

LANE COUNTY LOCAL GOVERNMENT BOUNDARY COMMISSION

State Agency Coordination Program

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Lane County Local Government Boundary Commission
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SECTION 1

INTRODUCTION

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

The Lane County Local Government Boundary Commission (hereafter referred to as the "Commission") submitted a SAC Program to the LCDC in 1978. At that time it was determined that the Commission did not have a land use program. However, amendments to ORS 199.410(2)(d) in 1981 and the subsequent Attorney General's Opinion No. 8091 in 1982 altered that determination. Opinion No. 8091 determined that Commission actions must be compatible with applicable acknowledged comprehensive plans when considering a proposal to incorporate a new city for territory covered by that plan. Furthermore, boundary commission actions must comply with the statewide planning goals and be compatible with acknowledged comprehensive plans.

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

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 The Commission's existing SAC Program will be considered rescinded upon certification of the Commission's revised program by LCDC.

The Commission is a State agency which is comprised of seven members appointed by the Governor. All members must be residents of Lane County. The broad purposes of the Commission are outlined in ORS 199 as follows:

1. Guide the creation and growth of cities and special districts;
2. Prevent illogical extensions of local government boundaries;
3. Assure adequate quantity and quality of public services and the financial integrity of each unit of local government resulting from boundary changes; and
4. Reduce the fragmented approach to local government service delivery in urban areas.

The Commission is staffed and supported by the Lane Council of Governments (L-COG) through an intergovernmental agreement.

SECTION 2

COMMISSION RULES AND PROGRAMS

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

A. Enabling Statutes

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

B. Commission Programs

The Commission has only one statutory (and therefore one program) responsibility. It is the duty of the Commission to review and act on proposals to create or alter the boundaries of cities and ten (10) separate types of special purpose districts:

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

The boundary changes are of two types:

1. Minor: annexations, withdrawals, transfers, service extensions (extension of water or sewer lines outside existing district or city boundaries), community systems (establishment or expansion of water or sanitary sewer systems), and addition of a new function by a special district; or
2. Major: incorporations, formations, mergers, consolidations, and dissolutions.

Minor boundary changes must be decided within 90 days of filing. Only if no person present at a public hearing on the proposal objects to extending the deadline can the 90 days be extended up to one year from date of filing. Major boundary changes must be decided within 120 days of filing.

The Commission has three options under its statute to act after conducting a public hearing:

1. Approve the proposal as submitted;
2. Approve the proposal after modifying the boundary to include or exclude territory; or
3. Deny the proposal based on failure of the proposal to meet any one or more of the Commission's standards as established in the Commission's policy administrative rule (OAR 191-30-020(4)).

The Commission cannot grant conditional approvals.

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

The Commission has an "expedited" approval process which is allowed under ORS 199.466 and is used for processing routine, noncontroversial boundary change proposals without a public hearing. Annexations, water and sewer extraterritorial extensions, and establishment or expansion of water or sanitary sewer systems are the only types of boundary change proposals which can use the expedited procedure.

To use this process, the applicant must request its use, and once filed, staff has 15 days from filing within which to prepare a brief staff analysis which addresses all applicable Commission standards as established in OAR 191-30-020(4), including consistency with the applicable acknowledged comprehensive plan and land use regulations. A copy of the staff analysis is sent to Commission members, affected cities, districts, state and federal agencies, and affected property owners within the affected territory. If within 25 days from the date of filing, none of the recipients of the staff analysis request a public hearing, the proposal is approved as submitted. Expedited proposals are final upon the 25th day from filing and are approved by "consent" of the Commission without the legal advertisement, posting, public hearing, findings, reasons, and final order which accompany non-expedited boundary change proposals. If the staff notes are not prepared for an expedited boundary change proposal, or if any of the recipients request a public hearing on the proposal, it is scheduled for hearing and is treated as a non-expedited proposal. If an expedited boundary change proposal requires statewide planning goal analysis, the proposal will be processed as a non-expedited boundary change proposal.

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

C. Oregon Administrative Rules (OAR's)

The Commission has adopted the following administrative rules in accordance with its own procedures and those required by ORS 183. The Commission's administrative rules can be found in OAR, Chapter 191:

1. Division 1: Procedural Rules (Notice Requirements);
2. Division 5: Rules of Procedure;

3. Division 6: Filing Requirements;
4. Division 10: Filing Fee Schedule;
5. Division 20: Budget and Assessment; and
6. Division 30: Policies.

The policies in Division 30 have been adopted by administrative rule and are used by the Commission when evaluating all proposed boundary changes.

D. Administrative Procedures

Within the context of Oregon appellate case law, the Commission relies on no procedures other than those found in ORS 199.410 to 199.534, those found in OAR, Chapter 191, and those in other sections of ORS which relate to boundary change enabling legislation for affected cities and districts.

E. Land Use Analysis

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

Decisions by the Commission on boundary changes and service extensions are critical to the orderly implementation of acknowledged city and county comprehensive plans. This important relationship is recognized in statute at ORS 199.410(2)(d) which requires that Commission decisions must be "consistent" with the statewide planning goals and comprehensive plans. The statute states, however, that inside acknowledged urban growth boundaries, Commission determinations are not to consider the statewide goals. This section of the ORS has been interpreted in the 1982 Attorney General's Opinion No. 8091 which requires that the Commission act compatibly with all acknowledged comprehensive plans.

F. Agency Programs Subject to OAR 660-31

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

SECTION 3

COMMISSION PROGRAM TO ASSURE COMPLIANCE WITH STATEWIDE GOALS AND COMPATIBILITY WITH ACKNOWLEDGED COMPREHENSIVE PLANS

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

The statutes at ORS 199.410(2)(d) and the Attorney General's Opinion No. 8091 require that the Commission's determinations comply with the statewide planning goals and be "consistent" or "compatible" with comprehensive plans.

To avoid any potential confusion or conflict between the terms "consistency" and "compatibility", this SAC Program adheres to OAR 660-30-005(5) and (7) which define the words as having the same meaning; i.e., no remaining conflicts between the agency's program and the applicable acknowledged comprehensive plan. Therefore, as used in this SAC Program, wherever the Commission's rules and procedures require it to be "consistent" with comprehensive plans, the Commission is also committing itself to be "compatible" with those same acknowledged plans and land use regulations.

A. Exempt and Compatible Land Use Program

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

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

1. Commission Rules

The statutes at ORS 199.410(2)(d) and AG's Opinion No. 8091 require that the Commission's determinations be "consistent" with comprehensive plans and comply with the statewide planning goals. The Commission's administrative rules and procedures (OAR 191-30-020(4)(c)) require that all Commission actions, whether using the expedited or non-expedited boundary change process, meet a defined set of standards, including the standard that the Commission's action be consistent with acknowledged comprehensive plans and land use regulations. The Commission is required to adopt findings (OAR 191-05-000(1)) and reasons (ORS 199.461(4)) when issuing a final order.

OAR 191-30-020(25) describes the findings required by the Commission in approving a non-expedited proposal:

In order to adopt a final order approving a boundary change proposal, the Commission must find that the proposal complies with the statewide planning goals and is consistent with the applicable acknowledged comprehensive plans and land use regulations as

provided in the Commission's State Agency Coordination (SAC) Program, which is hereby adopted by reference. To approve a proposal where an acknowledged comprehensive plan and land use regulations contain no specific or general policy provisions relative to the proposal, the Commission must find that the proposal complies with the applicable statewide planning goals. Failure of the proposal to be found in compliance with the statewide planning goals or to be consistent with the acknowledged comprehensive plan and land use regulations will result in denial of the proposal by the Commission.

2. Commission Procedures

The situations when the Commission will adopt findings against the statewide planning goals when acting on a proposal include:

- a. When the acknowledged comprehensive plan does not contain any specific or general policy provision relative to the major boundary change proposal;
- b. When the proposal being reviewed by the Commission specifically relates to or is to occur in an area not subject to an acknowledged comprehensive plan;
- c. When the Commission is required to adopt goal findings based upon a new or amended statewide goal or administrative rule under OAR Chapter 660 enacted by LCDC; or
- d. When the Commission is required to adopt goal findings in response to an appellate court decision or change in statutes.

As noted previously on page 3, any boundary change proposal requiring statewide goal analysis will be processed as a non-expedited proposal pursuant to OAR 191-30-020-(25) and to procedures a. through f. below.

When the Commission acts consistently with acknowledged comprehensive plans, it is acting in compliance with the statewide planning goals. For this reason, the Commission does not anticipate the need to adopt findings of consistency with statewide planning goals when acting on most proposals submitted to the Commission. However, if goal findings are required, the Commission shall adhere to the following procedures:

- a. Confirm that a situation actually exists requiring the Commission to adopt findings of compliance with one or more of the statewide goals;
- b. Identify the specific statewide goals which the Commission must address;
- c. Consult directly with the affected local governments;
- d. Require interpretive guidance from the Department of Land Conservation and Development and the Attorney General's Office;

- e. Rely on any relevant goal interpretation for state agencies adopted by LCDC under OAR Chapter 660; or
- f. Adopt any necessary findings to assure compliance with the statewide goals.

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

1. Commission Rules

The Commission's statute at ORS 199.410(1)(d), 199.462(1) and 199.464(1) together require that determinations involving boundary changes and service extensions must be done in a manner consistent with comprehensive plans. This requirement is referred to or is restated in Commission rules at OAR 191-05-060, 191-06-005(1) and in 191-06-020(1)(i). The Commission's administrative policies give further direction for assuring consistency with applicable comprehensive plans:

OAR 191-30-020(4): ". . . When making its decision, the Commission shall adopt findings that the applicable standards have been met . . . consistent with acknowledged comprehensive plans and land use regulations . . ."

The Commission requires applicants to provide evidence that the proposal is consistent with acknowledged plans and land use regulations and, when necessary, that proposals are consistent with statewide planning goals:

OAR 191-06-005(9): "All parties submitting a proposal to the Commission must provide written information indicating consistency of the proposed boundary change with the applicable acknowledged comprehensive plan and local land use regulations. If the proposal requires compliance with statewide planning goals, the applicant must submit draft findings for Commission consideration which demonstrate compliance of the proposed boundary change with the applicable statewide planning goals."

2. Commission Procedures

In order to make the necessary determinations of consistency, the Commission shall rely on the following:

- a. The Commission's interpretation of the clear language in the applicable comprehensive plan and land use regulations;
- b. A copy of the local land use permit or equivalent documentation from the city or county planning agency or the local governing body that the boundary change proposal has received land use approval;
- c. A letter from the local planning agency or governing body stating that the boundary change proposal is permitted under the jurisdiction's comprehensive plan but does not require specific land use approval; or

- d. Other information provided equivalent to b. or c. above including but not limited to testimony at a Commission hearing.

3. Dispute Resolution

The Commission provides an impartial forum for resolving boundary change disputes. The Commission allows representatives of federal, state, county, districts, cities, and any other interested persons to comment on boundary change proposals. The Commission also has the authority to initiate all types of boundary changes except public health hazard and island annexations (ORS 199.490(5)(a) and (b)). The Commission also directs its staff to participate in negotiating solutions in boundary change disputes.

Because of the nature of the Commission's unique statutory function and specific timelines within which the Commission must make its decisions, the dispute resolution procedures provided in OAR 660-30-070 are not applicable to the Commission's review of boundary change proposals.

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

The SAC Program shall be amended, as necessary, when any of the following occurs:

1. Change in Oregon Revised Statutes;
2. Adoption of new administrative rules;
3. Appellate Court decisions;
4. Attorney General's Opinions; or
5. Change in the intergovernmental agreement between the Commission and the Lane Council of Governments.

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

SECTION 4

COMMISSION PROGRAM FOR COORDINATION WITH DLCD, AFFECTED STATE AND FEDERAL AGENCIES, AND SPECIAL DISTRICTS

A. Commission Coordination and Agency Procedures

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

When reviewing proposals, pre-application meetings are encouraged. Upon receipt of a proposal, written notice to all affected parties is given, and a written referral is sent to all affected units of government, including local, state, and federal agencies. When reviewing water and sanitary sewer system proposals, the Commission coordinates with the Oregon Health Division (or with Lane County Environmental Management Division which administers the Health Division's standards through an intergovernmental agreement) and the Oregon Department of Environmental Quality.

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

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

The expedited boundary change process is explained previously on page 3, Section 2.

All Commission and Advisory Committee meetings are subject to the Oregon Public Meetings Law. All Commission files are subject to Oregon Public Records Law.

All cities, counties, and special districts (refer to list in Section 2) listed in ORS 199.420 are considered to be affected parties for any proposal affecting territory within such city, county, or special district. When considering a non-expedited boundary change proposal, the Commission will adhere to the following procedures related to coordination with state and federal agencies, and special districts:

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

B. Commission Coordination Contact

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

Executive Officer
Lane County Local Government Boundary Commission
Public Service Building
125 E. 8th Avenue
Eugene, Oregon 97401
(503) 687-4283

SECTION 5

COMMISSION PROGRAM FOR COOPERATION WITH AND TECHNICAL ASSISTANCE TO LOCAL GOVERNMENTS

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

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

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

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

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

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

1. Education and pre-application meetings with staff;
2. Maintenance of information sheets and instructions for various types of boundary change applications;
3. Review of referrals;
4. Comment on staff notes;
5. Assistance with applications;
6. Notice of filing;
7. Official referral of proposals;
8. Circulation of Commission staff notes;

9. Notice of final Commission action;
10. Coordination during legislative sessions; and
11. Other support as budget and staff limitations allow.

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

The Commission does not actively participate in the periodic review process of any city or county within its jurisdiction. If Commission review is requested, it will be provided. If a new Commission program is added, the Commission will coordinate with local governments and DLCD regarding the effect of the new program in maintaining consistency with acknowledged comprehensive plans and compliance with the statewide planning goals.

D. Cooperation and Technical Assistance to Coastal Cities and Counties

The Commission applies its statute uniformly in coastal counties under its jurisdiction, and its program has no different purpose or status within coastal areas than in non-coastal areas within its jurisdiction.

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

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

F. Commission Coordination Contact

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

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