

Appendix C

Compatibility

Criteria

APPENDIX C

COMPATIBILITY CRITERIA - INLAND SECTOR

Inland Sector Within the Oregon Dunes NRA boundaries there is a buffer of land known as the Inland Sector which is described in Section 3 of the Act establishing the Oregon Dunes NRA. About 30% of the total lands within the Oregon Dunes NRA is in the Inland Sector and approximately 30% is privately owned. Except for several small tracts, lands containing a high degree of both residential and commercial development were excluded from the boundaries of the Oregon Dunes NRA. Lands with important scenic characteristics, opportunities for developed or dispersed recreation, and lands necessary to maintain the character of sand dunes, freshwater lakes and forests were included within the Oregon Dunes NRA boundaries.

Improved property, commercial and industrial, timberlands, and private non-commercial are four classes of property within the Inland Sector where certain uses are protected from the Government's normal right of eminent domain. Acquisition in the absence of non-compatible activity on the property may only occur with the consent of the landowner.

The Enabling Act states that if additional purposes or improvements to commercial or industrial properties and private non-commercial recreational properties within the Inland Sector are compatible with or further the purposes of the establishing legislation, they may be certified by the Secretary of Agriculture.

Certification Criteria The following three points are criteria for certification by the Secretary of Agriculture.

- Proposed industrial or commercial purposes must be compatible with or further the purposes of the Act and should contribute to or promote the public use and enjoyment of the Oregon Dunes NRA as well as protect the values that contribute to that public enjoyment.
- Proposed improvements to property being used for private non-commercial recreation purposes should be complementary to the public use and enjoyment of the Oregon Dunes NRA and protect the values that contribute to that public enjoyment.
- Analysis will be on a case-by-case basis and should include, but not be limited to, the following considerations:

Compatibility Criteria

- Maintenance of the natural environment of the Oregon Dunes NRA including
 - the effect on the open space environment characteristic of the coastal area;
 - capability of the land to support the proposed improvements or purpose;
 - modification of the land and vegetation necessary for the proposed action; and
 - impacts to the scenic, scientific, historic and other values contributing to to public enjoyment of the Oregon Dunes NRA (as stated in Section 1 of the Act), wildlife and wildlife habitat, soil stability, and water quality and quantity.
- The actions' availability to the general public and the effects on existing and planned public developments, adjacent property uses, and visitors. Also whether similar commercial or industrial purposes are available to the general public near the Oregon Dunes NRA and how many similar improvements exist because the total number, in the general area, may exceed the capability of the land to accommodate them.
- Effects on future management options that may be required to serve the projected increased demand for the use of the Oregon Dunes NRA as identified in this management plan.
- Consistency with plans and regulations of other agencies having cooperative jurisdiction in the management of the Oregon Dunes NRA.

Getting Certified

In order to obtain certification for a proposed action on Inland Sector lands, the landowner should submit his or her request in writing. The Forest Service will then analyze the request using the criteria mentioned above and the Forest Supervisor will reply as to the result of the analysis. If the proposed action is not compatible, the reasons for incompatibility will be given and discussed with the landowner. This step may require an on-site meeting between the landowner and the Forest Service. If agreement is reached, the landowner may proceed in conformance with the revised plans.

Certification is made upon completion of plans as proposed or revised.

Uses of Private Lands

Improved Property

This is defined in Section 8(d) of P.L. 92-260 as "a detached one-family dwelling, the construction of which was begun before December 31, 1970, together with any structures accessory to it and the land on which the dwelling is situated, the said land being in the same ownership as the dwelling, as the Secretary (of Agriculture) finds necessary for the enjoyment of the dwelling for the sole purpose of a non-commercial residential use."

For clarification, a one-family dwelling is defined as a structure used or intended for use as a single-family residence and consists of a single residential unit, as opposed to multi-units. A dwelling is also a structure either originally designed and constructed as a residence, or a structure which has been or was in the process of being remodeled for the intended purpose of human habitation. The size and boundaries of an improved property, as defined in Section 8(d) of the Act, is at the discretion of the Secretary of Agriculture, and will have to be determined on a case-by-case basis, but normally the homesite would include land of sufficient size to cover outbuildings, lawn, garden or pasture as has been historically used with the dwelling. Section 8(c) of the Act dealing with life estate reservations indicates that the size of the reservations should not exceed three acres. This is considered a good guide as to the upper limits of land included as improved property, however, normally it would be something less.

Dwellings as described above are considered incompatible with or do not further the purposes of the Act as they do not provide for public outdoor recreation use and enjoyment of the Oregon Dunes NRA, which is the purpose of P.L. 92-260. However, within the Inland Sector, if they existed or construction began prior to December 31, 1970, the homesite on which the dwelling is located has protection from condemnation. As long as the homesite continues to be used for the purposes of a single-family residence, certification is not required for replacement of dwellings or other changes deemed necessary by the Secretary of Agriculture for the enjoyment and use of the homesite. If additional dwellings are constructed, the owner would lose that protection against the Government's exercising its right of eminent domain.

Commercial and Industrial

Commercial and industrial uses are authorized to continue so long as the purposes are the same as they were on December 31, 1970. A change of purpose or new commercial or industrial purposes will need certification from the Secretary of Agriculture or designee as being compatible with or furthering the purposes of the Act if the landowner wishes to retain his or her protection from Government acquisition.

So long as existing commercial or industrial purposes remain the same, the facilities used for that purpose would not require certification. Properties authorized for an existing commercial or industrial purpose are only those physically occupied by the purpose as of December 31, 1970.

Timberlands According to the Enabling Act, timberlands under Sustained Yield Management are authorized to continue so long as the Secretary of Agriculture determines that such management is being conducted in accordance with standards for timber production, including, but not limited to, harvesting, reforestation and debris cleanup, not less stringent than management standards imposed by the Secretary on comparable national forest lands.

Private Non-Commercial Property used primarily for private non-commercial recreation purposes as of December 31, 1970, is authorized to continue. Any improvements made to such property after December 31, 1970, must be certified by the Secretary of Agriculture as being compatible with the purposes of the Act, or the owner loses his or her protection against the government's exercising its right of eminent domain.

Additional Uses of Private Lands

Residences Except as discussed in the following paragraph, additional new residences will not be certified within the Oregon Dunes NRA. Replacements, minor improvements or additions to existing improved property may be approved by the Forest Supervisor. Approval may be obtained prior to construction so that the landowner can be assured that his or her action will not jeopardize protection against eminent domain. Woodsheds, garages, additions to existing dwellings, fences, driveways, patios, trails, etc, are examples of improvements that normally would not affect a landowner's protection. Normal repair, maintenance or interior remodeling also will not affect a landowner's protection.

In describing the Oregon Dunes NRA boundary, it was the intent to eliminate existing subdivisions in the Saunders Lake area; however, because of errors in the original General Land Office survey, a portion of the Southwood Subdivision in the E 1/2 SE 1/4 SE 1/4, Section 34, T. 23 S., R. 13 W., W.M., platted in 1959, was included within the Oregon Dunes NRA. This area includes County Tax Lot numbers 663-1 through 663-8 and 702-6 of that portion of the subdivision lying within the Oregon Dunes NRA. In view of the above, the Forest Service may certify one-family dwellings on those lots, as the intent was to exclude the Saunders Lake subdivisions from the Oregon Dunes NRA.

Commercial Proposals for new or changes in commercial or industrial purposes will be judged against the criteria established in Section 15(a).

Timberlands The Multiple Use-Sustained Yield Act of June 12, 1960 (74 Stat. 215; 16 U.S.C. 528-531) Section 4(b) defines sustained yield as: "Sustained yield of the several products and services" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forests without impairment of the productivity of the land.

For clarification, sustained yield for small tracts of commercial timber may be on a periodic basis rather than annual.

Management and operation plans for commercial timber under sustained yield should be approved by the Forest Service as being comparable or exceeding Forest Service standards for a similar unit of land. Harvest methods, road location, design and construction, reforestation, debris cleanup, stream and lake protection, maintenance of visual quality and erosion control are categories to be included in management and operating plans.

The Secretary of Agriculture may acquire timberlands for recreation use, access, or protection of recreation improvements. Conversion of timberlands under sustained yield management to purposes other than contributing to public outdoor recreation will not be considered compatible.

Conversion of timberlands to purposes other than sustained yield timber production will not be considered compatible. Cutting of such timberlands would be classified as a commercial purpose, unless authorized for safety, sanitation, placement of approved facilities, control of wildlife, or contributes to public outdoor recreation. By cutting such timberlands, the owner would lose his or her protection against the government exercising its right of eminent domain. The cutting of dead and down trees for non-commercial domestic consumption will not affect the landowner's protection from acquisition.

Possible Improvements

Examples of improvements to private non-commercial recreation properties which could be made compatible are access roads, water lines, electrical utilities, fences, trails and other facilities necessary for the use and enjoyment of the property. Generally, items necessary for protection of the property, safety and sanitation may be certified.

Summerhome-type dwellings are not considered to be compatible with the purposes of the Oregon Dunes NRA because of the scarcity of lands available for development, needed public facilities, open space requirements, and protection of scenic values within the Oregon Dunes NRA on a long term basis.

Tent and recreational vehicle pads and duck blinds may be certified. Hunting lodges, unless they replace existing structures, will not be certified.

New organization camps will generally be considered incompatible since these camps tend to restrict use to members of the organization that owns the camp. Exceptions may occur. Prior to approval of an organization camp, it must be demonstrated to be compatible based on the type of facility, degree to which it is open to the public, suitability of location, need for the camp, degree of development in the vicinity, alternatives available outside the Oregon Dunes NRA, and the competition for other uses.

General

Any new development on private lands within the Oregon Dunes NRA will also consider proximity to open sand areas (so that it is not in danger of being inundated by sand in the foreseeable future), wildlife habitats and sanitation before being certified as compatible.

Compatibility Criteria

In addition to acquisition of all private lands within the Dunes Sector and key tracts necessary for management and development, additional acquisition will be made from willing sellers not wishing to be bound by certification requirements and they cannot find a buyer who is willing to live within the requirements. Acquisition will be on a priority basis and contingent on the availability of funds.

Acquisition of State or County lands is restricted by P.L. 92-260 to donation or exchange. It was the intent of the Act to have the administration of the Oregon Dunes NRA a cooperative venture among agencies. If an exchange of lands would be mutually beneficial, this option will be pursued.