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LAVONNE GRIFFIN-VALADE
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CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED

09/18/2023 1:20 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend Territorial Sea Plan Part Four - Uses of the Sea Floor

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/03/2023 8:00 AM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Casaria Taylor
971-600-7699
casaria.taylor@dlcd.oregon.gov

635 Capitol St
Ste. 150
Salem, OR 97301

Filed By:
Casaria Taylor
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/03/2023

TIME: 7:30 AM

OFFICER: LCDC

HEARING LOCATION

ADDRESS: Medford City Hall, Council Chambers, Room 300, 411 W. 8th Street, Medford, OR 97501

SPECIAL INSTRUCTIONS:

sign-up in advance to testify at <https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx>

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-253-205-0468

CONFERENCE ID: 766920

SPECIAL INSTRUCTIONS:

sign-up in advance to testify at <https://www.oregon.gov/lcd/Commission/Pages/Public-Comment.aspx>

DATE: 10/23/2023

TIME: 12:00 PM

OFFICER: Andy Lanier

HEARING LOCATION

ADDRESS: Hatfield Marine Science Center, 2030 SE Marine Science Drive, Library Seminar Room, Newport, OR 97365

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-253-205-0468

NEED FOR THE RULE(S)

To update Part Four of the Territorial Sea Plan: Uses of the Sea Floor, originally adopted in 2001.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Statewide Land Use Planning Goal 19: Ocean Resources – <https://www.oregon.gov/lcd/OP/Documents/goal19.pdf>

Oregon Territorial Sea Plan - <https://www.oregon.gov/LCD/OCMP/Pages/Territorial-Sea-Plan.aspx>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The department has not identified any effect on racial equity in the state.

FISCAL AND ECONOMIC IMPACT:

State agencies (ODFW, OPRD, DSL, DLCD, DEQ) will be required to act in accordance with the policies outlined in the Plan, which may include rulemaking. Agency staff will also be necessary to be members of the Joint Agency Review Team to review project proposals for feasibility, completeness, and technical merit, which will incur the use of staff resources and personnel. In addition to proposed rulemaking for multiple divisions, DSL anticipates proposing new legislation to fully comply with the policies outlined in the plan. Moreover, DSL plans to hire a facilitator and limited duration staff to help oversee and implement proposed rulemaking. Limited duration staff will also work on drafting any necessary legislative concepts

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) State agencies (ODFW, OPRD, DSL, DLCD, DEQ), local governments, and industry representatives submitting project proposals will be required to act in accordance with the policies outlined in the Plan, which may include rulemaking. Agency staff will also be necessary to be members of the Joint Agency Review Team to review project proposals for feasibility, completeness, and technical merit, which will incur the use of staff resources and personnel. In addition to proposed rulemaking for multiple divisions, DSL anticipates proposing new legislation to fully comply with the policies outlined in the plan. Moreover, DSL plans to hire a facilitator and limited duration staff to help oversee and implement proposed rulemaking. Limited duration staff will also work on drafting any necessary legislative concepts. Local Governments may have increased costs associated with complying with the plan requirements.

2) (a) The department has identified small businesses such as cable owners and operators, offshore energy companies, and similar small businesses subject to the rules.

(b) Small businesses will be expected to perform additional record keeping or administrative activities outside of the requirements of current administrative rules. These additional requirements relate to the completion of the resource and use inventory and effects evaluation.

(c) The department has identified the possibility of increased cost to small businesses associated with this rule in regard to professional services, equipment supplies, labor, or increased compliance administration. The department does not have access to sufficient available information regarding the magnitude of the potential cost increase to these small businesses to make an accurate cost estimate.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A number of small business entities were involved in the development of this rule through membership of the Ocean Policy Advisory Council (OPAC) and its subcommittee, the TSP Part Four Working Group as well as through public comment. The makeup of OPAC is representative of all coastal interests. The working group was made up of representatives from the telecommunications industry, conservation groups, coastal research institutions, local government, and management agencies.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

Description of proposed change: (Please attach any draft or permanent rule or ordinance) This rule amendment is not expected to have any impact on housing cost.

Amend rule to read:

660-036-0001

Territorial Sea Plan: Uses of the Sea Floor

The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan Part Four: Uses of the Sea Floor, that the Commission approved as modified on December 01, 2000 and November xx, 2023.

[Publications: Publications referenced are available from the agency.]

[ED. NOTE: To view attachments referenced in rule text, click here for PDF copy.]

Statutory/Other Authority: ORS 183.310 - 550, 196.465, 196.471 & 197

Statutes/Other Implemented: ORS 196.465, 196.471 & 197.040

History:

LCDD 1-2001, f. 1-25-01, cert. ef. 1-26-01

Description of the need for, and objectives of the rule: To update Part Four of the Territorial Sea Plan: Uses of the Sea Floor, originally adopted in 2001, and as amended in 2023 by LCDC.

List of rules adopted or amended: 660-036-0001

Materials and labor costs increase or savings: n/a

Estimated administrative construction or other costs increase or savings: n/a

Land costs increase or savings: n/a

Other costs increase or savings: n/a

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

AMEND: 660-036-0001

RULE SUMMARY: This rule incorporates text amendments, by reference, for Part Four of the Oregon Territorial Sea Plan: Uses of the Sea Floor.

CHANGES TO RULE:

Telecommunication Cables, Pipelines, and Other Utilities ¶¶

(1) Oregon's coast is a prime landing zone for fiber-optic telecommunication cables that cross the ocean floor from sites around the Pacific Rim. Other utilities, such as natural gas pipelines, may eventually be routed across Oregon's Territorial Sea bed. Proper placement of utility easements and installation of fixtures is required to avoid damage to or conflict with other ocean uses, such as commercial fishing, and to reduce or avoid adverse effects on marine habitats. State agencies, such as the Division of State Lands, the Department of Fish and Wildlife, the Oregon Parks and Recreation Department, and the Department of Land Conservation and Development, need clear policies and standards for reviewing and approving the routing and installation of utilities on the seafloor of Oregon and adjacent federal waters.¶¶

(2) Policies. When making decisions to approve routing, placement, or operation of a seafloor utility or fixture, state and federal agencies shall:¶¶

(a) Protect ocean fisheries and other ocean uses from any adverse effects that may be caused by installation or operation of cables, pipelines, or other fixtures by requiring that such routing, placement, or operation:¶¶

(A) Avoid conflicts between commercial or recreational fishing or other ocean-use activities and utilities, as a first priority;¶¶

(B) Reduce any adverse effects when conflicts cannot be avoided; and¶¶

(C) Mitigate for adverse effects after first reducing them to the minimum practicable.¶¶

(b) Protect marine habitat, fishery areas, and other marine resources as required by Statewide Planning Goal 19, Ocean Resources, and the Oregon Territorial Sea Plan; and¶¶

(c) Promote direct communication between affected ocean users to resolve or avoid conflicts and require written agreements among the parties when necessary to ensure communication and memorialize agreements.¶¶

(3) Implementation Requirements. When approving the routing, placement, or operation of seafloor utility, state and federal agencies shall avoid or reduce conflicts or adverse effects on other ocean users through the use of one or more of the following:¶¶

(a) Burial:¶¶

(A) In state waters: All telecommunication cables, pipelines, and other fixtures, crossing or affixed to state lands of the territorial sea lying seaward of Extreme Low Water (which is the seaward boundary of the Ocean Shore Recreation Area), shall be buried so as to ensure continuous burial unless the approving state agencies make findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture have been reduced, avoided, or mitigated to the extent practicable.¶¶

(B) In federal waters: Decisions to permit burial of cables, pipelines, or other fixtures crossing or affixed to the seabed of the outer continental shelf (beneath federal waters) to a depth of 2,000 meters off Oregon, will be deemed consistent with this state policy. When a federal agency does not require burial in waters to this depth, the state may concur that the decision is consistent with state policy only if the federal agency makes findings that burial cannot be practically achieved and all affected parties agree that adverse effects of not burying the cable, pipeline, or fixture, have been reduced, avoided, or mitigated to the extent practicable.¶¶

(C) Burial shall be certified by the contractor to the easement-granting agency.¶¶

(D) The easement-granting agency shall require that cables, pipelines, or other utility fixtures shall be inspected periodically and after any major geologic event, such as subduction-zone earthquake to ensure continued burial.¶¶

(b) Communication and coordination. Written agreements between the applicant and fishers or other users shall be required by the easement-granting agency as evidence of communication and coordination. Such agreements may coordinate work, determine routing, identify routes, respond to emergencies, provide for mitigation of adverse effects, or specify procedures for on-going communication. Written agreements shall specify how fishers or other users and the applicant will resolve disputes over lost fishing gear, damage to seafloor utilities, or liability for such actions.¶¶

(c) Controlling the location of utilities. Locations for new cables, pipelines, or other utilities shall conserve areas available to ocean fisheries, prevent or avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other public resources of the seafloor or ocean shore. New rights-of-way may be required to be located as close to existing rights of way as possible or with sufficient capacity to enable future expansion within the approved right of way.¶¶

(d) Single point-of-contact. The Division of State Lands shall coordinate approvals of easements and permits in consultation with the Parks and Recreation Department, the Department of Fish and Wildlife, the Department of Land Conservation and Development, the Department of Geology and Mineral Industries, and coastal local governments, as appropriate. The Department of Land Conservation and Development will use its authority under the federal Coastal Zone Management Act to review federal permits to ensure that they are consistent with state requirements. The Land Conservation and Development Commission adopts as part of the Oregon Coastal Management Program, and herein incorporates by reference, an amendment to the Territorial Sea Plan Part Four:

Uses of the Sea Floor, that the Commission approved on December 1, 2000 and November xx, 2023.

Statutory/Other Authority: ORS 183.310 - 550, ORS 196.465, ORS 196.471, ORS 197

Statutes/Other Implemented: ORS 196.465, ORS 196.471, ORS 197.040

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.



Oregon Territorial Sea Plan: Part Four

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1. The State Perspective

1.1. Purpose

Part Four of the Oregon Territorial Sea Plan provides a strategic framework for the decision-making process, partnerships, and collaborative relationships for undersea infrastructure on, affixed to, or buried under the seafloor in the state territorial sea.

1.2. Goal

This strategic framework aims to maintain the long-term protection of marine ecosystems, preservation of their ecological functions, economic and social services, and, at the same time, protection of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea from potential threats in order to preserve the services the infrastructure provides Oregonians.

1.3. Objectives

This strategic framework identifies the following objectives to be achieved:

- a. Maintain and protect marine ecosystems, biological resources, migratory species, and areas that are of economic (*e.g.*, fisheries, navigation), aesthetic, recreational, social, or historical importance to the people of Oregon, and could be impacted by infrastructure on, affixed to, or buried under the seafloor in the state territorial sea.
- b. Implement policies and recommendations for routing, construction, operation, maintenance, and decommission, including recycling, of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea.
- c. Engage communities, ocean users, industries, research institutes, and technical experts in decision-making on a state permit, license, lease, or other authorization for infrastructure on, affixed to, or buried under the seafloor in the state territorial sea.
- d. Facilitate coordination and cooperation among federal, state, and local agencies, and tribal governments in the permitting and planning process for infrastructure on, affixed to, or buried under the seafloor in the state territorial sea, and require that the applicant develop and update mitigation and accident response plans.
- e. Promote resilience of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea to climate change, natural disasters, extreme weather events, and human-made activities.
- f. Coordinate the development and installation of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea with the growing development of



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renewable energy facilities in the Pacific Northwest (e.g., offshore wind farms, hydrokinetic, solar, and hydrogen technologies).

- g. Continue current, and promote future, compatible use of the seafloor in the state territorial sea between various ocean users.

2. Background

Oregon's coast is a prime landing zone for fiber-optic telecommunication cables that cross the ocean floor from sites around the Pacific Rim. Other types of utilities such as ocean outfall pipes also make use of the seafloor. In the future, utilities such as pipelines and power transmission cables from renewable energy facilities, may eventually be routed across the seafloor of the state territorial sea. Proper placement of easements and installation of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea is required to avoid damage to or conflict with other ocean uses, such as commercial fishing, and to avoid, minimize, and mitigate adverse effects on natural resources, marine habitats, and coastal communities.

State agencies, such as the Department of State Lands (DSL), the Department of Environmental Quality (DEQ), the Department of Fish and Wildlife (ODFW), the Oregon Parks and Recreation Department (OPRD) including the State Historic Preservation Office (SHPO), and the Department of Land Conservation and Development (DLCD), need specific policies and standards for considering the routing and installation of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea. The policies and standards within the Territorial Sea Plan can also assist federal agencies in the siting and regulation of infrastructure located in federal waters adjacent to the territorial sea.

The Land Conservation and Development Commission adopted Part Four of the Territorial Sea Plan on December 1, 2000, based on a January 28, 2000 recommendation from the Ocean Policy Advisory Council (OPAC). These amendments are consistent with administrative rules adopted by the Oregon State Land Board in August 1999, governing easements for submarine fiber-optic cables. Part Four was updated based on recommendations made from the Ocean Policy Advisory Council on September 8th, 2023. The Land Conservation and Development Commission adopted this update on **xx/xx**.

2.1. International Law & Treaty Obligations

In implementing this strategic framework, the state recognizes international agreements intended to provide adequate oversight and protection of federal and state concerns regarding seafloor development actions.

- International Convention for the Protection of Submarine Telegraph Cables (1884).
- The United Nations Convention on the Continental Shelf (1958).
- The United Nations Convention on the High Seas (1958).



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- The United Nations Convention on the Law of the Sea (1982).¹
- The United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses (1997).
- The United Nations Framework Convention on Climate Change (1992) and the Paris Agreement (2015).

In addition to those international agreements, various federal, state, and local agencies and authorities are involved in the permitting process related to seafloor development in Oregon. The routes of seafloor infrastructure can pass through many jurisdictions, and therefore, require authorizations from multiple agencies for installation and construction.

2.2. Federal

The state should consider consulting with the following (but not limited to) federal agencies with a role in permitting seafloor development: The National Oceanic and Atmospheric Administration (NOAA) and the United States Army Corps of Engineers (USACE). Additionally, for offshore renewable energy facilities addressed in Part Five: the Bureau of Ocean Energy Management (BOEM) and the Federal Energy Regulatory Commission (FERC) play roles in permitting and leasing.

In addition to the federal laws identified in Part One, subsection D.4, under federal law undersea cable systems are, and pipelines and other utilities may also be, considered vulnerable critical infrastructure. The USA PATRIOT Act of 2001 and the Critical Infrastructure Information Act of 2002 aim to protect critical infrastructure and facilitate sharing of critical infrastructure information among the owners and operators of the facilities and government agencies with infrastructure protection responsibilities.

The Cybersecurity and Infrastructure Security Agency (CISA) considers 16 critical infrastructure sectors, including communication, energy, information technology, and water and wastewater systems.²

Critical infrastructure is subject to risks associated with physical threats and natural disasters. It is also now increasingly exposed to cyber risks. In addition, connections and interdependencies between infrastructure elements and sectors mean that damage, disruption, or destruction to one infrastructure element can cause cascading effects, impacting the continued operation of another.

¹The United States has signed the Agreement but has not ratified it. See Part One, subsection D.5 for background.

²The Department of Homeland Security Critical Infrastructure Sectors <https://www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors>



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A Guide to Critical Infrastructure Security and Resilience prepared by CISA³ highlights the Cascadia Subduction Zone earthquake preparedness in the Pacific Northwest as a case that requires cooperation among federal, state, local agencies, and the private sector to improve the resilience of critical infrastructure, including telecommunication cables, pipelines, and other utilities.

2.3. State

Seafloor development within the Territorial Sea may require authorizations, permits, certifications, determinations, and easements from DSL, OPRD including SHPO, DEQ, and DLCD. The enforceable policies (See Appendix C) of the Territorial Sea Plan Part Four, incorporated by NOAA's Office for Coastal Management (OCM) into the Oregon Coastal Management Program, are applicable to those federal actions that affect Oregon's coastal zone and are subject to the federal consistency requirements of the federal Coastal Zone Management Act.

2.4. Tribal

State and federal laws applicable to permitting process for seafloor development provide for communication and coordination between the state and the federally recognized tribes. Coordination with the tribal peoples native to Oregon affords the opportunity to learn traditional ecological knowledge and perspective important to the protection of tribal cultural resources. During the last glacial maximum, 19,000 years before present, Oregon's coastline was 61 kilometers west of the modern coast in some areas¹. Archaeological evidence shows people living in Oregon for at least 18,000 years and many tribal traditions say tribal people have inhabited Oregon for time immemorial²³. Ancient Oregon coastlines have moved significantly since that time. During a single generation precontact inhabitants of the coast might see the shoreline move eastward 0.5-1.35 meters/year⁴. The ancient Pacific coastline is considered by many scholars to have been a migration route and many archaeological sites are located on coastlines worldwide⁵. With the above facts in mind, the likelihood of archaeological sites along the prehistoric Oregon coast is high. According to Oregon statute, archaeological sites occurring on submerged and submersible lands or the bed of the sea within the state's jurisdiction may not be altered or excavated without a permit from the Oregon Parks and Recreation Department issued to a professional archaeologist⁶.

¹ [Inventory Pacific Submerged Archaeology Sites_BOEM_2013.pdf](#)

² [Field site shows evidence of humans in Oregon 18,000 years ago | Around the O \(uoregon.edu\)](#)

³ [Essential Understandings of Native Americans in Oregon \(oregon.gov\)](#)

⁴ [Inventory Pacific Submerged Archaeology Sites_BOEM_2013.pdf](#)

⁵ Loren G. Davis, David B. Madsen, The coastal migration theory: Formulation and testable hypotheses, Quaternary Science Reviews, Volume 249, 2020

⁶ ORS 390.235



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2.5. Local

Local counties, municipalities, or special districts may have jurisdiction and may have requirements for an onshore component of a seafloor development; such development actions need to be consistent with local land use planning. The most common approvals required include, but are not limited to, conditional use permits or development permits.

3. Policies

These policies and the implementation requirements of the following section are mandatory.⁴ Decisions of state agencies with respect to approvals of permits, licenses, leases or other authorizations for routing, construction, operation, maintenance, and decommission, including recycling, of any cables, pipelines, utilities or fixtures on, affixed to, or buried under the seafloor in the state territorial sea and or connected from the seafloor to the ocean shore must comply with the requirements of the Oregon Territorial Sea Plan.

An applicant for a project or development action within or affecting the Oregon Territorial Sea shall:

Design and site projects and infrastructure responsibly such that proposed seafloor development actions will maintain and protect to the maximum extent practicable, natural resources, ecosystem integrity, marine habitat, and areas important to fisheries, navigation, recreation, and aesthetic enjoyment from adverse effects that may be caused by said development actions. For purposes of this section, 'Maintain and protect' requires mitigation, in order of priority:

- 1) Avoiding the impact altogether by not taking a certain development action or parts of that action;
- 2) Minimizing impacts by limiting the degree, magnitude, or timing of the development action and its implementation;
- 3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- 4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures; and
- 5) Compensating for the impact. Either monetary compensation or by replacing or providing comparable substitute resources or environments.

³ A Guide to Critical Infrastructure Security and Resilience
<https://www.cisa.gov/sites/default/files/publications/Guide-Critical-Infrastructure-Security-Resilience-110819-508v2.pdf>; see also CISA National Critical Functions Set
<https://www.cisa.gov/sites/default/files/publications/national-critical-functions-set-508.pdf>

⁴ Notwithstanding Territorial Sea Plan Part One, paragraph F.1.b.



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When making decisions to approve projects or development actions, regulating state agencies shall promote direct communication and collaboration between the applicant and interested and affected ocean users as identified by the Joint Agency Review Team (JART) under 4.2.2 to mitigate potential conflicts.

4. Implementation Requirements

Applicants shall adhere to these implementation requirements during all project phases related to infrastructure on, affixed to, or buried under the seafloor in the state territorial sea. This includes utility cables that transmit electrical energy from a renewable energy facility to the onshore substation, as prescribed in Part Five of the Territorial Sea Plan, Use of the Territorial Sea for the Development of Renewable Energy Facilities or Other Related Structures, Equipment or Facilities. The requirements in Part Two, Making Resource Use Decisions, sections A and B will not apply to development actions related to cables, pipelines, or other utilities or fixtures on, affixed to, or buried under the seafloor within the Oregon Territorial Sea.

When approving development actions or projects, state agencies shall mitigate (see definition in Appendix A) conflicts or adverse effects on natural resources or other ocean users through the following measures:

4.1. Agency Communication, Coordination, & Review Requirements

State agencies shall apply the policies and provisions of the Oregon Ocean Resources Management Plan, Oregon Territorial Sea Plan, and Statewide Planning Goals as required to comply with State Agency Coordination Programs (OAR chapter 660, divisions 30 and 31).

In accordance with the federal Coastal Zone Management Act, federal consistency regulations (15 CFR Part 930), and ORS 196.435, DLCD will review the consistency certification together with required necessary data and information submitted by the applicant for federal authorization for development actions related to cables, pipelines, or other utilities or fixtures on, affixed to, or buried under the seafloor within the state territorial sea to determine whether the development action is consistent with enforceable policies of the Oregon Coastal Management Program, including the Oregon Territorial Sea Plan.

DSL shall coordinate the review of applications for easements and permits in the state territorial sea in consultation with the JART as described in the next section.



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4.2. Joint Agency Review Team

The purpose of the JART is to facilitate coordination and communication between state agencies in the early stages of project planning, and between representatives of other affected jurisdictions throughout the pre-application and application process. When an applicant requests a pre-application meeting with DSL, DSL shall convene the JART for the pre-application meeting and application meeting. If the cable or fixture is associated with a renewable energy facility, the JART convened under Part Five shall also serve as the JART for purposes of Part Four coordination, with any additional membership needed to meet the requirements below. DSL may also convene the JART as necessary for follow-up meetings in order to facilitate the coordination of state and federal agencies, and local jurisdictions, as they apply their separate regulatory, proprietary, or other authorities to the review of a proposed project within the state territorial sea.

4.2.1. JART Composition

DSL shall invite representatives from the following state agencies to the coordination meetings:

- 1) ODFW, OPRD including SHPO, DEQ, DLCD, Department of Geology and Mineral Industries, and other agencies with regulatory or planning authority, or advisory expertise, applicable to the proposed project or development action and location as necessary.

The state agencies shall identify the areas affected by the proposed project or development action. Thereafter, DSL shall invite representatives from the following agencies, jurisdictions, and organizations from affected areas to the coordination meetings:

- 2) Federal agencies, with regulatory or planning authority applicable to the proposed project or development action and location;
- 3) Federally recognized Coastal Tribes in Oregon;
- 4) Local jurisdictions including representatives from affected cities, counties, and their affected communities, and affected special districts as appropriate; and,
- 5) Statewide and local organizations and advisory committees, to participate in the JART application of specific standards, including but not limited to those addressing areas important to fisheries, ecological resources, recreational and visual impacts.

4.2.2. JART Roles & Responsibilities



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- 1) The JART will coordinate with DSL on the pre-application review process, and comment on the adequacy of the resource inventories and effects evaluations required under subsection 4.3 (Resource and Use Inventory and Effects Evaluation).
- 2) The JART will make recommendations to DSL on the approval of state territorial sea easements and other authorizations, and to other applicable regulatory agencies on their decision to permit, license or authorize a proposed project or development action in the state territorial sea.
- 3) The JART comments and recommendations are advisory; regulating agencies who are members of the JART still operate in accordance with their own rules and statutory mandates.
- 4) DSL may acquire the services of technical experts at the reasonable expense of the applicant to assist the JART as necessary to conduct the application review.
- 5) The JART shall identify affected ocean users, local communities, and representatives that applicants must consult with in order to mitigate potential conflict.



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4.3. Resource & Use Inventory & Effects Evaluation

An applicant shall provide the regulating agencies the data and information to complete the Resource and Use Inventory and Effects Evaluation, prior to the regulating agencies making any decision. DSL, upon consultation with the state agencies identified in 4.2.1, may waive any information or evaluation requirement of this Section 4.3 determined to be unnecessary for evaluating the coastal effects of the development action or project under Part Four.

4.3.1. Purpose of Resource & Use Inventory & Effects Evaluation

The purpose of the Resource and Use Inventory and Effects Evaluation is to provide the regulating agencies the data and information necessary to make a decision based on the project or development action's potential coastal effects. The Resource and Use Inventory and Effects Evaluation will help identify if the applicant needs to address potential use conflicts with the proposed project or development action. The regulating agency will use the evaluation to develop specific measures for environmental protection and mitigation as well as measures to protect other ocean uses.

4.3.2. Sufficiency of Resource & Use Inventory & Effects Evaluation

An applicant must provide, during the pre-application and application phases, information and data to complete the Resource and Use Inventory and Effects Evaluation that is sufficient to identify and quantify the short-term and long-term effects of the proposed project or development action in the state territorial sea on the affected natural resources and uses.

4.3.3. Use of Available Environmental Information

Regulating agencies may allow the applicant to use existing data and information from a project application to a federal agency or other authoritative sources, when complying with the requirements for the Resource and Use Inventory and Effects Evaluation.

4.3.4. Inventory Content

The applicant shall provide information and data sufficient to determine the scope, likelihood, and significance of reasonably anticipated potential effects to coastal resources and uses. The Resource and Use Inventory and Effects Evaluation provisions listed below apply to all proposed cables, pipelines, utilities or fixtures within the territorial sea for which an applicant pursues a DSL state territorial sea easement, unless the requirements are otherwise addressed in another part of the Territorial Sea Plan or the requirements were waived as described in section 4.3.



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4.3.4.1. Information to be provided by applicants about the proposed project or development action within the Oregon Territorial Sea:

- (a) Location (using maps, charts, descriptions, etc.);
- (b) Numbers and sizes of equipment, structures;
- (c) Methods, techniques, activities to be used;
- (d) Transportation and transmission systems needed for service and support;
- (e) Materials to be disposed of and method of disposal;
- (f) Physical and chemical properties of materials, if any, to be used or produced (*e.g.*, chemicals used in horizontal directional drilling (HDD), materials which may be transported by a pipeline, etc.); and
- (g) Proposed time schedule.

4.3.4.2. Location and description of all affected areas, including, but not limited to:

- (a) Proposed route of the cable, pipeline, or other utility; and
- (b) Onshore facilities.

Additionally for pipelines or other utilities or fixtures:

- (a) Adjacent areas that may be affected by physical changes in currents and waves caused by the project or development action;

4.3.4.3. Physical and chemical conditions including, but not limited to:

- (a) Bathymetry (bottom topography) and Shoreline Topography, including profile of water depth along the route;

Additionally for pipelines or other utilities or fixtures:

- (a) wave regime;



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- (b) typical and maximum current velocities; and
- (c) dispersal characteristics.

4.3.4.4. Geologic structure, including, but not limited to:

- (a) Geophysical imaging and geotechnical investigation of full planned HDD routes across the shoreline sufficient to characterize subsurface geotechnical properties and plan HDD construction in a way that avoids drill pipe breakage, inadvertent return, surface settlement, and other complications.
- (b) Geologic hazards, such as faults or landslides;
- (c) Mineral deposits; and
- (d) Seafloor substrate type.

4.3.4.5. Biological and ecological features affected by the project or development action, including, but not limited to:

- (a) All habitats along the proposed route, specifically including critical marine habitats (see Part Four, Appendix A)
- (b) Recreationally or commercially important finfish or shellfish species;
- (c) Benthic flora and fauna that may be affected by the project or development action; and
- (d) Other ecosystem elements that may be affected by the project or development action.

4.3.4.6. Cultural, economic, and social uses affected by the project or development action, including, but not limited to:

- (a) Commercial and sport fishing;
- (b) State or federally protected areas;
- (c) Scientific research;



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- (d) Ports, navigation, and dredge material disposal sites;
- (e) Recreation;
- (f) Coastal community economy;
- (g) Aquaculture facilities;
- (h) Wastewater or other discharge;
- (i) Utility or pipeline corridors and transmission lines;
- (j) Military uses; and
- (k) Aesthetic resources.

4.3.4.7. Significant historical, cultural or archeological resources.

4.3.4.8. Other data that the regulating agencies determine to be necessary and appropriate to evaluate the effects of the proposed project or development action.

4.3.5. Written Evaluation

An applicant shall submit a written evaluation of the reasonably foreseeable adverse effects associated with projects or development actions within or affecting the Oregon Territorial Sea. For purposes of the evaluation, the submittal shall base the determination of "reasonably foreseeable adverse effects" on scientific evidence and how the applicant mitigated any impacts in the design and siting phases of a project or development action. The evaluation shall describe the potential short-term and long-term effects of the proposed project or development action to state coastal resources and uses of the Oregon Territorial Sea, continental shelf, estuaries, onshore areas and coastal communities based on the inventory data listed above and the following considerations:

4.3.5.1. Biological and Ecological Effects:

Biological and ecological effects include those on marine habitats and on the species those habitats support. The evaluation need not discuss highly speculative consequences. However, the evaluation shall discuss possible outcomes that are either likely to occur or catastrophic environmental effects of low probability. Factors to consider include, but are not limited to:



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- (a) The time frames/periods over which the effects will occur;
- (b) The maintenance of ecosystem structure, biological productivity, biological diversity, and representative species assemblages;
- (c) Maintaining populations of threatened, endangered, or sensitive species;
- (d) Vulnerability of the species, population, community, or the habitat to the proposed actions; and
- (e) The probability of exposure of biological communities and habitats to adverse effects from construction, operating or decommissioning procedures, or accidents.

4.3.5.2. Current Uses:

Evaluate the effects of the project or development action on current uses and the continuation of a current use of ocean resources.

Factors to consider include, but are not limited to:

- (a) Local and regional economies;
- (b) Archeological and historical resources;
- (c) Transportation safety and navigation;
- (d) Recreational uses;
- (e) Fisheries;
- (f) Cultural uses; and,
- (g) Aesthetics.

4.3.5.3. Natural and Other Hazards:

Evaluate the potential risks to the project or development action, in terms of its vulnerability to certain hazards and the probability that those hazards may cause loss, dislodging, or drifting of infrastructure. Consider both the severity of the hazard and the level of exposure it poses to natural resources and coastal communities. Hazards to be considered shall include slope failures and subsurface landslides, faulting, tsunamis, variable or irregular bottom



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topography, weather related, or due to human cause. Additionally, evaluate potential for horizontal directional drilling complications that could affect natural resources and coastal communities and describe plans to minimize these hazards based on site-specific subsurface geotechnical characteristics.

4.3.5.4. Cumulative Effects:

Evaluate the cumulative effects of a project or development action, including the onshore component, in conjunction with effects of any past projects, other current projects, and probable future projects. The evaluation shall analyze the biological, ecological, physical, cultural, and socioeconomic effects of the proposed project or development action and other projects along the Oregon coast, while also taking into account the effects of existing and future human activities and the regional effects of global climate change.

In conducting the cumulative effects analysis, the applicant shall focus on the specific resources and uses, as inventoried under section 4.3.4 that may be affected by the incremental effects of the proposed project or development action and other projects in the same geographic area. The evaluation shall include but not be limited to consideration of whether:

- a. the resource and uses are especially vulnerable to incremental effects;
- b. the proposed project or development action is one of several similar projects in the same geographic area;
- c. other developments in the area have similar effects on the resources and uses;
- d. these effects have been historically significant for the resource and uses; and
- e. other analyses in the area have identified a cumulative effects concern.



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4.4. Routing & Landing

Locations for new infrastructure within the state territorial sea shall, to the extent practicable, preserve access to ocean fisheries, avoid conflicts with other uses, protect marine habitats, and minimize adverse effects on other natural resources of the seafloor or ocean shore. DSL shall consider the benefit of implementing corridors for infrastructure crossing the territorial sea while maintaining adequate distance for servicing of infrastructure and shall determine when the state territorial sea has reached carrying capacity for new easements. DSL may require new easements to be located as close to existing easements as possible or with sufficient capacity to enable future expansion within the approved right of way. DSL shall not grant easements through marine reserves, marine protected areas, rocky habitats designated as a Marine Research Area, Marine Garden, or Marine Conservation Area under Part Three, and shall not grant easements on rocky habitat areas within the state territorial sea.

4.5. Installation

4.5.1. Cable Burial: All seafloor cables shall be buried so as to achieve and maintain continuous burial unless DSL finds that burial cannot be practicably achieved and that adverse effects of not burying the cable have been avoided, minimized, or mitigated to the maximum extent practicable.

4.5.1.1. DSL may base findings for 4.5.1 on written evidence of communication between an applicant and affected ocean users.

4.5.1.2. Burial Verification: The applicant shall verify burial to DSL by written assurance. The state may require photographic or other evidence of burial from the applicant.

4.6. Maintenance

DSL shall require that cables, pipelines, utilities, or fixtures be inspected as part of installation. Inspections after installation shall occur as otherwise required by a regulatory agency, and after any major geologic event, such as subduction- zone earthquake, to confirm continued burial and or infrastructure integrity.

4.7. Decommission & Recovery

After the usable, operational, or design life of seafloor infrastructure or fixture an owner or operator shall decommission any infrastructure or fixtures, removing them from the seabed. The owner or operator of the seafloor infrastructure or



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fixture shall submit a decommissioning plan to DSL for approval pursuant to the terms and conditions of the easement.

There may be cases where the removal of discrete portions of seafloor infrastructure or fixtures is more environmentally damaging than leaving it in situ. In such cases, the owner or operator shall submit to DSL a complete application for an encroachment easement, as provided in OAR chapter 141, division 123. The application shall include a written assessment of the environmental impacts and coastal effects which demonstrates the lesser overall impact to the environment by leaving sections of seafloor infrastructure or fixtures in place and provides justification for leaving said portions of the infrastructure or fixture in place.

5. Communication & Cooperative Mechanisms

DSL may consider written agreements between the applicant and fishers or other users as evidence of communication and coordination when necessary to provide evidence that an applicant has mitigated use conflict to the maximum extent practicable. Such agreements or other documentation of coordination may coordinate work, determine preferred routing, identify routes, respond to emergencies, provide for mitigation of adverse effects, or specify procedures for on-going communication and dispute resolution.

6. Territorial Sea Plan Review

The Ocean Policy Advisory Council (OPAC) shall review the Oregon Territorial Sea Plan Part Four no longer than seven years after LCDC has adopted it. OPAC may, at any time, choose to initiate an amendment of the plan through the process described under Part One, section F.2, Changing the Plan and ORS 196.443(1)(a).

Appendix A: Definitions & Terms

The following definitions shall apply to Part Four, unless the context requires otherwise:

Affix(ed): To attach to the seafloor in a permanent way.

Archaeological Resources: Those districts, sites, buildings, structures, and artifacts which possess material evidence of human life and culture of the prehistoric and historic past. (See Historical Resources definition.)

Areas important to fisheries: (Goal 19)



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- a.) areas of high catch (e.g., high total pounds landed and high value of landed catch);
- b.) areas where highly valued fish are caught even if in low abundance or by few fishers;
- c.) areas that are important on a seasonal basis;
- d.) areas important to commercial or recreational fishing activities, including those of individual ports or particular fleets; or
- e.) habitat areas that support food or prey species important to commercially and recreationally caught fish and shellfish species.

Applicant: The person or party responsible for acquiring a state permit, license, lease or other authorization for the evaluation, siting, routing, placement, operation, or removal of a cable, pipeline, utility or fixture placed on, affixed to, or buried under the seafloor in the state territorial sea will be referred to as “the applicant”.

Avoid: To prevent or eliminate an effect from a project or development action.

Benthic: Living on or within the bottom sediments in water bodies.

Burial: To place into the seabed below the local mean surface of the ocean floor at the time of burial.

Cable(s): includes a cable used to conduct electricity or light that is placed on, affixed to, or buried under state-owned submerged or submersible lands within the territorial sea and any facilities within the territorial sea associated with the cable.

Carrying Capacity: Level of use which can be accommodated and continued without irreversible impairment of natural resources productivity, the ecosystem and the quality of air, land, and water resources.

Coastal Zone: The area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction, and in the east by the crest of the coastal mountain range, with the exception of: (a) The Umpqua River basin, where the coastal zone shall extend to Scottsburg; (b) The Rogue River basin, where the coastal zone shall extend to Agness; (c) The Columbia River basin, where the coastal zone shall extend to the downstream end of Puget Island. (*Formerly* ORS 191.110)

Continental Shelf: The area seaward from the ocean shore to the distance when the ocean depth is 200 meters, or where the ocean floor slopes more steeply to the deep ocean floor. The area beyond the state's jurisdiction is the OUTER Continental Shelf.

Critical infrastructure: Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.



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Critical Marine Habitat: means one or more of the following areas designated within the territorial sea:

- a.) as “critical habitat” in accordance with federal laws governing threatened and endangered species;
- b.) “rocky habitat conservation areas” designated under Part Three;
- c.) areas necessary for the survival of animal or plant species listed by state or federal laws as “threatened”, “endangered”, or “sensitive”;
- d.) for scientific research or education within the territorial sea;
- e.) as essential fish habitat; or
- f.) as marine reserves or marine protected areas.

Develop: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

Development: The act, process or result of developing.

Development Action: Any activity related to infrastructure on, affixed to, or buried under the seafloor within or affecting the state territorial sea which is subject to regulation by local, state, or federal agencies that could result in adverse impacts to natural resources or conflict with other ocean users. Development actions also include, but are not limited to, subsequent re-permitting for activities with new impacts or continued impacts that have not been mitigated consistent with current standards.

Diversity: The variety of natural, environmental, economic, and social resources, values, benefits, and activities.

Ecosystem: the living and non-living components of the environment which interact or function together, including plant and animal organisms, the physical environment, and the energy systems in which they exist. All the components of an ecosystem are interrelated. (Oregon Statewide Planning Goals)

Fixture(s) includes any structure affixed to or permanently placed on the seafloor, not otherwise defined in this glossary, including but not limited to scientific and research devices, observation devices, or other structure requiring a Territorial Sea easement or other authorization but not otherwise governed by another section of the Territorial Sea Plan.

Geologic: Relating to the occurrence and properties of earth. Geologic hazards include faults, land and mudslides, and earthquakes.

Habitat: the environment in which an organism, species, or community lives. Just as humans live in houses, within neighborhoods, within a town or geographic area, within a certain region, and so on, marine organisms live in habitats which may be referred to at different scales. (see also “critical marine habitat”)



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Historical Resources: Those districts, sites, buildings, structures, and artifacts which have a relationship to events or conditions of the human past. (See Archaeological Resources definition.)

Impact: is the severity, intensity, or duration of the adverse effect.

Infrastructure: The physical assets that provide the foundation or basic framework for a utility (telecommunications, energy, material transfer, etc) on, affixed to, or buried under the seafloor within or affecting the state territorial sea. Examples include, but are not limited to, telecommunications cables, power transmission cables, pipelines, and fixtures.

Integrity: The quality or state of being complete and functionally unimpaired; the wholeness or entirety of a body or system, including its parts, materials, and processes. The integrity of an ecosystem emphasizes the interrelatedness of all parts and the unity of its whole.

LCDC: The Land Conservation and Development Commission of the State of Oregon. The members appointed by the Governor and confirmed by the Oregon Senate in accordance with the requirements of ORS 197.030.

Maintain: Support, keep, and continue in an existing state or condition without decline.

Minimize: to reduce or limit the effect to the maximum extent practicable.

Mitigate: taking one or more of the following actions listed in order of priority:

- (a) Avoiding the impact altogether by not taking a certain development action or parts of that action;
- (b) Minimizing impacts by limiting the degree, magnitude, or timing of the development action and its implementation
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the development action and by monitoring and taking appropriate corrective measures;
- (e) Compensating for the impact. Either monetary compensation or by replacing or providing comparable substitute resources or environments.

Natural Resources: Air, land and water and the elements thereof which are valued for their existing and potential usefulness to man.

Owner or operator: Means the legal owner of the infrastructure or fixture and or long-term holder of an easement.



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Pipeline(s) includes any line of pipe, with or without equipped pumps, valves, and other control devices, used to move liquids, gasses, or slurries.

Practicable: Reasonably capable of being put into practice or of being done or accomplished.

Preserve: To save from change or loss and reserve for a special purpose.

Project: the evaluation, siting, routing, placement, operation, decommission, or removal of infrastructure on, affixed to, or buried under the seafloor in the state territorial sea.

Protect: Save or shield from loss, destruction, or injury or for future intended use.

Provide: Prepare, plan for, and supply what is needed.

Quality: The degree of excellence or relative goodness.

Recreation: Any experience voluntarily engaged in largely during leisure (discretionary time) from which the individual derives satisfaction.

Coastal Recreation occurs in offshore ocean waters, estuaries, and streams, along beaches and bluffs, and in adjacent shorelands. It includes a variety of activities, from swimming, scuba diving, board sports, boating, fishing, hunting, and use of dune buggies, shell collecting, painting, wildlife observation, and sightseeing, to coastal resorts and water-oriented restaurants.

Low-Intensity Recreation does not require developed facilities and can be accommodated without change to the area or resource. For example, boating, hunting, hiking, wildlife photography, and beach or shore activities can be low intensity recreation.

High-Intensity Recreation uses specially built facilities, or occurs in such density or form that it requires or results in a modification of the area or resource. Campgrounds, golf courses, public beaches, and marinas are examples of high intensity recreation.

Regulating agency or regulating agencies: State agencies making decisions to authorize projects or development actions on, affixed to, or buried under the seafloor in the state territorial sea.

Restore: Revitalizing, returning, or replacing original attributes and amenities, such as natural biological productivity, aesthetic and cultural resources, which have been diminished or lost by past alterations, activities, or catastrophic events. For the purposes of Part Four of the Territorial Sea Plan restoration means to revitalize or reestablish functional characteristics and processes of the seafloor diminished or lost by past alterations, activities, or catastrophic events.

Active Restoration: involves the use of specific positive remedial actions, such as removing fills and infrastructure (cables, pipelines, other utilities or fixtures) to return a site to functional and sustainable use.

Passive Restoration: Allowing natural processes, sequences, and timing to occur in an ecosystem to return a site to functional and sustainable use.

Seafloor: The solid surface underlying the ocean. Specifically, within Part Four of the Oregon Territorial Sea Plan, the submerged or submersible lands within the boundaries of the state territorial sea.

Shoreline: The boundary line between a body of water and the land, measured on tidal waters at mean higher high water, and on non-tidal waterways at the ordinary highwater mark.

Substrate: The medium upon which an organism lives and grows. The surface of the land or bottom of a water body.

Territorial Sea: The ocean and seafloor area from mean low water seaward three nautical miles.

User: an individual, group or entity that makes use of the territorial sea and adjacent rocky intertidal, whether it is for traditional, recreational, educational, commercial or other purposes.

Utility/utilities includes any infrastructure affixed to or placed on the seafloor, not otherwise defined in this glossary, which provide the public with an essential good or service (heat, gas, electricity, water, sewage treatment, data, etc).

Appendix B: Maps

Territorial Sea Plan Part Four - Appendix B Map

Undersea Cable Routes (as of July, 2023)



Part Four Appendix C: Enforceable Policies Subject to Federal Consistency

This Appendix lists the provisions of Part Four that constitute the “enforceable policies” for Federal Consistency purposes, under the CZMA and pursuant to the Federal Consistency Regulations at 15 CFR Part 930. The federal Coastal Zone Management Act requires that certain federally permitted or licensed activities that affect coastal uses or resources must be conducted in a manner consistent with the enforceable policies of a state’s federally approved coastal management program. When reviewing federal decisions to permit or license seafloor development actions or projects for consistency with the OCMP the Department of Land Conservation and Development will apply the following sections of TSP Part Four as enforceable policies:

Note: The exact text for each of the sections will be included here once the text is finalized and approved.