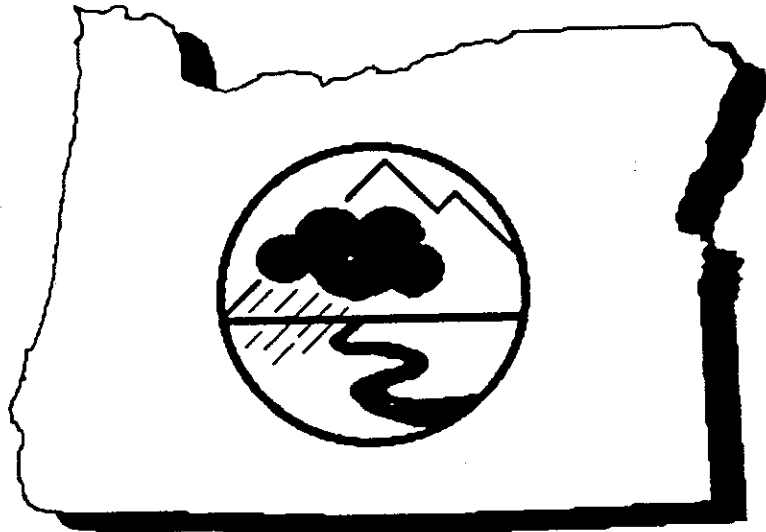


Land Use Planning Procedures Guide



**Water Resources Department
State Agency Coordination Program**

August 1990



Water Resources Department Land Use Planning Procedures Guide

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EXECUTIVE SUMMARY

I. Introduction

Oregon's land use planning statutes (ORS 197.180) require state agencies to comply with the statewide planning goals and be compatible with local comprehensive land use plans when taking actions affecting land use. Agencies assure compliance and compatibility through State Agency Coordination (SAC) Programs. SAC Programs are to agencies as comprehensive plans are to counties and cities -- ways to achieve compliance with the goals. Just as the Land Conservation and Development Commission (LCDC) acknowledged local plans, LCDC is responsible for approving ("certifying") SAC Programs.

LCDC rules require SAC Programs to contain: (1) descriptions of programs and activities which have been identified as affecting land use; (2) rules and procedures to assure agency actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; (3) procedures for coordination with the Department of Land Conservation and Development (DLCD), special districts, and other state and federal agencies; and, (4) a program for cooperating with, and providing technical assistance to, local governments.

The Water Resources Department's SAC Program contains each of these elements, plus a number of other required items. Basically, the program consists of inter-related rules and procedures as illustrated in Figure 1. A new rule division (OAR Chapter 690, Division 60) establishes the SAC Program and provides general standards for meeting compliance and compatibility obligations. Additional rules throughout portions of OAR Chapter 690 provide assurance that the Department's land use program activities meet the ORS 197.180 mandate. A section of OAR Chapter 690 Division 60 provides standards for fulfilling SAC obligations which are referenced by corresponding rules in Chapter 690. (See Figure 2 and Appendix F.) A document entitled the "Land Use Planning Procedures Guide" (Guide) contains descriptions and analyses of Department programs, as well as the required coordination and technical assistance programs.

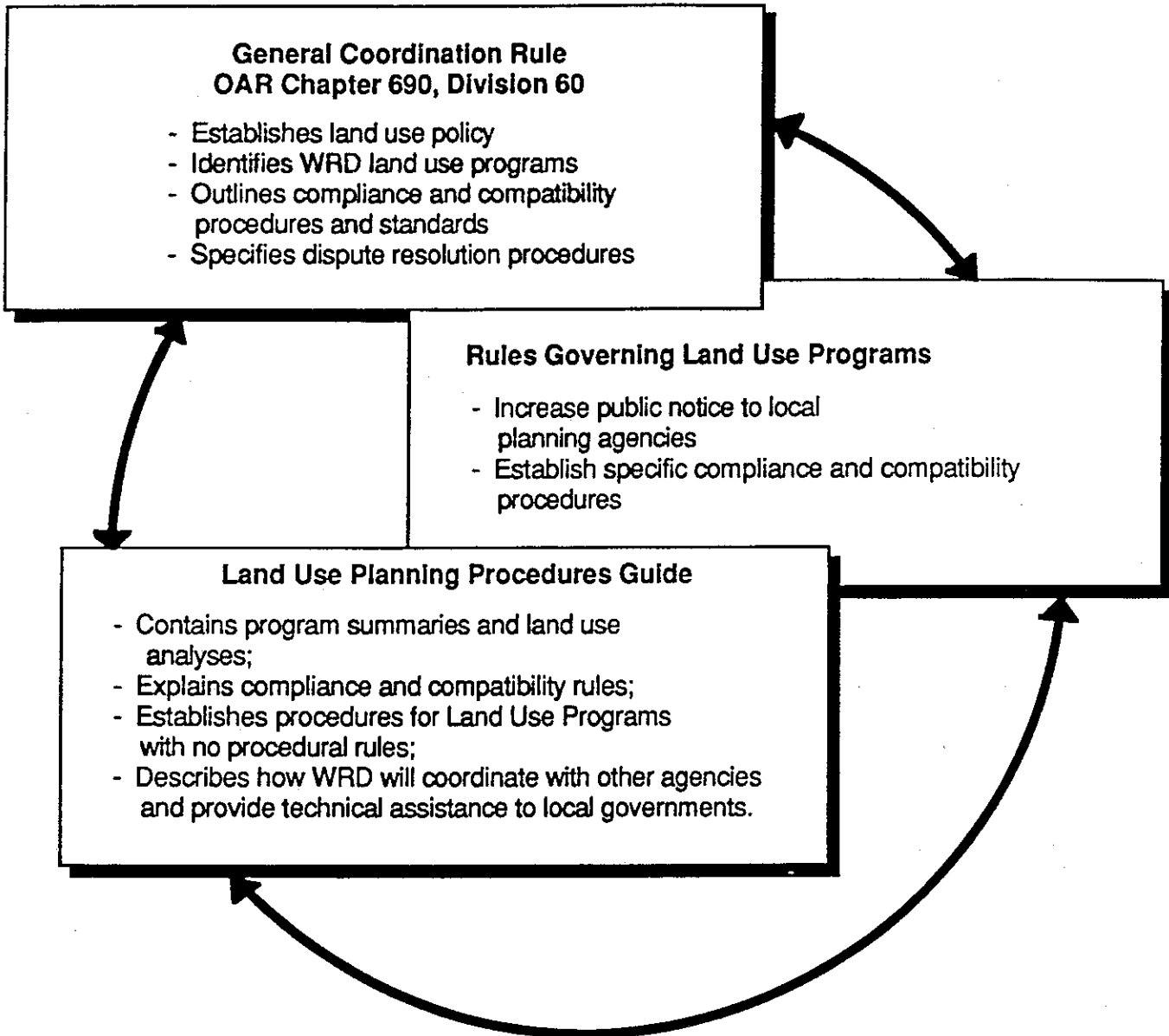
II. Identification of Programs Affecting Land Use

State agency coordination statutes and rules require state agencies to evaluate program activities and determine which significantly affect present or future land uses and/or resources identified in the statewide planning goals. Programs and activities which meet these criteria are known as "programs affecting land use" or agency "land use programs," and are subject to SAC compliance and compatibility requirements.

The Department's approach to identifying land use programs with the understanding that water and land management are inseparable. In addition,

Figure 1

**Water Resources Department's
State Agency Coordination Program**



WRD's PROCESS for Fulfilling SAC Compliance and Compatibility Requirements

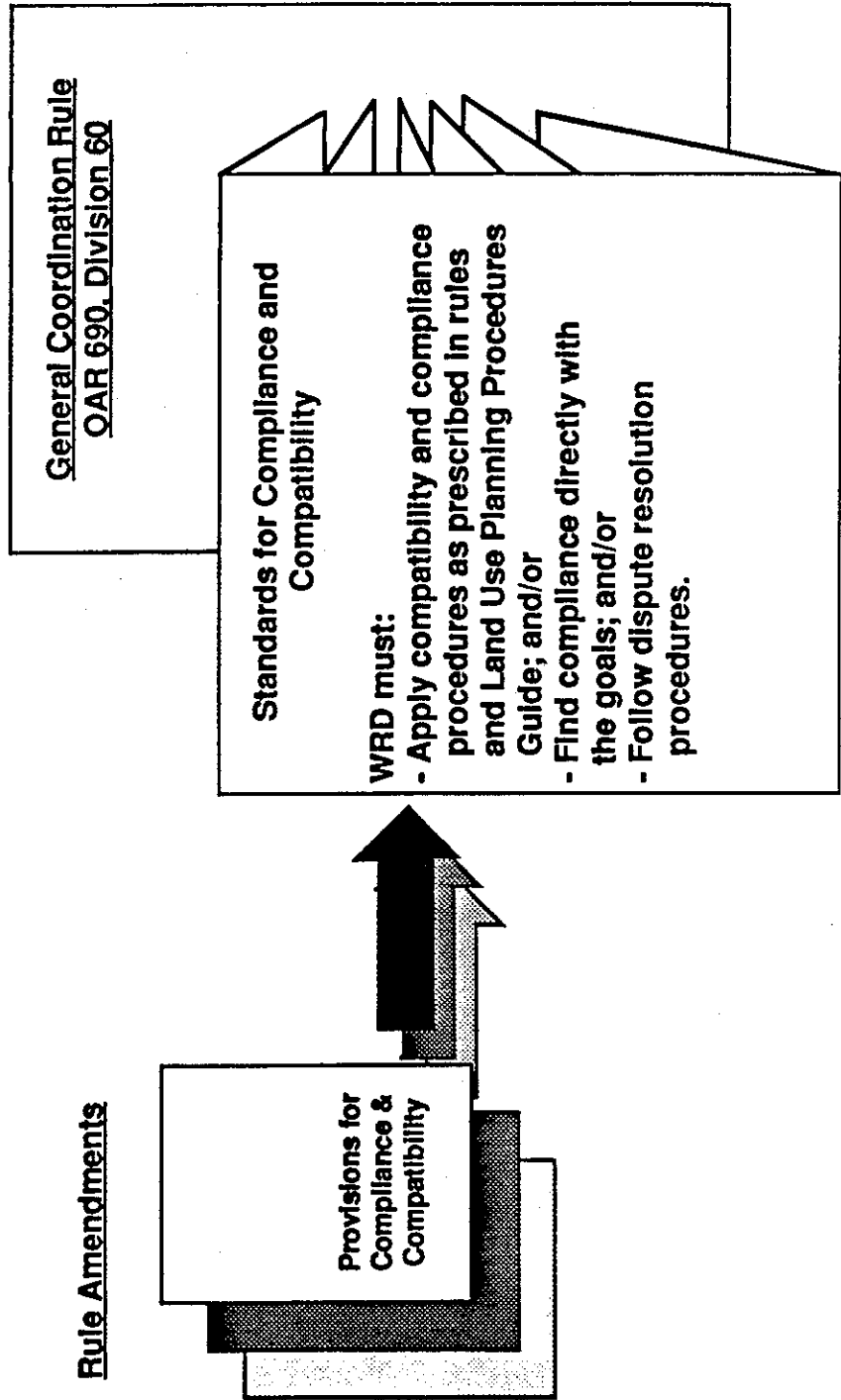


Figure 2

Executive Summary

the statutory definition of "land" includes surface and ground water, and water resources are addressed extensively in the Goals. These references to water encouraged the Department to use an inclusive approach to determining which programs affect land use.

The Department also developed and applied supplemental criteria to determine the significance of expected land use impacts. An action was found to affect land use if it:

- A) substantially affects water availability; or
- B) restricts, controls, or allows particular types of water uses; or
- C) establishes policy which will likely affect water availability or future uses of water; or
- D) is governed under the sole or lead authority of the Water Resources Commission; or
- E) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

The Department's water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights), basin planning activities (including reservations), critical ground water areas and withdrawals, and water development loan program qualify as "programs affecting land use." (See Figure 3.) Advisory, data-gathering, and enforcement activities did not qualify as Department land use programs.

III. Strategies to Assure Compliance with the Goals and Compatibility with Comprehensive Plans

Having identified programs affecting land use, the Department developed strategies to ensure that actions taken to carry out these programs will comply with the Statewide Planning Goals and be compatible with comprehensive plans. LCDC rules generally require state agencies to comply with the Goals by achieving compatibility with comprehensive plans. Under certain circumstances, agencies may find actions in compliance directly with the Goals. The Department's "compatibility strategies" vary by program but can be grouped into basic types as outlined in Figure 3 and described in further detail below. An exceptions process is provided as part of each compatibility strategy and is described in the Dispute Resolution section of this summary.

- A. **Rely on Local Response to Notification of Pending Action, or "Deeming"** (See Figure 4) - (Basin Planning, Instream Water Rights, Minimum Streamflows, Reservations, and other Department water use approvals)

The Department will notify (in writing) affected local governments of a proposed basin program adoption or amendment, and of pending instream water right, minimum perennial streamflow, or reservation applications. The notice will state that the Department assumes the proposal is compatible with comprehensive plans unless informed otherwise by appropriate local officials. The Department will coordinate

Figure 3

WRD Land Use Programs	Compatibility Strategies
<p>Basin Planning Instream Water Rights Reservations for Economic Development Minimum Perennial Streamflows</p>	<p>Rely on local government response to notification of pending action, or "Deeming." WRD will presume compatibility if no response is received. Local indication of incompatibility may result in no action or initiation of dispute resolution procedures.</p>
<p>Water Use Permits Water Right Transfers Use of Conserved Water Hydroelectric Permits and Licenses Water Right Exchanges Application for uses in Addition to Classified Uses Water Development Loan Payment for Projects with Public Benefit</p>	<p>Rely on land use information supplied by applicants and confirmed by local planning officials. Depending on the allowability of the use by local plans, and the status of local land use approvals, WRD may approve, approve conditionally, or reject the proposed water use. Deviation from prescribed procedures would trigger dispute resolution procedures.</p>
<p>Critical Ground Water Area Determination Withdrawal from further Appropriation Statewide Water Policy</p>	<p>Prepare and adopt findings that the action complies with Statewide Planning Goals Coordinate with local governments to ensure that comprehensive plans reflect resource constraints in appropriate inventories. Notify local governments and planning officials of policy development and hearings. Defer assurance of compatibility to implementation phase.</p>
<p>Scenic Waterway Coordination</p>	<p>Defer to Parks and Recreation Department for compatibility assurance.</p>

RELY on LOCAL RESPONSE TO NOTICE OF PENDING ACTION, or "DEEMING"

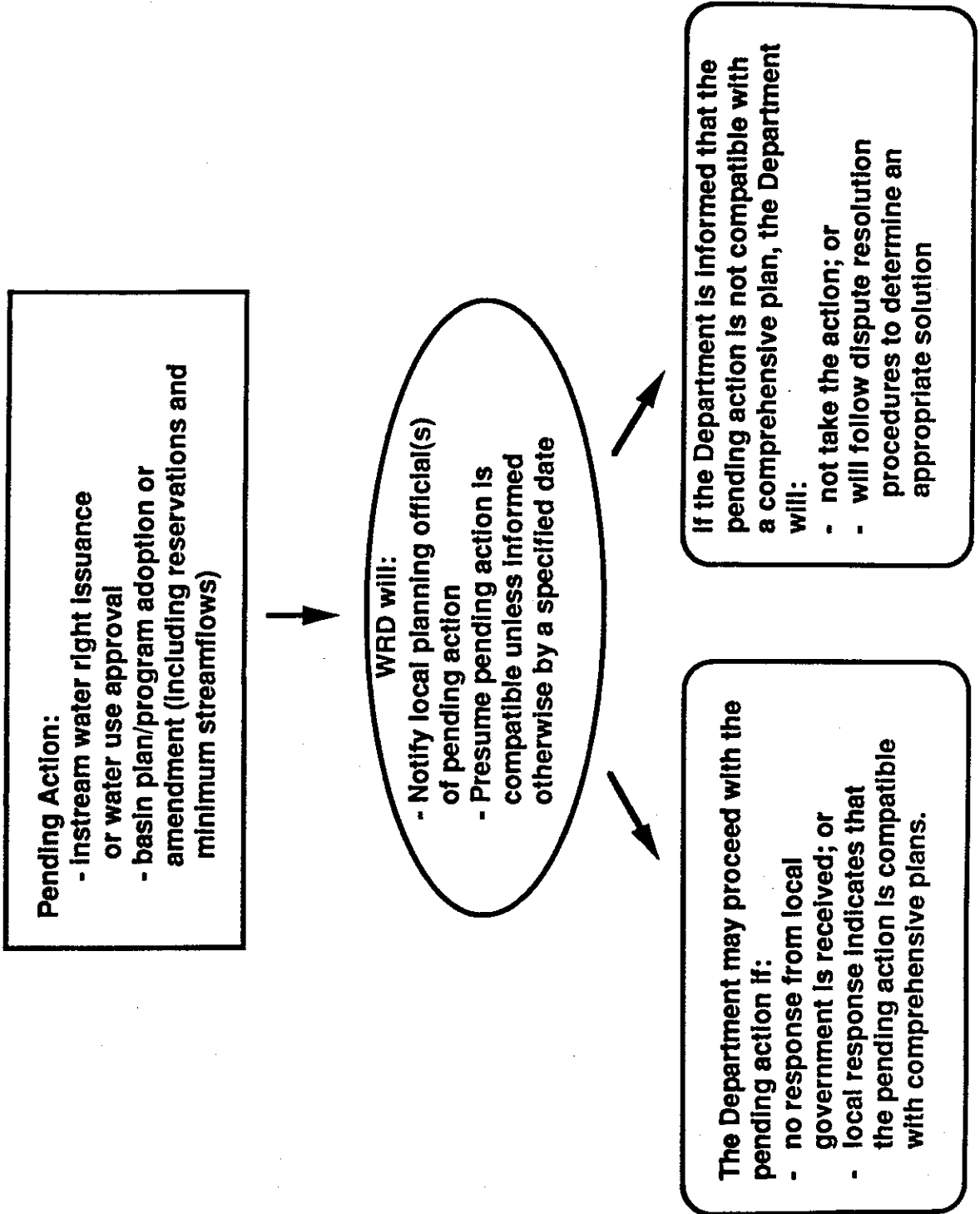


Figure 4

Executive Summary

with affected local governments to achieve compatibility with local plans. If informed that the proposed action is incompatible with local plan policies or provisions, WRD will either not take the disputed action or will follow certified dispute resolution procedures.

B. Rely on Land Use Information Supplied by Applicants and Confirmed by Local Officials (See Figure 5) - (Water Use Approvals, Water Development Loan Program)

The Department will require land use information (i.e., plan designation, zoning, allowability under local plans, and status of applicable local approvals) to be submitted by applicants for permits and other water use approvals. Applicants will be required to contact local planning officials to provide written confirmation of this information. The Department will then proceed as follows:

1. If land uses that correspond with proposed water uses are allowed outright by comprehensive plans, or if all local land use approvals have been granted, the Department may approve the water use.
2. If local land use approvals are pending, the Department may approve the water use with conditions prohibiting water use (and associated construction) until all necessary local land use approvals are obtained.
3. If corresponding land uses are not allowed by local plans and plan amendments are not being pursued, or if land use approvals or plan amendments have been denied, the Department will not approve the water use except as provided in approved dispute resolution procedures.

C. Prepare and Adopt Findings that an Action Complies with the Statewide Planning Goals/Comprehensive Plan Augmentation - (Critical Ground Water Areas, Withdrawals, Statewide Policy Formulation)

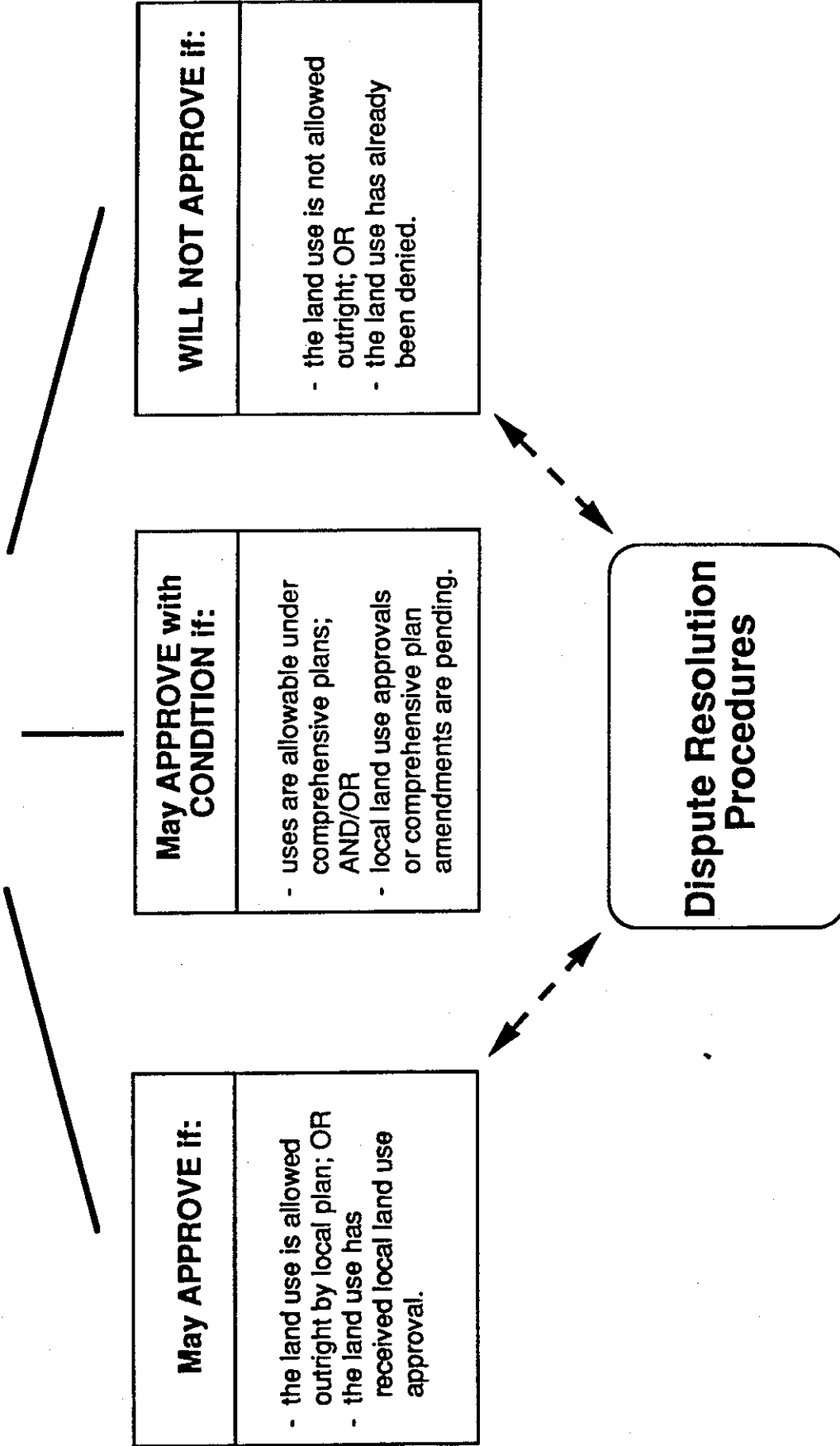
To meet its statutory mandate, the Commission is required to adopt state water resources policy and authorized to restrict the use of water to solve urgent water supply or quality problems. In such cases, the Department will work closely with local planning officials to accommodate local plans and priorities to the maximum extent possible. However, if conflicts arise and/or local plans lack policies or provisions to address the situation, the Commission will adopt findings that the proposed action complies with the Statewide Planning Goals directly. Further, the Department will attempt to resolve disparities between Department rules or orders and local plans by suggesting plan amendments that reflect resource constraints and provide resource protection through the land use planning process.

Figure 5

Water Use Approvals

(i.e. permits, transfers, use of conserved water, exchanges)

the Department:



Executive Summary

D. Rely on Local Response to Notification of Rule Adoption/Defer Specific Compatibility Assurance to Implementation Phase (Statewide Policy Adoption)

The Water Resources Commission is authorized to develop an integrated, coordinated state water resources policy. These policies are adopted as rule. The Department will notice local planning officials of pending rulemaking actions and will coordinate to assure general compliance and compatibility. Site specific compliance and compatibility assurances will take place in conjunction with policy implementation.

E. Defer to Lead State Agency (Scenic Waterway Coordination)

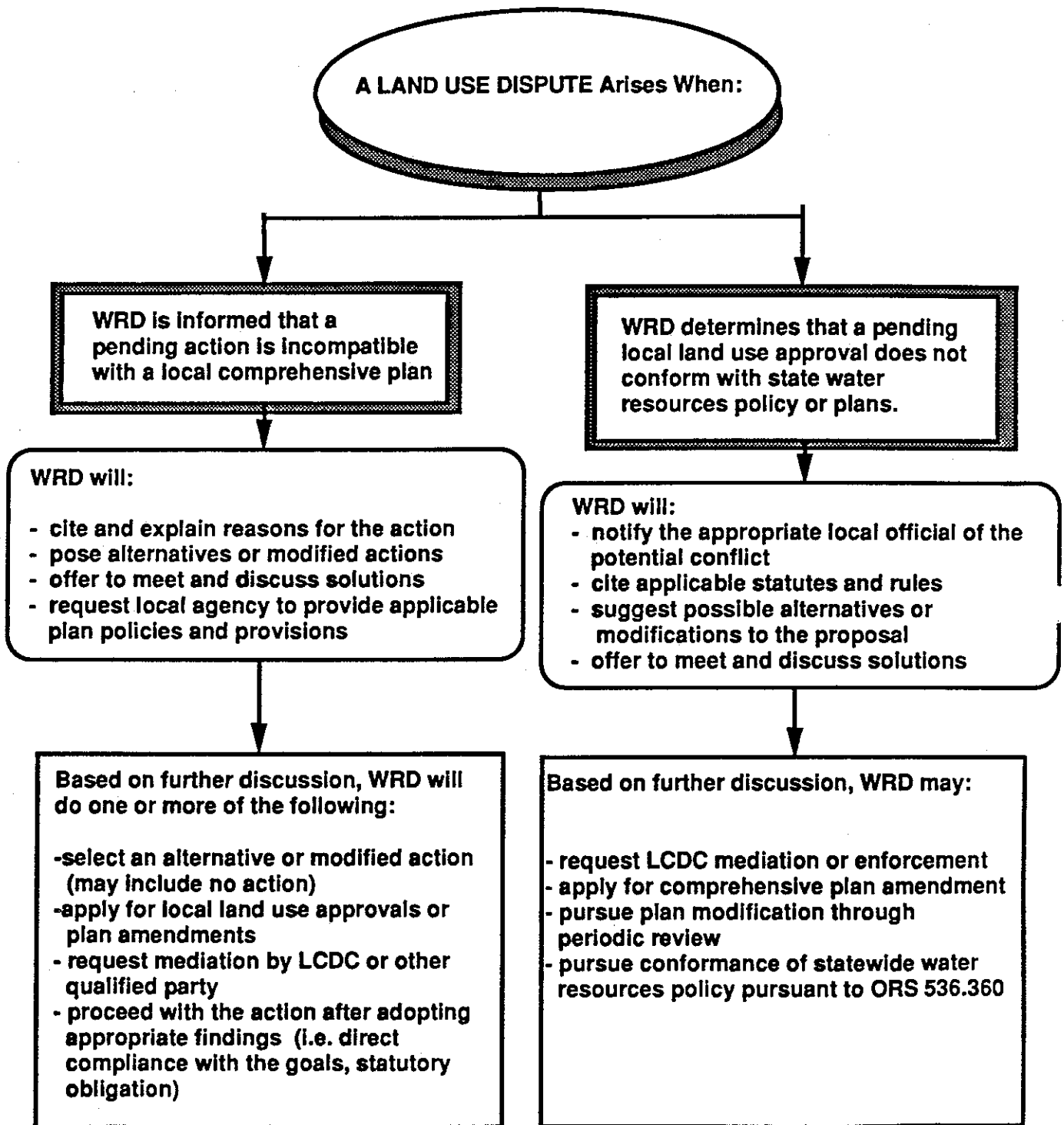
In addition to appropriating water for instream values, the Commission participates in scenic waterway planning by reviewing with Parks and Recreation Department (PRD) scenic waterway management plans. Since PRD prepares the plans prior to Commission review and concurrence, the Department will defer compliance and compatibility assurance to that provided by the PRD's certified SAC Program.

IV. Dispute Resolution Procedures

The Legislature has given authority over water resources to both local governments and the state. The SAC Program attempts to establish a balance between these authorities. The Water Resources Commission will assure that its land use programs comply with the goals and are compatible with comprehensive plans by using the approaches described above. However, despite improved coordination and the implementation compatibility strategies, land use disputes between state agencies and local governments may arise. In addition, the Water Resources Commission may find it necessary to take an action which is believed to be incompatible with comprehensive plans. This would only take place if necessary to fulfill the Commission's statutory mandates. In such cases, the Commission and Department will follow a set of dispute resolution procedures, as described below, prior to taking action.

As mentioned above, the option to initiate dispute resolution procedures is provided in each of the Department's compatibility strategies. (See Figure 6.) The procedures involve an exchange of information between local planning departments and the Department. Local planning officials must state specifically why a pending action would be incompatible with comprehensive plans. The Department must respond by explaining the reason and authority for the action. In addition, the Department must offer to meet to resolve the dispute. Resolution may occur through identification of an alternative action, not taking action, applying for amendments to comprehensive plans, or formal or informal DLCD mediation.

DISPUTE RESOLUTION PROCEDURES



Executive Summary

If no alternatives allow the Department to fulfill its legal requirements and achieve compatibility, it may proceed with the disputed action after adopting written findings. The findings must identify and cite the legal basis for the action. The findings must also document how the Department met standards for fulfilling SAC obligations as prescribed in OAR Chapter 690, Division 60.

V. Coordination with, and Technical Assistance to Local Governments

Preventing disputes between the Department and local governments is a major objective of WRD's SAC Program. The SAC Program provides for increased coordination with local governments, improved participation in periodic review and amendment of comprehensive plans, and technical assistance to local planners. Technical assistance and coordination procedures are prescribed in OAR Chapter 690 Division 60 and are further detailed in the Department's Land Use Planning Procedures Guide. These coordination activities will help ensure that the Department's water resources management and allocation activities will not conflict with local comprehensive plans. These activities will also prevent local land use decisions which conflict with state water policy.

VI. Conclusion

The Water Resources Department's State Agency Coordination Program meets the requirements of ORS 197.180 by assuring actions that affect land use comply with statewide planning goals and are compatible with comprehensive plans. Compliance and compatibility are assured through increased gathering, evaluation, and use of land use information in Department planning and decision-making. Dispute resolution procedures provides an additional forum for communication, and allow the Department to carry out statutory mandates after exploring potential solutions with local governments. The Program provides for technical assistance to local governments including participation in periodic review and amendment of comprehensive plans. Program implementation will provide important opportunities for improving water resources management and land use planning in Oregon.

Executive Summary

I. Introduction

A. Background

The Water Resources Department (Department) is a state agency that carries out the programs and policies of the Water Resources Commission (Commission). The Commission is a seven person group appointed by the Governor to administer the water laws of the state. The Commission is a steward of the public trust in the waters of the state and is charged with developing an integrated, coordinated state water resources program. The program provides for securing the maximum beneficial use and control of the waters of the state. The Department's staff processes water use permits (water rights), conducts water planning studies, enforces water laws, compiles surface and ground water information, and advises the Commission on decisions relating to policy and water appropriation. More information on the Department's statutory mandates and programs may be found in Section II. E. 2 and Appendices A and B . The Department's structure is displayed in Figure 7.

Since the enactment of Oregon's unified water code in 1909, the state's water resources authority -- whether in the form of the State Engineer, the Water Resources Board, the Water Policy Review Board, or the Water Resources Commission -- has dealt extensively with local interests. Early water law included special provisions for providing municipalities with water and power. Before state government assumed enforcement responsibilities, water law was administered through the counties' watermasters. Oregon's water resources were developed through state interaction with local irrigation, drainage, and water improvement districts.

As Oregon's population grew and water resources issues multiplied, many more agencies and localities became involved. Coordination became increasingly difficult. In 1955 the Legislature addressed the situation by identifying the Water Resources Commission as the single authority to promote and secure the maximum beneficial use of water in the state. [ORS 536.220 (2)] The Legislature also required local governments to conform with the water resources policies of the agency. [ORS 536.360]. Thus, by 1955 the Legislature had established one avenue for state-local water resources coordination.

With the passage of SB 100 in 1973, the Legislature required all local governments to formulate comprehensive land use plans. In the land use planning statutes, "land" means both land and water. These plans must address a number of water resource topics including identifying water supplies needed for growth and water bodies that warrant protection from development. At the same time, the Legislature directed that state agency programs and activities affecting land use must comply with the statewide planning goals and be compatible with the comprehensive plans of local governments.



Oregon Water Resources Department

January 1990

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Dam Safety Hearings
Water Right Contested Cases
Well Enforcement
Contested Cases
Administrative Rule Review
Strategic Water Mgt. Hydro
Task Force

Figure 7

**B. Water Resources Department's
State Agency Coordination Program**

ORS 197.180 is the Legislature's principal mechanism for assuring land use planning coordination. This law requires state agencies to: identify which programs or actions can reasonably be expected to significantly affect land use; establish rules and procedures for assuring such programs or actions comply with the statewide planning goals and are compatible with local comprehensive land use plans; adopt procedures for coordination with state and federal agencies and special districts; and, cooperate with and provide technical assistance to local governments. These elements comprise a State Agency Coordination (SAC) Program.

SAC Programs are to state agencies what comprehensive plans are to local governments -- namely, mechanisms for complying with the statewide planning goals. Just as comprehensive plans are acknowledged by the Land Conservation and Development Commission (LCDC), SAC Programs are approved, or "certified", by LCDC. The Water Resources Department's first SAC Program was approved by LCDC in 1978. The 1978 SAC Program was oriented toward review of local government comprehensive plans during the acknowledgment process. The Department's SAC Program is being updated at the direction of LCDC. The new SAC Program will reflect recent changes in Oregon's water law and in administrative rules governing SAC Program formulation. This revised program supersedes the 1978 SAC Program.

The Water Resources Commission and the Water Resources Department place a high priority on coordination with state and federal agencies, local governments, and special districts in managing the water resources of the state. The Department's SAC Program represents a balancing of the authorities of state and local governments to protect and manage water resources. The SAC Program is designed to promote a mutual awareness in the Department and local governments of their respective water and land planning processes. Increasing opportunities for mutual involvement will help the Department promote maximum beneficial use of, and protect the public interest in, the state's water resources.

E. Water Resources Department Programs Affecting Land Use

1. Criteria for the Determination of Department Land Use Programs

a. Water Resources Department "Land Use Programs"

State agency coordination programs must assure that state agency rules and programs which affect land use ("land use programs") comply with the statewide goals and are compatible with acknowledged city and county comprehensive plans. Administrative rules (OAR 660, Divisions 30 and 31) provide several qualifying criteria for agency land use programs. An agency program affects land use if it is:

- (1) specifically referenced in the statewide planning goals; or,
- (2) reasonably expected to have significant effects on
 - (a) resources, objectives or areas identified in the goals, or
 - (b) present or future land uses identified in acknowledged comprehensive plans; or
- (3) a permit listed in OAR 660-31-012 (2) (f).

(1) Water Resources Department Programs Referenced in the Goals

Goal 16, Estuarine Resources, references the appropriation of surface water and hydroelectric power projects. The Implementation Requirements provided in Goal 16 include a statement that the "State Water Policy Review Board ... shall consider establishing minimum fresh-water flow rates and standards" to maintain estuarine uses. This statement may represent an implicit reference to the adoption of minimum perennial streamflows which is now a function of the Water Resources Commission.

No other Water Resources Department functions are specifically referenced in the Goals. Further, the Department believes these references are out-dated as they cite programs and decision-making bodies which have been largely superseded. Thus, the Department found this criterion of limited use in determining which programs affect land use. No program was determined to be a land use program solely on the basis of being referenced in the goals.

(2) Programs Reasonably Expected to Have Significant Effects on Resources Identified in the Goals or Present or Future Land Uses

As stated previously, water and land use are integrally related and must be managed accordingly. Both surface and ground water resources are mentioned in many of the Goals and are included in the description of "land," as used in the statutory definition of "comprehensive plan." The management and regulation of water supplies certainly has the potential to significantly affect land use.

Section II: Department Rules and Programs

The general nature and broad scope of these criteria forced the Department to develop more focused criteria to identify those programs reasonably expected to have significant effects. The Department worked closely with DLCD to assure that the criteria satisfied the intent of the SAC statute and rules.

The Department's programs were divided into actions. Generally, only actions to adopt rules, policies or plans, or to appropriate water resources were found to affect land use. As determined using the additional criteria listed below, an action is expected to affect land use significantly if it:

- 1) substantially affects water availability; or
- 2) restricts, controls, or allows particular types of water uses; or
- 3) establishes policy which will likely affect water availability or future uses of water; or
- 4) is governed under the sole or lead authority of the Water Resources Commission; or
- 5) involves approving grants or loans for projects to divert, convey, apply, or protect water resources.

(3) Department Permits Listed in OAR Chapter 660, Division 31

OAR Chapter 660, Division 31 identifies Water Resources Department permits for surface water and ground water use, surface water storage, and hydroelectric use as land use programs. These, and other Department land use programs are discussed further in Sections E and F, below.

b. Department Programs Which Do Not Affect Land Use

Under OAR Chapter 660, Division 30, an agency action does not qualify as a land use program if it is:

- (1) expressly exempt from compliance and compatibility requirements by statute, constitutional provision or appellate court decision;
- (2) limited to the transfer or acquisition of real property; or
- (3) not reasonably expected to significantly affect land use.

(1) Programs Exempted By Statute, Constitutional Provision, or Court Decision

The Department has no programs which are exempt from state agency coordination requirements by statute, constitutional provision, or court decision.

(2) Acquisition or Transfer of Real Property

The Department's Water Development Loan Program includes the acquisition and transfer of real property in conjunction with loan defaults and foreclosures. This activity is summarized in Appendix B, Department Programs which Do Not Affect Land Use.

(3) Not Expected to Significantly Affect Land Use

The Department developed supplemental disqualifying criteria to further clarify the interpretation of supplemental qualifying criteria described in Subsection a. above. A Department action is not expected to affect land use significantly if it:

- (a) is advisory to other decision-making bodies or agencies with sole or lead authority; or
- (b) is limited to study or data-gathering with no Commission or Department actions which would actually affect water supplies or uses; or
- (c) involves the enforcement or validation of existing water uses in accordance with established state laws, rules, and standards; or
- (d) is limited to internal administration, such as accounting, word processing, or data processing.

These qualifying and disqualifying criteria formed the basis for determining which Department programs affect land use. A matrix showing the Departments programs evaluated according to the criteria discussed above is provided in Appendix E.

2. Summary and Analysis of Land Use Programs

Each of the Department's programs and activities were evaluated for effects on land use using criteria described in Section 1 above. Those programs and activities which qualified as Department "land use programs" include: adoption of statewide policies; water use approvals (i.e., permits, transfers, exchanges, use of conserved water, instream water rights, minimum perennial streamflows); basin planning (i.e., classification and reservation of water); critical ground water area determinations; withdrawal from further appropriation; the issuance of loan for water development projects; and Commission recommendations to the Legislature on payment for water projects with public benefits. These programs and their relationship to land use are described in further detail below.

(a) Statewide Water Policy Formulation

1. Purpose

State water policies guide Commission actions for protecting the public interest in water. Statewide water policies both express the Commission's direction on managing the state's waters and establish an institutional environment within which decisions are made.

2. Authorization

The Legislature in ORS 536.220 finds that it is in the public interest that a single state agency, the Water Resources Commission, develop and enforce a coordinated, integrated state water resources policy. Under 536.300, the Commission is directed to issue statements pertaining to its coordinated programs for the use and control of all the state's water resources. ORS 536.360 requires every state agency and public corporation to conform to state water resources policy.

There are no procedural administrative rules for formulating statewide policy. Statewide water policies are being adopted as administrative rules under Chapter 690, Divisions 400 and 410.

3. *Statewide Water Policy Formulation Activities*

Since 1955, the Commission has relied on policy statements in statutes and findings in basin programs to guide decision-making concerning water resources. The formal development of policy statements as administrative rules is a recent activity. In 1988, the Commission together with the Strategic Water Management Group approved the Oregon Water Management Program (OWMP). The OWMP consists of three inter-related processes: a two-year program schedule (called the Biennial Water Management Program), basin planning, and statewide policy formulation. The formulation of state water resources policies is authorized by ORS 536.300 and 536.310. One objective of formulating statewide policies is to provide a uniform expression for the state's position on a broad range of water resource issues. The OWMP will not only document existing policies, but identify where new policies are needed.

The process for formulation and adoption of statewide policies is still being developed. In late 1989 the Commission directed staff to draft statewide policies for a number of topics based on policies as found in or expressed through existing statutes and rules. New policies will be established in response to future conditions and needs. Policies will be adopted as administrative rules by the Commission after public hearings. Some policies are expected to be adopted by other lead agencies. Policies adopted by the Commission are not self-implementing. Rather, they will be applied through other programs such as basin planning, permitting, and instream water rights issuance.

4. *Relationship to Land Use*

Because statewide policies are rules which determine the direction and extent of water resources management throughout the state, their formulation has been identified as a land use program. Ultimately, statewide policies are expected to guide Commission and Department decision-making in most management programs. Because of the broad topical scope and statewide nature of the policy statements, testing them against each of the 277 local plans for compatibility is not feasible. Compatibility is best determined and assured at the policy implementation stage. Policies are implemented through other programs where policy-driven actions would be subject to specific compatibility strategies, as described elsewhere in the SAC program. Although statewide policies cannot meaningfully be subjected to compatibility tests at the formulation stage, coordination strategies are very important.

Providing local governments the opportunity to review and comment on proposed policies allows for construction of a coordinated water resources program that respects local interests in water. Early and frequent contact with county commissions and local planning departments also would increase a feeling of ownership in the state program. Providing local governments with a copy of the water resources program, as required under ORS 536.350, will be of little effect if local governments do not understand it or were not involved in its development.

(b) Basin Planning

1. *Purpose*

By law, all waters of the state belong to the public. The Water Resources Department manages the public's water by planning and providing for multiple beneficial water uses. The basin planning process: specifies the water uses for which the Department may grant water rights; identifies water resource problems and potential solutions; reserves future quantities of water for specific needs; and specifies water management controls.

2. *Authorization*

ORS 536.220 describes the need for a coordinated, integrated state water resources policy and the plans and actions needed to implement such a policy. ORS 536.300 directs the Commission to conduct studies and formulate an integrated, coordinated program based on the policies outlined in ORS 536.310. The policies in 536.310 address the protection of existing water rights, provision of safe supplies for human consumption, preferences for multi-purpose impoundments, maintenance of minimum perennial streamflows, and conflicting water uses.

There are no administrative rules directing the basin planning process. Basin programs are adopted as administrative rules under OAR Chapter 690, Division 500.

3. *Basin Planning Activities*

The Department has engaged in basin planning since the passage of the 1955 authorizing legislation. The Department conducts basin planning as part of the Commission's integrated, coordinated program for the use and control of water resources.

Basin reports and programs are the customary products of basin planning. Reports contain information on a basin's character including its size, physical features, climate, and hydrology. Reports also document the nature and extent of water use and control, and which water management issues will be addressed in the planning process.

Programs are administrative rules which control future water appropriations by establishing basin water management policies and specific allowable uses and levels of use. Future water rights may only be issued for uses allowed in basin programs. Existing water rights are not affected by basin programs, except to the extent that waste of water might be defined or controlled. Basin programs classify streams, drainage areas and other water bodies for specific future uses. These classifications can be liberal, allowing nearly every kind of use; or very restrictive, allowing only small or non-consumptive uses. The primary factors in determining classifications are water availability and identified water needs for instream flows, ground water levels and future development. Programs may also specify conditions or restrictions to be attached to water rights through the Department's permitting process. Programs have been established for all but two of the state's 18 drainage basins.

Programs adopted from 1955 to 1983 generally were narrow in scope, concerned almost exclusively with identifying those uses for which unappropriated water remained. There was little attempt to direct the pace or extent of development. Many believed public interests in water were not adequately protected.

To remedy the narrow focus, basin programs were developed using local citizen committees and with increased coordination with the Oregon Department of Fish and Wildlife. The basin planning process continues to change. It is becoming issue-driven, where before it was largely issue-neutral. The focus on issues not only assures relevance, but allows a more timely planning cycle than previously possible. It is expected that programs can be updated every 10 to 15 years, rather than every 25 years. In an effort to better manage the resource, the basin planning process now considers other water management issues in addition to appropriation questions. These issues include watershed and riparian area condition, watershed management practices, water quality and interstate issues. In addition, more emphasis is being placed on ground water management and protection. Strategies and recommendations beyond the direct authority of the Commission are now included in a document termed a basin plan.

When the Department formulates or updates basin plans and programs, it contacts other state agencies and affected local governments. Basin boundaries are such that frequently a number of counties and cities are affected. The Department relies heavily upon state agencies and local governments for information to characterize the basin's human and natural resources and to assist in identifying major water resource issues that should be addressed. Citizen advisory committees and work groups are established to provide public input on issue identification, management alternatives, and recommended solutions. Department staff is responsible for compiling information, writing reports, reporting to the Commission, assisting local committees and work groups, and drafting plan and program language.

The primary action associated with basin planning is the Commission's adoption of a basin program. The basin program consists of administrative rules which assign each stream within a basin an allowable future use or uses. Lakes and ground water bodies may also be classified in the program. Other decisions embodied in a basin program can include reservations for municipal use or economic development or the establishment of minimum perennial streamflows. Reservations provide a way to claim specific quantities of water for future need. Minimum perennial streamflows provide an administrative protection for instream flows. It is likely issuance of public instream water rights will supplant the need for establishing future minimum perennial streamflows. In a basin program update, any pre-existing classification, reservation, minimum perennial streamflow, or other program element can be changed. Existing water rights are not subject to change, however, except to prevent waste.

By statute, before adopting a program, the Commission must hold a public hearing in the affected basin. Department staff make a final recommendation to the Commission based on the hearing record. The Commission may accept, modify, or reject staff recommendations for a proposed program, but ultimately decides how to classify the waters of the basin.

The adoption of a basin plan is another action associated with basin planning. The basin plan can be viewed as the Commission's official recommendations to other commissions and agencies. Basin plans also contain those Commission directives to the Department that are not appropriately expressed through rule.

The Commission may also amend or allow exceptions to basin programs. One type of exception -- application for a water use not referenced in a basin program -- is addressed by rule (OAR 690-82-010). Other exceptions are heard by the Commission on a case-by-case basis in conjunction with a staff recommendation. Basin program amendments may be undertaken by the Commission on its own initiative or by petition from other parties. In order to amend a basin program, by statute the Commission must hold a public hearing in the affected basin.

4. Relationship to Land Use

Basin planning is designed to affect one of the most important resources addressed by the statewide land use planning goals -- water. It is therefore a "land use program" as defined in OAR Chapter 660, Division 30. However, one of the most important features of the basin planning program's relationship to land use is the position it and other water policy expressions occupy in the statutes with respect to local governments. ORS 536.360 states:

In the exercise of any power, duty or privilege affecting the water resources of this state, every state agency or public corporation of this state shall give due regard to the statements of the commission and shall conform thereto. No exercise of any such power, duty, or privilege by any such state agency or public corporation which would tend to derogate from or interfere with the state water resources policy shall be lawful.

"Public corporations" are defined under ORS 536.007 as including "any city, county or district organized for public purposes." ORS 536.370 states that the Commission must approve any public corporation order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy.

These statutes underscore the importance the Legislature places on state water resources policies which basin programs express. It is clearly the Legislature's intent that local government actions be consistent with state water resources policies. In a 1983 opinion requested by the Water Policy Review Board (predecessor to the Water Resources Commission), the Attorney General's Office concluded that local governments may exercise planning and zoning authority only to the extent not directly in conflict with the Board's statutory authority. [OP-5506, 1983] Thus, it is the goal of the Water Resources Commission to recognize local government land use plans to the maximum extent possible, consistent with the public interest as expressed through state water resources policy.

The relationship between basin planning and land use planning is not straightforward. By establishing the types and limits of allowable future water uses, it is clear that basin planning can influence the type and extent of land use. However, past basin plans and programs have done little to define potential relationships with local land use plans. Many basin programs were adopted prior to the beginning of Oregon's current land use planning process in 1972. For basin programs updated or formulated since 1972, there has been a limited understanding on the part of Department staff of the linkages between basin planning and local land use planning. Conversely, local representatives generally have not been aware of the existence or purpose of basin programs. Consequently, each program has had little effect on the other.

This lack of awareness may be partially due to the treatment of water resources in the state land use planning goals, upon which all local plans are based. There is no water resources goal, per se. General references to water resources carrying capacity are spread throughout the goals. Although Goal 5 is frequently represented as a water resources goal, it actually deals in a very broad fashion with natural resources, open space, and scenic and historic areas. Thus, local plans have not been required to address water resources issues in any specific or uniform way.

Goal 5 requires local governments to inventory "water areas" as part of their comprehensive plans. Goal 5 also recommends that reservoir sites be protected from irreversible loss and that streamflows be protected for instream uses. However, there is no reference to Water Resources Commission programs or state water policy statements -- in contrast to specific references to the Oregon Wildlife Commission, the State Natural Area Preserves Advisory Committee, and the State Advisory Committee on Historic Preservation. The only explicit reference to the Water Resources Commission (or the Water Policy Review Board at the time of Goal adoption) or the Water Resources Department is under Goal 16 (Estuarine Resources) -- and then only in terms of appropriation and minimum perennial streamflows, not planning. In short, although the Goals do not prevent local governments from coordinating with Commission planning programs and adhering to state water policy, this coordination is not encouraged or required.

The lack of understanding of the relationship between basin planning and land use planning on the part of WRD staff also stems from the complicated nature of that relationship. One of the complicating factors is how land uses identified in local plans and water uses interact. Seldom is the tie between the two so direct that Commission action precludes or would necessitate changes of the overlying land use category.

For example, the Commission may withdraw a stream in an agricultural zone from future use for irrigation. This could affect, but not necessarily preclude, the future development of irrigable lands. Alternative sources of irrigation water could include ground water, savings from conservation, purchase or lease of nearby water rights, service from existing irrigation districts, or use of water from storage. Thus, customary land uses in the area could continue. Zoning ordinances normally do not distinguish between types of agriculture. Therefore even if alternative irrigation sources are not available, agricultural uses of the land, such as dryland farming or grazing, frequently remain. Thus, in one sense, the Commission withdrawal would have no effect on the local plan designations. On the other hand, if an area relies heavily on irrigated agriculture and alternative sources are few, the withdrawal is likely to affect the local pattern and intensity of land use, even if it does not directly affect a local plan.

Conversely, the Commission might allow industrial use of a stream in a zone where industrial land uses are not allowed. This does not necessarily represent a land use / water use conflict. Water is not always used on lands immediately adjacent to a stream. For example, a potential industrial user could occupy an industrially-zoned parcel and yet need to divert water from a distant stream outside the zone. Thus, allowing a water use for a land use precluded by an overlying zone is not necessarily inconsistent. In this case, matching a stream's classification to the surrounding zoning could frustrate a local government's goal of economic development. Because of these types of issues, there is a potential for incompatibility between basin planning and land use planning.

Within a basin, water flows through many jurisdictions. In recognition of the mobile nature of both surface and ground water resources, the Commission is directed by statute to coordinate many interests. One type of coordination deals with balancing state and local interests. Another involves weighing the frequently competitive water resource demands of many local jurisdictions. Examples of the latter might include assessing opportunities for pooling water rights or funds to regionalize city water supplies, coordinating projections of water use for agriculture or recreation from a stream separating two counties, or maintaining sufficient flows to absorb projected sewerage discharge increases from all upstream cities. In short, it is likely the Commission may have to say "no" to City A, in order to meet the needs of Cities B, C, and D. This means that provisions of a given basin program which are compatible with one local plan can at the same time be incompatible with another.

It is the Commission's goal to be as compatible as possible with local plans. Ultimately, this can be assured by obtaining confirmation from all local governments in the basin that the basin plan and program are compatible with local comprehensive plans. However, compatibility is most effectively achieved through early coordination in the basin planning process, and through on-going technical assistance. For example, an area where both local and state government could derive considerable benefit is the identification of future water needs. Local plans reflect projected growth and indicate where and at what levels future development will take place. Often these projections are not tied to water supply or state water policy. It is important that WRD and local planners use the same inventory information in their respective planning processes.

Compatibility can also be achieved through the Department's permitting process. The permitting process can be viewed as one form of implementation for basin programs. That is, permits can only be issued for uses that conform to basin program classifications and statements. As described elsewhere in this document, water use permits are defined in OAR Chapter 660, Division 31 as "Class B" permits and are subject to certain compatibility requirements. In other words, the classifications established in basin programs are tested against local plans during water use permit review.

(c) Instream Water Rights

1. Purpose

Instream water rights are water rights held in trust by the Water Resources Department to support public uses in streams and lakes. The main purposes of providing for instream flows are to protect aquatic life, dilute water pollution, and maintain recreational values. Historically, the Water Resources Commission has been directed to adopt administrative rules establishing certain quantities of water for instream use. These rules, called minimum perennial streamflows, protected instream flows, but monitoring was limited and many streams were already depleted by earlier water rights not subject to the minimum streamflows. During the 1987 legislative session, public instream uses were declared to be "beneficial" for purposes of appropriation. Instream water rights were created to give public instream uses the same legal status as water rights for out-of-stream uses. Instream water rights must be set at the level needed to provide public benefit. If this level exceeds present flows, it establishes a management goal and basis for denial of further appropriations.

2. Authorization

Instream water rights are defined in ORS 537.332 to 537.360. These statutes call for conversion of previously established minimum perennial streamflows. Under these statutes, only the Oregon Departments of Fish and Wildlife, Environmental Quality and the Parks Division may apply to the Commission for instream water rights. A process for transferring and leasing out-of-stream water for instream use is also provided. Procedures and standards for issuing instream water rights are prescribed in OAR 690, Division 77.

3. Instream Water Rights Activities

To date, the Department has converted about 465 out of 490 minimum streamflows to instream water rights. About 40 instream water right applications have been submitted to the Department. Nearly all were submitted jointly by the Departments of Fish and Wildlife and Parks and Recreation to reserve flows for fish and recreational uses. Of these, about 25 have been approved with the remainder still pending.

4. Relationship to Land Use

WRD's authority and program activities to protect instream flows qualify as "land use programs" for SAC purposes. Issuing instream water rights is similar to the Department's water use permitting activities in that both provide for discretionary review of applications to use the public's water. Both result in the allocation of water that is then unavailable for future uses.

Section II: Summary and Analysis of : *Instream Water Rights*

The statutory definition of "land use" states that "land" includes water (both surface and subsurface). Under Goal 5 guidelines, local governments are encouraged to consider instream flows in their planning decisions. For example, local recreation policies and the siting of parks and recreational facilities could be influenced by an assurance that some level of flows are protected. The amenities provided by a river or lake with good water quality, scenic surroundings, and fish resources can significantly influence growth in a community. On a larger scale, the maintenance of instream flows can influence regional economies by protecting fisheries, water quality, and recreational areas which are used by in- and out-of-state residents. At the same time, the issuance of instream water rights signifies a withdrawal of water, at least in a particular stretch of stream, from future appropriation for other uses.

(d) Reservations of Water for Future Economic Development

1. Purpose

Reservations of water for future economic development allow certain quantities of water to be set aside for specified uses which, when developed, will have preference over all water rights subsequent to the date of the reservation, including instream water rights.

2. Authorization

ORS 537.356 authorizes any state agency to request the Water Resources Commission to reserve unappropriated water for future economic development. ORS 537.358 requires the Water Resources Commission to adopt rules to carry out the intent of the authorizing legislation. OAR 690-77-200 governs WRD activities relating to reservations for future economic development.

3. Water Reservation Activities

The administrative rules governing reservations set up a two-step process. First an application for a reservation is submitted. Only state agencies may apply for reservations. If the request is approved, it is recorded as an amendment to the basin program. Second, an application must be submitted at a later date for actual use of the reserved water.

WRD must notify the Oregon Departments of Fish and Wildlife, Environmental Quality, and the Parks and Recreation Department within one month of the receipt of a reservation request. A member of the Water Resources Commission must conduct a public hearing on the proposed reservation in accordance with ORS 537.170 within six months of receipt of the request. The hearing must be conducted in the basin of the proposed reservation.

Approval of the initial reservation requires a public interest determination in accordance with standards outlined in OAR Chapter 690, Division 11. The Director must prepare findings and a recommendation to the Commission on the proposed reservation. The Commission may approve, partially approve, condition or deny the request.

Applications for the use of reserved water shall also undergo a public interest determination based on the standards outlined in Division 11. The administrative rule specifically requires a consideration of "land use plans or policies of local jurisdictions," and states that, "if the reservation contemplates future development that is not foreseen in the plans, the Commission shall seek concurrence of the affected local jurisdiction(s) before making the reservation."

To date, WRD has received one inquiry into reservation of water for future economic development. The interested party was advised that information requirements include the following items:

1. Agency name and address;
2. Purpose of reservation;
3. Amount of water;
4. Source of water;
5. Natural flow or storage;
6. Season of use;
7. Place of use;
8. Developer;
9. Term of reservation;
10. Schedule of development;
11. Economic benefits;
12. Land use compatibility;
13. Alternatives;
14. Foregone opportunities;
15. Existing/future water use;
16. Adverse water impacts;
17. Water management measures;

The Commission has adopted similar information submittal requirements as part of the Department's updated SAC Program.

4. *Relationship to Land Use*

The intent of establishing reservations of water for future economic development is to provide known quantities of water to support certain planned land uses. Almost by definition, these reservations can reasonably be expected to have a significant impact on land use and water use in Oregon. Increasing competition for water between instream and out-of-stream uses is expected to lead to an increased interest in water reservations. Thus WRD activities in this area qualify as a "program affecting land use" and must be addressed in WRD's SAC Program.

(e) Establishment of Minimum Perennial Streamflows

1. Purpose

Minimum perennial streamflows, ("minimum streamflows"), are administrative rules which assign quantities of water and priority dates for the support of instream uses such as aquatic life or pollution abatement. Minimum flows are administered as water rights, with the exception that they are subject to administrative actions that may modify their effect.

2. Authorization

ORS 536.235 makes establishment of "minimum perennial" streamflows a high priority of the Water Resources Commission and the Water Resources Department.

ORS 536.310 (7) states that the "maintenance of minimum perennial stream flows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit .."

ORS 536.325 establishes procedures for accepting, reviewing, and adopting minimum streamflows.

OAR Chapter 690, Division 76 contains the definitions, standards, processes and criteria for the evaluation of minimum perennial streamflow applications.

3. Minimum Perennial Streamflow Activities

Since 1955, the Water Resources Commission has established over 500 minimum streamflows statewide, mostly through basin planning. In 1983 the Legislature made significant changes in the minimum streamflow program. Minimum streamflows may be requested by the Departments of Environmental Quality and Fish and Wildlife. The Commission may also modify or adopt minimum streamflows on its own initiative. Before adopting a minimum flow the Commission must consider Water Resources Department recommendations, provide all other state agencies which may be concerned an opportunity to be heard, consider all legislatively mandated policies, and hold at least one public hearing in the affected river basin.

Section II: Summary and Analysis of : *Minimum Perennial Streamflows*

Minimum flows have priorities dating from when applications were received or, absent applications, from when the Commission initiated action to consider the flows. Within one year of the date an application is received, the Commission must adopt the requested flow, adopt an alternative flow rate, or deny the request. If an alternative flow rate is adopted, the Commission must make a finding that the adopted rate is more appropriate for supporting aquatic life and minimizing pollution. If the request is denied, the Commission must make a finding that establishing a minimum flow is of lesser importance than other uses of the waters of the particular stream. Minimum flows are recorded in applicable basin programs.

In 1987, the Legislature created instream water rights and required all existing minimum streamflows to be converted to instream water rights after a hearing. Instream water rights are water rights held in trust for the people of the state by the Water Resources Department. Unlike minimum streamflows, they cannot be modified by administrative action. Because of this, they are expected to supplant minimum streamflows for purposes of protecting instream uses. However, the Legislature did not do away with minimum streamflows by creating instream water rights. It is possible additional minimum streamflows may be established in the future.

4. Relationship to Land Use

Minimum flows affect future water availability and are indirectly referred to in Goal 5 and Goal 16. Minimum flows also protect public uses such as fish and wildlife habitat, pollution abatement, and recreation, all of which are addressed throughout the statewide planning goals. Therefore, establishment of minimum perennial streamflows represents a land use program.

(f) Withdrawal of Water from Appropriation

1. Purpose

The Legislature established withdrawals to provide an administrative mechanism for making unappropriated water unavailable for further appropriation if necessary to: a) ensure compliance with the state water resources policy; and/or b) uphold the public interest in conserving or controlling water for the maximum beneficial use.

2. Authority

ORS 536.410 authorizes the Commission to withdraw waters of the state from further appropriation. Withdrawals are adopted as administrative rule in accordance with the Administrative Procedures Act. There are no additional administrative rules governing withdrawal activities.

3. Withdrawal Activities

Water withdrawals have been ordered since the inception of Oregon's water code in 1909. Early withdrawal orders generally withheld waters from appropriation, except as needed for irrigation purposes. The State Engineer would apply for withdrawals upon the request of irrigation or reclamation districts. Many of these early withdrawals for undeveloped storage projects have been cancelled and surplus unappropriated waters returned to the public.

The State Engineer also filed withdrawal orders in response to verified complaints that there was insufficient water on an annual basis to support existing water rights. In addition there are a number of legislative withdrawals in statute. Since 1909, the legislature has withdrawn waters for various purposes including protection of municipal supplies, fish and wildlife, and parks.

Today's statutes authorize the Water Resources Commission to file withdrawal orders. Prior to the issuance of an order, the Commission must hold a public hearing on the necessity for the withdrawal. The Commission must follow standard rulemaking proceedings as required by the Administrative Procedures Act. The Commission may amend basin programs to include withdrawals. In many ways, the action of withdrawal is similar to that of classification. The Commission is using restrictive classifications in place of withdrawals. Withdrawals are now being used more as responses to immediate needs for limited duration.

4. Relationship to Land Use

The withdrawal of unappropriated waters is found to be an "agency program affecting land use." Making unavailable a portion, or all, of the unappropriated waters of a particular water body could significantly affect land uses adjacent to and in the vicinity of the water body. In addition, restricting certain uses could require local or regional changes to rural and urban economic development strategies.

(g) Critical Ground Water Area

1. Purpose

Oregon water law contains strong policies to protect the supply and quality of ground water. The statutes authorize the Water Resources Commission to control the use of ground water to achieve policy goals. The Legislature created the "critical ground water area" (CGWA) designation as a tool to mitigate or prevent excessive ground water level declines, overdraft, interference between users, and contamination.

2. Authority

Statutory authorization for critical ground water area determinations is found in ORS 537.620, 537.730, 537.735, and 537.740. Rules to implement the program are found in OAR Chapter 690, Divisions 8 (Definition and Policy Statements Regarding Statutory Ground Water Terms), 9 (Ground Water Interference with Surface Water), and 10 (Water Resources Department).

3. Critical Ground Water Area Activities

The Water Resources Commission may declare a critical ground water area if: 1) ground water levels in the area are declining or have declined excessively; 2) there is or is likely to be substantial interference between: ground water users; or ground water and surface water users or minimum perennial streamflows with earlier priority dates; or ground water users and geothermal development managed by the Department of Geology and Mineral Industries; 3) the ground water is or is about to be overdrawn; or 4) ground water contamination is occurring, or is likely to occur. The Commission may begin the CGWA process upon its own motion, when petitioned by DOGAMI or any existing water user, or when a proposed use of ground water is likely to cause significant interference between water users.

To date, the Water Resources Commission has approved five critical ground water area orders. These include the Cooper Mountain/Bull Mountain, Ordnance, Cow Valley, the Dalles, and Butter Creek Critical Ground Water Areas. Minimum acreage-to-well ratios are also in effect under the Cooper Mountain-Bull Mountain order. The administrative rules under which existing critical ground water areas were established were superseded in 1986. Current and future CGWA proceedings will be carried out in accordance with current rules as described below.

The Water Resources Department Director initiates proceedings for determination of a critical ground water area. Notification is published in newspapers of general circulation in the proposed critical area vicinity. The notification is also mailed to ground water permit applicants and licensed water well constructors within the area boundaries, and to the governing bodies of counties and cities in the area. It is generally expected that the Department would defer action on pending applications after issuing the notification. However, the Commission could grant ground water use permits within the proposed critical area boundary only after holding a contested case hearing.

A period of investigation follows the Notification of critical area proceedings. Within 270 days, the Department must hold a public hearing or the Notification expires. The Commission must hold a public hearing prior to adopting an order establishing the critical area boundaries. State law requires that licensed well constructors, ground water appropriators, and affected cities be notified of the hearing. If the Commission confirms at the conclusion of the public hearing that any of the ground water problems listed above exist, and further finds that protecting the public welfare health and safety require the enactment of corrective controls, the Commission may adopt an order establishing the critical area boundaries. The extent of restrictions on pumping may be defined by rule or order.

The Commission must distribute copies of the order to all parties in the proceeding and file a copy of the order with the clerk of each county within which any part of the critical area lies. The clerk must record the order in the county's deed records. The Commission may suspend, modify, or cancel any order.

4. Relationship to Land Use

The designation of a critical ground water area can significantly affect land use and development and qualifies as a Department land use program. Restrictions on the issuance of ground water permits are imposed when proceedings are initiated, and when rules or orders are adopted. The order defines the areal and hydrogeologic boundaries of the critical area. The order or a separate rule may include any of the following corrective control measures: 1) closure of the critical area to further appropriation; 2) restrictions on the total withdrawal of ground water per day, month, or year; 3) preferred water uses (i.e., residential and livestock watering) not based on priority dates; 4) reduction or prohibition of pumpage by established appropriators; 5) the abatement or sealing of any well; and, 6) a system of rotation between users.

State law requires the Commission to maintain stable ground water levels, and take action to prevent and control substantial interference, overdraft, and contamination of ground water. Under Goal 5 local comprehensive plans are required to inventory and provide programs to protect important ground water resources. Critical ground water areas should be viewed not only as a regulatory tool, but also as an information source for use in local land use planning within those areas.

(h) Applications and Permits

1. Purpose

A permit is required to use, divert, or store any water in the state, except for a few very specific exceptions. Permits for water use are issued to ensure orderly development of the state's water resources for beneficial use without waste. Permits document the conditions under which water resources can be used. Permits also provide a framework for evaluating whether the use has been established (or "perfected") and can be issued a water right. The permit application review process is designed to ensure that existing beneficial uses and the public's interest in water resources are protected.

2. Authorization

Permits for appropriation of the waters of the state are required under ORS 537.110 through 537.295 and 537.505 through 537.745. These statutes apply to surface water and ground water appropriations and prescribe procedures for application and application review, exemptions, standards for approval, standards for hearing, time restrictions, and cancellation of permits.

Corresponding administrative rules are found in OAR 690 Division 11 (Applications and Permits), Division 20 (Dams), Division 50 (Appropriation and Use of Water For Hydroelectric Power Projects, Division 51 (Appropriation and Use of Water for Hydroelectric Power and Standards for Hydroelectric Applications), Division 74 (Standards for Consideration of Applications Involving Hydroelectric Projects), and Division 82 (Rules for Acceptance of Applications for Water uses in Addition to Classified Uses). With one case excepted, Division 51 supersedes Divisions 50 and 74.

3. Permitting Activities

A permit to use or "appropriate" water allows a person to develop a water use prior to certification. Certification is provided through issuance of a water right. Permits are required for nearly all uses of surface water and ground water, except as follows. Certificates for instream water rights are not preceded by issuance of a permit as the use(s) does not require diversion or control of water. Transfers, exchanges, and the use of conserved water are authorized by order. Procedures for approval of these water uses are discussed under separate program summaries. ORS 537.142 exempts the use of less than 30 gallons per minute of surface waters for egg incubation from all WRD permit and certificate requirements. ORS 537.545 exempts the use of ground water for stockwatering, down-hole heat exchange purposes, and domestic, industrial, commercial, and irrigation uses less than specified amounts from WRD registration, permit, and certificate requirements. However, 1989 legislation has authorized the Water Resources Commission to require permits of exempt uses under certain circumstances.

The Water Resources Department Applications and Permits section reviews about 400 permit applications for new uses each year. Application fees are set by statute, however 1989 legislation authorized the Water Resources Commission to set fees for certain minor applications. WRD provides notice of all applications submitted to those persons on a standard weekly mailing list. County planning departments and certain DLCD Field Representatives are included on this list. However, most cities are not on the list and therefore may be unaware of ongoing state water permitting activities.

Oregon administrative rules allow the Director to act on certain permit applications. Larger or more complex appropriation requests require Water Resources Commission review. The Director must screen all permits to determine the potential for "substantial public interest issues." The Director may also refer minor permit applications where the potential for a substantial public interest issue is found to exist. Where authorized, the Director may issue a permit if: 1) the application is consistent with Commission policies; rules, and basin programs; 2) existing rights holders are protected; 3) water is available; 4) there is no request for additional review by other agencies or persons; and, 5) the appropriation does not raise any other substantial public interest issue.

The Water Resources Commission may act on a permit application in three ways. The Commission may:

- 1) find that the use would not be detrimental to the public interest and instruct the Director to issue a permit; or
- 2) find that the use, as appropriately conditioned, would not be detrimental to the public interest and instruct the Director to issue the permit with the conditions; or
- 3) find that the use may be detrimental to the public interest because it raises a substantial public interest issue and require a contested case hearing under ORS 537.170 and 537.180. The hearing is noticed to various parties including the affected local government planning agency and the owners of contiguous lands. Interested persons (including agencies) may petition for party or limited party status. If the petition is approved, they may conduct discovery, submit evidence, examine and cross-examine witnesses and file proposed findings, briefs and exceptions (see program summary for Contested Case Hearings in Appendix B).

OAR 690-11-080 (4) establishes standards to be applied by the Commission or Director in making determinations of public interest. Following a hearing, the Commission may approve issuance of a permit, approve a permit with modifications or conditions, or reject the application with findings.

According to OAR 690-11-090 (8), when a change of interest occurs in lands covered by a permit, the permittee may request the Water Resources Director to assign the permit to the new owner. Actual construction of diversion works must commence within one year of permit issuance. Time limits for completion of construction shall not exceed five years. Time extensions may be granted only to FERC-related project permits or permits issued to a municipal corporation for municipal uses. If no appropriation is made under the terms of the permit, OAR 690-11-100 authorizes the Department to initiate proceedings for permit cancellation. The permittee must be notified and given 60 days to respond to an intent to cancel the permit.

4. Relationship to Land Use

As most land uses need some amount of water to sustain them, WRD's permitting activities significantly affect land use by regulating water use throughout the state. Existing rules reflect the land/water use relationship. WRD water use permits are listed under the "Class B" heading in OAR 660 Division 31. WRD permits state that the issuance of the permit is not a finding of compliance with the statewide planning goals or compatibility with the acknowledged comprehensive Plan. Permittees are also advised that they must receive all applicable land use approvals from affected local governments.

In addition, OAR Chapter 690 Division 11 provides standards for whether a substantial public interest issue exists. These standards require the Director and the Water Resources Commission to assess whether issuance of the permit would be likely to 1) adversely affect vested or inchoate water rights (those rights applied for but uncertified at the time adjudication takes place), 2) result in the wasteful, uneconomic, impractical or unreasonable use of water, 3) impede orderly economic development of the waters involved, 4) be a non-beneficial use of water, and 5) jeopardize the public good. Existing rule language expressly requires an assessment of impacts from a permit on "the public good" to include consideration of "basin policy, state statutes and the respective land-use plans of the jurisdictions affected." (underline added)

Division 51 outlines specific standards for the review and approval of hydroelectric license and permit applications. A municipality or public utility applies for a permit while a non-municipal or private utility applies for a license to use water for hydroelectric power generation purposes. The Department is required to notice both the governing body(ies) and planning department(s) of affected cities of pending applications. The standards for project evaluation include a section entitled Land Resources. Under this rule, the Commission must enter findings that the project will avoid or minimize impacts on prime farmlands, forest lands, wetlands, scenic resources designated for protection in local comprehensive plans or by state or federal agencies, and endangered natural or geological communities as identified by the Oregon Natural Heritage Data Base. The Commission must also find that the project will not violate state noise standards, disturb fragile or unstable soils, or cause soil erosion that would impair water uses. The project must be designed with appropriate safeguards to withstand natural hazards such as geologic instability, flooding, and ice formation.

Division 51 also contains a section entitled Land Use which requires the Commission to consider input on land use in affected counties and cities. The rules require Commission action to be consistent with local government recommendations except when:

- 1) The recommended action conflicts with the development, use, and control of the state's water resources; or
- 2) The recommended action conflicts with the Commission's integrated coordinated water use program for the affected basin.

If inconsistent with the recommendation of an affected local government, the Commission must support its action with findings showing cause for action. The applicant is required to provide local government approval(s) to the Commission prior to issuance of a license or permit. To approve a hydroelectric application the Commission must find that:

- 1) The project complies with statewide land use goals; and
- 2) Either the project is compatible with the acknowledged local comprehensive plan; or local government application of the comprehensive plan conflicts with the Commission's control over, or policies for, the state's water resources.

In summary, Water Resources Department permitting activities are governed by sets of rules which already contain references to the Statewide Planning Goals and local land use planning. WRD is already attempting to achieve compatibility with local comprehensive plans. However, opportunities exist to enhance the level of communication between WRD and local governments regarding WRD's water use permitting and effects on land use.

(I) Water Rights Transfers

1. Purpose

Water rights in Oregon are issued for specific uses in specific locations. No change in either is allowed without approval of the Water Resources Department. A change in the type of use, the place of use, or the point where water is diverted is called a transfer. Water right transfers add flexibility to Oregon's prior appropriation water rights system. The laws regulating transfers ensure that net water use is not increased and that existing rights holders will not be harmed.

2. Authorization

Water right transfers are authorized under ORS 540.510 through ORS 540.570. The statutes provide special guidance for lands within irrigation and water control districts. Corresponding administrative rules for transfers are found in OAR Chapter 690, Divisions 15 and 16. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Transfer Activities

A transfer may include a change in the point of diversion or a change in the type or location of use. It may also include shifting a water right from supplementary to primary status. Any legal owner of a valid water right may apply to the Water Resources Department for a water right transfer or exchange. When a transfer is approved the original water right is superseded and an amended water right issued. Increasing the amount of water use and/or expanding the area of water use (for irrigation) constitutes an enlargement of the water right and is not allowed under the transfer provisions.

Transfers provide for changes in water use but preclude increasing the quantity used or injury to other users. Water rights transfers are approved through an order issued by the Water Resources Commission. Over the past approximately two decades, the Department has received an average of about 200 transfer applications annually.

Primary departmental activities associated with evaluating transfers involve ascertaining the status of existing water rights and determining the potential impact of the transfer. State statutes and rules require public notice of pending transfer applications. Administrative rules pertaining to water right transfer require that notice be published in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion. Those applications requiring notice may not be approved in less than 20 days from the date of notice. Those applications not requiring notice may not be approved in less than 30 days after the date of application. Protests may be filed at any time prior to approval of a pending application. The Water Resources Commission may hold a hearing if sufficient public interest issues emerge.

Failure to complete a water right transfer as approved may constitute grounds for forfeiture of the water right. The Department may grant time extensions on completion of a transfer. Normally, time extensions are granted for one year only. An extension of up to five years may be granted to a municipal corporation for municipal use.

4. Relationship to Land Use

The review and issuance of water right transfers is similar and related to WRD permitting authority. Accordingly, most water rights transfer activities meet the criteria of a "land use program" for SAC purposes.

Transfers can be associated with a change in land use and/or the construction of diversion or distribution facilities on the ground. A change in the type or place of use could be associated with land use plan amendments, local urbanization trends, and changing land values. For example, the subdivision of agricultural lands for residential uses may include changing the point of diversion from surface water to ground water. Transfers involving changes in the point of diversion and shifts from a supplemental to primary rights would not correspond to a change in land use, but could result in the construction of diversion, transmission or pumping facilities on the ground.

However, certain transfers are not expected to have significant effects on land uses. These include transfers which:

- a) involve only irrigation uses; and
- b) involve place-of-use changes only; and
- b) involve no structural change; and
- c) would be located within irrigation districts or Exclusive Farm Use Zones.

Water rights transfers meeting these four conditions would be expected to serve irrigation uses on farm lands both before and after Department action on the application. Further, local governments generally do not differentiate between irrigated and non-irrigated agriculture in their land use plans. Thus, the Department's review and approval activities involving transfers meeting the above criteria are not treated as land use programs.

(I) Water Right Exchanges

1. Purpose

An exchange is a transfer between sources where equal (or reduced) amounts of stored, surface or ground water are used to replace the other source in amounts sufficient to satisfy prior appropriations. Aside from ensuring protection of existing water rights and the public interest, the Water Resources Commission may approve an exchange only if water can be used more efficiently and instream uses are enhanced. Allowing exchanges adds flexibility to Oregon's prior appropriation water rights system.

2. Authorization

Water rights exchanges are authorized under ORS 540.533 through 540.543. There are no administrative rules governing WRD's water exchange activities. However, the statutes are very specific in outlining procedures and standards for evaluating exchange requests.

3. Exchange Activities

Historically, the Department approved water rights exchanges by modifying established rights and issuing rights for supplemental as well as primary uses. Only one application for exchange has been filed since the authorizing statutes were enacted in 1987. This project involves an exchange of rights to use Columbia River water for rights to use Umatilla River water. The exchange of these rights will provide for irrigation and increased instream flows.

4. Relationship to Land Use

WRD's authority to approve water exchanges meets the criteria for a "land use program" as outlined under administrative rule. Although the authorizing statutes do not provide for a change in the type of water uses allowed, exchanges may affect large amounts of land and many interested parties. Exchanges may also involve the construction of storage and distribution facilities. To ensure that existing uses can be maintained, the Commission must determine whether replacement waters will be equal to the water exchanged. Further, exchanges have the potential to maintain or enhance instream flows.

Section II: Summary and Analysis of: *Water Right Transfers*

(k) Use of Conserved Water

1. Purpose

The purpose of this program is to encourage water conservation by allowing water right holders to use a portion of their water savings. In 1987, Senate Bill 24 was passed and codified as ORS 537.455 to 537.500. This law allows a water right holder to use part of any water saved through conservation and returns part to the state. Previously, any water saved was not available to the person saving it, but was immediately returned to the public domain.

2. Authorization

ORS 537.455 to 537.500 declares the policy of the state as being the aggressive promotion of conservation and the encouragement of the highest and best use of water by allowing the sale or lease of the right to the use of conserved water. ORS 540.510 allows any right to the use of conserved water to be severed from the land and transferred or sold.

OAR Chapter 690, Division 18 establishes procedures for processing applications for the use of conserved water.

3. Activities Involving the Use of Conserved Water

Conserved water is defined in ORS 537.455 and OAR 690-18-020 as "the amount of water, previously unavailable to subsequent appropriators, that results from conservation measures." Any holder of a valid water right may apply to use conserved water if the proposal meets requirements outlined in statute and administrative rule.

Basically, an applicant must demonstrate that the proposed conservation measure(s) will make conserved water available for other uses. The processing of applications to use conserved water includes: 1) review of the conservation proposal's scope and effectiveness; 2) quantification of probable water savings; 3) analysis of impacts on other users; 4) developing recommendations for assignment of conserved water to the user and state; 5) determining public interest issues and impacts; 6) providing substantial public notice; and, 7) referral by the Director to the Commission for approval. Authorizing statutes require the Commission to allocate 25 percent of the conserved water to the state, unless the Commission finds that more or less water should be allocated to the state based on several criteria.

The Commission may allocate the conserved water if it finds that the proposed conservation measure:

- (A) Is feasible; and,
- (B) Will produce conserved water; and,
- (C) Can be effected without injury to existing water rights; and
- (D) Will not adversely affected the public interest.

When the Commission approves an application for use of conserved water, it issues a final order stipulating the percent of water allocated to the applicant and the state, and any conditions on the use of conserved water. A new water right certificate is issued for the diminished original right and another for the new use of the conserved water. When the state's share of the conserved water is dedicated to instream use, a certificate is issued for that purpose as well. Given the newness of this process and its complexity, it is unclear how many water users will participate in the program.

4. Relationship to Land Use

The use of conserved water qualifies as a "program affecting land use" for SAC purposes. The use of conserved water can involve changes in the type and intensity of land use, much like water use permits. For example, a water right holder may wish to apply conserved water for residential use to a parcel currently zoned for open space or agricultural land uses. The proportion of conserved water allocated to the state can potentially affect public uses such as recreation, fish and wildlife, water quality, navigation, and scenic values. These public uses should be reflected in local comprehensive plans as required by the Statewide Planning Goals.

(I) Water Development Loan Program

1. Purpose

The Water Development Loan Fund was established by general election in 1977. The Fund was created to provide fiscal incentives for local development of irrigation facilities and other agricultural improvement projects. Later amendments of the Act authorize loans for municipal supply projects in smaller communities, and fish protection and watershed enhancement projects. Secondary uses (i.e., recreation, conservation, water quality enhancement, power generation, etc.) may also be funded as long as the primary use falls into one of the above categories. The Commission must give the highest priority to loan applications for projects which would alleviate health hazards.

2. Authorization

Legal authority for the Water Development Loan Program is found in ORS 541.700 through 541.855 and OAR Division 90.

3. Description of Activities

The first Water Development Loan application was submitted to the Department in 1978. The first sale of general obligation bonds to fund the loans was approved in 1979. Since then, bond sales have funded approximately 190 irrigation and drainage projects. In 1984, two cities and a water district had water supply projects financed through a \$2,215,000 bond sale.

Loan application submittal requirements include detailed information to ensure the eligibility and financial solvency of the applicant, and the viability of the proposed water development project. The administrative rules require that the applicant meet the definition of a "water developer," which includes any individual resident of this state, a profit, non-profit, or cooperative whose principal income is from farming, water improvement, control, irrigation or drainage districts, ports, cities and counties. The applicant must provide a statement from the appropriate city or county official stating that the proposed project complies with applicable land use regulations and other applicable regulations and ordinances. The rules prohibit approval of a loan to fund a project that would conflict with any state or federal agency statutes or rules, or any adopted local comprehensive land use plans approved by the Land Conservation and Development Commission.

Over the life of the program, 20 loans have been foreclosed and the security property taken into state ownership, with three loans currently in the process of foreclosure. Several bankruptcies have also been declared. The rules allow the Director to collect on delinquent accounts in a number of ways. The Director may accept a deed of foreclosure or purchase or real and personal property. The Director may initiate actions such as contracting for service and repair, reserving, or sale of property owned by the Fund in order to protect the State's interest.

4. Relationship to Land Use

The Water Development Loan Program can be divided into two main categories in terms of impacts on land use. The first is the evaluation of loan applications and granting of loans for water development projects. The second is the management of property received by the State upon loan foreclosure. Only the actual granting of loans qualifies as a land use program for the purposes of SAC.

The loans finance the study and/or construction of irrigation or water supply facilities which can shape the distribution of land uses and provide for community growth. However, the property management activities associated with foreclosure do not qualify as a land use program. The Department simply maintains and sells these properties as deemed appropriate to protect the State's interest. Any improvement to these properties would be subject to local land use approvals.

(m) Payment for Public Benefits in Water Projects

1. Purpose

The Water Resources Commission, with the approval of the Governor, may identify proposed water projects which provide significant public benefit, and recommend to the Legislature funding of such projects in proportion to the public benefits provided.

2. Authorization

ORS 542.075 establishes the authority of the Commission to recommend that the Legislature fund water projects providing public benefits.

ORS 541.830 allows project funding requests submitted under the Water Development Loan Program to be considered under the provisions of ORS 542.075.

OAR Chapter 690, Division 100 provides the procedure for determining eligibility, applying for payment, determining public benefits and for the Commission's recommendations to the Governor and the Legislature.

3. Payment for Public Benefits Activities

Those seeking payment for providing public benefits through a water project must first apply to the Department. Any resident of the state, partnership, corporation, water district, or other water developer defined in ORS 541.700 may apply. Application may be made for proposed projects, as well as existing, completed projects, if it has been five years or less since beginning of construction.

The Department requires information describing the project and specifying the nature and quantity of public benefits produced. The submittal is circulated among, and a presentation made to a meeting of, the state's natural resource agencies. A public hearing is held in the vicinity of the water project for the purpose of taking public comments on the payment request. Following the hearing, the state natural resources agencies develop findings, conclusions, and recommendations on the application. The Director prepares a recommendation to the Commission based on the hearing record and comments from the agencies. The Commission may accept the Director's recommendation, modify the recommendation, or prepare a different recommendation for submission to the Governor. Any funds appropriated by the Legislature are deposited with the Water Development Loan Program or in a new Water Resources Department account, depending on whether the application is for an existing or a proposed project, respectively.

The legislation allowing payment for public benefits was enacted in 1981. There have been very few applications for payment since that time, and none have been approved by the Legislature. Future activity with regard to this program is uncertain.

4. Relationship to Land Use

The program for payment of public benefits has the potential to significantly and directly affect land use. Water projects made possible by the program could include major reservoirs and water delivery systems for municipal or agricultural use. Providing payment for public benefits could also increase the likelihood of facilities being operated to benefit instream water uses such as fish life, recreation, and pollution abatement which are addressed throughout the statewide planning goals.

The Commission's has an advisory role in the payment of public benefits. The final authority for approval rests with the Governor and the Legislature. However, to be funded, applicants must first obtain a favorable recommendation from the Commission. Thus, the Commission's role, although advisory, is nonetheless authoritative.

Because the program has the potential to significantly affect land use and resources identified in the goals, and because the Commission's role is more than strictly advisory, the program for payment of public benefits has been determined to be a Water Resources Department land use program.

(n) Scenic Waterway Coordination

1. Purpose

Through the scenic waterway program, the state seeks to protect the free-flowing character of designated streams for fish, wildlife and recreation, and to protect and enhance scenic, esthetic, natural, recreational, and scientific values along such streams.

2. Authorization

ORS 390.805 to 390.925 establish the scenic waterway program. ORS 390.815 sets forth the policy of the state on scenic waterway protection. ORS 390.825 designates certain rivers and lakes as scenic waterways. ORS 390.835 defines the highest and best use of the waters of scenic waterways and assigns certain responsibilities to the Water Resources Commission, the Fish and Wildlife Commission, and the Land Board. ORS 390.845 through ORS 390.865 describe procedures for designating and managing scenic waterway lands and waters.

OAR 736-40-005 through 736-40-095 include hearing procedures, land management regulations, and classifications for designated scenic waterways.

3. State Scenic Waterway Coordination Activities

The Scenic Waterway program protects the free-flowing nature of streams through restrictions placed on impoundments and new water uses. The program protects the natural and scenic diversity of waterways by encouraging compatible new development. Activities that noticeably alter the surroundings -- such as building construction, land clearing, road construction, timber harvesting, and changes to river banks -- must be approved by the Parks and Recreation Department. If a proposed activity would threaten scenic or natural values, the Parks and Recreation Department works with the landowner to find a mutually acceptable solution. If no solution results, Parks and Recreation has one year from the date of notification to acquire an easement or title to the property in question. Otherwise, the landowner may proceed with the activity as proposed.

The Scenic Waterways program is administered by the State Parks and Recreation Department. The Water Resources Commission, however, has responsibilities in several areas of Scenic Waterway program administration. First, the Commission cannot permit any dam, reservoir, other water impoundment facility, or placer mining within scenic waterways. The legislature has deemed the highest and best uses within scenic waterways to be for fish, wildlife, or recreation. Second, diversions may be restricted pursuant to ORS 536.300 (12). Further, before issuing permits for the use of any waters upstream from a scenic waterway, the Commission must find that the use will not diminish streamflows necessary for the purposes of the scenic waterway. Third, the Commission must concur in scenic waterway management plans, in condemnation proceedings to acquire lands, and in Parks and Recreation Department recommendations for additions to the scenic waterway system.

The Commission fulfills its responsibilities for maintaining the free-flowing nature of scenic waterway streams and protecting flows for fish, wildlife, and recreation through the permit review process (described in a separate program summary). The Commission has promulgated no rules concerning how it will concur with the Parks and Recreation Department in scenic waterway matters. There have been few instances where the Commission has been called upon for its concurrence. This is primarily due to three factors: 1) the Parks Department has completed relatively few management plans during the last 10 years; 2) condemnation of lands associated with scenic waterway has rarely occurred; and, 3) recent additions to the scenic waterway system have resulted from legislative actions and ballot initiatives, not from recommendations of the Parks and Recreation Department.

4. Relationship to Land Use

Because the Scenic Waterway Program regulates both new water and land uses, it is clearly a land use program. It is also specifically referenced in Goal 5. There are no explicit references to local comprehensive plans or land use planning in either the statutes or rules. However, ORS 390.845 (2) requires the Parks and Recreation Department to consult with affected counties when adopting rules governing the management of related adjacent lands. In addition, OAR 736-40-020(3) points out that approvals or agreements regarding scenic waterways "in no way relieve persons .. of requirements established by other governmental agencies, local, state, or federal."

Although the Water Resources Commission is assigned a number of duties, it does not have primary responsibility for initiation of action or for program administration. The Commission plays a largely reactive role, in that it either goes along with, or withholds approval from, recommendations of the Parks and Recreation Commission. The Water Resources Commission's major responsibility is discharged through its water use permitting process. Designation and management of scenic waterways should not be repeatedly subjected to local plan compatibility tests throughout the process. At the point when the Commission's concurrence is sought, the land use ramifications of scenic waterway additions, management plans, or land condemnations should already have been addressed by staff of the Parks and Recreation Department. In other words, any proposal would have passed or failed the land use plan compatibility test before, and would not be an issue when, it went to the Commission for concurrence. Compatibility strategies, then, are best designed by the Parks and Recreation Department, not the Water Resources Department.

F. Department Programs Subject to LCDC Permit Compliance Rule

OAR 660-31-015 requires state agencies to list Class A and Class B permits affecting land use. The classification system employed by LCDC is defined in OAR 660-31-012. The two classes are identified on the basis of public notice and hearings requirements. In OAR 660-31-012 (2)(f), LCDC has identified surface water, ground water, storage, and hydroelectric permits as Class B permits. The Department must either: find that the issuance of these Class B permits comply with the goals and/or are compatible with comprehensive plans; or, inform applicants that permit issuance is not a finding of compliance or compatibility, and that local land use approvals may be required. In the latter instance, the Department may rely on local government determinations of compatibility for these programs as long as local governments have made appropriate findings to justify their determination.

The Department does not propose to change the classification of the water use permits presently listed in OAR 660, Division 31. The Department also does not propose any additions to, or deletions from the established list.

Section II: Programs Subject to LCDC Permit Compliance Rule

Section III. Rules and Procedures for Assuring Compliance with the Statewide Planning Goals and Compatibility with Comprehensive Plans

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

1. Procedures

The Department's general coordination rule (OAR 690 - 60 - 030) states that all Commission and Department actions taken pursuant to a land use program must comply with the Statewide Planning Goals. As OAR 660 - 30 - 065 requires, the Department will comply primarily by assuring its actions are compatible with acknowledged comprehensive plans. Acknowledged comprehensive plans had to comply with the goals. Thus, it follows that agency actions compatible with a comprehensive plan simultaneously comply with the goals.

Exceptions to this approach would require an agency to comply directly with the goals. The circumstances which would trigger this procedure are delineated in OAR 660 - 30 - 065 and fully incorporated in the Department's coordination rule (OAR 690 - 60 - 030).

The goal compliance requirements of OAR 660 - 30 -065 are fully incorporated in the Department's rule (OAR 690 - 60 - 030). Affected local government will be notified of the Department's intent to make findings of compliance directly with the goals. The Department will explain why direct goal compliance is required and offer the local government an opportunity to initiate dispute resolution procedures described in OAR 690 - 60 - 040. Readers are directed to OAR 690 - 60 - 030 for details.

2. Goals Most Likely To Be Addressed Directly

OAR 660 - 30 - 065 (5) requires agencies to: identify which goals the Department is most likely to address directly; commit to directly address other goals if requested; and, describe situations in which the Department may have to address the goals directly. These requirement are discussed below.

The Department is most likely to address Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources) and Goal 11 (Public Facilities and Services) directly. Water resources are commonly referenced throughout the goals, especially in terms of carrying capacity. It is possible that the Department might have to make findings of conformance with any of the goals that reference water resources. The Department is committed to complying with all applicable goals and will do so directly, as required. A brief discussion of how Goals 5 and 11 apply to water resources follows.

Goal 5

Goal 5 requires local governments to inventory the location, quality and quantity of water areas, wetlands, watersheds, and ground water, including potential and designated scenic waterways. Conflicting land uses must be managed to protect important resources. Goal 5 planning guidelines direct local governments to identify and protect reservoir sites from irreversible loss. Implementation guidelines direct local governments to protect streamflow and water levels for fish, wildlife, pollution abatement, recreation, esthetics, and agriculture.

The most likely situations requiring direct goal compliance could include the following. Comprehensive plans, zoning ordinances, or development codes may not provide for watershed, streamflow, or ground water management in any detail. Most of the Department's actions involve the allocation water supplies between particular uses, consistent with the statewide public interest in water resources. Protecting the public interest may require addressing water allocation or other problems not identified in comprehensive plans. This is likely when conducting activities where more than one comprehensive plan is involved, such as in basin planning, critical ground water area designations, and instream water rights issuance.

Alternatively, some comprehensive plans may contain provisions that conflict with statewide public needs by failing to provide for maintenance of water levels for the uses identified in Goal 5, or by providing for one use at the expense of another. The Commission and Department are obligated under other statutes, as well as Goal 5, to protect these uses and would ultimately do so notwithstanding provisions of applicable comprehensive plans.

Goal 11

OAR Chapter 660, Division 11 requires that public facility plans must identify the water quantity necessary to support land uses within urban growth boundaries. Plans for public facility systems must include identification of water sources and information on storage, pumping and distribution. Plans must also assess system elements and contain policy statements or urban growth management agreements identifying water providers.

In many areas, demands on the state's water resources are growing rapidly. Citizens are demanding water not only for traditional uses such as for cities and irrigation, but increasingly for fisheries and recreation as well. New federal drinking water quality standards are forcing some communities to abandon established water sources and search for replacement sources. Many cities are growing and seeking to establish claims to additional water supplies for economic development.

The Department must act in the broad public interest evaluating requests for reservations, permit extensions, and instream water rights. In addition, the Department will be intensifying its scrutiny of whether water is being used efficiently prior to permitting additional appropriations to existing users. This balancing will involve review of the elements of comprehensive plans, especially public facility plans. It is conceivable that the Department may have to act incompatibly with one of the comprehensive plans of the many competing interests in order to assure orderly development of the state's water resources. Reducing the opportunity for conflict between users is one of the primary objectives of the Department's SAC program in coordinating with local governments and special districts.

Section III: Goal Compliance Procedures

B. Procedures for Assuring Compatibility with Comprehensive Plans and Pursuing Land Use Dispute Resolution

The *Coordination and Compatibility Procedures* outlined in this section specify how the Department will assure that its land use programs and activities comply with the Statewide Planning Goals and are compatible with acknowledged comprehensive plans. In general, the procedures will facilitate the exchange of land use information between the Department and local governments. Many of the procedures outlined in this section are requirements established by administrative rules. However, there are land use programs for which rules have not been adopted. Land use coordination procedures applying to these programs will be found in this Guide only. *Future Department Actions* will be undertaken to enhance the Department's land use coordination efforts as Department resources allow and priorities dictate.

The *Coordination and Compatibility Procedures* outlined in this section, as well as other portions of the Guide, are referenced in OAR Chapter 690, Division 60 (Appendix F). This division of rule establishes the Water Resources Department's SAC Program generally, and provides many of the components required in ORS 197.180 and OAR Chapter 660, Divisions 30 and 31. Many of the procedures are also outlined in the other portions of OAR Chapter 690 which govern the Department's land use programs. For programs without rules such as state water policy development, basin planning, withdrawals, and water exchanges, these procedures will, by themselves, assure compliance and compatibility. Ultimately all the Department's land use programs and activities will be subject to requirements for assuring compliance and compatibility as prescribed in OAR 690-60-045. (Standards for Goal Compliance and Compatibility with Comprehensive Plans.)

Procedures follow for the Department land use programs listed below.

- 1 State Water Resources Policy (Proposed OAR Chapter 690, Division 410)
- 2 Basin Planning
- 3 Instream Water Rights (OAR Chapter 690, Division 77)
- 4 Reservations for Future Economic Development (OAR Chapter 690, Division 77)
- 5 Minimum Perennial Streamflows (OAR Chapter 690, Division 76)
- 6 Withdrawals of Water from Further Appropriation
- 7 Critical Ground Water Area Proceedings (OAR Chapter 690, Division 10)
- 8 Water Use Permits and Applications (OAR Chapter 690, Division 11)
- 9 Water Right Transfers (OAR Chapter 690, Division 15) except for those:
 - (a) Where existing and proposed water uses would be located entirely within lands zoned for Exclusive Farm Use 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.
- 10 Use of Conserved Water (OAR Chapter 690, Division 18)

Hydroelectric Permits and Licenses (OAR Chapter 690, Division 51)

- 10 **Water Exchanges**
- 11 **Applications for Water Uses in Addition to Classified Uses (OAR Chapter 690, Division 82)**
- 12 **Water Development Loan - Loan Management (OAR Chapter 690, Division 90)**
- 13 **Payment for Projects with Public Benefit (OAR Chapter 690, Division 100)**
- 14 **Scenic Waterway Coordination**

I. STATE WATER RESOURCES POLICY: COORDINATION AND COMPATIBILITY PROCEDURES

A. Public Notice

The Department will:

1. Publish notice of public meetings or hearings in newspapers distributed statewide.
2. Maintain a state policy mailing list that includes all parties who have responded to the initial notice or have submitted written or oral testimony on the policies.
3. Ensure that DLCD, the Association of Oregon Counties, each county planning director, the League of Oregon Cities, and the current chairperson of the City Planning Directors' Association are included on the mailing list.
4. Mail notice of public hearings to parties on the Department's state policy mailing lists.

B. Public Involvement

The Department may hold workshops and will hold at least one public hearing to receive input on draft policies.

C. Land Use Compatibility - The Department will:

1. Use the results of the WRD Local Government Land Use Survey (1989) in identifying policy making priorities;
2. Accommodate to the extent possible comments and suggestions from local government planning officials in the policies or policy-making process;
3. Initiate and follow resolution procedures outlined in OAR 690-60-040 if land use disputes arise;
4. Work with local government planning officials to amend comprehensive plans as needed to become consistent with the Commission's statewide policies (pursuant to ORS 536.360).
5. Defer additional assurances of compatibility to rules and procedures governing those Department land use programs which implement statewide water policy.

Section III: Compatibility Procedures for: *State Water Resources Policy*

II. BASIN PLANNING: COORDINATION AND COMPATIBILITY PROCEDURES

A. Public Notice - The Department will:

1. Send notice of public meetings and hearings to those parties on its basin planning and rulemaking mailing lists.
2. Deliver basin programs to affected public corporations as required in ORS 536.350.

B. Public Involvement - The Department will:

1. Solicit concerns from local governments through surveys, town hall meetings, and distribution of draft documents for comment.
2. Contact local governments located within basins that are scheduled (in the Biennial Water Management Program) for basin program updates within the upcoming biennium.
3. Convene a meeting of the planning directors of local governments in the basin early in the planning process. The purpose of the meeting will be to:
 - a. Identify land use and water use issues which should be addressed in the basin planning process;
 - b. Identify and select strategies for systematic involvement of local planning agencies in the basin planning process (i.e. issue assessment, water classifications (allocation), and basin plan amendments);
 - c. Determine if the Department should form a land use issues work group consisting of local planning representatives and interested citizens to participate in the basin planning process;
 - d. Establish local planning contacts to represent local governments on issue work groups and to assist Department planning staff in achieving compatibility with acknowledged comprehensive plans; and
 - e. Develop administratively feasible approaches for considering and integrating local information. Local information sources may include:
 - 1) Comprehensive plan policies, ordinances, and map information
 - 2) Local water management policies, restrictions and priorities
 - 3) population projections
 - 4) Goal 5 inventories
 - 5) Economic development strategies
 - 6) Public Facilities Plans

Section III: Compatibility Procedures for: *Basin Planning*

4. Hold at least one public hearing in the basin, as required by ORS 536.300 (3).
5. Invite local government representatives and planning officials to participate in work groups.
6. Encourage local governments to form local water resource committees to provide the Department with input on water resource issues. The Department will provide technical assistance to local committees as requested.

D. Land Use Compatibility - The Department will:

1. Upon issuing notice of upcoming rulemaking hearing(s) to adopt a basin program, mail copies of the draft basin plans and programs to the planning director of local government jurisdiction located wholly or partially within the basin under consideration. The Department will attach a notice to this mailing specifying a comment period of at least 30 days. Local governments will be informed that they must respond by the comment period deadline if they believe the draft plan or program to be incompatible with acknowledged comprehensive plans. Local governments will be requested to cite any applicable plan policies, ordinance provisions, or maps in their responses. The Director and Commission may presume that the draft plan and program is compatible with acknowledged comprehensive plans if no response is received by the comment period deadline. If the Department receives a response indicating that the basin plan or program is incompatible with acknowledged comprehensive plans, the Director or Commission will initiate dispute resolution procedures outlined in OAR 690-60-040.
2. Supplement its distribution of the final basin plan and program with a summary of major changes and implications for local land use and development in the basin. In this supplement, the Department will identify issues which should be addressed during periodic review or when otherwise amending comprehensive plans, ordinances, or codes. Other assistance strategies are detailed in Guide.

III. INSTREAM WATER RIGHTS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 77, Instream Water Rights.)

A. Public Notice - The Department will:

1. Require applicant agencies to identify affected local governments, to notify affected local government planning departments of the intent to apply for an instream water right, and to submit copies of this notification to the Department as part of an instream water right application.
2. Provide notification of instream water rights application submittals to affected local governments. Allow local governments 60 days to comment on issues related to the compatibility of the proposal with acknowledged comprehensive plans before the Director may presume compatibility. The Department's notification will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected local governments;
 - c) Description of the proposed instream water right and identification of affected water sources
 - d) The purpose of the instream water right;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to instream flow protection and/or other uses of the water under consideration;
 - f) A request, if a locality believes the proposal to be incompatible with its comprehensive plan, for evidence that the local plan provisions would provide a greater public benefit than the proposed instream right as prescribed in OAR 690, Division 77; and,
 - g) An offer to discuss the proposal with interested local governments.

B. Public Involvement - Any person or agency including local governments may file a petition with the Director requesting a review of public interest issues.

C. Public Interest - The Department will:

1. Evaluate whether the proposed instream water right will adversely affect the public interest. If a public interest issue is found to exist, the Director is authorized to negotiate in attempts to resolve the issue. If the issue cannot be resolved, the Director must submit the proposal to the Commission for a contested case hearing under ORS 537.170 (5).

OAR Chapter 690, Division 77 provides standards for making public interest determinations when reviewing instream water right requests. The Water Resources Commission may modify or condition a proposed instream water right if the proposed right would preclude "planned uses with a reasonable chance of being developed that would provide a greater benefit to the public from the use of the unappropriated water available." "Planned" is defined in these rules as a situation where "a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction application for a development permit from the private sector."

2. Review petitions requesting that multi-purpose storage projects, municipal water rights, or municipal hydroelectric projects take precedence over a previously established instream water right (created through OAR 690-77-020).

D. Land Use Compatibility - The Director may presume that issuance of the instream water right is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the Department's notice of the proposed instream water right application submittal. If the Department is informed that a proposed instream right is incompatible with local comprehensive plans, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving an instream water right.

E. Local Participation - The Department will encourage local planning agencies to identify where instream flows need protection and to request appropriate state agencies to apply for instream water rights. The Department will pursue this action in conjunction with periodic review of comprehensive plans and basin program updates.

F. Future Department Actions

The Department will amend OAR 690, Division 77 to establish submittal requirements and review standards for petitions and findings allowed under OAR 690-77-100. These rules allow the Commission to give precedence to storage, municipal, and municipal applicants for hydroelectric water uses over instream water rights. Standards should include consideration of how local comprehensive plans substantiate the request and provide for a balance of instream and out-of-stream uses.

Section III: Compatibility Procedures for: *Instream Water Rights*

**IV. RESERVATIONS FOR FUTURE ECONOMIC DEVELOPMENT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 77, Instream Rights.)

A. Public Notice - The Department will:

1. Notify the Oregon Departments of Fish and Wildlife, Environmental Quality, Economic Development and the Parks and Recreation Department, within a month of receipt of application.
2. Provide notice of rulemaking hearing to those on the appropriate basin plan/program mailing list(s). Generally, these lists include counties, cities and various water and irrigation districts.

B. Public Involvement - The Department must process the application as a basin program amendment and will hold at least one public hearing in the basin where the reservation would be located.

C. Public Interest - The Director's must base his/her recommendation, and the Commission's its decision, on a determination of public interest in accordance with Division 11 standards for water use permits. These standards specifically require consideration of local land use plans and policies.

D. Land Use Compatibility - The Department will:

1. Require state agency applicants to submit a "land use coordination statement" with applications. A prototype form is provided in Appendix G of this Guide. The completed statement will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected local governments;
 - c) A description of the proposed reservation and identification of affected water sources;
 - d) The purpose of the reservation;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to economic development and/or planned uses of the water under consideration; and,
 - f) An offer (from the applicant(s) and/or Department) to discuss the proposal with interested local governments.

The Department will mail the land use coordination statement to the planning departments or appropriate affected local government agency at or about the time of official notice.

Section III: Compatibility Procedures for: *Reservations for Economic Development*

2. May presume that approval of the reservation is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the official notice of the proposed reservation. If the Department is informed that a proposed reservation is incompatible with an acknowledged comprehensive plan, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving the reservation.
3. Limit to a maximum term of 20 years. Administrative rules allow the Commission to grant time extensions with retention of the original priority date. The Commission may also require periodic review of the reservation during the approved term of reservation. These extensions are subject to *de novo* review for land use compatibility so that possible changes to local planning and economic development strategies can be factored into the decision.
4. Require applicants for the use of reserved water to meet the land use information submittal requirements and compatibility standards provided in Division 11.

E. **Local Participation** - The Department will encourage local planning officials to identify water reservation needs to support planned economic development, and to work through DLCD or other state agencies to submit an application. The Department will pursue this action in conjunction with periodic review of comprehensive plans and update of basin programs.

V. MINIMUM PERENNIAL STREAMFLOWS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 76, Review of Applications for Minimum Perennial Streamflows.)

- A. Public Notice** - The Department will notify affected local government planning departments of pending minimum streamflow applications. Interested persons may request written notification of the required public hearing.
- B. Public Interest** - The Commission will weigh the expected benefits of planned uses against those to be provided by minimum streamflows in making its decision. "Planned" (in OAR 690-76-010) means a determination has been made for a specific course of action either by administrative or budgetary action of a public body or by engineering, design work, investment toward construction or application for a development permit from the private sector. Planned uses may include uses designated in comprehensive plans.
- C. Public Involvement** - The Commission will hold a public hearing to consider the application.
- D. Land Use Compatibility**
 - 1. The Commission will:
 - a) Consider the impact of land use and development on streamflow when evaluating an application;
 - b) Weigh the potential economic, social, and environmental benefits of the proposed minimum streamflow against those which could be provided by other "planned uses."
 - 2. The Department will require applicant agencies to submit a "land use coordination statement" with minimum perennial streamflow applications. A form is provided in Appendix G of this Guide. The completed statement will include the following items:
 - a) Identification of applicant agencies
 - b) Identification of affected counties and cities;
 - c) A description of the proposed minimum streamflow and identification of affected water sources;
 - d) The purpose of the minimum streamflow;
 - e) An invitation for local planning agencies to identify and submit to the Department applicable policies or provisions in local comprehensive plans that relate to instream flows and/or planned uses of the water under consideration; and,

Section III: Compatibility Procedures for: *Minimum Perennial Streamflows*

- f) An offer (from the applicant(s) and/or Department) to discuss the proposal with interested local governments.

The Department will mail the land use coordination statement to the planning departments or appropriate agency of affected counties and cities at the time of official notice.

3. The Director may presume that approval of the minimum streamflow is compatible with comprehensive plans unless informed otherwise within 30 days of the date shown on the official notice of the proposed instream water right. If informed that a proposed minimum streamflow is incompatible with local comprehensive plans, the Department will follow dispute resolution procedures in the SAC General Coordination rules prior to approving a minimum streamflow.

B. Future Department Action

1. The Department will seek legislative clarification of statutes to determine if and under what circumstances instream water rights may supersede or replace minimum perennial streamflows.

**VI. WITHDRAWAL OF WATER FROM FURTHER APPROPRIATION:
COORDINATION AND COMPATIBILITY PROCEDURES**

A. Public Notice - The Department will:

1. Publish notice of the required public hearing in at least one issue each week, for at least two consecutive weeks prior to the hearing, in a newspaper of general circulation published in each county in which the waters proposed to be withdrawn are located.
2. Notify the planning department of affected local governments of upcoming hearings. The Department may also notify surrounding counties and cities which are likely to be affected by the withdrawal.

B. Public Involvement - The Department will hold at least one public hearing in or near the area where withdrawn water would be located.

C. Land Use Compatibility - The Department will:

1. Request local planning officials to submit any policies, provisions, or procedures which 1) are part of their acknowledged comprehensive plans, and 2) address and provide guidance for mitigating water resources problems related to the proposed withdrawal.
2. Work with local planning officials during development of the withdrawal order to:
 - a) Obtain and incorporate information on areas of planned growth and priority land uses; and
 - b) Accommodate comprehensive plans within the physical constraints of the subject waters and the statutory responsibilities of the Commission.
3. Consider how local government participation could increase the administrative feasibility and effectiveness of the withdrawal.

Section III: Compatibility Procedures for: *Withdrawal of Water from Appropriation*

- 4. Inform planning officials of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended (within a specific time period) to:**
 - a) Reflect the physical constraints in the withdrawn area;**
 - b) Ensure compliance with the withdrawal order; and**
 - c) Reduce the potential for future water-related problems within affected local jurisdictions located in and around the withdrawn area.**
- 5. Distribute the final withdrawal order to affected local government planning departments. Interpret the order as needed for use in local planning. Provide follow-up assistance as needed.**
- 6. Follow procedures 1. through 5. above when adopting or substantively amending a withdrawal order.**

VII. CRITICAL GROUND WATER AREA PROCEEDINGS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 10, Rules for Initiation of Proceeding for Determination of a Critical Ground Water Area.)

A. Public Notice - The Department will:

1. Notify licensed well constructors, ground water appropriators, ground water permit applicants, and counties and cities of initiation of critical ground water area proceedings and subsequent hearings.
2. Mail the Notification of initiation of critical ground water area proceedings to the planning department of each affected local government. Accompany the Notification with a statement explaining the implications of the CGWA proceedings. Provide recommendations for local land use actions (i.e., limiting the approval of development served by ground water in accordance with permit restrictions).

B. Public Involvement - The Department will:

1. Conduct a contested case hearing before issuing any ground water permits between the date of notification and the critical ground water area (CGWA) determination.
2. Send copies of CGWA orders to counties for recordation into deeds.
3. Conduct at least one public hearing within or near the proposed CGWA prior to withdrawing the aquifer by rule or issuing the critical ground water area order.

C. Land Use Compatibility - The Department will:

1. After issuing Notification, request local planning officials to submit any policies, provisions, or procedures from acknowledged comprehensive plans and which address and provide guidance for mitigating applicable ground water problems.
2. Accommodate comprehensive plans (i.e., areas of planned growth and priority land uses) to the extent possible within the physical constraints of the aquifer and the Commission's responsibilities under ORS 537.525, in adopting rules or issuing orders pertaining to CGWAs.

Section III: Compatibility Procedures for: *Critical Ground Water Areas*

3. Inform planning officials of affected local governments how comprehensive plans, maps, ordinances, and/or land use approval procedures may need to be amended (within a specified time period) to:
 - a) reflect the physical constraints in the critical area;
 - b) ensure compliance with the withdrawal or critical ground water area order; and
 - c) reduce the potential for future ground water problems within affected local jurisdictions.
4. Consider how local government participation could enhance the effectiveness of managing the area.
5. Distribute the final CGWA rule or order to planning director(s) of each affected county and city. Interpret the rule or order as needed for use in local planning. Provide follow-up assistance as needed.
6. When substantively amending a CGWA order, follow coordination strategies selected for initiation of proceedings, subsequent hearings and issuance of the order.

D. Future Department Actions

The Department will clarify procedures for determining and issuing orders for critical ground water areas in OAR 690, Division 10.

VIII. WATER USE APPLICATIONS AND PERMITS: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 11, Applications and Permits.)

- A. **Public Notice** - The Department will notify the planning officials of affected local governments of water use permit application submittals. The notice of pending permit applications shall explain the various water use approvals and how local governments/citizens can participate. Except as provided in 4.b. below, the Director may presume that the proposed use is compatible with the comprehensive plan if the Department receives no response within 30 days of the date on the notice.
- B. **Public Interest** - The Department must consider acknowledged comprehensive plans in evaluating whether the water use would adversely affect the public interest (See OAR 690-11-080 (4)(f)).
- C. **Public Involvement** - Any person or agency, including local governments, may file a petition with the Director requesting further review of public interest issues.
- D. **Land Use Compatibility** - The Department will:
 - 1. Accompany water use permits and permit applications with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to contact local governments for information on local plan requirements.
 - 2. Require applicants to provide land use information specified in a form provided by the Department (see Appendix G) The application must include a) the completed form, or b) a receipt, signed and dated by a local government planning official as evidence that a request for information is was received by the local government. If the completed land use information form is not received by the Department within 60 days of request by the applicant, the Director may proceed with processing the application.

Section III: Compatibility Procedures for: *Applications and Permits*

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are allowed under by the comprehensive plan and whether any required local land use approvals are pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected local governments.

- c. Require applicants for municipal water uses to submit information with the application showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
- d. Issue a permit if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:
 - 1) The land use associated with the proposed water use is allowed outright under land use and zoning designations, or is not regulated under acknowledged comprehensive plans; or
 - 2) The land use is allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
- e. Approve a permit with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
 - 1) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - 2) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
 - 3) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

Section III: Compatibility Procedures for: *Applications and Permits*

The Department may withhold approval of the permit until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

- f. Deny the permit if:
- 1) Proposed uses are not allowable under acknowledged comprehensive plans; and
 - 2) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - 3) Local land use approvals have been denied.

However, if the Commission decides that issuing a permit or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

G. Future Department Actions

The Department will develop policies on municipal water supply and standards for granting time extensions for municipal use permits. Explore the possibility of requiring a water management plan as a condition of approving time extensions.

Section III: Compatibility Procedures for: *Applications and Permits*

IX. WATER RIGHT TRANSFERS: COORDINATION PROCEDURES AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 15, Water Right Transfers.)

Note: The procedures in this section apply to water right transfers unless the transfer involves only changes in place of use for irrigation uses with no structural changes and would be located within irrigation districts or Exclusive Farm Use zones.

A. Public Notice - The Department will:

1. Publish notice of transfer applications in a local newspaper when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion.
2. Mail notice to the planning directors of affected local governments when an application proposes a change in use, a change in point of diversion of more than one-quarter mile, or a change in point of diversion where there is an intervening diversion.

B. Land Use Compatibility - The Department will:

1. Accompany transfer applications and approvals with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.
2. Require applicants to include land use information specified in a form provided by the Department (see Appendix G) with their application. The form may be modified to streamline administration so long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not the land use supported by the proposed water use is allowed by the comprehensive plan and whether local land use approvals are required, pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected counties and cities.
3. Require applicants for transfers involving municipal uses to submit information, with the application, showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
4. Approve the transfer if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:

Section III: Compatibility Procedures for: *Water Right Transfers*

- a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
5. Approve a transfer with a condition prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - b) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
 - c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of the transfer until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

6. Deny the transfer if:
- a) The proposed uses are not allowable under acknowledged comprehensive plans; and
 - b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - c) Local land use approvals have been denied.

However, if the Commission decides that approving the transfer or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Water Right Transfers*



X. USE OF CONSERVED WATER: COMPATIBILITY AND COORDINATION PROCEDURES

(Also refer to OAR Chapter 690, Division 18, Conservation and Use of Conserved Water.)

- A. Public Notice** - The Department will provide public notice of all conserved water use applications and preliminary evaluations in a local newspaper and to individuals and organizations on the Department's weekly and rulemaking lists. Mail notice of pending applications for conservation measures and the use of conserved water to the planning department of each affected county and city. The Director may also notify any other party of the proposal. Objections must be filed with the Department within 30 days of notification or the Commission may presume that proposed use is compatible with comprehensive plans.
- B. Public Interest** - The Department will require applicants to submit information on the existing and proposed point of diversion, place and type of use proposed for the conserved water. The application must also include a list of public and private entities which may have an interest or regulatory authority concerning any aspect of the proposed conservation measure. The Department must evaluate whether the proposal will adversely affect the public interest as defined in ORS 537.170 (5). The standards outlined in ORS 537.170 (5) do not require consideration of local land use plans.
- C. Public Involvement** - The Commission will hold a noticed public meeting prior to deciding whether to approve an application.
- D. Land Use Compatibility** - The Department will:
1. Accompany applications and orders for the use of conserved water with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.

Section III: Compatibility Procedures for: *Use of Conserved Water*

2. Require applicants to submit land use information, as specified in a form provided by the Department (see Appendix G), with their original application for approval of conservation measures. (This requirement applies to applicants for use of conserved water only if the proposed type or place of water use is different than that originally approved by the Commission.)

The form may be modified to streamline administration so long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are compatible with respective acknowledged comprehensive plans. The completed form shall include the signature of planning director or responsible official of affected counties and cities.

3. Require applicants for municipal use of conserved water to submit information, with the application, showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).
4. Approve the proposed use of conserved water if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:
 - a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
5. Approve an order with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
 - 1) All applicable requirements of statutes and rules governing Commission and Department actions are met; and

Section III: Compatibility Procedures for: *Use of Conserved Water*

- 2) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
- 3) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of proposed use of conserved water until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

6. Deny the proposal if:

- a) The uses are not allowable under acknowledged comprehensive plans; and
- b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
- c) Local land use approvals have been denied.

However, if the Commission decides that approving the transfer or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Use of Conserved Water*

**XI. HYDROELECTRIC PROJECT PERMITS AND LICENSES:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 51, Appropriation and Use of Water for Hydroelectric Power & Standards for Hydroelectric Applications.)

- A. Public Notice** - The Department will notify the planning departments of affected local governments when an application for a preliminary permit, a license, or a permit to appropriate water for hydroelectric purposes is submitted. The Department will also notify affected local governing bodies and planning departments of upcoming project hearings.
- B. Public Involvement** - The Department will hold a public hearing for any proposed project for greater than 100 theoretical horsepower (THP). The Commission may also conduct a hearing for proposals less than 100 THP if it determines such action is in the public interest.
- C. Land Use Compatibility** - The Department will:
1. Accompany water use permits, permit applications and licenses with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to contract local governments for information on local plan requirements.
 2. Require project applicants to consult with appropriate public and private agencies before an application is filed. Evidence of the consultation must be filed with the application. The planning departments of affected counties and cities are to be consulted on scenic, aesthetic, recreation, land use, and access issues.
 3. Require applicants to include a discussion of land uses in the project area and the general compatibility of the proposed project with planned land uses. The applicant will be required to submit a completed land use information form, or a receipt that a request for land use information has been received by the local government.
 4. Use standards established in OAR Chapter 690, Division 51 in reviewing of hydroelectric applications. These standards require consistency with the land use recommendations of local governments except if to do so would violate the Commission's water resources policies and programs.
 5. Approve the hydroelectric facility if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

- a) The land use associated with the proposed water use is allowed outright under the land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or
 - b) Land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.
6. Approve a permit or license with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - b) The proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or,
 - c) The applicant is pursuing a comprehensive plan amendment; to the satisfaction of the planning director.

The Department may withhold approval of a permit or license until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

7. Deny the license or permit if:
- a) The uses are not allowable under acknowledged comprehensive plans; and
 - b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - c) Local land use approvals have been denied.

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

However, if the Commission decides that approving the permit or license or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Hydroelectric Permits and Licenses*

XII. WATER EXCHANGES: COORDINATION AND COMPATIBILITY PROCEDURES

A. Public Notice - The Department will provide notification of an exchange application in newspapers of general circulation in the areas of proposed water uses. The Director shall notify the planning director of local governments within which exchanged water will be diverted, conveyed, or used, of the application submittal.

B. Public Interest - The Commission's evaluation of a proposed exchange is required by statute to include consideration of the public interest as outlined in ORS 537.170 (5).

C. Land Use Compatibility - The Department will:

1. Accompany water use exchange applications and orders with a caveat: a) stating that approval does not guarantee compliance with statewide planning goals, and b) directs applicants to local governments for information on local plan requirements.
2. Require applicants to provide land use information specified in a form provided by the Department (see Appendix G) with the application.

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are compatible with respective acknowledged comprehensive plans. The completed form shall include the signature of planning director or responsible official of affected counties and cities.

3. In assuring compatibility with acknowledged comprehensive plans, the Commission will approve an exchange if all applicable statutes and rules governing Commission and Department action are met, and:
 - a) The proposed use is allowed outright under the land use and zoning designation, or is not regulated under acknowledged comprehensive plans; or
 - b) The use is allowable, with discretionary land use approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.

Section III: Compatibility Procedures for: *Water Exchanges*

4. Approve exchange orders with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:
- a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and
 - b) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or
 - c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.

The Department may withhold approval of the exchange until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

5. Deny the permit if:
- a) Proposed uses are not allowable under acknowledged comprehensive plans; and
 - b) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or
 - c) Local land use approvals have been denied.

However, if the Commission decides that approving an exchange or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

D Future Department Actions

The Department will develop and adopt administrative rules to govern water use exchanges. Set standards in the rule which require consideration of compatibility with local comprehensive plans.

XIII. APPLICATIONS FOR WATER USES IN ADDITION TO CLASSIFIED USES: COORDINATION AND COMPATIBILITY PROCEDURES

(Also refer to OAR Chapter 690, Division 82, Rules for Acceptance of Applications for Water Uses in Addition to Classified Uses.)

- A. Public Notice** - The Department will provide notice of an application submittal to the planning department of affected local governments, as well as other agencies and Indian tribes. Interested parties have 25 days in which to comment on the proposed use(s).
- B. Land Use Compatibility** - The Water Resources Department will:
1. Accompany water use permits and permit applications with a caveat: a) stating that the permit does not guarantee compliance with statewide planning goals, and b) directing applicants to local governments for information on local plan requirements.
 2. Require applicants to provide and use information specified in a form provided by the Department (see Appendix G) Applicants must submit: a) the form; or b) a receipt, signed and dated by a local government planning official, as evidence that a request for information is was received. If the completed land use information form is not received by the Department within 60 days of request by the applicant, the Director may presume that the application is compatible with comprehensive plans, and accept and process the application.

The form may be modified to streamline administration as long as the revised form would supply equivalent information as confirmed by the Department's land use coordination staff. The completed form shall indicate whether or not land uses supported by the proposed water use(s) are allowed under by the comprehensive plan and whether any required local land use approvals are pending, approved, or denied. The completed form shall include the signature of the planning director or responsible official of affected local governments.
 3. Require applicants for municipal water uses to submit information with the application showing that the proposed water use is compatible with comprehensive plan policies on provision of urban services, urban growth boundaries, and Public Facilities Plan(s).

Section III: Compatibility Procedures for: *Uses in Addition to Classified Uses*

- 4. Accept the application if all applicable requirements of statutes and rules governing Commission and Department actions are met; and:**
 - a) The land use associated with the proposed water use is allowed outright under land use and zoning designations, or is not regulated by acknowledged comprehensive plans; or**
 - b) The land use is allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.**

- 5. Accept the application and approve subsequent permits with conditions prohibiting water use, and the placement or construction of facilities to support such use, until the applicant has received all applicable local land use approvals and local appeals periods have expired if:**
 - a) All applicable requirements of statutes and rules governing Commission and Department actions are met; and**
 - b) Land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director; or**
 - c) The applicant is pursuing a comprehensive plan amendment to the satisfaction of the planning director.**

The Department may withhold acceptance of the permit application until all local land use approvals have been obtained if requested to do so by the applicant, a local or state agency, or as otherwise warranted to serve the Department's needs.

- 6. Reject the application if:**
 - 1) Proposed uses are not allowable under acknowledged comprehensive plans; and**
 - 2) The applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or**
 - 3) Local land use approvals have been denied.**

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However, if the Commission decides that accepting and application, issuing a permit or taking any disputed action may be necessary to meet statutory obligations, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

Section III: Compatibility Procedures for: *Uses in Addition to Classified Uses*

**XIV. WATER DEVELOPMENT LOAN FUND - LOAN MANAGEMENT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 90, Water Development Loan Fund.)

A. Land Use Compatibility - The Department will:

1. Require applications for water development projects to include: "...a statement of the appropriate city or county official stating that the proposed project complies with applicable land use regulations and other applicable regulations and ordinances."
2. Apply criteria as provided in OAR Chapter 690, Division 90, n determining whether to grant a loan from the Water Development Fund. These criteria prohibit the approval of a loan application that would "...conflict with any adopted local comprehensive land use plans approved by the Oregon Land Conservation and Development Commission."
3. Require applicants to submit land use information as required in a form provided by the Department (See Appendix G) with their application. The statement will indicate whether land uses which would be supported by the the proposed project are compatible with respective acknowledged comprehensive plans.
4. Approve a water development project loan if all applicable statutes and rules governing Commission and Department actions are met, and:
 - a) The proposed project is allowed outright under the land use and zoning designation(s), or is not regulated under acknowledged comprehensive plans; or
 - b) The project is allowable, with discretionary land use approval, under acknowledged comprehensive plans, and the applicant(s) has/have received all applicable local land use approvals and local appeals periods have expired.
5. If the project is allowable, with discretionary approval, under acknowledged comprehensive plans; and such approval is pending, the Commission will not approve a loan until the applicant has received all applicable local land use approvals and local appeals periods have expired.
6. The Commission will generally reject a loan application if:
 - a) The project is not allowable under acknowledged comprehensive plans; and

Section III: Compatibility Procedures for: *Water Development Loan Fund*

- b) The applicant is not pursuing applicable local land approvals to the satisfaction of the planning director; or
- c) Local land use approvals for the project have been denied.

However, if the Commission finds that approving a loan or taking any disputed action may be necessary to meet statutory obligations, it will follow dispute resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.

B. Future Department Actions

1. The Department will amend application form or add criteria to administrative rules that would guide a loan applicant in preparing the statement of need presently required under OAR 690-90-020 (k). Criteria might include the following issues:
 - a. The extent to which the proposed project may be justified by projected growth under acknowledged local comprehensive land use plans (including public facilities plans);
 - b. Whether the proposed project is of a scale or capacity sufficient to meet the growth needs projected under local comprehensive land use plans; and
 - c. The cost-effectiveness of alternative water sources including the adoption of a regional approach in which available supplies are combined with those held by other purveyors.
2. Add standards to administrative rules that require an appropriate level of water use efficiency and justification of the approval based on reasonably expected water demand over an appropriate time period.

**XV. PAYMENT FOR PROJECTS WITH PUBLIC BENEFIT:
COORDINATION AND COMPATIBILITY PROCEDURES**

(Also refer to OAR Chapter 690, Division 100, Payment for Public Benefits in Water Projects.)

A. Public Notice - The Department will:

1. Provide public notice of each application for partial repayment of a project to "all persons and organizations which have filed a written request for notices with the Department.."
2. Require circulation of the applicant's summary report to the planning department of each affected county and city, along with state natural resource agencies listed in established rules.

B. Public Involvement - The Department will:

1. Hold a meeting with the applicant and state natural resource agencies to address questions and concerns regarding the project.
2. Hold a public meeting (if requested to do so by 10 persons or more) on the proposed payment request in the vicinity of the water project.

C. Land Use Compatibility - The Department will:

1. Require applicants to submit land use information as required in a form provided by the Department (See Appendix G).
2. Invite local planning officials to the meeting prescribed in OAR 690-100-025(2)(b)(B). Add local planning departments to the participants authorized to assist in developing findings on the proposal.
3. In assuring compatibility with acknowledged comprehensive plans, the Commission may recommend approval of partial repayment if:
 - a) The land uses supplied by the proposed water uses are allowed outright under the land use and zoning designations in acknowledged comprehensive plans; or
 - b) The land uses are allowable, with discretionary approval, under acknowledged comprehensive plans, and the applicant has received all applicable local land use approvals and local appeals periods have expired.

Section III: Compatibility Procedures for: *Payment for Public Benefits*

- 4. If the proposed land uses are allowable, with discretionary land use approval, under acknowledged comprehensive plans; and the applicant is pursuing all applicable land use approvals to the satisfaction of the planning director, the Commission will withhold its recommendation for approval of repayment until the applicant has received all applicable local land use approvals and local appeals periods have expired.**
- 5. If the proposed land uses are not allowable under the existing land use designation; and the applicant is pursuing necessary comprehensive plan amendments to the satisfaction of the planning director, the Commission will withhold its recommendation for approval of repayment until the applicant has received all applicable local land use approvals and local appeals periods have expired.**
- 6. The Commission generally will recommend denial of the repayment if: 1) the proposed uses are not allowable under acknowledged comprehensive plans; and 2) the applicant is not pursuing applicable local land use approvals to the satisfaction of the respective planning director; or 3) local land use approvals have been denied. However, if the Commission decides that such repayment may be necessary to protect the public interest in the waters of the state, it will follow resolution procedures prescribed in OAR 690-60-040 and Section III of this Guide.**

XVI. State Scenic Waterway Coordination: Current Coordination Procedures

Land Use Compatibility - The Department will:

Request the Parks and Recreation Department to provide evidence to the Water Resources Commission that coordination with local governments has occurred when Parks is proposing to designate scenic waterways, establish scenic waterway boundaries, [condemn property], or otherwise conduct scenic water way activities affecting land use.

Rely on the Parks and Recreation Department to ensure that scenic waterway activities, which require Water Resources Commission concurrence, comply with the Statewide Planning Goals and are compatible with comprehensive plans as prescribed in Parks' certified state agency coordination program.

Section III: Compatibility Procedures for: *Scenic Waterway Coordination*

2. Resolution of Land Use Disputes

(a) Introduction:

The Commission will follow the rules and procedures in its certified State Agency Coordination Program to ensure compliance with the Statewide Planning Goals and compatibility with acknowledged comprehensive plans. Land use disputes can be avoided through early coordination between the Department and affected local governments. However, land use disputes may arise despite preventive efforts on the part of the Commission and local governments. This section provides the context within which the Commission has adopted dispute resolution procedures as required by OAR 660, Division 30. A summary of the procedures follows this Introduction.

The Legislature has given authority to both the Commission and local governments to manage and protect water resources. State water law requires the Water Resources Commission to develop an integrated, coordinated state water resources policy to manage and protect the waters supplies of the state on behalf of the general public. [ORS 536.220 (2)]. ORS 536.360 requires state agencies and public corporations (i.e., cities, counties or districts organized for public purposes) to conform to the Commission's water resources policy. The Legislature vested the authority to manage water resources in a single agency to avoid conflicting actions and policies by the large number of public authorities with interests in water. [ORS 536.220 (1) (c)].

State law also requires local governments to "promote and manage the local aspects of land conservation and development for the best interests of the people within their jurisdictions." (ORS 197.005 (3)). One aspect of local land use planning is the development and protection of water resources. State land use law defines "land" to include both surface and ground water. The Statewide Planning Goals require each local government to address water resources in its comprehensive plan. In particular, Goals 5 and 6 direct local governments to inventory and provide protection measures for water resources comprehensive plans. Water is also of concern in Goals dealing with agricultural lands, forest lands, natural hazards, public facilities and services, the Willamette River Greenway, and coastal resource areas.

In passing these laws, the Legislature has created an "authority continuum" between state and local governments for managing water resources. This dual authority may increase the likelihood of disputes, but also provides opportunities for successful cooperation in managing water and land use in Oregon.

The Commission's SAC Program reflects this authority continuum. The Program provides a framework for achieving compliance with statewide planning goals and maximum compatibility with acknowledged comprehensive plans. Embodied in the framework is an explicit assumption that the Commission must also fulfill its statutory mandates to manage and protect the water resources of the state.

The Commission's dispute resolution procedures are summarized below. They were developed in close consultation with DLCDC and local planning staff representatives. Upon completing these procedures, and others described in the SAC Program, the Commission will have fulfilled mandatory compatibility requirements outlined in ORS 197.180 and OAR Chapter 660, Divisions 30 and 31.

(b) Procedures:

(1) Determination of Land Use Disputes

A "land use dispute" is defined in Division 690, Division 60 (see Appendix F) as occurring when the Commission has:

- a. Completed procedures to ensure its land use program activities comply with the Statewide Planning Goals and are compatible with comprehensive plans outlined in Division 60 and other applicable sections of OAR Chapter 690; and
- b. Been informed by the planning director or other planning official of a county or city 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 city or county comprehensive plan does not conform to the Commission's state water resources policy, would harm existing water rights, or would otherwise impair the public interest in water resources.

(2) Dispute Resolution Process

If a land use dispute arises, Department program staff will work with land use coordination staff to initiate dispute resolution procedures outlined in OAR 690-60-040. Department responses to land use related questions and issues will be channeled through land use coordination staff to ensure that SAC Program requirements are satisfied.

Section III. Land Use Dispute Resolution Procedures

In summary, the dispute resolution procedures of OAR 690-60-040 provide for an exchange of information between the Department and local government. The Department will explain the purpose and authorization for the disputed action to the local government. In turn, the local government must also provide justification for its position regarding the action by citing specific comprehensive plan policies and regulations. The Department will suggest and invite the local government to suggest alternatives that would allow the Department to act compatibly. Based on these negotiations, staff will recommend that the Commission consider: modifying the proposed action; taking an alternative action; abandoning the action; applying for a comprehensive plan or ordinance amendment; or requesting formal or informal LCDC mediation. If after considering these measures, the Commission determines it must take a disputed action to fulfill its statutory mandate, it may proceed after adopting written findings explaining its action.

C. New or Amended Land Use Programs

The procedures for assuring that new or amended land use programs comply with the goals and are compatible with comprehensive plans are set out in OAR 690 - 60 - 050. In summary, each new rule or rule amendment will be examined to determine if it significantly affects land use, using the criteria explained in Section E.1 .

Agency staff will complete the form in Figure 3 and forward the form to the land use coordination staff when they begin to write new rules or rule amendments. If land use is affected, the associated program or activity will be added to the list of land use programs in OAR 690 - 60 - 025. In addition, any new specific compliance or compatibility needs will be added to the rules and/or procedures governing the associated program. If it is found that an amendment disqualifies a program listed in OAR 690 - 60 - 025, the program will be dropped from that rule section.

If a new rule, rule amendment, or any other program change is found to affect land use, the Department will notify DLCDC and interested parties of: the date, time and location of hearings or other agency action; the manner and date by which comment may be submitted to the Department; an explanation of how the rule qualifies as, or affects the status of, a land use program; and a description of any additional actions proposed to assure goal compliance and comprehensive plan compatibility.

Figure 3
Land Use Check List for New Rules or Rule Amendments

Proposed Rule Number / Title: _____

- Yes No 1. The proposed rule restricts, controls, or allows specific quantities of types of water uses.
- Yes No 2. The proposed rule establishes policy which will probably affect water availability or future uses of water.
- Yes No 3. The proposed rule involves approving grants or loans for projects to divert, convey, apply, or protect water resources.
- Yes No 4. The proposed rule requires actions other than data-gathering, reporting, or enforcement of existing water law.

If you checked "Yes" to any of the above, the rule probably affects land use. Additional rule language or procedures may be needed to assure compatibility with comprehensive plans. Please contact the land use coordination staff to discuss further action. If you checked "No" to all of the above, the rule probably does not affect land use. Please keep this form as documentation that land use impacts were considered as you developed the rule. Also, please remember that even if the proposed rule is not a land use program, keeping local governments informed about the activity can benefit both the Department and the local government.

Section IV: Coordination with Other State and Federal Agencies and Special Districts

This section describes in general terms the Department's land use coordination activities with state and federal agencies and special districts. This coordination currently takes place as a normal part of many Department programs. Coordination with agencies and districts, for the most part, is integrated into the land use program activities and procedures described in other sections of this Guide.

A. State Agencies

The Department coordinates with other state agencies when carrying out land use programs such as instream water rights issuance, basin planning, and reservations of water for future economic development. These state agencies include the Oregon Departments of Fish and Wildlife, Parks and Recreation, and Environmental Quality. Procedures for coordination with these agencies are described in Section III.

Several other important mechanisms have been established for coordination between state water resource agencies. The Strategic Water Management Group (SWMG) is composed of the directors of state natural resource agencies, including those most frequently involved in Department land use programs. SWMG provides a forum for raising, and reaching consensus on, water policy issues. The Department is a member of SWMG and also provides its administrative support. Another important coordination tool is the development of the Biennial Water Program. As the short-term implementing framework of the Oregon Water Management Program, the Biennial Water Program identifies water resources issues to be dealt with in a given biennium and assigns tasks addressing those issues to the appropriate state agencies. The Department produces the Biennial Program in close cooperation with the agencies most often involved in Department land use programs.

In addition, each biennium the Director of the Water Resources Department will report to the Director of the Department of Land Conservation and Development on the effectiveness of WRD's SAC Program. The Director will also recommend changes to either agency's rules to improve coordination between the agencies and local governments.

B. Federal Agencies

Federal agencies are usually not extensively or significantly involved in Department land use programs. Federal agencies, such as the Forest Service and the Bureau of Land Management, apply for water use permits much like other applicants. Permits are usually requested for relatively small quantities of water for livestock, campground, storage, or domestic uses. Applications for water uses on federally owned lands are not subject to land use information requirements as are other applications. Coordination with federal agencies relating to land use programs is on a case-by-case basis. The bulk of the Department's extensive coordination with federal agencies takes place in regard to non-land-use programs dealing with technical investigations, technical assistance, and advice on water resource management issues.

C. Special Districts

The Department deals directly with ditch companies and irrigation, drainage, water control, water improvement, and diking districts. There are over 200 of these bodies in the state. The Department's interactions with these districts consists mostly of processing new permit applications and transfers and tracking information submitted under the water use reporting program. The Department will continue to coordinate with districts in the customary manner. The Department will increase its efforts to coordinate with districts through its basin planning process, as described in Section III. The Department also hopes to work with DLCD, counties, and districts to update or develop the mandatory planning agreements between counties and districts required by ORS 197.185. In addition, the Department will add the Special Districts Association of Oregon to appropriate mailing lists and provide districts with information on programs or water resources upon request, as resources allow and priorities dictate.

D. Interagency Coordination Contact

The land use coordination staff is responsible for much of the Department's interagency coordination. The names, address, and phone number of the land use coordination staff are provided in Appendix H.

Section V: Department Program for Coordination with and Technical Assistance to Local Governments

A. Introduction

State law requires the Commission to make information on Oregon's water resources available to the public, government agencies, and public corporations. Accordingly, the Department is extensively involved in the gathering, analysis, and distribution of water resources information. Through the SAC Program, the Commission commits itself and the Department to continued coordination with local governments to assist local planning efforts and to strengthen the Department's water resources management programs. The Department will provide technical assistance and inform local governments of water resources conditions and issues. The Department will also participate in periodic review and amendment of comprehensive plans; review and comment on local project proposals; and manage water rights reporting requirements.

Land use coordination staff are responsible for ensuring that Department activities uniformly and systematically meet the goals, objectives, and requirements of the SAC Program. Other program staff will contact the land use coordination staff regarding activities which involve land use issues or working with local planning officials. Land use coordination staff will also be consulted regarding citizen inquiries that involve land use issues. When water resources assessment or studies reveal information that could significantly affect water availability, land use coordination staff will participate in developing management strategy alternatives. The names of the land use coordination staff are provided in Appendix H.)

The Department will generally follow the procedures outlined below, as appropriate to meet the needs of a particular locality or region.

B. Procedures for Cooperation and Technical Assistance

1. Inform Local Government Planning Departments of Water Resources Issues and Water Resources Department Activities

The Commission has, in adopting this State Agency Coordination Program, significantly increased its efforts to inform local planning departments of water issues and Department activities. The Commission amended its administrative rules to include local planning departments its noticing requirements for water use approvals. The Commission has also established procedures to assure that its actions comply with Statewide Planning Goals and are compatible with acknowledged comprehensive plans. In the event a land use dispute arises, the Commission's resolution procedures will guide the Department's efforts to resolve the problem. The Commission has also established numerous procedures to enhance the level of local planning department involvement in basin planning and in developing management strategies for critical ground water areas.

In many instances, a local government will not have an official planning department or planning director. In these cases, the Commission and Department will work closely with local elected bodies, public works directors, city engineers, clerk recorders, and other local officials responsible for the preparation, maintenance and implementation of comprehensive plans. An up-to-date list of local planning department contacts is available in the Planning Section, along with a computerized mailing list in Word Processing Section of the Department.

To inform local governments of water resources issues and Department activities, staff will:

- (a) Offer to brief affected local planning departments and/or their commissions about ongoing or upcoming water resource assessments and studies;
- (b) Consider local input in preparing the scope of Department studies;
- (c) Offer to interpret and discuss the results of assessments and studies;
- (d) Provide copies of water resources reports and studies as requested;
- (e) Invite local planning staff to attend inter-agency meetings and site-visits as appropriate.
- (f) Notify the planning departments of affected counties and cities of pending actions relating to the Departments land use programs.
- (g) Invite local planning officials to participate in Department work groups and advisory committees which are dealing with issues that have significant land use implications.
- (h) Consider submitting announcements and articles describing WRD activities for publication in local government and land use planning newsletters.

- (i) Develop and distribute model policy and ordinance language appropriate for inclusion in comprehensive plans, designed to promote water resources management and protection through the land use planning process.

2. Participation in the Periodic Review and Amendment of Comprehensive Plans

(a) Periodic Review

Upon receipt of DLCD's periodic review notice, the land use coordination staff will send the Department's Periodic Review Guide (see Appendix I.) to the applicable planning department. This guide identifies numerous water-related issues which local planners should consider in updating their comprehensive plans. Staff will follow-up the mailing by contacting local planning staff to answer questions, provide information, and schedule meetings to discuss issues of concern. Staff will also take the following actions to the extent issues warrant and resources allow.

- (1) Identify and explain relevant Department programs and plans adopted since the date of acknowledgment or previous periodic review;
- (2) Provide information on trends in local water-related conditions and issues which may affect assumptions embodied in comprehensive plans;
- (3) Obtain and review applicable land use plan policies, ordinance sections, and maps. Particular attention will also be directed at reviewing local public facilities plans for consistency with state water policies and plans. Staff will assess the adequacy of water resource inventories and protections, and whether the comprehensive plan designations and projections reflect water supply availability and constraints.
- (4) Suggest possible amendments to comprehensive plans that would enhance water management and protection consistent with the Statewide Planning Goals and state water resources policy.

- (5) Provide materials for use by local governments in their planning efforts. Such materials might include:
- basin maps for the planning area;
 - maps displaying water classification and withdrawal information;
 - a description of the Commission and its mission;
 - a copy of the Commission's coordination rule, OAR Chapter 690, Division 60;
 - the Oregon Water Management Program, including applicable basin programs, policies, and explanatory materials;
 - a list or copies of relevant water resource investigations, reports, studies or other information (i.e., U.S. Geological Survey statistical summaries of streamflow, water atlases, or water conservation publications);
 - an explanation of how local planners can make use of these materials;
 - a summary of water resources conditions, issues, concerns, and conditions in the planning area;
 - watershed management information case studies;
- (6) Coordinate with Governor's Watershed Enhancement Board staff in addressing issues related to watershed management and enhancement;

(b) Amendment of Comprehensive Plans

Periodic review of comprehensive plans occurs approximately once every seven years. However, local planning agencies amend their comprehensive plans on an ongoing basis to improve the planning process and to reflect changes in the planning area. To coordinate the management of water resources and land use, the Commission authorizes the Department to review and participate in the comprehensive plan amendment process.

(1) Review and Comment on Proposed Plan Amendments

The Department will review proposed amendments prior to action by local decision-making bodies. The Department's land use coordination staff will:

- monitor proposed amendments published in DLCD's bi-weekly lists;
- circulate lists for review by program staff in other sections, regional offices, and watermasters' offices;
- determine, in consultation with other program staff, which amendment proposals warrant further research and attention;
- facilitate communication, information transmittal, meetings, site visits, and correspondence with local planning department and DLCD staff,
- consult with program staff to prepare advisory or position statements on proposed amendments;
- participate in preparing official testimony, if needed, for submittal at local hearings or to appeals at the state level.

(2) Department-Initiated Comprehensive Plan Amendments

In addition to the standard review of plan amendment proposals described above, the Commission may request local governments to amend comprehensive plans in order to protect and better manage water resources. Such requests may be submitted:

- during periodic review of comprehensive plans; or
- pursuant to the procedures for resolving land use disputes outlined in OAR 690-60-040 and described in this procedures guide; or
- to correct inaccurate or outdated information; or
- if the Commission finds such action necessary to comply with statewide water resources policy or otherwise protect the public interest in Oregon's water resources.

In such instances, Department land use coordination staff will work with other program staff to assess the issues and problems, craft the desired plan and ordinance amendments, coordinate with affected local agencies, and present the proposed amendment to local and state decision-making bodies.

(3) Coordination and Technical Assistance in Public Facilities Planning

The Department will coordinate with local governments, other state agencies and districts in public facilities planning. Currently, the Department issues loans from the Water Development Fund for various types of water supply projects. Administrative rules to assure that the issuance of loans complies with the goals and is compatible with comprehensive plans are contained in OAR Chapter 690, Divisions 60 and 90. Procedures for ensuring compliance and compatibility are also found in Section III of this Guide.

The Department is also represented on a task force created by the Strategic Water Management Group (SWMG) to identify and evaluate strategies for funding and regionalizing municipal water supply development, treatment and distribution. The findings and recommendations of the task force as adopted by SWMG will feed into the Department's technical assistance to local governments in preparing public facilities plans.

The Department will continue to participate, as requested by local agencies and water providers, in developing long-range water supply plans and strategies to maximize water use efficiency. Currently, the Department is working with a consortium of representatives from agencies and districts in Yamhill, Polk, Benton, and Lincoln Counties to develop a long-range water supply plan for the four-county region.

The Department will also be adopting rules allowing water providers, having merged districts or formed a water authority, to pool their water rights and apply them flexibly within a pre-determined service area. Municipal water rights can then be severed from appurtenant land and marketed for municipal uses. These rules will reflect the need to coordinate the process with the planning agencies of affected local governments.

(4) Review of Project Proposals

The Department will review individual development project proposals and provide pertinent water resources information to local governments, applicants, organizations, and individuals upon request. If necessary, program and/or land use coordination staff may visit the site under consideration to evaluate the conditions and the need for additional Department involvement. Due to constraints on Department staff resources, and the availability of private consultants to provide related services, the Department will focus its efforts on providing local governments with more generic options for managing and protecting local water resources through plan policies and ordinances.

The Department is unaware of any LCDC rule or similar policy interpretation establishing any specific compliance requirement for the Department of any other applicable state agency to meet implementation Requirement 9 in Goal 16.

In the event that it becomes necessary to for the Department to comply directly with this Goal 16 requirement, the Department will adhere to the procedures set forth in OAR 690-60-030, Compliance with Statewide Planning Goals.

Department Involvement in Coastal Management Program

The Department recognizes that the Oregon Coastal Management Program (OCMP) is part of the state program for coordinated land use planning. The OCMP is a partnership between local governments and state and federal agencies to resolve general and often competing interests through the acknowledgement of coastal city and county comprehensive plans.

The OCMP is based primarily on the Oregon Land Use Planning Act (ORS Chapter 197) and its principal elements, the Statewide Planning Goals and acknowledged comprehensive plans. In addition, the OCMP also is based upon the statutory authorities of various state agencies, including the Department of Water Resources.

The specific WRD statutory responsibilities listed in OCMP document include the following:

- a. Policies and programs for the use and conservation of surface and groundwater resources;
- b. Permits issued for the appropriation of surface and groundwater resources;
- c. Permits issued for dams not regulated by the state Energy Facility Siting Council;
- d. Coordination of river basin programs with comprehensive plans;
- e. Approval of minimum streamflows now redefined as instream water rights.;
- f. Designation of critical groundwater areas; and;
- g. Regulation of water withdrawals.

The above authorities, programs and actions are implemented by Chapter 690 of the Oregon Administrative Rules.

Section V: Cooperation and Technical Assistance to Local Governments

Federal Consistency

The Department, in cooperation with DLCD and other affected state and federal agencies, will advise DLCD as needed on the consistency of federal actions and activities which may affect Oregon's coastal zone. In carrying out its responsibilities under the federal consistency process, the Department will follow the procedures and requirements contained in LCDC's federal consistency rule, OAR Chapter 660, Division 35.

OCMP Strategic Plan

The Department will participate with DLCD and other OCMP agencies, to the extent resources allow, in the development and maintenance of a five year strategic plan for Oregon's coastal zone.



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