make its goal compliance and plan compatibility findings in accordance with OAR 635-405-000 through 635-405-045 and other applicable rules, and the Department's certified state agency coordination program, which is hereby adopted by reference.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0020

Compliance With The Statewide Planning Goals

- (1) The Department shall attempt to achieve goal compliance whenever possible by taking actions that are compatible with the acknowledged comprehensive plans of the applicable local governing body.
- (2) An action within a "land use program" of the Department is considered to be in compliance when such action is compatible with the acknowledged comprehensive plan and land use regulations of the applicable local governing body.
- (3) The Department will achieve compliance by acting compatibly with applicable acknowledged comprehensive plans; however, should a situation arise which requires direct goal findings pursuant to OAR 660-30-065(3), the Department shall adhere to the following procedure.
 - (a) Confirm that a situation exists pursuant to OAR 660-30-065(3) requiring the Department to adopt findings of compliance with one or more of the statewide planning goals.
 - (b) Identify the specific statewide planning goal(s) or goal requirements the Department must address.
 - (c) Consult directly with the affected jurisdiction(s).
 - (d) Request interpretive guidance from the DLCD and the Attorney General's office.
 - (e) Rely on any relevant Goal interpretations for state agencies adopted by the LCDC under OAR Chapter 660.
 - (f) Adopt any necessary findings to assure compliance with the statewide planning goals.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

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635-405-0025

Compatibility With Acknowledged Comprehensive Plans And Land Use Regulations



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(1) The following procedure is intended to assure that a Department program or action determined to affect land use is compatible with the acknowledged comprehensive plans and land use regulations of the applicable local governing body.

(a) Except where it is necessary for the Department to adopt findings for compliance with the statewide planning goals, the Department shall achieve goal compliance by acting compatibly with acknowledged comprehensive plans and land use regulations. To make the necessary determinations of compatibility for a Department project or action affecting land use, the Department shall rely on the following two procedures.

(A) A copy of the local land use permit or equivalent documentation from the applicable local governing body or its designee that the proposed project or action has received land use approval; or

(B) A letter or some other form of verification from the applicable local governing body or its designee stating that the proposed project or action is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval.

(2) Upon receipt of an application for a private salmon hatchery permit, the Department will apply procedures pursuant to OAR 635-40-009(4) and (5).

(3) An applicant seeking approval from the Department to place explosives or harmful substances in waters of this state pursuant to ORS 509.140 shall provide information to this Department assuring the project's compliance with the statewide planning goals and compatibility with the applicable acknowledged comprehensive plan(s) and land use regulations. Such information shall be submitted in a manner established by the Department and shall include a written declaration by the applicant acknowledging that:

(a) Department approval of the project is not a finding of compliance with the statewide planning goals and compatibility with the applicable comprehensive plan; and

(b) The applicant has or shall obtain land use approval or determination of compatibility from the applicable local governing body.

(4) When siting or conducting expansion of a Department facility, the Department will apply procedures pursuant to OAR 635-405-025(1).

(5) When siting winter wildlife-feeding activities on private or non-federal public lands, the Department will apply procedures pursuant to OAR 635-405-025(1)

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0030

Dispute Resolution

(1) The Department shall attempt to resolve all disputes regarding land use issues by direct contact with the applicable local governing body(ies). Whenever possible, Department efforts to avoid and resolve potential land use conflicts concerning a specific use or action shall be conducted prior to and through local government land use proceedings. These efforts may include Department participation in pre-application meetings and conflict mediation activities, and provision of technical information and assistance to project applicants as well as the applicable local governing body(ies).

(2) In the event the Department and an applicable local governing body do not agree that a Department program or action, or local governing body action is compatible with the applicable acknowledged comprehensive plan(s) and land use regulations, the Department will attempt to resolve the dispute through the following procedures.

(a) Department staff, where appropriate, may request meetings with planning staff or other representatives of the local government to discuss:

(A) The ways in which the proposed Department program or action can be made compatible with the jurisdiction's comprehensive plan and land use regulations, including possible modification of the proposed program or action, while achieving the Department's desired results;

(B) Existing or possible Department alternative actions, including withdrawal of the proposal.



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(b) When determined to be necessary by the Department, local denials of Department requests for land use approvals or compatibility determinations may be pursued through appropriate appeals processes.

(c) Where appropriate, the statutory plan amendment and periodic review processes shall be used to obtain local land use approvals for a program or action proposed by the Department which affects land use.

(d) If the dispute is not resolved through steps (a) - (c) above, the Department may request informal mediation or a compatibility determination from the LCDC in accordance with OAR 660-30-070.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0035

Compliance And Compatibility Of New Or Amended Land Use Programs

(1) LCDC certification of the Department's SAC Program signifies that the Department has fulfilled its statutory state agency coordination responsibilities. The Department shall implement the following procedures to assure that new Department programs and any amendments to existing Department programs identified in OAR 635-405-010 shall conform to the Department's certified SAC Program and the requirements in ORS 197.180 and OAR Chapter 660, Division 30.

(2) The Department shall not amend its certified state agency coordination program, adopt new programs, or amend existing programs identified in OAR 635-405-010 without notifying the DLCD in accordance with OAR 660-30-075.

(3) Such notice to adopt or amend a program or regulation as described in (2) of this section shall be provided to the DLCD in writing not less than 45 days before Department adoption is scheduled to occur.

(4) The notice provided to DLCD shall demonstrate that the proposed new adoption or amendment:

(a) Does not affect land use; or

(b) Affects land use and goal compliance and comprehensive plan compatibility shall be assured through adherence to existing procedures in the Department's certified SAC Program; or

(c) Affects land use, but is not covered by regulations and procedures in the Department's certified SAC program. In this case, the notice shall include an explanation of how the Department shall assure goal compliance and comprehensive plan compatibility in accordance with the applicable provisions of OAR 660-30-075.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0040

Coordination With Affected State and Federal Agencies And Special Districts

The Department Habitat Conservation Division Land Use Coordinator or other appropriate Department employees shall coordinate with affected state and federal agencies and special districts to discuss wildlife habitat inventory and habitat protection and management standards. The information and assistance provided may include, but is not limited to:

(1) Delineation (i.e., boundaries and locations) of significant wildlife habitat, such as:

(a) Big game ranges;

(b) Bird habitat sites;

(c) Threatened and endangered habitat as defined in OAR 635-100-100 to OAR 635-100-130;

(d) Riparian habitat/land;

(e) Wetlands;

(f) Aquatic habitat;

(g) Sensitive species habitat;

(h) Other significant wildlife habitats not listed above;

(2) Estimated wildlife population levels whenever data is available;



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(3) Identification of conflicting uses and an analysis of the consequences of such conflicting uses on identified fish and wildlife habitat as required by city and county comprehensive plans and land use regulations and to comply with the statewide planning goals;

(4) Wildlife habitat protection and management standards including but not limited to:

(a) Dwelling density criteria;

(b) Setback buffers from wildlife habitat resource sites;

(c) Types of and timing restrictions on activities conflicting with wildlife uses;

(d) Instream flows or lake levels;

(e) Structures compatible with wildlife uses;

(5) Educational and informational materials to promote public awareness and involvement in protection of wildlife habitat; and

(6) Estimated monetary values of wildlife whenever this information is available.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90

635-405-0045

Cooperation And Technical Assistance To Local Governments

Subject to statutory limitations, the Department may provide technical assistance and information to local governments through its County Coordinators as availability and resources permit. This effort may include Department participation in pre-application meetings, and provision of technical information and assistance to project applicants as well as the affected local governments. Technical assistance and information provided by the Department shall be for the purpose of implementing Department programs and activities affecting land use and wildlife habitat protection programs under its jurisdiction during Periodic Review, plan updates, plan amendments or implementation actions of acknowledged comprehensive plans pursuant to OAR 635-405-040 and the Department's State Agency Coordination Program. This Section is not intended to preclude or prevent local governments from seeking fish and wildlife-related technical assistance from other state and federal agencies or the private sector.

Stat. Auth.: ORS Ch. 197 & 496

Stats. Implemented: ORS Ch. 197 & 496

Hist.: FWC 66-1990, f. & cert. ef. 6-27-90