
IV. District Operations

A. Staying Legal

1. The Five Basic Requirements

As mentioned in Chapter II of this Guidebook, conservation districts are governed by specific enabling legislation under ORS Chapter 568. They are also subject to other statutes and administrative rules affecting local government and special districts.

All conservation districts should become familiar with the five basic requirements identified in ORS Chapter 568. At a minimum, districts need to comply with these five requirements to stay legal and become eligible for funding from the ODA. The following provides a list of the five requirements and a reference to the statutes relating to these requirements.

REQUIREMENT	RELATING STATUTE AND TEXT
1. Annual Work Plan	ORS 568.554 - District to submit program and work plans for department review.
2. Long-Range Plan	Each conservation district shall submit to the State Department of Agriculture its proposed long-range plan and annual work plans for review and comment.
3. Annual Meeting and Notice	ORS 568.580 - Annual meeting.
4. Annual Report	Each year after the creation of the first board of directors at a time fixed by resolution of the board, the board, by giving due notice, shall call an annual meeting of the landowners in the district and present an annual report and audit. ORS 568.590 - Notice of annual meeting. Fifteen days before the annual meeting, the directors shall cause notices to be posted in three public places in the district and mailed to each cooperator in the district or published for two successive weeks in a paper of general circulation in the area, setting forth the time and place of holding the meeting.
5. Annual Financial Reports	ORS 568.610 - Records; audits. The directors shall: (1) Provide for the keeping of full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted. (2) Provide for an annual audit of the accounts of receipts and disbursements.

In addition to these five basic requirements, conservation districts should become familiar with the other statutes and administrative rules identified in chapter II, relating to district operations. Of particular importance are the

statutes and administrative rules relating to public meetings and records, conflict of interest, employment laws, contracting, civil rights, and discrimination. These topics are discussed in more detail in other sections of the Guidebook.

2. Posting Requirements

As an employer of record, a conservation district is required by law to post certain information at a readily visible site in the district office. Information on these requirements and the individual posters are available at no cost via the links on the following page or by contacting the BOLI Technical Assistance for Employers Division:

BOLI/Technical Assistance for Employers
 800 NE Oregon Street, Suite 1045
 Portland, OR 97232
 Phone: (503) 731-4073, press 1, 5, 2
 or (971) 673-0825
<http://www.state.or.us/BOLI>

BOLI also sells a composite poster (Commonly Required Postings in Oregon) that includes all the generally required state and federal posters. This poster, also known as the 8-in-1 poster, is available for \$10 in both English and Spanish. Districts can order this poster from BOLI.

A poster designed specifically for the agricultural concern is available in English and Spanish and includes all the state and federal postings most agricultural employers must display. It also can be ordered from BOLI for \$10.

FEDERAL Posting Requirements

Poster	Required For
Federal Minimum Wage Poster www.dol.gov/esa/regs/compliance/posters/flsa.htm	All employers subject to the Fair Labor Standards Act
Family and Medical Leave www.dol.gov/esa/regs/compliance/posters/fmla.htm	Employers with 15 or more workers
"The Law" www.cbs.state.or.us/external/osha/pdf/pubs/1507.pdf	Employers with 15 or more employees, during 20 weeks of the year. Americans with Disabilities required postings are included in this poster.
Equal Employment Opportunity www.dol.gov/esa/regs/compliance/posters/eeo.htm	Employers with 15 or more employees during 20 weeks of the year.

STATE Posting Requirements

Poster	Required For
State Minimum Wage www.oregon.gov/BOLI/WHD/docs/engminwage2006.pdf	All employers in Oregon, except federal government employers.
Family Leave www.oregon.gov/BOLI/WHD/docs/leave.pdf	Employers with 25 or more employees in Oregon.
Job Safety and Health www.cbs.state.or.us/external/osha/pdf/pubs/1507.pdf	Employers with one or more employees.
No Smoking www.oregon.gov/DHS/ph/smokefree/materials.shtml	All employers open to the public.
Agricultural Employees: Your Rights Under Oregon's Minimum Wage Law and Child Labor Law www.oregon.gov/BOLI/WHD/docs/agri_minwage_2006.pdf	All agricultural employers in Oregon.

STATE COMPLIANCE Posting Requirements

Poster	Required For
Workers' Compensation Notice of Compliance	All employers with one or more workers. For additional information, contact Workers' Compensation Division, Employer Compliance, 503-947-7815
Employment Insurance Notice (Form 11)	Employers with at least a \$225 payroll in a calendar quarter, and employers with one or more workers during 18 different weeks in a calendar year. For additional information, contact the Employment Department, Unemployment Insurance Tax Unit, Forms Hotline: 503-947-1488, Option 3

3. Public Records Law

Conservation districts are subject to the requirements of the state's public meetings and records law. Under ORS 192.420, every person has a right to inspect any nonexempt record of a public body in the state. The Attorney General, however, has concluded that "person" does not mean public body. This means a public body cannot use the Public Records Law to obtain records from another public body.

- **Who is subject to the Public Records Law?**

ORS 192.420 applies to any public body in this state. Public body is defined as including every state officer, agency, department, division,

bureau, board, and commission; every county and city governing body, school district, special district (which includes conservation districts), municipal corporation (which includes conservation districts), and any board, department, commission, council, or agency thereof; and any other public agency of this state.

- **Are private entities subject to the public records law?**

Normally public records law does not apply to private entities such as nonprofit corporations and cooperatives. However, if a private entity fits the definition of a “functional equivalent” of a public body, it is subject to public records law. The following factors are among those used to determine whether a private entity is the functional equivalent of a public body:

1. The entity’s origin: Was it created by government or independently?
2. Nature of the function(s) assigned and performed by the entity: Are they a traditional function performed by government?
3. Scope of authority granted and exercised by the entity: Does it have authority to make binding decisions or to make only recommendations to a public body?
4. Nature and level of governmental financial support;
5. Scope of governmental control over the entity; and
6. Status of the entity’s officers and employees: Are they public employees?

- **What records are covered by the law?**

ORS 192.410(4) defines “public record” as including any “writing” containing information relating to the conduct of the public’s business, including, but not limited to, court records, mortgages, and deed records, prepared, owned, used, or retained by a public body regardless of physical form or characteristics.

ORS 192.410(6) defines “writing” to include handwriting, typewriting, printing, photographing, and every means of recording, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers (including message notes), maps, files, facsimiles, or electronic recordings. The Oregon Department of Justice advises that e-mails are also considered public records.

Records need not have been prepared originally by the public body to qualify as public records. If the information is owned, used or retained by the public body, it is subject to public records law.

- **May a public body charge a fee per page for copies of public records and for time spent putting the information together?**

Yes. A public body may charge its actual cost to make the records available for inspection or for furnishing copies. The cost per copy should reflect the cost for a person to locate the information, copy it, and other administrative overhead.

- **Can a public body require prepayment of a public records request?**

Yes. The law permits the public body to do so, and most public bodies request prepayment.

- **What public records are exempt from disclosure?**

There are specific and limited types or records that are exempt from public disclosure under Oregon public records law. These exemptions are not covered in this Guidebook. Districts should consult ORS 192.501 and 192.502 and the Attorney General's Public Records and Meeting Manual for specific information and guidance.

- **Where does a person go for review of a denial of records in the custody of a public body made up of elected officials?**

According to ORS 192.480, a suit for injunctive or declaratory relief is filed with the circuit court of the county in which the public body is located. Be advised, if the petitioner prevails, the district may be required to compensate the petitioner for litigation cost, including attorney fees.

NOTE: All districts should have a copy of the Oregon Attorney General's Public Records and Meetings Manual and the Administrative Law Manual available through:
Department of Justice
100 Justice Building
1162 Court Street NE
Salem OR 97301-4096
(503) 378-2992

4. Conflict of Interest

Conservation district officials are sometimes confronted with situations that might be construed as a conflict of interest. A conflict of interest arises when a public official takes official action (a) that could or will create a positive financial impact or (b) to avoid a negative financial effect for any of the following parties:

- The official,
- The official's relatives, or
- A business with which the official or relative is associated.

ORS 244.020(15) defines a public official as "any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body of the state as an officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services." Public officials under ORS 244.020(15) include

conservation district directors, associate directors, employees, and volunteers.

There are specific distinctions between potential conflict of interest and actual conflict of interest. In brief:

A *potential* conflict of interest occurs when an action **potentially could affect** the financial interests of the public official, or the official's relatives or associated business.

An *actual* conflict of interest occurs when such action definitely would have such an effect.

The definitions of potential and actual conflicts of interest are described in detail in a document entitled, "Oregon Government Standards and Practices Laws, A Guide for Public Officials." The document can be obtained from:

Oregon Government Standards and Practices Commission
885 Summer St. NE
Salem Oregon 97301-2522
Ph: (503) 378-5105
FAX (503) 373-1456
<http://www.oregon.gov/GSPC>

Recommendation: Every conservation district should have a copy of "Oregon Government Standards and Practices, A Guide for Public Officials", available from the Government Standards and Practices Commission at http://www.oregon.gov/GSPC/forms_publications.shtml. Board members should review at regularly scheduled board meetings.

a) Addressing potential or actual conflicts of interest

The following are some important considerations pertaining to conflicts of interest.

- All board members should be fully aware of what constitutes a conflict of interest.
- *"An elected official or person appointed to a board or commission must publicly declare a conflict of interest prior to discussion, recommendation, vote, or other official action on an issue."*
Oregon Government Standards and Practices Laws
A Guide for Public Officials
- The declaration must be recorded in the minutes.
- The director with the conflict of interest must refrain from participating in

discussion and official action.

- The director with the conflict of interest may not vote except in circumstances where their vote is required to meet the minimum quorum requirements.

~~B. Contracts and Agreements~~

~~1. Contracting Handbook~~

~~Conservation districts are required to follow state contracting law (ORS Chapters 279, 279a, 279b and 279c and OAR Chapter 137 Divisions 45 through 49). Each district should have a copy of the Attorney General's Public Contract Handbook, available from the Department of Justice:~~

~~Department of Justice
100 Justice Building
1162 Court Street NE,
Salem OR 97301-4096
(503) 378-2992~~

- ~~1. Public contracts,~~
- ~~2. Public works contracts,~~
- ~~3. Personal services contracts, and~~
- ~~4. Architectural & Engineering Contracts.~~

~~2. Review of Draft Contracts and Agreements~~

~~When a conservation district prepares a contract or an agreement, it is encouraged to submit a draft to the Natural Resources Division for review (ORS 561.400). The division can help districts determine if there are any concerns or problems in the contract or agreement, provide guidance to minimize the risk to the district, and help modify the wording of the liability/indemnity portions of the document, if needed.~~

~~3. Contract Liability ñ Loss of Tort Coverage~~

~~Tort liability does not apply to liability assumed under a contract. If a district contracts with a person to do something, that person has the same rights as if he had contracted with a private company. If something goes wrong and the district breaches the contract, e.g., it fails to make payment for work performed under the contract, the district could be sued. If that happens, the general liability insurance provided through the Department of Agriculture and the Department of Administrative Service, Risk Management Division does not apply. It only covers legal actions involving torts.~~

4. ~~Hold Harmless/Indemnity Clauses~~

~~It is important to include a hold harmless or indemnity clause in contracts and agreements. In doing so the district is stating up front it will not be responsible for any actions by the contractor or others involved in the project that cause damage to others. Any contract or agreement prepared by an entity other than the district should be reviewed carefully to insure that the hold harmless clause does not hold the district accountable for the actions of the other party. Tort Liability Insurance Coverage, provided through the Oregon Department of Administrative Service's Risk Management Division, only covers the district for its representatives' actions, not those of another party.~~

~~The standard "Hold Harmless" Clause for conservation district contracts and agreements is:~~

~~Natural Resources Division staff are available to review the wording of the hold harmless/indemnity clauses in contracts and agreements before the district signs them.~~

<p>The district agrees to be responsible for any damage or any third party liability which may arise from its _____ (name of project) subject to the limitations and conditions of the Oregon Tort Claims Act, ORS 30.260 through 30.300, and the Oregon Constitution, to the extent of liability arising out of negligence of the district.</p>

5. ~~Public Funds and Competition~~

~~Regardless of the source, all funds received by a conservation district are considered public funds. As public entities, districts are subject to ORS 279 which requires:~~

~~ORS 279.005 _____ Policy of competition in public contracts:~~

~~(1) — It is the policy of the State of Oregon to encourage public contracting competition that supports openness and impartiality to the maximum extent possible.~~

~~(2) — The Legislative Assembly finds that:~~

~~(a) — Competition exists not only in prices, but in the technical competence of suppliers, in their ability to make timely deliveries and in the quality and performance of their products and services and that a balance must exist between performance competition and price competition;~~

~~(b) — The nature of effective competition varies with the product or service being procured and that while competitive sealed bids are a common method of procurement, it is not always the most advantageous or practical method of source selection; and~~

~~(c) — Meaningful competition can be achieved through a variety of methods when procuring products or services. The methods include but are not limited to:~~

- (A) — Price competition as represented by the initial or acquisition price;
- (B) — Competition as represented by price and performance evaluations of the competing items and suppliers;
- (C) — Competition as represented by evaluation of the capabilities of bidders or proposers to perform needed services;
- (D) — Competition as represented by evaluation of the capabilities of the bidders or proposers to perform the services followed by a negotiation on price; or Competition as represented by another method of procurement that is reasonably calculated to satisfy the public contracting agency's need.

ORS 279.007 Methods of fostering competition:

- (1) — All public contracts shall be made under conditions that foster competition among a sufficient number of potential suppliers that offer a wide spectrum of products and services and that represent a broad marketplace. Fostering competition shall be reflected in:
 - (a) — Writing specifications and procurement documents in a simple and easy to read format;
 - (b) — Searching for new sources of supply;
 - (c) — Attempting to make solicitation documents simple and inviting;
 - (d) — Everyday courtesy shown to prospective suppliers and contractors; and
 - (e) — The way information on contracting opportunities is provided to suppliers, including but not limited to advertisement in publications of general circulation or the Oregon Department of Administrative Services' electronic bulletin board services, and any other reasonable methods that encourage competition and that are consistent with ORS 279.025.
- (2) — A public contracting agency may evaluate every aspect of competition in its effort to purchase products or services, choose the appropriate solicitation process in accordance with the criteria described in ORS 279.005 and arrive at offers that represent optimal value to the state.

6. — Commonly asked Questions About Contracting

- i — At what dollar amount are districts required to seek bids?
 The short answer is that all public contracts shall be based upon competitive bids. At lower dollar amounts the bids can take the form of verbal quotes, but as the dollar amounts increase written bids are required. — Districts should refer to the Contracting Handbook for Soil and Water Conservation Districts for the specific requirements of dollar amounts:
 Public Contracting ————— Page 23
 Public Works Contracting ————— Page 77
 Personal Services Contracting — Page 155

Be sure to keep accurate records on file on all bids and price offers.

- i — Is it permissible to divide a public works project into smaller projects or

phases of a larger project in order to avoid the requirements of formal, competitive bidding and prevailing wage?

No. It is not permissible to divide a public works project into smaller units, particularly if the reason behind it is to avoid compliance with ORS 279.348 to 279.380. However, if some parts of the project appear to be unrelated enough to the total project that one contractor may not be able to do it all, the district should consider them as separate projects right from the start, for contracting purposes.

ii — How long before awarding the contract does the district need to advertise for bids?

The district needs to give adequate time for prospective contractors to visit the site, if appropriate, review the plans, and develop the costs needed to formulate a bid. Generally, a minimum of two weeks prior to bid opening is needed; a longer period is preferred. Time frames can be shortened to accommodate emergency situations.

ii — How and where does the district advertise for bids?

It may depend on the size and/or specialized nature of the project. However, area daily and weekly newspapers and contractor's journals are a good source of advertising. If the district has a mailing list of potential contractors, invitations to bid can be sent to them. If the project fits the low dollar amount requiring only oral bids, persons can be contacted by phone. Make sure, in any case, all persons contacted have the same information about the project on which they bid. Check the Contracting Handbook for Soil and Water Conservation District for more details.

ii — Does the district need to require a performance bond?

A performance bond in a sum equal to the contract price is required for all public works contracts in excess of \$25,000. Performance bonds for public works contracts under \$25,000 may be required by the district, but should not be used to discourage competition. Page 129 of the district's Contracting Handbook contains an example. Districts often say requiring a performance bond scares away potential contractors. However, in making the decision on whether or not to require it for contracts under \$25,000, the district should ask itself, "how much money are we willing to lose or gamble on this project if the contractor decides to pull out before the project is finished, does a poor quality job, or requests more funds to complete it?" The performance bond protects the district from financial loss if the contractor does not perform according to contract specifications.

ii — Does the district need to adhere to prevailing wage rules?

Yes, all public works projects being done on public land or for public use must comply with the prevailing wage laws and rules of both the state Bureau of Labor

and Industries and the federal Davis-Bacon Act. There are some exceptions:

1. ~~Work on private land for private use.~~

2. ~~Work on publicly-owned land for public use where the project cost does not exceed \$25,000.~~

Please note: These exceptions were in place at the time of this writing. They are subject to change. Contractors need to comply with the current state and federal prevailing wage laws!

3. ~~Projects including federal funds where the federal Davis-Bacon Act applies. If the contract price does not exceed \$25,000, the Bureau of Labor and Industries does not require that prevailing wages be met, but the Davis-Bacon Act might apply (see Title 29, Part 5 of the Code of Federal Regulations, WH-1244).~~

i ~~Is our conservation district required to have a "Contract Review Board"? Yes. Any conservation district that engages in any contracting activities is required to have a Contract Review Board. The district may utilize the services of a "county recognized board" or it may create its own. If the district creates its own, it must adopt and use rules to guide it in its contracting procedures. Many districts that form their own Contract Review Board choose to adopt and use the "Attorney General's Model Public Contract Rules, Division 30 and 40". A copy of the rules can be purchased from:~~

~~—— Oregon Department of Justice
—— Administrative Services
—— 1162 Court Street, NE
—— Salem, OR 97310~~

~~—— Does the district always have to award the contract to the lowest bidder? No. The lowest bidder may not be able to meet the starting date or completion date requirements, or might have a reputation of poor quality of work, or for other reasons may not be the best choice. If the contract is awarded to someone other than the lowest bidder, the district or the Contract Review Board must be able to clearly justify and document choosing the other contractor.~~

i ~~Can the district contract with the landowner or farmer upon whose land the project is being done?~~

~~Yes. However, the landowner or farmer must be compared along with other available contractors and not given an unfair advantage.~~

i ~~Can a conservation district director or his or her relative bid on personal services or public works contract proposals let by the district?~~

~~Yes. A conservation district director or his or her relative can be considered as a bidder, along with other interested contractors, subject to the following~~

qualifications:

~~The director or his or her relative shall not be given any preference over other prospective contractors by the district board or the Contract Review Board.~~

~~The director or his or her relative must adhere to the same contracting conditions as other prospective contractors.~~

~~The director must declare a conflict of interest.~~

~~The director must excuse himself/herself from any discussions or voting relating to the planning of the project, specifications for the project, decisions to sponsor the project, or participating in the deliberations required to select a contractor for the project.~~

~~When awarding a contract to a district director or his or her relative, it is advisable that the district be especially detailed and diligent when assembling documentation supporting the selection of the director or relative for the contract, to assure the public that favoritism has not been practiced. Since there is a risk that the public will perceive the awarding of a contract by a district to a district director or relative as a "conflict of interest", it is essential that the district follow stringent rule and procedures and provide thorough documentation of its decisions.~~

~~7. Contract Review Board, Rules, and Officers~~

~~According to the Oregon Attorney General, conservation districts that engage in contracting activities must have a Contract Review Board. The district may choose to utilize the services of a review board that already exists in the county or develop its own. The Attorney General's staff suggests districts develop their own and that the entire board of directors serve as the review board. Districts should follow the procedures outlined below to create their own contract review board, establish rules, and appoint a contract officer.~~

~~A. Creating a Contract Review Board~~

~~1. Adopt a resolution:~~

~~Adopt a resolution at a regular or special board meeting identifying the district board as the Contract Review Board.~~

~~2. File resolution:~~

~~Check with county officials to determine with whom the resolution should be filed and in what manner.~~

~~File the resolution as instructed.~~

~~Provide a copy of the resolution to the ODA's Natural Resources Division.~~

~~B. — Adopt Rules Governing Contracting Procedures:~~

~~A Contract Review Board must adopt rules governing its procedures. The Attorney General's Model Public Contract Rules satisfy current statutory requirements. The guidance provided in the Contracting Handbook complies with the Attorney General's model public contract rules.~~

~~The Contract Review Board may (a) adopt the Attorney General's model public contract rules or (b) may develop and adopt its own rules. If a district chooses to develop its own rules, the district needs to understand the process is complex and legal consultation is recommended.~~

~~For copies of the Attorney General's Model Contract Rules, contact:~~

~~—— Department of Justice
Library and Publication Section
1162 Court Street, NE
Salem, OR 97310
Ph: (503) 378-2992~~

~~C. — Appoint a Contract Officer:~~

~~The Contract Review Board must appoint a director or district employee to act on its behalf as a Contract Officer. It may choose to appoint the person by title or by name. (Example: district chair, district manager, Jim Smith)~~

~~The Contract Review Board establishes the duties of the Contract Officer.~~

~~The Contract Officer should be identified in all "Requests For Proposals" and contracts developed by the district.~~

~~D. — Appoint a Project Manager (optional):~~

~~If a project manager is needed, one should be selected by the Contract Review Board, based on who is best suited for each project. The Contract Officer may serve as the Project Manager.~~

~~A Project Manager's general responsibilities include:~~

~~Overseeing the project, and making sure it is completed according to the standards and specifications set forth in the contract.~~

~~Make progress reports and payment recommendations to the Contract Officer, Contract Review Board, and the district.~~

~~If a Project Manager is needed for a specific project, the program manager should be identified in the "Requests For Proposals" and contracts developed by the district.~~

C. Vehicles

1. District Vehicles

When purchasing a vehicle, it is important to remember that district funds are public funds. Therefore, the district must use a competitive process when purchasing a vehicle. Conservation districts are eligible to purchase state surplus vehicles, and should contact the Oregon Department of Administrative Services (DAS) by calling (503) 378-4714 or by visiting the DAS website at <http://www.oregon surplus.org/> for more information. If the district chooses to purchase a new or used vehicle, it should seek at least three (3) bids or price quotes on the equivalent vehicle from different vendors. **Regardless of the vendor, districts must follow the procurement procedures set out in ORS Chapter 279A.

A. Insurance Coverage for Conservation Districts

All conservation district directors, associate directors, employees, and volunteers are provided tort liability coverage under the state's self-insurance program. The ODA's Natural Resources Division pays the required charges to the state's Risk Management Division for this coverage. Every two years the department provides each conservation district a copy of the following documents, which can be downloaded from the Insurance and Risk Management section in the SWCD Services at <http://www.oregon.gov/ODA/SWCD/services.shtml>, or by clicking on the name of the document below:

- | | |
|--|----------|
| 1. District Insurance Certificate | 1 page |
| 2. Local Government Self-Insurance | 12 pages |
| 3. Uninsured Motorist - Endorsement #1 | 1 page |
| 4. Personal Injury Protection - Endorsement #2 | 4 pages |

District directors and staff should review and become familiar with the documents and the provisions of this coverage, and be clear about what is covered and what is not. The information in the documents will be helpful when determining what additional insurance is needed or desired at the district. Conservation districts may contact the ODA's Natural Resources Division for copies if needed.

B. Insurance Coverage For District-Owned Vehicles

Under the Oregon Responsibility Law every Oregon driver is required to carry a minimum coverage of automobile insurance. Conservation district representatives are covered by state's self-insurance policy and are provided liability protection under the Oregon Tort Claims Act, ORS 30.260 - 30.300, while operating a district-owned vehicle. If a conservation district wishes to obtain its own comprehensive automobile insurance for collision, fire, theft, replacement, and other costs, it needs to purchase the additional insurance coverage through

a private carrier.

C. Oregon Tort Claims Act Exclusions

Be advised there are some exclusions in the Oregon Tort Claims Act. Specifically, the limits and protections of the Oregon Tort Claims Act do not apply when conservation districts operate vehicles or work outside the State of Oregon. If districts are operating vehicles and/or conducting business outside of the State of Oregon, they should consider purchasing extra liability insurance that would cover claim costs exceeding the limits provided under the state's policy.

There are additional exclusions identified on pages 4-5 of the Local Government Self-Insurance document referenced above. Some conservation districts may choose to purchase additional insurance to cover identified exclusions that affect their district (such as the use of watercraft over 25 feet.) Districts should consult with insurance providers to determine additional insurance needs and coverage requirements.

2. Use of Personal Vehicles

All districts should have policies and procedures regarding the use of personal vehicles for official district business. These policies and procedures apply to directors, associate directors, directors emeritus, staff, volunteers, and any other agents of the district. The following items should be addressed in district policies:

- Licensing and insurance documents (e.g., drivers license, vehicle registration, insurance)
- Accident/claim reporting requirements and procedures
- The conditions under which vehicles can be used (what is official business?)
- Reimbursement rates
- Mileage documentation requirements
- Safety requirements, equipment, and/or inspection of vehicles (seat belts, operational standards, life jackets, etc.)
- Clarification that district is not responsible for repairs and/or maintenance

If an accident occurs in a personal vehicle being used on conservation district business, whose insurance pays?

A person's own automobile insurance takes first position in the event of a claim. If the limits of the person's insurance are exceeded, then the liability coverage from the state takes second position and covers the damages up to established policy limits. As a risk management practice, conservation districts should require proof of insurance from those people using personal vehicles for official district business.

3. Use of State or Federally-owned Vehicles

Conservation districts often ask about the insurance requirements when using USDA Natural Resources Conservation Service (NRCS) or other non-owned vehicles. Per NRCS' advice, conservation districts should refer to guidelines and references to this subject in the NRCS General Manual 120, part 405 subparts C, section 405.23(m)(1&2), and NRCS National Bulletin NO. 120-1-3. This information states that NRCS may loan vehicles to conservation districts and that all loans require a formal written agreement. National Bulletin NO. 120-1-3 also states that "if vehicles are loaned to a district, the district must carry property damage and bodily injury liability insurance policy, and shall include the United States as an insured thereunder." Conservation districts need to work closely with NRCS to clarify under what conditions the NRCS is loaning a vehicle to the district and under what conditions the district is using the vehicle to assist with NRCS official business.

Under the state's self-insurance policy, conservation districts are provided liability coverage when using state or federally-owned vehicles. However, coverage is not provided for physical damage of vehicles operated by the district, regardless of whether the district, NRCS, another person, or company owns the vehicle. If a conservation district borrows or rents a vehicle, and has an accident that is determined to be the district's fault, then the district will likely be responsible for the repair or replacement costs of the vehicle. This could prove to be an extreme financial hardship for some conservation districts.

Therefore, conservation districts may wish to consider purchasing physical damage insurance coverage for any state or federally-owned vehicle it uses, or any other vehicle it rents or borrows. The physical damage coverage the district needs to purchase is **commercial auto insurance**, which includes non-owned auto coverage. When the district attempts to obtain such an insurance policy, the potential insurer may suggest that the district needs liability insurance, not physical damage insurance. However, conservation districts are covered for liability under the state self-insurance policy. It is not liability coverage that the district needs to purchase; it is the extra insurance for collision, fire, theft, replacement, and other costs that may need to be purchased.

4. Leasing and Renting Vehicles

Conservation districts are eligible to lease vehicles from the State Motor Pool. In doing so a district must enter into an "Intergovernmental/Interagency Agreement For The Cooperative Provision and Use of Vehicle Fleet and Motor Pool Services" with the State Motor Pool. Any conservation district considering leasing a State Motor Pool vehicle is urged to be sure it has reviewed the agreement carefully, particularly with respect to the kinds of comprehensive automobile insurance that might be needed.

The State Motor Pool will require the district to provide to the Oregon

Department of Administrative Services a "certificate of insurance" showing that the district carries comprehensive collision, fire and theft insurance. Most of these kinds of insurance policies "total" out vehicles at blue book value at the time of the accident. The Interagency Agreement provided by the State Motor Pool, however, may state that the lessee will replace the "totaled" vehicle at a "new car value", which means the district would need to provide the difference in cost between the insurance settlement and the price of a new, replacement vehicle.

The State Motor pool can be reached by calling (503) 378-2307 or through its website at <http://www.oregon.gov/DAS/SSD/FLEET/index.shtml>.

NOTE: When leasing a vehicle from the State Motor Pool, or any other source, be sure the district knows what level of coverage is needed to meet the requirements of the agreement, and determine if the district can afford the additional cost for insurance, before deciding to sign the agreement.

5. Licensing

Since conservation districts are not state agencies, they are not required to have an **E** license plate number on their district-owned vehicles. When the district obtains a license plate from the Driver and Motor Vehicle Services (DMV) for a district-owned vehicle, it can choose whether to get the **E** plate. The **E** license plate is generally less expensive.

D. Equipment

1. Equipment Accountability

All equipment purchased by a conservation district is public property. The conservation district is responsible for keeping an up-to-date inventory of this equipment, its use, and its location (e.g., where it is stored, or who is using it and how). As outlined in the Oregon Government Standards and Practices Laws, public officials are prohibited from using public equipment for personal purposes. District resource use must be consistent with appropriate district policy to avoid actual or perceived misuse of public equipment.

2. Equipment Insurance

The state Risk Management Division, Department of Administrative

Recommendation: Each conservation district should develop its own written policies on how its equipment may be used, where it's to be stored, rental schedules, etc. Refer to the *Oregon Government Standards and Practices Laws, A Guide For Public Officials*, for clarification of issues related to potential equipment misuse. This document can be obtained from: Oregon Government Standards and Practices Commission, 885 Summer St. NE, Salem, Oregon, 97301-2522, or from the website at http://www.oregon.gov/GSPC/forms_publications.shtml.

Services, does not provide property insurance for conservation districts. The district needs to determine whether it wishes to purchase appropriate property insurance for equipment, tools, etc.

3. Purchase and Sale of Equipment

Conservation districts have two primary options for selling equipment they no longer need:

Option #1
The conservation district may sell its equipment itself, seeking bids locally. If this option is used the district must be very careful not to be "in conflict of interest", and must be ethical in how it goes about the sale and/or bid process. Example: A direct sale to a district director or friend of the family may be considered both a conflict of interest and unethical. All interested persons must have an equal opportunity to bid on the item for sale. Items for sale should be advertised for at least two weeks.

ORS 279a.280**Option #2**

The conservation district may choose to enter into an Intergovernmental Agreement with the Oregon Department of Administrative Services, in which the department takes care of everything from advertising to the actual sale. The equipment can be left at the local site, but the sale would be handled through the Department of Administrative Services in Salem, and the funds would go to the district. This option takes away the risk of a conflict of interest and the potential for an ethics violation from the district, since the Department of Administrative Services will manage the sale process.

Districts need to be clear about any conditions of funding sources for equipment.

4. Purchase of State Surplus Equipment

Conservation districts are eligible to purchase state surplus equipment. Before doing so, however, it is necessary to complete an eligibility application form that designates authorized signers for the district. For more information regarding state surplus equipment, contact the Oregon Department of Administrative Services, (503) 378-4714, or visit the website at <http://oregon.gov/DAS/SSD/SURPLS/index.shtml>.

E. Insurance/Risk Management**1. Risk Management Concepts**

All individuals, small companies, corporations, and various types of governments assume risk when conducting business. Conservation districts, like any other entity, assume and expose themselves to certain types of risk while acting as a local unit of government, an employer, and in other roles they assume (landowner, contractor, etc). Conservation districts can employ different techniques and methods to manage and reduce their exposure to risk.

Each conservation district should have a copy of the publication "Managing the Rapids of Risk, Accessories for Protection" in their office. This document is available on the ODA's website at <http://oregon.gov/ODA/SWCD/risk.shtml>, or by contacting the SWCD program in ODA's Natural Resources Division, (503) 986-4775. The publication provides information regarding:

- The Role and Purpose of the Risk Management Division
- The Oregon Tort Claims Act
- The State Liability Self-Insurance Plan and Coverage Limits
- Self Insurance Policy Exclusions
- Risk Management Suggestions for Conservation Districts

Risk management must be an integral part of conservation district activities. The strategies districts develop to minimize risk will help guarantee continued

operations. Risk assessments are valuable tools for districts to use. Risk assessments can be done at anytime and by anyone. They help identify and develop strategies to eliminate or minimize risk.

The following excerpts from *Managing the Rapids of Risk, Accessories for Protection*, outline the six steps to conduct a risk assessment:

A) What are your district's activities?

- ✓What will you be doing?
- ✓Where will it be done?
- ✓What materials or substances will be used?

B) Who will be performing these activities?

- ✓Are they your agents, employees, board members, or volunteers?
- ✓Are they independent contractors or employees of the district, county, city, or municipality?

C) What are the risks associated with these activities?

- ✓Injury to your agents, employees, board members, or volunteers.
- ✓Injury to others covered by their employer's workers' compensation coverage.
- ✓Injury to third parties.
- ✓Third-party property damage.

D) Rank risks.

- ✓What is the chance of a loss occurring: high, medium, or low?
- ✓How much might this loss cost?

E) How are these risks covered?

- ✓Are they covered by the state tort liability policy?
- ✓Is there a contract with the service provider? Does the contract transfer the risk and require insurance coverage?
- ✓Do you have a commercial insurance policy covering the risk?
- ✓Is the risk so low that it can be uninsured?

F) Are there other ways to minimize the risk?

- ✓Are the participants properly oriented and trained?
- ✓Is supervision required?
- ✓Are there clear expectations?
- ✓Are there policies and procedures?
- ✓Are the duties clearly delineated?
- ✓Are you acting in good faith?
- ✓Are you following reasonable professional and industry standards? Is it best to use an experienced professional in this case? What level of

professional or industry standard is needed? Are you meeting this standard?

- ✓ Are you a good neighbor? Have you addressed community concerns? Do neighbors know when and where the activity will begin? Do they know how the task will be accomplished and the length of the project?
- ✓ Do all participants recognize and know how to handle endangered species and culture resource issues?
- ✓ Have you filed a permit with U.S. Fish and Wildlife for exemption from accidental or unintentional “take” of an endangered species?

2. Policies and Procedures

A common way to reduce and/or transfer risk is develop and adopt district policies and procedures. Policies and procedures are the self-imposed written rules and procedures under which the district directors, staff, and volunteers operate. Policies and procedures should be developed for many areas of district operations. Some areas may include:

- Personnel Management
- Financial Management and Budgeting
- Equipment and Vehicle Use
- Roles of Directors and Officers
- Volunteers
- Parliamentary Procedure
- Public Records Requests
- Agreement with Partners
- Fund Raising
- Risk Management
- Safety
- Drug and Alcohol Use
- Orientation and Training
- Long-range Business Planning
- Ethics and Conflict of Interest
- Roles of Associate Directors
- Public Contracting
- Meeting Management
- Communications
- Memorandum of Understanding
- Campaigning
- Sexual Harassment Prevention
- Americans with Disabilities Act
- Entry on to Private Property

At a minimum, conservation districts should begin by developing policies and procedures in the following three areas:

A. Personnel Management

Every conservation district that has employees, or is considering hiring employees, should develop and adopt personnel policies and guidelines. This topic is covered in greater detail in *Chapter IX - District as Employer*. The Oregon Association of Conservation Districts (OACD) has developed a *Personnel Management Handbook for Conservation District Directors and District Managers*, available to download in Microsoft Word or pdf format at <http://www.oacd.org/>, or by contacting the OACD at 503-566-9157. Each conservation district should have a copy of this Personnel Management Handbook in its office. This handbook can be adopted as a district’s personnel guidebook or used as a framework for developing a district’s own personnel policies and procedures.

Other examples of personnel policies and guidebooks are also available from other sources such as the Special Districts Association of Oregon, (503) 371-8667. Districts may also contact the ODA for copies of the guidebook or to request assistance in developing personnel management policies.

B. Sexual Harassment Prevention

The OACD's Personnel Management Handbook discusses sexual harassment in Chapter 11. The ODA urges every district board to establish its own Sexual Harassment Policy. When a harassment situation arises in a conservation district, it is the responsibility of the district board to resolve it, not the responsibility of the Department of Agriculture.

If a complaint is filed and a director is found guilty, he/she may be personally liable for the costs associated with any fine that is levied. Directors may also be found liable if they knew, or should have known, about the circumstance and did nothing about it.

C. Drug and Alcohol Use Policy

All conservation districts are encouraged to develop drug and alcohol use/abuse policies. Be advised that some funding sources, such as federal funds, may require a district to have written policies regarding drug and alcohol use/abuse and put these policies into practice.

Districts may refer to the OACD's Personnel Management Handbook and the Special Districts Association of Oregon for sample alcohol and drug policies.

3. Tort/Tort Liability Insurance Coverage

A. Definition of a Tort

A tort is defined as a wrongful act, injury, or damage (not involving a breach of contract), for which a civil action can be brought. ORS 30.260 defines a tort as the breach of a legal duty that is imposed by law, other than a duty arising from contract or quasi-contract, the breach of which results in injury to a specific person or persons for which the law provides a civil right of action for damages or for a protective remedy. Conservation districts are provided protection from tort liability for their actions while doing district business through tort liability insurance coverage.

B. Extending State Tort Liability Coverage

The state covers its employees, agents, and volunteers. Coverage is rarely provided to non-state entities and often requires legislative approval. In fact, Soil and Water Conservation Districts and Watershed Councils are the only non-state entities with state policies. Authorization to extend this policy is granted by the Oregon Legislature.

C. Insurance Coverage for Conservation Districts

As previously discussed, all conservation district directors, associate directors, employees, and volunteers are provided tort liability coverage under the state's self-insurance program. The ODA's Natural Resources Division pays the required charges to the state's Risk Management Division for this coverage. Every two years the department provides each conservation district with a copy of the four insurance documents listed below. Additional copies of these documents can be obtained from the Insurance and Risk Management section in the SWCD Services website at <http://www.oregon.gov/ODA/SWCD/services.shtml>, or by clicking on the name of the document:

- | | |
|--|----------|
| 1. District Insurance Certificate | 1 page |
| 2. Local Government Self-Insurance | 12 pages |
| 3. Uninsured Motorist - Endorsement #1 | 1 page |
| 4. Personal Injury Protection - Endorsement #2 | 4 pages |

District directors and staff should review and become familiar with the documents and the provisions of this coverage, and be clear about what is covered and what is not. The information in the documents will be helpful when determining what additional insurance is needed or desired at the district. Conservation districts may contact the ODA for copies if needed.

D. Oregon Tort Claims Act Exclusions

There are some exclusions from coverage under the Oregon Tort Claims Act. Specifically, the limits and protections of the Oregon Tort Claims Act do not apply when conservation districts operate vehicles or work outside the State of Oregon. If districts are operating vehicles and/or conducting business outside of the State of Oregon, they should consider purchasing extra liability insurance that would cover claim costs exceeding the limits provided under the state's policy.

There are additional exclusions identified on pages 4-5 of the *Local Government Self-Insurance* document. Some conservation districts may choose to purchase additional insurance to cover identified exclusions that affect their district (such as the use of watercraft over 25 feet.) Districts should consult with insurance providers to determine additional insurance needs and coverage requirements.

E. Authority to Purchase Coverage

ORS 568.550(p) authorizes conservation districts to purchase additional liability insurance coverage.

4. Commonly-Asked Questions

A. Is tort liability insurance coverage provided for conservation districts?

Yes. All Oregon conservation districts have a Local Government Liability Policy

through the state of Oregon's Risk Management Division. The policy is subject to the Oregon Tort Claims Act and the Oregon Constitution.

B. Who pays for the coverage?

The ODA pays the insurance premiums, through legislative appropriation to the Natural Resources Division budget.

C. Who is covered?

All conservation district directors, associate directors, directors emeritus, employees, and volunteers are covered who fit any of the following criteria:

1. All conservation district directors, associate directors, directors emeritus, and employees who are under the direction of the board.
2. All conservation districts volunteers involved in district projects.

A volunteer is a person who:

- the conservation district appoints to perform official district business
- receives no compensation for this service
- works at the conservation district's request or consent under the conservation district's direction and control

NOTE: In order to make sure that volunteers are covered under tort liability insurance, board action appointing the volunteer should be reflected in board minutes, and all volunteers should sign a volunteer agreement. This agreement should be kept on file.

3. Watershed council staff who are employed by the conservation district and get direction from the conservation district board and staff.

D. When does coverage begin?

- Coverage for conservation district directors begins when an elected or appointed director takes the "Oath of Office" at a district board meeting and it is recorded in the district's board meeting minutes.
- Coverage for an associate director or a director emeritus begins when the conservation district board votes to appoint a person to that position. The board meeting minutes should reflect the name of the person who has been appointed to the associate director or director emeritus position.
- Employee coverage begins on his or her employment starting date.
- Volunteers become covered on the date a signed Volunteer Agreement form is received by the conservation district. The board meeting minutes should reflect the volunteer's appointment and should specify the terms of volunteer service, including tasks, length of service, etc.

E. Are participants in conservation district-sponsored activities or field trips on private property covered?

Before conducting a field trip it is important for the district to determine who is covered and who isn't. Only those conservation district-related persons who are normally covered by the tort liability insurance are covered on a field trip. State and federal agency participants in field trips have coverage through their agencies, but other individuals may not be covered. The district should ask them to sign a "Field Trip Waiver of Liability" before accepting them as participants in the field trip. A sample field trip waiver of liability description follows this segment on "commonly asked questions".

Also, the person on whose property the field trip occurs is not covered by the conservation district's liability insurance. The district should always verify with the property owner that he/she has adequate comprehensive liability insurance coverage before plans for the field trip are finalized.

F. Is the district's tort liability insurance coverage in effect when district officials are driving a district, state, or federal vehicle on district business?

Yes.

G. Is the district's tort liability insurance coverage in effect when district officials are driving a personal vehicle on district business?

Yes. Anyone driving a personal vehicle on district business must also have his/her own liability coverage, at least to the minimum required by Oregon law. Districts should be aware that private insurance pays first in the event of a claim.

H. Does the conservation district's liability insurance coverage include physical damage insurance coverage?

No. The tort liability insurance coverage is only for liability. The conservation district must obtain physical damage insurance coverage when using district, state, or federal vehicles. The conservation district must purchase a commercial auto insurance policy that includes non-owned auto coverage. Be aware that some potential insurers may tell the conservation district that a commercial auto insurance policy that includes non-owned auto coverage is a liability policy, not a physical damage policy, but the Risk Management Division will verify that it is a physical damage insurance policy, not a liability insurance policy.

I. What state agency administers the tort liability insurance program?

The Risk Management Division of the Department of Administrative Services, (503) 373-7475, <http://www.oregon.gov/DAS/SSD/Risk/>

J. What are the coverage limits?

Limits mirror Oregon Tort Claims Act Limits outlined in ORS 30.270.

- **\$50,000** for third-party property damage.
- **\$100,000** for third-party general and special damages (i.e. medical bills, pain, suffering, and inconvenience). An additional \$100,000 for special damages.
- **\$500,000** for any number of claims arising out of a single accident or occurrence.
- **Plus** unlimited defense cost.

K. What isn't covered?

- Criminal complaints or actions.
- Acts not arising in the performance of duty.
- Slander.
- Malfeasance in office or for acts due to willful or wanton neglect of duty or that were committed maliciously with intent to injure.
- For the assumption of liability to another party because of negligence, unless a written agreement was entered into prior to a loss.
- Workers' compensation.
- Public Meetings Law violation claims.
- Protective relief actions.
- Pollution.
- Aircraft.
- Watercraft over 25 feet in length.
- Personal property.

NOTE: Districts should work with their private insurance carrier to determine what additional insurance coverages are needed for their specific operations.

L. What should the district do in the event of an accident or occurrence, or if someone makes a claim or suit against it?

1. Notify the Risk Management Division and the ODA's Natural Resources Division of any accident or occurrence that may result in a claim. Include how, when, and where the occurrence took place, and the names and addresses of any injured persons or of any witnesses.
2. Notify the Risk Management Division and the ODA promptly of any actual claims or suits. Send copies of demands, notices, summons, or legal papers received to:

Risk Management Division
Department of General Services
1225 Ferry St. SE, U150
Salem, OR 973010-4287
(503) 373-7475
risk.management@state.or.us
<http://www.oregon.gov/DAS/SSD/Risk/>

SWCD Program Manager
ODA – Natural Resources Division
635 Capitol St. NE
Salem, OR 97301-2532
(503) 986-4705
lojua@oda.state.or.us

3. Cooperate with the Risk Management Division in the investigation, settlement, or defense of the claim or suit.

M. When will the state represent me in a lawsuit?

The tort liability insurance contract policy provides that the Department of Administrative Services will provide defense for any public official, employee, or agent from any tort claim or demand which on its face arose out of an alleged act or omission occurring in the performance of duty except as described below. If it is unclear whether the claim arose from a district's representative's duties, the Attorney General will tell the district early in the investigation if he will defend the district. Once the state decides to defend the district, it will continue to defend the district unless the district fails to cooperate in the investigation, or acts to prejudice the case.

Under certain circumstances individuals are personally liable for their actions. Being personally liable means an individual pays his or her own attorney, court costs, settlements, judgments, and other expenses. Some clear cases of personal liability include, but are not limited to:

1. Charge of ethics violation.
2. Traffic or motor vehicle citations.
3. Charge of criminal act or criminal contempt.
4. Wrong allegedly done when an individual was acting outside the scope of his or her district employment or board position.
5. When the alleged wrong, if true, constitutes intentional harm, a willful neglect of duty, malfeasance in office, or gross recklessness.
6. Failure to cooperate or acting to prejudice the state's defense.
7. Professional licensure sanctions, complaints, or discipline.
8. Payments of transfers of state funds or property in violation of the law.
9. Negligent or willful damage or loss to state assets.

Sample Waiver

I, _____ (guest name) _____, hereby request permission of the _____ Soil and Water Conservation District to allow me to accompany the district as a participant in its _____ (name) _____ field trip on _____ (date) _____ . I have been made aware and I understand that, by participating in this field trip, I am not protected by the district's Tort liability insurance coverage. I knowingly and voluntarily assume any and all risk associated with my participation in this field trip. I also agree that in the event of any accident, illness, or incapacity, or death associated with my participation in the field trip, I or my estate will assume and pay for all of my medical and emergency care expenses and any other costs arising from any damage, loss, or injury to my property or person.

In exchange for permission to participate in this field trip, I hereby release and hold harmless the State of Oregon and its agencies, officers, employees, and agents, including the _____ Soil and Water Conservation District, from any or all actions, claims, or demands whatsoever that may arise out of my participating in the field trip. I intend this release and hold harmless agreement to forever bind myself as well as my estate, personal representatives, guardians, conservators, parents, heirs, executors, administrators, or assigns. I hereby agree to the terms and conditions set forth above for this field trip.

By my signature below, I hereby represent that I understand and consent to the terms, conditions, and release from liability pertaining to the _____ (name) _____ field trip sponsored by the _____ Soil and Water Conservation District.

Signature (Guest)

Date

District Witness

Date

This liability waiver form can be used for other purposes, by changing the description of the purpose or event, e.g. from "field trip" to "program".

5. ODA Assistance to Districts

If a legal issue or a potential legal issue arises in a conservation district, the ODA's Natural Resources Division should always be contacted. Division staff may be able to direct the district to sources of assistance or to resources about which the district might not be aware.

Depending on the nature of the issues, the following agencies may be able to

help a district work through a local problem:

Dept of Administrative Services Risk Management Division 1225 Ferry Street SE U150 Salem, Oregon 97301-4287 Telephone: (503) 373-7475 http://www.oregon.gov/DAS/SSD/risk/index.html	Special Districts Association of Oregon P.O. Box 12613 Salem, OR 97309-0613 Phone: (503) 371-8667 Toll Free: (800) 285-5461 http://www.sdao.com/
Bureau of Labor and Industries 800 NE Oregon, No. 32 Suite 1070 Portland, OR 97232 Phone: (503) 731-4200 http://www.oregon.gov/boli	Oregon Department of Revenue 955 Center Street NE Salem, OR 97301-2555 Phone: 503-378-4988 Toll Free: 1-800-356-4222 http://www.oregon.gov/dor
Secretary of State's Elections Division 136 State Capitol Building Salem, Oregon 97310 Phone: (503) 986-1518 http://www.sos.state.or.us/elections	Secretary of State's Audits Division Public Service Building Suite 500 255 Capitol Street NE Salem OR 97310 Phone: 503-986-2255 http://www.sos.state.or.us/audits

6. Attorney General Legal Counsel

ORS 568.600(1) states that conservation district "directors may call upon the Attorney General for such legal services as they may require." What that statute does not say is that the district must pay for the services rendered, including, but not limited to:

- Telephone calls
- Research
- Opinions
- Staff time not associated with tort claim
- Other assistance as needed

Districts need to place all requests for Attorney General assistance through the Natural Resources Division. In addition, the division staff keeps a record of all Attorney General Opinions relating to conservation districts.

F. Miscellaneous

1. Entering Private Lands

In addition to the powers and authorities previously described, ORS 568.730 authorizes districts "to go upon any lands within the district, after notifying the owner or operator, for the purpose of making surveys and to determine whether

land-use regulations adopted under ORS 568.630 to 568.690 are being observed. Due precaution shall be taken at all times to prevent injury to growing crops or livestock.” Additionally, in implementing agricultural water quality management program strategies, ORS 568.915 states “after a reasonable attempt to notify the landowner, the Department of Agriculture or a designee of the department may go upon any lands within the area subject to a water quality management plan for the purpose of determining: (1) those actions that may be required of a landowner under ORS 568.900 to 568.933; and (2) whether the landowner is carrying out the required actions.”

It is strongly recommended that districts make every reasonable effort to obtain permission from the landowner or operator before entering private property. Procedures relating to entry should be outlined in district policy.

2. Photo Identification Cards

Conservation district directors, associate directors, and employees are eligible to obtain a government Identification Card. The use of an Identification Card sometimes allows the district to purchase items at a reduced rate. There are several steps the district must follow to get Identification cards:

1. Submit a letter to the Natural Resources Division, Oregon Department of Agriculture, requesting a letter from the department authorizing the issuance of a card to certain district representatives. The letter must list the names and titles of each person for whom the district is requesting authorization.
2. A Natural Resources Division representative will prepare a letter to the Department of Motor Vehicles for each district person listed that tells the Department of Motor Vehicles what should be printed on the Identification Card. The letter will include information for four lines on the card:

Line 1:	District Person’s Name
Line 2:	Title
Line 3:	District Name
Line 4:	Oregon Department of Agriculture
3. The Natural Resources Division will mail the letter for each district representative to the conservation district office, who will then provide them to the persons for whom they were prepared.
4. The district person must take the letter to a local Department of Motor Vehicles office to pay a small fee, have a photo taken, and the plasticized card made.
5. The district person must then report back to the district office manager

that the card has been obtained.

6. When a card holder leaves the service of the conservation district, the Identification Card must be returned to the district.

G. Changing District Name or Structure

1. Changing District Name

ORS 568.555 defines the process to change the name of a conservation district. Upon approval of the ODA, the directors of a district may submit to the Secretary of State a proposed name change for the district. The Secretary of State verifies the new name is not identical to another district name, or so similar as to lead to confusion or uncertainty with another district, and records and issues to the district a new Certificate of Organization bearing the new certificated name.

2. Zone Boundary Changes

ORS 568.560 states, "To insure proper representation of all the people in the district and to facilitate district functions, the department shall provide for the zoning of each district, and shall provide at each election for the proper and equitable representation for each zone." The statute allows the department to consider requests for zone changes submitted by districts.

The procedure for this is outlined in OAR 603-071-0025. "Each soil and water conservation district board of directors shall prepare a map of the district, indicating the board's proposed zones. After preparation of said zone map, the same shall be submitted to the department, which shall review for compliance with ORS 568.560. The department shall notify each soil and water conservation district board of directors of the approved zoning of the district."

The above ORS and OARs do not state how zones are to be determined; they only address proper and equitable representation. In order for a conservation district to change one or more zone boundaries these steps must be followed:

1. The district board determines what zone boundary changes are needed.
2. The district board develops a map showing the proposed new boundaries. The proposed zone boundary changes must be approved by official board action.
3. The district submits a request for the proposed zone boundary change to ODA's Natural Resources Division. The request must include:
 - Map showing proposed zone boundary changes.
 - Letter of explanation of the zone boundary changes.
 - Documentation of board action approving the request for zone boundary

changes.

4. The department acts on the request. If approved, the district must provide (1) a copy of the new zone boundaries map and (2) a list identifying the current director representing each zone to the local County Clerk and to the department.
5. The new zone boundaries go into effect when the above steps are completed.

3. District Boundary Changes

The legal process to change boundaries of conservation districts is set forth in ORS 568.430 and 568.470 and is different from other special districts. Districts interested in modifying boundaries should contact the Natural Resources Division to obtain assistance with the procedure.

4. Consolidation of Districts

ORS 568.430 through 568.470 describes the process to consolidate conservation districts. The procedure to consolidate districts may be initiated by:

- A. Petitions to consolidate signed by any 25 or more owners of land within the districts affected and filed with the ODA; or
- B. Resolutions to consolidate adopted by the board of directors of each district to be affected by the consolidation and filed with the ODA.

If the districts affected choose to utilize the resolution process for consolidation the following steps apply:

- A. Hold joint informational meetings among the districts affected, to discuss the pros and cons of consolidation. (Not required by law but highly recommended by the Department of Agriculture.)
- B. The affected districts should consult with county officials on how to appropriately rezone the new, consolidated district.
- C. Each district must approve and submit a resolution to consolidate to the Director of the Oregon Department of Agriculture. Reasons supporting the consolidation must also be provided.
- D. If acceptable resolutions are received from all affected districts, the ODA conducts a public hearing on the matter. Each district must place a legal notice of the hearing in a newspaper of general circulation within the district, for two successive weeks, one or two weeks prior to the date of

- the hearing. Testimony is taken at the hearing and recorded by the hearings officer provided by the department.
- E. The department must approve the map and narrative of the new zone boundaries prior to voting on the proposed consolidation.
 - F. The process continues unless 10% of the landowners, or 10 landowners, whichever is the lesser, in any of the affected districts objects at the hearing or provides written objections to the department within 30 days after the hearing.
 - G. If the process continues, each board of the affected districts must approve, within 60 days after the hearing, the consolidation and the new proposed zone boundaries by at least a 2/3 vote.
 - H. The issue must go to a vote of the public or by referendum if objections exceed the levels identified in item (e) above, or if one of the affected district's boards does not register a 2/3 majority vote for consolidation.
 - I. If the consolidation is approved by either method above, the department will send a *consolidation notice* to the Secretary of State signed by the department Director. The Secretary of State then issues a Certificate of Consolidation.
 - J. Within 30 days after the Secretary of State issues a *Certificate of Consolidation*, the boards of the consolidated districts shall hold a joint meeting and, if a quorum is present, the current directors elect seven directors of the new board. All rights, properties, and liabilities are assumed by the new board.
 - K. The new district board must notify the County Clerk and the ODA's Natural Resources Division of the names of the new directors and the zones/positions they represent immediately after the new board is formed.

SAMPLE RESOLUTION
Pertaining to the consolidation of districts

Whereas, _____ Soil and Water Conservation District and _____ Soil and Water Conservation District share similar climactic and geomorphic conditions, similar soil and water resource problems and conditions, and similar socio-economic conditions, and

Whereas, _____ Soil and Water Conservation District and _____ Soil and Water Conservation District are aware of duplication of efforts and services by employees, duplication of deliberation by each board of directors and increased workload by both staff and volunteers, and

Whereas, many cooperators own and manage land in both _____ Soil and Water Conservation District and _____ Soil and Water Conservation District,

Therefore, be it resolved that the board of directors of the _____ Soil and Water Conservation District supports the formation of a consolidated district, to be known as _____ Soil and Water Conservation District, to more efficiently and effectively serve the area presently represented by _____ Soil and Water Conservation District and _____ Soil and Water Conservation District.

DATED this _____ day of _____, 20__.

Director

Director

Director

Director

Director

Director

Director