



**Oregon Administrative Rules
1998 Compilation**

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DIVISION OF STATE LANDS

DIVISION 1

PROCEDURAL RULES

141-001-0000

Notice of Proposed Rule

The purpose of this rule is to provide a reasonable opportunity for interested persons to be notified of the proposed actions of the State Land Board and/or the Division of State Lands. Prior to the adoption, amendment, or repeal of any rule, the State Land Board and/or the Division of State Lands shall give notice of the proposed adoption, amendment, or repeal:

- (1) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to the effective date.
- (2) By mailing a copy of the notice to persons on the State Land Board's and/or Division of State Lands' mailing list established pursuant to ORS 183.335(6).
- (3) By mailing a copy of the notice to the United Press International and Associated Press.
- (4) When the rule relates to abandoned property:
 - (a) Notice as provided in sections (1), (2), and (3) of this rule; and
 - (b) Department of Commerce, Banking Division; Department of Commerce, Insurance Division; and Executive Council, Oregon Bankers Association.
- (5) When the rule relates to waterway users:
 - (a) Notice as provided in sections (1), (2), and (3) of this rule; and
 - (b) Lessees of waterways.
- (6) When the rule relates to sand and gravel:
 - (a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees or companies who remove sand and gravel from state lands.

(7) When the rule relates to mining and explorations:

(a) Notice as provided in sections (1), (2), and (3) of this rule;

(b) Lessees who mine or explore for hard minerals, oil and gas, or geothermal resources on state lands; and

(c) Department of Geology.

(8) When the rule relates to the removal and/or filling of material:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, U.S. Corps of Engineers, and environmental groups requesting notification of removal and/or fill applications.

(9) When the rule relates to grazing lands:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) Lessees of grazing or agricultural lands.

(10) When the rule relates to natural area preserves:

(a) Notice as provided in sections (1), (2), and (3) of this rule; and

(b) State resource agencies, and environmental groups requesting notification of proposed natural areas.

Stat. Auth.: ORS Ch. 183

Stats. Implemented: ORS 183.341 & 273.045

Hist.: LB 32, f. & ef. 11-18-75

141-001-0005

Model Rules of Procedure

Pursuant to ORS 183.341, the Division of State Lands and the State Land Board adopt the Attorney General's Model Rules of Procedure under the Administrative Procedure Act as amended and effective November 4, 1993.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or Division of State Lands.]

Stat. Auth.: ORS 183.341 & 273.045

Stats. Implemented: ORS 183.341 & 273.045

Hist.: LB 10, f. 11-15-71, ef. 12-1-71; LB 13, f. 1-21-74, ef. 2-11-74; LB 35, f. & ef. 1-6-76; LB 2-1978, f. & ef. 4-20-78; LB 1-1980, f. & ef. 2-20-80; LB 1-1982, f. & ef. 2-25-82; LB 4-1983, f. & ef. 12-23-83; LB 4-1989, f. & cert. ef. 7-25-89; LB 2-1992, f. & cert. ef. 6-15-92; LB 1-1994, f. & cert. ef. 4-13-94

Conducting Contested Case Hearings

141-001-0010

Contested Case Hearings

Subject to the approval of the Attorney General, an officer or employee of this agency is authorized to appear on behalf of the agency in the following types of hearings conducted before another agency:

- (1) The agency representative may not make legal argument on behalf of the agency.
- (2) Legal argument as used in ORS 183.450(8) and this rule has the same meaning as in OAR 137-003-0008(1)(d).
- (3) When an agency officer or employee represents the agency, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advise is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.413 - 183.470

Stats. Implemented: ORS 183.341 & 273.045

Hist.: LB 1-1995, f. & cert. ef. 2-15-95

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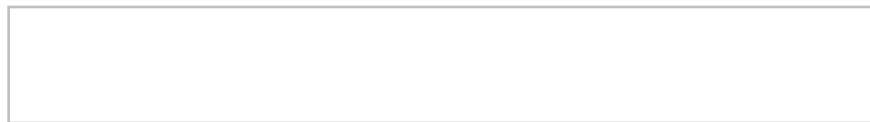
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DIVISION OF STATE LANDS

DIVISION 5

NOTICE OF MEETINGS OF THE STATE LAND BOARD

141-005-0000

Definitions

- (1) "Regular Meeting" means any convening of the board, other than a special meeting, emergency meeting, or executive session, to conduct normal business, make decisions, or deliberate toward a decision on any matter.
- (2) "Special Meeting" means a convening of the board to make decisions or deliberate toward a decision on any matter requiring attention prior to the next regular meeting of the board, but not in less than 24 hours.
- (3) "Emergency Meeting" means a convening of the board to deliberate or make decisions on any matter requiring attention in less than 24 hours.
- (4) "Executive Session" means any meeting or part of a meeting of the board which is closed to members of the public, other than members of the press or other reporters in accordance with and as provided by OAR 141-005-0040.

Stat. Auth.: ORS 273.035(1)

Stats. Implemented: ORS 273.035

Hist.: LB 1-1990, f. & cert. ef. 3-19-90

141-005-0005

Regular Meetings

- (1) The Regular meetings of the State Land Board shall be scheduled on a date, and held at a time and location acceptable to the Board members.
- (2) Proper Notice of regular meetings shall consist of:
 - (a) Personal Notice to each member of the board at least six days prior to the meeting or rescheduled regular meeting;

(b) Public Notice at least six days prior to the regular meeting date, as follows:

(A) Notices by mail to wire services and to newspapers, radio, and television stations who have requested to be notified;

(B) Press releases as appropriate to other wire services, newspapers, radio and television stations;

(C) Notice by mail to any person or organization on a mailing list maintained for notice purposes pursuant to ORS 192.640;

(D) Notice by mail to any person who has asked to be advised when a particular matter will be considered by the board.

(3) The Notice shall contain a copy of the agenda of the meeting or a summary of the matters to be considered at the meeting. However, this shall not limit the ability of the board to consider additional subjects.

Stat. Auth.: ORS Ch. 192 & 273.035(1)

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-100; LB 1-1990, f. & cert. ef. 3-19-90; Renumbered from 141-05-000

141-005-0010

Cancellation of a Meeting

If there is sufficient time, notice of cancellation of a meeting for which notice has been given shall be given to the same parties and in the same manner as was the notice of the scheduled meeting. If unforeseen circumstances preclude timely notice of cancellation in such a manner, notification shall be given by means reasonably calculated to give actual notice of cancellation.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-105

141-005-0020

Special Meetings

(1) A special meeting of the State Land Board may be called at any time by the Governor or by a majority of the members of the board.

(2) Notice shall be given to members of the board at least 24 hours prior to the special meeting. Interested persons, wire services, newspapers, radio and television stations, and the general public shall be given notice 24 hours before the special meeting by means reasonably calculated to give actual notice under the circumstances.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-110

141-005-0030

Emergencies

In case of an emergency, a meeting of the State Land Board may be canceled, or a meeting may be held upon such notice as is appropriate and reasonable under the circumstances.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-115

141-005-0040

Executive Sessions

An executive session of the board may be held during a regular, special, or emergency meeting when authorized under ORS 192.660, after identifying the specific authorization for holding the executive session. When an executive session only is to be held as a regular, special or emergency meeting, notice shall be given to the members of the board, interested persons, wire services, newspapers, radio and television stations as appropriate for a special, emergency, or regular meeting. The notice shall state the specific provision of law authorizing the executive session.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS 273.035

Hist.: LB 2-1987, f. & ef. 5-6-87

141-005-0050

Authority to Change or Cancel a Meeting or to Call a Special or Emergency Meeting

The Director of the Division of State Lands, acting under the direction of the Governor, in the case of a special meeting, or a majority of the members of the State Land Board, may cancel a meeting of the board, call a special or emergency meeting of the board, or make changes in the time or place of regular meetings of the board, as provided in these rules.

Stat. Auth.: ORS Ch. 192 & 273.035(1)

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-120; LB 1-1990, f. & cert. ef. 3-19-90

141-005-0060

Responsibility for Notices

The Director of the Division of State Lands shall be responsible for the giving of all notices required by these rules.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS 273.035

Hist.: LB 11, f. 10-12-73, ef. 11-11-73; LB 2-1987, f. & ef. 5-6-87; Renumbered from 141-10-125

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DIVISION OF STATE LANDS

DIVISION 10

GENERAL

141-010-0005

Definitions

"Board" means the State Land Board.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64

141-010-0010

Sealed Bids Required

The leasing of offshore tracts for the production of oil, gas, and sulphur shall be by sealed bids. Bids shall be submitted on forms supplied by the Board, or image copies thereof. To be considered, bids shall be received at the office of the Board, 106 State Capitol, Salem, OR 97310, before the time designated in the public notice of the offer to lease.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64

141-010-0015

Lease Map

Reference to the tract number as designated on the official lease map adopted by the Board on January 3, 1964, and any

subsequent revisions shall constitute sufficient description for bidding and leasing purposes. The successful bidder will assume full responsibility for any location surveys to determine precise boundaries of the tracts offered for lease. Copies of the official lease map may be inspected at the Board office or may be purchased for \$15 per copy. No bid for less than a full tract, as delineated on the official lease map, will be considered. For the purposes of computing the annual rental of each leased tract, the acreage shown on the official lease map shall be used.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64

141-010-0020

Bidding Procedure

- (1) When a bid or bids are submitted in person to the Board, name and address of the bidder and the number of tract bid on shall be designated on the envelope sealing each bid.
- (2) When a bid or bids are submitted by mail, each bid shall be placed in a separate sealed envelope with the name and address of the bidder and the number of the tract identified on the outside of each separate bid envelope. The bid envelope or envelopes shall then be placed into a larger envelope, addressed and forwarded to the Board with the notation on the outer envelope that it contains a sealed bid or bids.
- (3) Unless the tract is withdrawn from bidding, or unless the Board refuses all bids upon a particular tract, the lease shall be awarded to the bidder offering the highest cash bonus bid. In the event the highest bids are tie bids, tie bidders may file with the Board within 15 days after notification an agreement to accept the lease jointly; otherwise, all bids will be rejected.
- (4) No variation shall be made in the prescribed form of the bid, and the insertion of any condition, qualification, or provisions of said form will invalidate the bid. The amount of cash bonus offered shall be stated in the designated place on the bid form and a certified or cashier's check made payable to the State of Oregon in an amount sufficient to cover the first year's rental in advance, plus 1/5 of the amount of cash bonus offered, plus \$100 fee to cover the cost of advertisement shall be enclosed with the bid.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6 f. & ef. 9-17-64; LB 7, f. & ef. 10-22-64

141-010-0025

Authorization

Bids submitted by corporations or partnerships shall contain an affidavit or a certificate of authority verifying that the company official, agent, or partner signing the lease and bid offer is duly authorized to enter into such a contract for the bidder.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64; LB 7, f. & ef. 10-22-64

141-010-0030

Financial Statement

A certified financial statement establishing to the satisfaction of the Board the bidder's financial ability to undertake and fulfill all obligations under the prospective lease must accompany the bid. The findings of the Board as to whether the bidder has the financial ability to undertake and fulfill all obligations under the prospective lease shall be final and conclusive.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6 f. & ef. 9-17-64; LB 7, f. & ef. 10-22-64

141-010-0035

Refund

Checks enclosed with the bids will be returned to the bidders upon request, except in the case of the successful bidder. Such requests are to be submitted on a form supplied by the Board. The execution of a request for refund shall be determined a withdrawal of the bidder's offer and a waiver of all rights the bidder may have in connection with or by virtue of said bid.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64

141-010-0040

Forms

Form SLB1, 10-21-64. Bid Form; Oil, Gas and Sulphur Lease; and Form SLB2, 10-21-64, Request for Return of Deposit, copies of which are attached hereto and by this reference made a part hereof, are hereby adopted and prescribed by the State Land Board

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS CH. 274

Stats. Implemented: ORS 274.735

Hist.: LB 6, f. & ef. 9-17-64; LB 7, f. & ef. 10-22-64

Off Shore Geological, Geophysical and Seismic Surveys

141-010-0201

Authority and Purpose

- (1) These rules are adopted under authority of ORS 274.705 - 274.860 relating to exploration and development of offshore oil, gas and related sulphur resources. These rules do not apply to offshore exploration of hard minerals or to scientific research sponsored by academic institutions.
- (2) It is the purpose of these rules to provide a uniform procedure for issuing non-exclusive permits to survey state-owned submerged and submersible lands by geological and geophysical (including seismic) methods to determine the potential of such lands for development of oil, gas and sulphur resources. Issuance of a permit under these rules does not confer any leasing rights or preferences in or to the subject property and does not affect requirements that the permittee obtain any other applicable regulatory permits from the Division of State Lands, or other agencies.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0205

Definitions

- (1) "Applicant" -- Person who submits an application for a permit under these rules.
- (2) "Aggrieved Person" -- Any person who has submitted comments on an application pursuant to OAR 141-010-0230, and who objects to issuance of a permit or any terms or conditions of the permit.
- (3) "Board" -- State Land Board.
- (4) "Director" -- Director of the Division of State Lands.
- (5) "Division" -- Division of State Lands.
- (6) "Exploration" -- Geological or geophysical surveys conducted pursuant to these rules.
- (7) "Geological Surveys" -- Use of grab samples, geochemical sampling, and similar geological techniques to obtain information and data on oil, gas or sulphur resources.
- (8) "Geophysical Surveys" -- Use of magnetic, gravitational, seismic, and similar geophysical techniques to obtain information and data on oil, gas or sulphur resources. Seismic techniques include, but are not limited to, use of sparkers and acoustical pulse generators. For purposes of these rules, seismic does not include the use of explosives.
- NOTE:** Under ORS 274.735 - 274.745, the director is authorized to issue permits for "geological, geophysical and seismic" surveys. As indicated in these definitions, seismic surveys are a form of geophysical surveys and are intended to be included in any reference to geophysical surveys.)
- (9) "Nearshore" -- Tidal submerged lands (see OAR 141-010-0205(12)) and all state-owned submerged and submersible lands lying west of a line ten miles easterly of the 124th Meridian, and the waters above them.
- (10) "Permittee" -- Holder of a permit issued under these rules.
- (11) "Person" -- A natural person, corporation, association, firm, partnership, joint stock company, quasi-public

corporation, political subdivision, and governmental agencies or instrumentalities.

(12) "Tidal Submerged Lands" -- Lands lying below the line of Mean Low Tide in the beds of all tidal waters within the boundaries of this state as heretofore or hereafter established.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0210

Permit Requirement and Jurisdiction

(1) A permit is required to conduct any geological or geophysical survey on lands subject to these rules. Lands subject to these rules include tidal submerged lands and all state-owned submerged and submersible lands lying west of a line ten miles easterly of the 124th Meridian (see ORS 274.710).

(2) No permit shall be issued under these rules for surveys using dynamite, TNT, or other forms of explosives.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0215

Permit Regions

(1) For purposes of these rules, the lands subject to permits are divided into five regions, as described below:

(a) Region I: from the Oregon-California Border to Cape Blanco;

(b) Region II: from Cape Blanco to Cape Perpetua;

(c) Region III: from Cape Perpetua to Cape Falcon;

(d) Region IV: from Cape Falcon to the Oregon-Washington border;

(e) Region V: the Columbia River from its mouth to a line 10 miles east of the 124th Meridian.

(2) If survey activities are proposed by a single applicant for more than one Region, separate applications and fees must be submitted for each Region.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0220

Permit Application

A permit application shall be submitted on a form provided by the division and shall include the following:

- (1) The name and address of the applicant;
- (2) The name and registration number of the vessel(s) to be used in conducting the proposed survey if known at the time of application (if the particular vessel is not known at the time of application, the applicant shall provide the name of the vessel at or before the time notice is given under OAR 141-010-0250);
- (3) Identification of the region and specific site(s) proposed for survey (if specific survey sites are unknown at the time of application, such information shall be provided at or before the time notice is given under OAR 141-010-0250);
- (4) If the area is subject to a current oil and gas, or other submerged/submersible land lease, evidence of written notice to the lessee of the permit application;
- (5) A description of the type of survey to be conducted, including the techniques to be used;
- (6) An application fee of \$500;
- (7) Any other information specified by the director.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0230

Permit Review Process

- (1) Within ten working days after receipt of a completed application, the division shall:
 - (a) Circulate the application for review and comment to:
 - (A) The Department of Fish and Wildlife;
 - (B) The Department of Geology and Mineral Industries;
 - (C) The Department of Land Conservation and Development;
 - (D) The State Historic Preservation Officer;
 - (E) Any other state agency the director determines may be affected by the proposed survey.
 - (b) Provided written notice of the application to:
 - (A) The governing body of each county within the proposed survey region;
 - (B) Any person who has requested notice from the director of permit applications;
 - (C) The general public, by publication once in a newspaper of general circulation in the region proposed for survey.

(2) Comment by state agencies:

(a) Within ten working days after the date an application is circulated by the Division, a state agency may request the Division, to obtain additional information from the applicant. The Division shall forward the request to the applicant and shall forward a copy of the response to the requesting agency;

(b) When additional information is requested, the agency shall have 20 working days after the date the additional information is forwarded by the Division in which to submit written comments and recommendations for permit conditions, if any;

(c) When additional information is not requested, the agency shall have 20 working days after the date the application is circulated in which to submit written comments and recommendations for permit conditions, if any.

(3) Comment by other than state agencies:

(a) Persons other than state agencies shall have 30 days after the date of notice of the application in which to submit written comments to the Division;

(b) Within 15 days of publication of the notice, as required in subsection (1)(b)(C), any person may request a public hearing on the application. A request for hearing shall be submitted to the director, in writing. The director shall have discretion to decide whether a public hearing shall be held. If held, the public hearing shall take place within 15 days of receipt of the written request. The director shall provide appropriate public notice of the hearing.

(4) Within (20 working days from the close of the comment periods provided in section (3) of this rule, the Division shall:

(a) Review the comments;

(b) Take action on the application request; and

(c) Give written notice of the action to the applicant and each state agency and person who has submitted written comments on the application.

(5) Within ten working days of the date of notice of action on the application, the applicant or any aggrieved person may request a hearing from the director:

(a) The request shall be in writing and shall state the specific nature of the objection;

(b) When requested by the applicant, the hearing shall be scheduled within 45 days of the written request;

(c) When requested by a person other than the applicant, the director shall have discretion to decide whether a hearing shall be held. If held, the hearing shall take place within 45 days of receipt of the request. The applicant shall have the opportunity to participate as a party in the hearing;

(d) The hearing shall be conducted as a contested case hearing and shall be subject to the applicable provisions of ORS 183.413 - 183.497;

(e) A final order shall be issued by the director within 20 working days of the close of the hearing record.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0235

Land Use Review

(1) Before taking action on any permit application, the director shall determine whether the proposed activity affects land use and if so, complies with applicable provisions of the Oregon Statewide Planning Goals adopted by the Land Conservation and Development Commission. Of particular concern are Statewide Planning Goal 16, relating to estuaries, and Goal 19, relating to ocean resources:

(a) The director shall determine that a proposed activity affects land use, and is therefore subject to applicable Statewide Planning Goals, when the activity is reasonably likely to have a significant impact on uses of the nearshore for fishing, navigation, recreation or aesthetic purposes, or on long-term protection of renewable resources;

(b) In determining whether a proposed activity affects land use, the director shall consider:

(A) Duration or frequency of the activity;

(B) Extent of impacts;

(C) Intensity of impacts;

(D) Timing or scheduling of the activity;

(E) Location in relation to sensitive resources;

(F) Potential for conflicts with other uses.

(2) If the director finds a proposed activity affecting land use does not comply with any applicable goal provision, the director shall deny the permit or impose appropriate conditions to assure goal compliance.

(3) In developing such findings or conditions, the director may rely on the written findings of other affected state agencies, such as the Department of Fish and Wildlife, the Department of Geology and Mineral Industries, and the Department of Land Conservation and Development.

(4) In responding to the inventory requirements of Statewide Planning Goals 16 and 19, the director may rely on existing available data and studies. Survey results obtained by the director pursuant to OAR 141-010-0270 shall be used to expand and update the inventories.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0240

Term

The permit period shall not exceed two years. If circumstances have not materially changed, the permit may be renewed for like periods upon application to the Division and upon showing due compliance with the original permit and applicable laws and regulations. Renewal applications shall be submitted to the Division at least 90 days before the expiration of the permit.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0250

Notice

- (1) At least 15 days before commencing a survey, the permittee shall provide notice as follows:
- (a) For all surveys, written notice of the specific survey site, including tract lines (if applicable), method of operation, vessel name, and contact person on board the vessel to the Division, Department of Fish and Wildlife, Department of Geology and Mineral Industries, and any other state agencies specified in the permit. The director shall take action on the notice as provided in OAR 141-010-0260(2)(k).
 - (b) For surveys involving towed cables or equipment, public notice by publication in a newspaper of general circulation in the survey region, and posted notice at various waterfront locations within the survey region, such as bait shops, fuel docks and the harbormaster's office.
- (2) The posted and public notice shall include, but not be limited to, the following information:
- (a) The general area of the survey, including the survey boundaries, the date(s) on which activities will occur, and the hours of operation;
 - (b) The methods of survey, including length, width and depth of cable and equipment in tow, if applicable;
 - (c) The name, registration number, radio call number, monitoring channel, and name of the captain of the survey vessel;
 - (d) The name and address of the permittee and the name and phone number of a local contact person;
 - (e) A statement that additional information may be obtained from the permittee or the Division.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0260

Permit Conditions

- (1) In issuing a permit, the director shall include conditions proper to safeguard the interests of the state.
- (2) Each permit shall include, but not be limited to, the following minimum conditions:
- (a) The permittee shall provide and maintain until the termination of the permit a faithful performance bond or cash deposit in the amount of \$25,000. The state reserves the right to approve the surety company. Approval shall not be unreasonably withheld. The bond shall be in favor of the State of Oregon acting by and through the Division of State Lands. The bond shall guarantee the faithful performance by the permittee of the permit and all applicable statutes and rules promulgated thereunder. The bond shall require the surety to give at least 90 days' written notice of its intention to cease acting as guarantor. If a surety gives notice of its intention to cease acting as guarantor, the permittee shall provide

to the state within 60 days of such notice a replacement bond or cash deposit of equal value to become effective upon the expiration of the existing bond;

(b) The permittee shall furnish a certificate of insurance or self-insurance showing that, at all times throughout the life of the permit, the permittee and all of its subcontractors and agents are insured for personal injury and property damage to third persons resulting from operations under the permit. The insurance shall include coverage for damage caused by pollution or contamination whether occurring suddenly and accidentally or over a period of time. The insurance shall be for an amount not less than \$1,000,000 for each occurrence. The insurance company or self-insurance program shall be subject to approval by the State. Approval shall not be unreasonably withheld. The required coverages shall include the State of Oregon as an additional insured. The certificate of insurance or self-insured plan shall contain a 30 day notice of cancellation or material change;

(c) Before commencing a survey, the permittee shall provide notice as required in OAR 141-010-0250;

(d) Before commencing a survey, the permittee shall visually observe the area around the vessel and shall begin survey activities only when no whales are observed within two miles. For surveys occurring between April 15 and July 31 in the following locations, permittee shall also observe for Steller sea lions, and shall not begin the survey if Steller sea lions are observed within two miles:

(A) Orford Reef (42°46'30" North Latitude to 42°47'40" North Latitude; 124°35'30" West Longitude to 124°36'40" West Longitude);

(B) Rogue Reef (42°26'40" North Latitude to 42°28'00" North Latitude; 124°28'00" West Longitude to 124°30'30" West Longitude);

(C) Upon evidence satisfactory to the Oregon Department of Fish and Wildlife that there are no adverse impacts to Steller sea lions as a result of geological or geophysical surveys, the director may delete this permit condition.

(e) Before commencing a survey, the permittee shall attempt to communicate to all vessels in the path and vicinity of the survey vessel:

(A) The name of the survey vessel;

(B) The radio call signals and monitoring channel;

(C) The time of commencement of surveying in the area;

(D) The name of the contact person on board the survey vessel.

(f) Surveys shall be conducted in compliance with all terms and conditions of the permit, and all federal, state, and local laws and administrative rules which are applicable to such operations;

(g) Surveys shall be conducted so that activities do not:

(A) Endanger or unreasonably interfere with operations under any lease issued by the Division;

(B) Cause substantial harm or damage to aquatic life;

(C) Create hazardous or unsafe conditions;

(D) Endanger or unreasonably interfere with other uses in the area; or

(E) Destroy or damage historical or cultural resources identified in the permit.

(h) The permittee shall immediately cease operations which create a threat of serious harm or damage to life (including fish and other aquatic life), property, mineral deposits, or marine, coastal, or human environments;

- (i) The permittee shall submit reports on permit operations in accordance with OAR 141-010-0270;
- (j) The permittee shall indemnify and hold harmless the State of Oregon, its officers, agents, employees, and members from all claims, suits, or actions, of whatsoever nature, resulting from or arising out of activities of the permittee, or its subcontractors, agents, or employees, under this permit;
- (k) Upon receipt of site specific information under the notice provisions of OAR 141-010-0250, the director may amend any condition of the permit or impose additional conditions to mitigate site specific adverse impacts or use conflicts, if any. If the director determines there are adverse impacts or use conflicts which cannot be satisfactorily mitigated by permit conditions, the director may deny permission to survey in a particular location. The director shall provide written notice of amended and additional permit conditions, or denial of permission to survey within ten days after receipt of the site specific information. The notice shall contain specific reasons for the director's action. Within ten days of such notice, permittee may request a contested case hearing as provided in OAR 183.413 - 183.497;
- (l) A permit is nonexclusive and does not give a preference right to any oil, gas and sulphur or other mineral lease, nor does it grant the permittee the right to conduct drilling or development activities for oil, gas, sulphur or any minerals.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0270

Reporting

- (1) If requested by the director, the permittee shall submit to the Division monthly status reports during periods of active survey operations. The reports shall be in a form approved or prescribed by the Division.
- (2) If requested by the director, the permittee shall submit to the Division a final report of the survey activities. The final report shall contain:
 - (a) A description of the work performed;
 - (b) Charts, maps, or plats depicting the areas in which survey activities were conducted, specifically identifying the tract lines where surveying occurred, and including a reference sufficient to identify the data produced during each activity;
 - (c) The dates on which survey activities were performed;
 - (d) A narrative summary of any adverse effects of the survey activities on environment, aquatic life, cultural resources, or other uses of the area in which the activities were conducted;
 - (e) Interpretable geological and/or geophysical data, collected pursuant to these rules and processed in the normal course of permittee's operations, and unused core samples or splits (the director may request such data, samples or splits at any time within five years after completion of the survey);
 - (f) Such other descriptions of the activities as may be specified by the Division, after consulting with the Department of Geology and Mineral Industries, the Department of Fish and Wildlife, and other affected state agencies.
- (3) Reports and samples shall be forwarded by the Division to the Department of Geology and Mineral Industries for data analysis and maintenance of records to facilitate future survey decisions or for other purposes consistent with the statutory authority of the Department.

(4) Report information relating to survey impacts on aquatic life or habitat shall be forwarded to the Department of Fish and Wildlife.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0280

Confidentiality

All proprietary information submitted by an applicant or permittee pursuant to these rules shall be treated as confidential trade secrets under ORS 192.500(1)(b) and shall not be disclosed to the public unless released by the permittee. Proprietary information includes, but is not limited to, the exact location of a survey and survey results.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

141-010-0290

Inspection, Enforcement, Cancellation of Permit

- (1) Upon request by the director, a permittee shall provide food and quarters for a representative of the director to observe and inspect survey activities onboard the survey vessel.
- (2) Upon oral or written notice to the permittee, the director, or onboard representative of the director, may suspend a permit upon a finding that:
 - (a) There is a threat of serious damage to life (including fish and other aquatic life), property, mineral deposits, or marine, coastal or human environment; or
 - (b) The permittee has violated any terms or conditions of the permit.
- (3) Such suspension shall be effective immediately upon notice.
- (4) Oral notice of permit suspension shall be followed by written notice confirming the action.
- (5) A suspension shall remain in effect until the basis for the suspension has been corrected to the satisfaction of the director or onboard representative. If such corrective action has not occurred within 30 days of the suspension, the director may permanently revoke the permit by written notice to the permittee stating the specific grounds for revocation. Within ten days of such notice, the permittee may request a contested case hearing, as provided in ORS 183.413 - 183.497

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS 274.735

Hist.: LB 7-1986, f. & ef. 7-18-86

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 14

RULES OF ADMINISTRATIVE PROCEDURE FOR AUDIT OF SAND AND GRAVEL LEASES

Sand and Gravel Program

141-014-0070

Purpose

- (1) These rules describe when royalty payments are due to the State of Oregon for sand and gravel and other material removed from state-owned submerged and submersible lands.
- (2) These rules are in addition to those govern-ing the Oregon Removal-Fill Permit Program (OAR 141-085-0005 through 141-085-0090).

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0075

Authority

ORS 273.225 through 273.241 (Removal of Material); ORS 274.040 and 274.525 through 274.550 (Submersible and Submerged Lands).

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0080**Definitions**

- (1) "Applicant" is any person (as defined in Section 15 of this rule) applying for a lease or license to sell or use material removed from state-owned submerged and submersible lands. "Applicant" also refers to the successful bidder at an auction prior to final lease execution.
- (2) "Article of Commerce" is any state-owned material which is bought, sold, traded, or bartered for other goods or services, or is used for a beneficial purpose and which would otherwise have to be acquired from alternate sources (such as material used for the purpose of "surcharging").
- (3) "Channel Improvement" is a removal activity conducted under contract or undertaken by a government agency or officially constituted public body (such as a port district) to improve federally authorized navigation channels in accordance with official minimum project specifications.
- (4) "Division" means the Division of State Lands.
- (5) "Dredge Spoils" are materials which have been dredged from state-owned submerged and submersible lands and placed on upland sites during the process of constructing, maintaining, or improving channels, harbors, or flood control projects.
- (6) "Exclusive Leases" grant the exclusive right to remove, sell, or use state-owned material from a specific area of submerged or submersible lands.
- (7) "Flood Control" is removal activity undertaken to construct, maintain, or improve flood control structures, channels, or projects.
- (8) "Harbor Improvement" is removal activity undertaken to construct, maintain, or improve a harbor area which has navigational access to a navigation channel.
- (9) "Lessee" refers to any person (as defined in Section 15 of this rule) having a lease to remove, sell, or use material from state-owned submerged and submersible lands.
- (10) "License" refers to a non-exclusive royalty agreement allowing the removal, sale or use of state-owned material. A license may be issued for removal, sale, or use of dredge spoils, or may be issued instead of an exclusive lease.
- (11) "Licensee" refers to any person (as defined in Section 15 of this rule) having a license to remove, sell, or use material removed from state-owned submerged and submersible lands.
- (12) "Material" means rock, gravel, sand, silt, and/or other organic or inorganic substances removed from state-owned submerged and submersible lands.
- (13) "Ordinary Low Water Line" is the line on the bank or shore to which the water ordinarily recedes annually. Ordinary low water shall be established by the Division with reference to historical data, field observations, survey, or other generally accepted methods.
- (14) "Ordinary High Water Line" is the line on the bank or shore to which the water ordinarily rises annually. Ordinary high water shall be established by the Division with reference to historical data, vegetation, field observations, survey, or other generally accepted methods.
- (15) "Person" is an individual, political subdivision, or government agency; or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(16) "Preference Right" is similar to a right of first refusal. It is the right of the owner of a parcel of land to lease state-owned submersible land that fronts that owner's upland property. A preference right to lease will be offered prior to competitive bidding for lease of those submersible lands.

(17) "Submerged Lands" are lands lying below the line of ordinary low water of all navigable waters within the boundaries of the State of Oregon.

(18) "Submersible Lands" are lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters within the boundaries of the State of Oregon.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0085

Royalty Exempt Activities

(1) Material may be removed from state-owned submerged and submersible lands without payment of royalty under the following circumstances:

(a) Any person may take up to 50 cubic yards of state-owned material (or the equivalent weight in short tons) per calendar year for that person's own exclusive non-commercial use, provided that the Division is notified prior to removal of such material;

(b) Any person may remove material from state-owned submerged and submersible lands for channel improvement, harbor improvement, or flood control, (as defined in these rules) provided that the Division is notified prior to removal of such material.

(2) These exemptions no longer apply if the material is removed from the place deposited and sold or used as an article of commerce (as defined in OAR 141-014-0080(2)).

(3) None of these exemptions apply if the material is transported and/or used outside the boundaries of the State of Oregon.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0090

Activities Subject to Payment of Royalty

Unless otherwise specifically exempted above, all material removed from state-owned submerged and submersible lands is subject to payment of royalty. Material originally exempt is subject to royalty if it is removed from the place deposited and sold or used as an article of commerce.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0095

Application and Notification Requirements

(1) Any person removing, using, or selling state-owned material not exempt from the payment of royalty from state-owned submerged and submersible lands must, prior to such removal, use, or sale, submit an application for a lease or license to the Division using forms provided by the Division.

(2) Any person taking up to 50 cubic yards of state-owned material (or the equivalent weight in short tons) per calendar year for that person's own non-commercial exclusive use must notify the Division prior to removing the material.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0100

Lease and License Provisions

(1) Exclusive leases will only be offered through a competitive bid auction procedure.

(2) The Division may deny an application for a lease or license if it is determined that issuing said lease or license would not be in the best interest of the State of Oregon, or is contrary to local, state, or federal law, or these rules.

(3) The Division will determine the leasable limits of any area and may establish conditions and terms, including the mining method(s) to be used to ensure maximum recovery and utilization of the resource, and appropriate protection of the environment.

(4) At the Division's discretion, a license may be issued for a period of less than one year without competitive bidding.

(5) If no Removal-Fill Permit is required for the proposed removal activity, the lease or license application will be sent to government agencies having jurisdiction over the removal site to determine whether the proposed removal activity is consistent with existing local, state, and federal laws.

(6) If an applicant for a lease to remove material from state-owned submersible lands is the owner of the upland fronting or abutting the removal site, the Division will determine the boundaries of the preference right area to be included within the lease and offer that preference area to said applicant. The applicant is responsible for providing to the Division whatever ownership information is required by the Division to establish the boundaries of the preference right area.

(7) Any person accepting an offer to exercise their riparian preference right must submit applications for all necessary local, state, and federal permits and other authorizations required to undertake the proposed removal within six months following the date of their written acceptance of the riparian preference right. Failure to do so may cause the Division to withdraw its offer of riparian preference right and/or re-offer the land within the preference right area for lease by competitive bidding.

(8) If an applicant is not the owner of the upland fronting or abutting the removal site, the Division shall, prior to

offering a lease to the state-owned submersible lands, offer the upland owner(s) fronting or abutting the proposed lease area a riparian preference right to lease said lands in accordance with ORS 274.040. Any person offered the riparian preference right to lease an area must notify the Division in writing whether they will accept said offer no later than 14 calendar days after receipt of a certified notification letter (evidence of receipt is the date of delivery indicated by the U.S. Postal Service). Failure to do so constitutes waiver of the preference right, and the Division may make the preference right area available through competitive bid auction.

(9) The successful bidder at an auction must submit applications for all necessary local, state, and federal permits and other authorizations required to undertake the proposed removal within six months following the auction date. Failure to do so may cause the Division to withdraw its offer to lease and/or re-offer the lands for lease by competitive bidding.

(10) The Division will not issue any lease to remove state-owned material until evidence is presented to the Division that the applicant or successful bidder has obtained the following:

(a) A surety bond in the amount required by the Division (or a cash deposit or certificate of deposit which has an equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) to ensure that the lessee will perform in accordance with all terms and conditions of the lease. The surety bond amount will be based on the royalty due for three months of estimated average annual removal as submitted in the lease application, or will be approximately equal to the royalties due on the total amount to be removed if only a small quantity of material is available, or on the quantity of material available for removal from the subject least site over a three month period by the applicant or other operators. A blanket bond in an amount determined by the Division will satisfy bond requirements for any lessee with multiple royalty leases. All interest accruing to any certificate of deposit accepted as security under this provision will be payable to the lessee;

(b) Comprehensive or commercial general liability insurance covering personal injury and property damage in the amount required by the State of Oregon. The State of Oregon, the State Land Board, and the Division of State Lands shall be named as additional insured on the above policy. Any person holding multiple royalty leases may satisfy insurance requirements by providing coverage of not less than twice the amount required for a single royalty lease;

(c) A Removal-Fill Permit issued by the Division (ORS 196.800 through 196.900), and any other applicable permits.

(11) The Division may require the applicant for a license to remove, sell, or use state-owned material to present evidence to the Division that said applicant has obtained any applicable permits, surety bond, and/or comprehensive or commercial general liability insurance required by the Division.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0105

Auction Notice and Procedure

(1) Notice:

(a) The Division will give public notice of each auction by publication in a newspaper of general circulation in the county in which the lands are located prior to the auction date. The notice will include the date, time, place, minimum bid amount, description of the offered lands, and type of auction, and will be published not less than once each week for two successive weeks;

(b) A mailing list of sand and gravel lessees and licensees, persons who have requested inclusion on the list, affected state agencies, and other interested persons will be maintained by the Division. A notice of auction will be mailed to

those on the above described list prior to publication of the public notice.

(2) General Procedure:

(a) All requests to lease state-owned land for sand and gravel removal through the competitive bid process shall be submitted on application forms provided by the Division. The Division may conduct auctions without receipt of said applications;

(b) The minimum starting bid amount shall be the minimum royalty rate per cubic yard established by the State Land Board.

(3) Oral Bid Procedure:

(a) The highest qualified bidder shall be awarded the lease upon compliance with these rules and applicable statutes;

(b) If no bids are received at the auction, the Division may award the lease to the applicant at the minimum royalty rate.

(4) Sealed Bid Procedure:

(a) Each bidder shall submit a completed bid form provided by the Division;

(b) All bids received by the deadline stated in the auction notice shall be opened and announced at the specified date, time, and place;

(c) The highest qualified bidder shall be awarded the lease upon compliance with these rules and applicable statutes.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0110

Lease and License Terms and Conditions

(1) Exclusive leases will not be issued for a period of more than ten years.

(2) Licenses will not be issued for a period of more than 364 days.

(3) Material removed from state-owned submerged and submersible lands may not be commingled with privately-owned material prior to payment of royalty without prior written approval of the Division.

(4) The removal, sale, or use of material from state-owned submerged and submersible lands without a lease, license, or specific permission is a trespass, and, if willful, is subject to double damages pursuant to ORS 273.241.

(5) Each lessee and licensee, or sublessee or assignee must maintain and make available for audit by the Division adequate records and accounts which accurately reflect the amount of material removed and that portion which is subject to royalty payment.

(6) Leases may be assigned or subleased only upon written approval of the Division. Upon such approval of any assignment or sublease by the Division, the assignee or sublessee shall be bound by all the terms and conditions of the lease so assigned or sublet. All transfers shall be on a form approved by the Division.

(7) In no case shall these rules be so construed as to allow any practice which would not accurately reflect the quantity

of material for which royalty is due.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0115

Weight and Measurement Determinations

- (1) All royalties due the Division shall be based on the number of short tons (each containing 2,000 pounds) removed from a leased or licensed area as determined by a state-certified scale. If the lessee or licensee is unable to weigh the material removed, the Division may allow the lessee or licensee to pay royalties based on cubic yards removed. If the volume of material cannot be determined at the point of removal, the Division may allow the lessee or licensee to calculate the royalty owed based on sales receipts or other forms of evidence approved by the Division.
- (2) The applicant is responsible for developing the cubic yard-to-ton conversion factor for each leased or licensed area, and for providing at its own expense sufficient and documented evidence to the Division justifying the conversion factor. Applicants with, or having access to weigh scales will provide the appropriate cubic yard-to-ton conversion factor as required in the application form. Current lessees with, or having access to weigh scales will provide the conversion factor no later than six months from the adoption date of these administrative rules.
- (3) The Division may, at any time during the term of the lease or license, require the lessee or licensee to re-establish the validity and appropriateness of the conversion factor at the lessee's or licensee's expense.
- (4) In the event that the applicant is unable to develop a cubic yard-to-ton conversion factor, the Division may establish a factor which must be used by the lessee or licensee until sufficient and documented evidence is provided to the Division by the lessee or licensee that another conversion factor is more appropriate.
- (5) If it is determined through weighing of the material by either the applicant/lessee/licensee or the Division that the cubic yard-to-ton conversion factor in use/to be used is not appropriate, modification of the rate shall be prospective only.
- (6) At such time that a lessee or licensee using a cubic yard-to-ton conversion factor obtains a scale, the lessee or licensee must begin to submit monthly reports (as provided for in these rules) indicating by direct measurement the quantity of material removed on a tonnage basis, and pay royalty owed to the Division.
- (7) Any changes made to the cubic yard-to-ton conversion factor used in a lease or license will be made by written addendum to that lease or license.
- (8) Any lessee or licensee using a barge to transport the material removed shall use the draft displacement of the barge as the means of measuring and reporting the quantity of material in short tons subject to payment of royalty. If this method of measurement is used, the lessee or licensee must provide at its own expense to the Division a curve or chart for each barge indicating the correlation between the displacement of that barge in the water and the tonnage carried. This curve or chart must be provided to the Division for each of the barges used by the lessee or licensee to remove material subject to payment of royalty. The curve or chart provided to the Division must enable the lessee or licensee and the Division to determine the tonnage carried by each barge for each one-inch displacement of that barge. The lessee or licensee shall measure the draft of each of the four corners of every barge before and after loading. The average of these readings shall be used to determine the volume placed on the barge and the amount of royalty due the Division. These data shall be retained by the lessee or licensee until released by the Division for destruction.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

141-014-0120

Royalty Rates and Payment

(1) Unless otherwise agreed to in writing by both the Division and the lessee/licensee, royalties must be paid on a monthly basis. Royalty payments and monthly removal reports are due not later than the 20th day of the month following the month that the material was removed. Monthly removal reports must be submitted to the Division every month, including those months in which no material was removed or royalty paid. Royalties not paid by the due date shall accrue interest from the first day of the month following the end of the month during which the material was removed.

(2) The minimum royalty for material taken from state-owned submerged and submersible lands will be:

(a) Sixty cents (60¢) per cubic yard for material

taken from below River Mile 72 of the Willamette River and its tributaries;

(b) Forty-one cents (41¢) per cubic yard for material taken from above River Mile 72 of the Willamette River and its tributaries;

(c) Thirty-eight cents (38¢) per cubic yard for material taken from other state-owned waterways;

(d) Forty-five cents (45¢) per cubic yard for shorecast dredge spoils.

(e) All sand and gravel leases or licenses in effect at the time these royalty rates are adopted will be subject to the new rates upon renewal or redetermination as specified in the lease agreement.

(3) The minimum royalty rates indicated in Section 2 of this rule will be adjusted every year based on an index to be created and maintained by the Division:

(a) The index will be based on the annual increase or decrease in the FOB plant retail prices for selected Oregon aggregate products as indicated in published retail price lists to be in effect on the first of January of each year;

(b) The retail price lists will be obtained by the Division from Oregon aggregate producers;

(c) The specific products used to develop this index will be determined by the Division in consultation with the Oregon aggregate industry;

(d) In the event the retail price data used by the Division are not available by the first of December of each year, or are determined by the Division to be an unreliable indicator of inflation/deflation, the Division may adjust the minimum royalty rates using another industry index or method of the Division's choice such as the United States Department of Labor Producer Price Index for construction sand, gravel, and/or crushed stone.

(4) The royalty rates for all leases and licenses shall be based on the application of the annual index to the minimum rates indicated in Section 2 of this rule, and adjusted each successive year.

(5) Any increase or decrease resulting from application of the Oregon aggregate producer retail price index shall be limited to a maximum of five percent per year. Royalty rates shall not be adjusted below those rates established in Section 2 of this rule.

(6) In instances where space on the upland is not available for the deposition of additional shorecast dredge spoils, the Division may negotiate a royalty rate other than that provided in Section 2 of this rule for material which is removed from where it was originally deposited in order to provide space for additional dredge spoils.

Stat. Auth.: ORS 273.551, 274.525, 274.530, 274.550 & 274.560

Stats. Implemented: ORS 274.525 & 274.550

Hist.: LB 7-1991, f. & cert. ef. 9-13-91

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 15

PROCEDURES GOVERNING DEFAULTS ON COMMON SCHOOL TIMBER SALE CONTRACTS

141-015-0000

Purpose

The purpose of these rules is to provide a uniform procedure governing defaults on Common School timber sale contracts involving only Common School Lands or contracts in which the timber on the Common School Lands predominates in value.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83

141-015-0005

Definitions

- (1) "Default" occurs whenever the Forester finds that the purchaser has not complied with the terms and conditions of the contract, or if the purchaser injures or severs timber not included in the sale.
- (2) "Damages and Expense" means costs, damages, losses and expense incurred by the State of Oregon by reason of a default including but not limited to any unpaid balances owing the State as determined by either a calculation of the State Forester or as the result of the difference in values between the original sale and the resale of the defaulted parcel; calculated or actual costs for preparing the defaulted parcel for resale; rehabilitation or regeneration delay costs; any expense incurred by the department for legal services resulting from the default, any interest charge as provided for in these rules or any other damages allowed by law.
- (3) "Department" means the State Forestry Department.
- (4) "Director" means the Director of the Division of State Lands.

(5) "Forester" means the State Forester.

(6) "Market Value" means the value of timber as determined by the Forester, using relevant transaction evidence. Relevant transaction evidence may include, but not be limited to, recent timber sale bid data, log prices, or appraisals.

Stat. Auth.: ORS Ch. 273.521

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83; LB 3-1990, f. & cert. ef. 8-7-90

141-015-0010

Default -- Future Bidding

(1) Except where the purchaser posts security as provided in OAR 141-015-0030, or except as may be otherwise provided in these rules, any purchaser of timber from Common School Forest Lands or any assignee of such purchaser who defaults on a contract with the Forester for the purchase of Common School Forest Lands timber shall not thereafter be permitted to bid any Common School Land timber sale conducted by the department including a sale involving the timber in default until the state is reimbursed for all damages and expense incurred by it as a result of the default.

(2) In the case of a contract for the sale of timber which includes both Common School Forest Lands and other lands, this rule shall apply only if the timber on the Common School Forest Lands predominates in value.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83

141-015-0020

Notice of Default to Purchaser

The State Forester by certified mail shall notify a purchaser of any default. The notice shall include the following information:

(1) The default allegedly committed by the purchaser and the facts showing the alleged default.

(2) The corrective action, if any, that can be taken by the purchaser to remedy the default and the time within which such action must be taken.

(3) That if the purchaser refuses to correct the default or the default cannot be remedied, the purchaser will be barred from bidding on future contracts including the contract in dispute, unless the state is reimbursed for all damages and expense incurred by it as a result of the default or the purchaser posts a bond or places in escrow cash or marketable securities in an amount estimated by the Forester to be sufficient to reimburse the state for all damages and expense that will be incurred by it as a result of the default.

(4) The right of the purchaser pursuant to OAR 141-015-0030, to request the Forester to estimate the damages and expense that will be incurred by the state as a result of the default.

(5) The right of the purchaser to request a contested case hearing on the existence of the default, the corrective action

required by the Forester, the estimate of damages and expense by the Forester, any questions that may arise concerning the security that may be posted by the purchaser in order to be permitted to bid and any other questions concerning the purchaser's qualifications to bid.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83

141-015-0030

Request to Bid by Purchaser -- Appeal

If a purchaser in default wishes to bid on future contracts, it shall so notify the Forester in writing. The Forester shall, within 30 days of receipt of the notice, estimate the damages and expense that will be incurred by the state as a result of the default. The estimate shall be sent by certified mail to the purchaser. If the purchaser posts a bond in an amount sufficient to cover the estimated damages and expense or places in an escrow account cash or marketable securities readily convertible into cash in an amount sufficient to cover the estimated damages and expense or a combination of such bond, cash and securities in the required amount, the Forester shall grant permission to the purchaser to bid on contracts other than the contract in dispute. The terms of the escrow agreement shall be satisfactory to the State Forester.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83

141-015-0040

Contested Case Hearing

- (1) Within 30 days after mailing of the estimate by the Forester, the purchaser may request a contested case hearing before the Forester and the Director of the Division of State Lands concerning any of the following issues:
 - (a) Whether a default was committed by the purchaser;
 - (b) Whether the corrective action which the Forester ordered to be taken by the purchaser is appropriate;
 - (c) Whether the Forester's estimate of damages and expense incurred or to be incurred by the state as a result of the alleged default is reasonable or arbitrary;
 - (d) Whether the security posted or proposed to be posted by the purchaser is sufficient; and
 - (e) Any other issues relevant to the purchaser's qualifications to bid.
- (2) The hearing shall be governed by ORS 183.413 to 183. 497. A hearings officer may be appointed by the Director and the Forester to hear the case. However, the hearings officer shall not have authority to issue a final order. Any order issued under this rule shall be signed by both the Director of the Division of State Lands and the State Forester and may be appealed as provided in ORS 183.482.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83

141-015-0050

Settlement of Default

(1) In the event of default, the purchaser shall have the following options for settlement of the contract:

(a) Prompt settlement:

(A) A purchaser may settle a default by the completion date of the contract. Such settlement shall include payment of the balances owing the state plus any other damages and expense incurred by the state as a result of the default;

(B) Damages and expense shall include, but not be limited to, any calculated costs and losses resulting from the resale of the parcel and any rehabilitation or regeneration delay costs and losses in areas which have been harvested;

(C) Any delays in this payment after the termination date of the contract shall be subject to an interest charge.

(b) Delayed settlement:

(A) Cash Resale. The original purchaser shall be responsible for any monies due the state if the balance of payments owing and other damages and expense incurred as a result of the default are not offset by the values of the resale on a cash basis. Such balances shall be due 30 days after the resale and award of the contract. Any delays in payment after the due date shall be subject to an interest charge;

(B) Recovery Resale. The original purchaser shall be responsible for any monies due the state if the balance of payments owing and other damages and expense incurred in the original sale are not offset by the values in the new sale on a recovery basis. The original purchaser shall have the option of settling with the state based upon the resale bid and the state's estimate of volume and value to be recovered. If this option is not exercised within 30 days of the award of the resale, then an interest charge on any monies owing shall accrue from the date the resale is awarded until the settlement is made;

(C) Without Resale. In the event a defaulted parcel is not resaleable, the difference between the appraised price of the parcel and the original bid price plus any damages and expense and interest due shall become the basis for a negotiated settlement between the purchaser and the state Forester.

(c) Default because of the purchaser's injury to or severance of timber not included in the sale:

(A) The Forester may take one or more of the following actions:

(i) Terminate the contract;

(ii) Assess damages and expenses in the amount of:

(I) Treble the market value of the severed or injured timber if the purchaser's action is willful or intentional or;

(II) Double the market value of the severed or injured timber if the purchaser's action is not willful or intentional.

(B) Any damages assessed for injury or severance are in addition to and not in lieu of any other damages to which the Forester may be entitled under section (1) of this rule.

(2) In either option, the following shall apply:

- (a) The interest rates used shall be those in effect being earned by the excess fund in the state Treasurer's office at the time interest commences to run;
- (b) In the case of a required project which was completed by the purchaser for the defaulted contract, the purchaser is entitled to credit for the project in the amount of the appraised value of the project as shown in the appraisal filed in the Forester's office *minus* any compensation the purchaser has received for the project during the course of the contract;
- (c) Initial down payments may be retained by the state and surety bonds shall be maintained in effect until the State has been reimbursed for all damages and expense incurred as a result of the default.

Stat. Auth.: ORS 273.521

Stats. Implemented: ORS 273.521

Hist.: LB 10-1982(Temp), f. & ef. 11-18-82; LB 1-1983, f. & ef. 4-29-83; LB 3-1990, f. & cert. ef. 8-7-90

Export of Unprocessed Logs -- Common School Timber

141-015-0105

Purpose

(1) The purpose of these rules is to permit the export of unprocessed logs cut from Common School forest lands, notwithstanding ORS 526.805 and 526.835. Those statutes prohibit the export of unprocessed logs from state-owned lands. The State Land Board, however, has determined that applying that prohibition to logs harvested from Common School forest lands would result in reduced harvests and sales of timber from Common School forest lands and in lower prices being received by the Common School Fund for its timber. The Board has also determined that permitting the export of such logs is necessary to preserve a market for and maintain sales of Common School timber, to maximize the production of timber on Common School forest lands under a sustained yield policy and to maximize revenue to the permanent corpus of the Common School Fund.

(2) Accordingly, the Board finds that the adoption of this rule is necessary in order for it to fulfill its constitutional trust duties to the schools under Oregon Constitution Article VIII. See 42 Op Atty Gen 260 (1982) and letter opinion dated February 19, 1982, to the Honorable Ted Bugas (OP-5216, pp. 7-8).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 3-1983, f. & ef. 10-19-83

141-015-0110

Definition

For the purpose of this rule, "Common School forest lands" are those forest lands designated on the records of the State Forester or the Division of State Lands as belonging to the State of Oregon acting by and through the State Land Board or the Division of State Lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 3-1983, f. & ef. 10-19-83

141-015-0115

Export of Unprocessed Logs -- Common School Fund Timber

(1) Notwithstanding ORS 526.805 and 526.835, any person may purchase or sell for delivery outside of the boundaries of the United States in log form any timber severed from forest lands designated as Common School forest lands.

(2) These rules shall apply to export sales under existing and future timber sale contracts involving Common School forest lands but shall not apply to an export sale under any timber sale contract involving both Common School forest lands and other forest lands if it is not possible in such contract to maintain the identity of the logs coming off the Common School forest lands from the logs coming off the other forest lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 3-1983, f. & ef. 10-19-83

141-015-0120

Legal Advertisement -- Contents

The State Forester shall indicate in the legal advertisement for the timber sale whenever all or any portion of the lands are Common School forest lands, the timber on which may be exported under this rule.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.521

Hist.: LB 3-1983, f. & ef. 10-19-83

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DIVISION OF STATE LANDS

DIVISION 25

**ADMINISTRATION OF ESCHEATED MONEY OR PROPERTY DEPOSITED WITH STATE
INSTITUTIONS BY PATIENTS OR INMATES**

141-025-0010

Purpose

The purpose of these rules is to provide a uniform procedure for the reporting and administration of property belonging to patients or inmates of state institutions delivered to the Division of State Lands as provided for in ORS 179.540 to 179.550. These rules shall be liberally construed to provide just, speedy, and inexpensive determination of the issues presented.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0020

Definitions

- (1) "Director" means the Director of the Division of State Lands or the Director's designee.
- (2) "Division" means the Division of State Lands.
- (3) "Patient" means a person who received treatment or care at a state institution for the mentally ill, or a former resident at a state institution for the mentally retarded.
- (4) "Inmate" means any person presently or formerly under the custody or supervision of the Corrections Department.
- (5) "State Institution" means the Mental Health and Developmental Disability Services Division and the Department of Corrections as defined in ORS 179.321.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0030

Initial Proceedings

Any money, certificates of deposit, securities, assets or other personal property belonging to or held in trust for patients or inmates committed to any state institution listed in ORS 179.321, who have died, escaped, or been paroled or released as inmates or patients thereof and which remains unclaimed after one year shall be reported to the Director of the Division of State Lands.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0040

Reports

Before preparing the report, the institution shall make a diligent attempt to find the patient or inmate, or his/her heirs by sending a letter to the last known address, or by any other method established by the institution.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0050

Report Forms

- (1) Reports shall be submitted on forms provided by the Division. Report forms shall be mailed upon request to each institution.
- (2) Reports shall be verified and include the following information for each patient or inmate:
 - (a) Full name;
 - (b) Last known address;
 - (c) Social Security number;
 - (d) Institution name and identification number;
 - (e) The originating county of commitment or sentencing if the estimated value of the property exceeds \$50;

- (f) A description of all property in custody of the institution;
 - (g) The date of release, escape, parole or death of the person.
- (3) Completed reports shall be delivered to the Director once a year, by December 20 or June 20, following the anniversary of escape, parole or death of the person.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0060

Valuation and Disposition Determination by Division of State Lands

- (1) Within ten working days of receipt of the report, the Director or designee shall review the report and make a determination of the commercial value of the itemized property. If the Director determines that any property reported has insubstantial commercial value (less than ten dollars) the Director may decline to receive the property and direct the institution to destroy, donate or otherwise dispose of this property before it is turned over to the Division:
- (a) Items likely to have insubstantial commercial value include:
 - (A) Clothing, cosmetics or personal hygiene items;
 - (B) Broken or inoperative items such as radios and appliances;
 - (C) Miscellaneous papers, court documents.
 - (b) Items to be remitted include:
 - (A) Money, travelers checks, certificates of deposit, securities, stocks, bonds;
 - (B) Personal property such as jewelry, luggage, knives, watches, wallets;
 - (C) Any other property or evidence of property held in trust for the patient or inmate.
- (2) After the determination of value is made by the Director, a copy of the report shall be returned to the institution indicating those items which should be delivered to the Division, and those which may be disposed of pursuant to Section (1) of this rule.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0070

Collection and Disposition of Property by Division of State Lands

- (1) Within ten working days of receipt by the state institution of the determination report, the institution shall comply

with the Director's instructions and forward the designated items to the Division by mail or personal delivery.

(2) A copy of the report indicating which items are being turned over shall accompany the articles.

(3) Within ten working days of receipt of the items, the Director or designee shall verify the contents against the report, issue a receipt to the institution and file a copy of the receipt with the office of the Secretary of State.

(4) The Director shall assign a control number and establish a file for each owner which includes a description of the property, the commercial value of each item, disposition of the property, and final account balance for the owner.

(5) If the Director determines that the value of escheated money, certificates of deposit, securities or other personal property exceeds \$50, a notice of such escheated property shall be published in a newspaper of general circulation within the county in which such institution paying or turning over the same is situated, and also in a newspaper in the county from which the inmate was committed, once each week for not less than three consecutive weeks. The expense of such publication shall be paid out of the proceeds of the escheated property.

(6) If any item received is determined by the Director to have insubstantial commercial value, the Director may destroy or otherwise dispose of it at any time, and document the report.

(7) All money, negotiable securities and other items of intangible personal property shall be liquidated, and the proceeds deposited and the amount credited to the owner's account.

(8) Tangible personal property with commercial

value shall be sold at a public auction. The expense of such sale shall be paid out of the proceeds of the sale of the escheated property. The balance of proceeds shall be credited to the owner's account and placed on deposit with the State Treasury.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

141-025-0080

Rights to Reclaim Property

The money or proceeds of the certificates of deposit, securities or other personal property which has escheated to the state under ORS 179.540 may be claimed, as provided in OAR 141-030-0010 through 141-030-0035, by the original owner or the deceased owner's personal representative at any time within ten years after such escheat in the same manner as property belonging to estates of deceased persons which has escheated to the state pursuant to ORS 116.253.

Stat. Auth.: ORS 98.050

Stats. Implemented: ORS 179.540 & 179.550

Hist.: LB 1-1989, f. 5-18-89, cert. ef. 6-1-89

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DIVISION OF STATE LANDS

DIVISION 30

**RULES OF PROCEDURE IN PROCEEDINGS FOR
THE RECOVERY OF ESCHEATED PROPERTY**

141-030-0010

Purpose

The purpose of these rules is to prescribe uniform procedures for making claims to recover escheat property held by the Division of State Lands as provided for by ORS 112.055, 113.045, 116.193, 116.203, 116.253, 179.540-.550.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96

141-030-0015

Definitions

- (1) "Affiant" means a person signing an affidavit for small estates filed pursuant to ORS 114.505.
- (2) "Agent" means a person who is filing a petition to recover escheat property on behalf of a claimant.
- (3) "Claimant" means a person or entity claiming to be legally entitled to property that has escheated to the Division.
- (4) "Claiming Successor" means the heir or devisee to a decedent, or any creditor of a small estate proceeding filed pursuant to ORS 114.505.
- (5) "Decedent" means a person who has died.
- (6) "Devisee" or "Distributee" means a person who is entitled to property of a decedent according to the will of a decedent.

(7) "Division" means the Oregon Division of State Lands, or its Director or the Director's designee.

(8) "Escheat property" means:

(a) Property paid or delivered to the Division of State Lands according to ORS 116.203 because the distributee, devisee or heir could not be found, or refused to accept the property;

(b) Funds paid or delivered to the State of Oregon according to ORS 179.540 from state institutions where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence has not claimed property left behind.

(9) "Estate" means the real and/or personal property of a decedent.

(10) "Heir" means any person or persons who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.

(11) "Intestate" means the circumstances of dying without leaving a valid will effectively disposing of all the estate.

(12) "Personal Representative" means a person who administers the estate of a deceased person under a full probate proceeding.

(13) "Testate" means the circumstances of dying with a legal, valid will which effectively disposes of all the estate.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 31, f. & cert. ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96

141-030-0025

Petition for Recovery of Escheat Estate Property

(1) Pursuant to ORS 116.253, a claim to recover escheat estate property shall be initiated by a claimant or the claimant's agent filing a petition with the Division of State Lands within ten years after the entry of an Order of Escheat to the Division.

(2) A petition shall be considered filed upon its receipt by the Division.

(3) The petition may be on forms provided by the Division. It shall be notarized and state:

(a) The name, age, and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant is lawfully entitled to the property or proceeds, and a brief description of the property or proceeds;

(c) That at the time the property escheated to the Division, the claimant had no knowledge or notice thereof;

(d) That the claimant claims the property or proceeds as:

(A) (For escheat of an estate) an heir or heir's personal representative or claiming successor.

(B) (For escheat of a distributive share of an estate) The devisee/distributee, or the devisee/ distributee's personal representative or claiming successor.

(e) That ten years have not elapsed since the property escheated to the Division. For the purpose of this rule, property from an estate escheats to the Division upon entry of the decree or order of escheat. As to all other escheat property, the escheat occurs as of receipt by the Division; and

(f) If the petition is filed on behalf of the claimant, the identity and authority of the claimant's agent.

(4) The petition to recover estates and distributive shares shall be supported by the following documents:

(a) Current photo identification of the claimant, or other proof of current residence.

(b) An executed indemnification agreement signed by the claimant(s) and acceptable to the Division.

(c) If the petition is being filed by an attorney or agent for a claimant or claimants, a Power of Attorney or written, notarized authorization given by each heir to the attorney or agent to act on his or her behalf. The original Power of Attorney or authorization shall be filed with the petition.

(d) A genealogical chart showing the relationship of all heirs of the decedent. If the line has lapsed, a statement shall be included that no issue exists and proof that the line lapsed by death.

(e) Certified copies of birth, death, and/or marriage certificates, that show the family relationships of the heirs to the decedent.

(5) In addition to the documents required by (4), a petition may also include the following records to verify and establish the relationship of the heirs to the decedent:

(a) Bureau of Census Records;

(b) Funeral Notices;

(c) Wills of deceased family members which show the relationship of heirs to each other;

(d) Church records showing birth, death, Baptism, or marriages;

(e) Applications for Social Security cards, naturalization records, employee pension plans or any records containing the signature of the applicant/claimant and listing any designated beneficiaries, other family members or parents;

(f) Court records and duly authenticated records of proceedings conducted before domestic and foreign courts to show the heirs of the decedent and/or the entitlement of the claimant to the escheat funds.

(6) At the Division's discretion, a person who is claiming as a distributee to an estate may not need to provide some of the documents listed in subsection (4) and (5) if enough evidence is otherwise provided to link the claimant to the asset.

(7) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96

141-030-0034

Recovery of Costs

The Division shall recover its actual costs of review, including those of the Attorney General, which shall then be deducted from the proceeds before payment is made to the claimant.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 5-1996, f. & cert. ef. 10-15-96

141-030-0035

Contested Case Procedures

- (1) If the Division is unable to determine legal entitlement from information provided in the petition or claim, and any supporting documentation received or provided by supplemental filings, the Division shall give written notice of denial of the petition.
- (2) The notice of denial shall include the specific reason(s) for denial and shall provide an opportunity for a contested case hearing.
- (3) Within 60 days of the date of written notice of denial, the claimant may request a hearing on the matter.
 - (a) A request for hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.
 - (b) Within 30 days after the receipt of the written request, the Division shall contact the claimant to schedule a hearing date by mutual agreement. The hearing date shall be confirmed by written notice to the claimant from the Division.
 - (c) The hearing shall be conducted by the Director or by a hearings officer appointed by the Director.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 31, f. & ef. 10-3-75; LB 37, f. & ef. 9-1-76; LB 5-1996, f. & cert. ef. 10-15-96

141-030-0036

Petitions to Recover Institutional Escheat Property

- (1) Petitions to recover institutional escheat property pursuant to ORS 179.540 shall be initiated by a claimant or the claimant's agent submitting a claim to the Division of State Lands within ten years after receipt of the property.
- (2) A claim shall be considered filed upon its receipt by the Division, and it shall be supported by the following documents:
 - (a) A notarized claim form furnished by or acceptable to the Division, signed by the owner, or the owner's heir, personal representative or claiming successor;
 - (b) Current photo identification of the claimant, or other proof of residence;
 - (c) Affidavits by claimants may also be required to substantiate information when insufficient supporting documentation is available to prove entitlement.

- (3) The Division requests that claimants voluntarily include their Social Security Number, which is of great assistance in determining the rightful owner of an account.
- (4) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 5-1996, f. & cert. ef. 10-15-96

141-030-0037

Review by the Division

- (1) The Division shall review the petition or claim and the sufficiency of the supporting documents. If a preponderance of the evidence indicates that is legally entitled to the property, the Division shall satisfy charges due, if any, to the Department of Human Resources, and prepare the necessary administrative deeds and assignment of contracts for property which is part of the estate. The Division may require the Attorney General's Office to review the petition or claim and supporting documents for accounts with a value of \$1,000 or more.
- (2) After all the necessary steps cited have been taken, the Division shall request a warrant from the State Treasurer and make payment to the claimant, agent, or attorney for the claimant.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 5-1996, f. & cert. ef. 10-15-96

141-030-0038

Special Standards for Claims for Escheat Estates

- (1) When evidence is provided to support a claim for only one side of a family (paternal or maternal), as heirs to a decedent, the claimant(s) are entitled to only one-half of the estate (maternal/paternal), UNLESS they prove that there are no other surviving heirs.
- (2) When evidence is provided to support a claim for only one or more of the heirs, but it is likely there are other entitled heirs who cannot be found, the Division may pay the claimant(s) only the percentage of the estate to which they are entitled, unless they prove that there are no other surviving heirs.
- (3) In the event that an heir or heirs are paid a portion of an estate pursuant to sub-section (1) and/or (2) of this section, the Division shall retain the balance of the estate for the remainder of the statutory ten-year claim period, during which time it may be claimed if sufficient evidence is provided to support a claim to the Division:
 - (a) By the previous claimants, upon proof that there are no surviving heirs on the other side of the family; or
 - (b) By other heirs who come forward.
- (4) Alternately, where a claimant (or claimants) has been paid a portion of an estate pursuant to subsection (1) and (2) of this section, the Division may pay the balance of the estate to that heir (or heirs) upon submission of a properly executed

indemnity bond from the proven heirs for the amount of the balance of the estate. In this event, if other heirs file a claim and prove entitlement to these funds prior to the ten-year period, the Division may collect on the bond.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540 to 179.550.

Hist.: LB 5-1996, f. & cert. ef. 10-15-96

141-030-0039

Expiration of Recovery Period

- (1) Pursuant to OAR 141-030-0038, in certain circumstances the Division shall retain a portion of an estate until the end of the statutory ten-year claim period. If at the end of that period the Division has not paid out the balance of the state as per that section, then the Division may, upon written request and receipt of appropriate documentation, identification, and/or agent authorization, pay the remaining estate to the previous claimants. Such requests must be filed no later than 60 days before the ten-year expiration period.
- (2) If evidence supporting ownership to an estate, or other written contact is not received by the Division within six (6) months after the request for extended recovery time has been granted, the Division may summarily close the file and escheat the remainder of the estate to the Common School Fund at the end of the ten-year period.

Stat. Auth.: ORS 273.041, 273.051

Stats. Implemented: ORS 112.055; 113.045; 116.193; 116.203; 116.253 & 179.540-550.

Hist.: LB 5-1996, f. & cert. ef. 10-15-96

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 35

ADMINISTRATION OF ESTATES -- PROBATE

141-035-0005

Purpose

The purpose of these rules is to provide a uniform procedure for the administration of estates of deceased persons who die intestate without known heirs; Oregon Revised Statutes per Chapter 591, Oregon Laws 1969, as amended. These rules shall be liberally construed to secure just, speedy determination of the assets, liabilities and net worth of the deceased.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0010

Definitions

- (1) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.
- (2) "Assets" includes real, personal and intangible property.
- (3) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.
- (4) "Court" or "Probate Court" means the court in which jurisdiction of probate matters, causes and proceedings is vested as provided in ORS 111.075.
- (5) "Decedent" means a person who has died leaving property that is subject to administration.
- (6) "Devisee" includes "legatee" and "beneficiary".

(7) "Director" means Director, Division of State Lands.

(8) "Distributee" means a person entitled to any property of a decedent under his or her will or under intestate succession.

(9) "Division" means Division of State Lands.

(10) "Domicile" means the place of abode of a person, where he or she intends to remain and to which, if absent, he or she intends to return.

(11) "Estate" means the real and personal property of a decedent, as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefor or diminished by any decreases and distributions therefrom.

(12) "Funeral" includes burial, cremation or other disposition of the remains of a decedent, including the plot or tomb and other necessary incidents to the disposition of the remains.

(13) "Heir" means any person, including the surviving spouse, who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate: An heir is one who can take under Oregon laws of intestate succession. They are:

(a) Spouse;

(b) Issue;

(c) Parents;

(d) Brothers/sisters;

(e) Grandparents;

(f) Uncles/aunts; and

(g) Issue of the deceased uncles and aunts.

(14) "Interested Person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.

(15) "Intestate" means one who dies without leaving a valid will, or the circumstances of dying without leaving a valid will, effectively disposing of all his estate.

(16) "Intestate Succession" means succession to property of a decedent who dies intestate or partially intestate.

(17) "Issue" includes biological children and legally adopted children and their issue and, when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living lineal descendants.

(18) "Personal Property" includes all property other than real property.

(19) "Personal Representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.

(20) "Probate Agent" means an employee of the Division of State Lands acting to protect the assets of the decedent on behalf of the Director of the Division of State Lands.

- (21) "Property" includes both real and personal property.
- (22) "Real Property" includes all legal and equitable interests in land, in fee and for life.
- (23) "Settlement" includes, as to the estate of a decedent, the full process of administration, distribution and closing.
- (24) "Small Estates Affidavit" means an affidavit of the heirs or devisees of the decedent and, if it appears that the decedent died wholly intestate without heirs, the Director of the Division of State Lands, as defined in ORS 114.505.
- (25) "Will" includes codicil; it also includes a testamentary instrument that merely appoints as executor or that merely revokes or revives another will.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0015

Master Index

An index of the names of persons who die intestate without heirs shall be maintained in the office of the Division of State Lands. It shall contain the number assigned to the potential estate, name of the deceased, county of probate, and estimated estate value. Upon notification by the probate agent of a new probate case, the decedent's name and file number will be added to the index. The county of probate and estimated value of the estate will be included when the Director has been appointed as personal representative, or when the Division files a Small Estates Affidavit.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0020

Initial Proceedings

- (1) Pursuant to ORS 113.085, if it appears that the decedent died wholly intestate and without heirs, the court shall appoint the Director of the Division of State Lands as personal representative. The Attorney General shall represent the Director in the administration of the estate. The Director may designate a Division employee in writing, as having authority to act on his or her behalf in any or all probate matters.
- (2) Any person who has knowledge of a person who has died without known heirs or a valid will shall notify the Director of the Division. This includes, but is not limited to friends, neighbors, care centers, nursing homes, hospitals, banking institutions, attorneys, and funeral homes.
- (3) Upon the notification to the Division of a person who has died and there are no known heirs to inherit and when there is no known will, the probate agent appointed by the Director shall immediately take steps to ensure the protection of assets of the deceased. The probate agent shall complete a discovery form which shall include, but not be limited to, the following information:
 - (a) Name of deceased, address, Social Security Number, date of death, place of death, and date of birth, if known;

- (b) Source of information, for example, friend, funeral director, sheriff's office, county coroner, medical examiner;
- (c) Funeral home where the body has been taken, name of the director or principal;
- (d) Information relative to assets belonging to the deceased, for example, real property, personal and household property, stocks, savings accounts, bank accounts, cash;
- (e) Names, addresses and phone numbers of friends and neighbors who can lend assistance in trying to establish identity of nearest of kin.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0025

Funeral Arrangements

- (1) Upon completion of the discovery form, the probate agent shall immediately contact the funeral home to which the body was taken. If the body is delivered to a funeral home and it appears the deceased has died intestate and without known heirs, the funeral director shall contact the probate agent of the Division within two working days of receipt of the body. All funeral arrangements must be approved by the Division.
- (2) Applications for Social Security, Veterans Administration, and other available death benefits shall be completed by either the funeral director or the probate agent after consultation with the funeral director.
- (3) The probate agent and the funeral director shall negotiate appropriate funeral services and their cost subject to the following guidelines:
 - (a) The decedent shall receive a funeral and disposition of remains in a manner suitable to the decedent's circumstances in life and within the reasonable limits of the financial condition of the estate. Due regard shall be given to other available death benefits;
 - (b) In most cases, the body shall be preserved for burial. However, cremation may be authorized by the Director if all of the following conditions are met:
 - (A) The body is in a deteriorated condition;
 - (B) It is apparent that there are no heirs;
 - (C) Estate has no assets to cover burial;
 - (D) The decedent's apparent religion permits cremation.
 - (c) The nature and cost of funeral services may be limited to those of a "plain and decent funeral" pursuant to ORS 114.305(a), 114.505(1), or 115.125 when the criteria for any of those statutes have been met.
- (4) A plain and decent funeral shall consist of:
 - (a) Professional services:
 - (A) First call -- reception of the remains;

(B) Preparation of the remains as required by law;

(C) Use of funeral home facilities and personnel for viewing and funeral services;

(D) Delivery of the remains to a local cemetery.

(b) The least expensive casket shown by the funeral home;

(c) Additional essential items:

(A) Newspaper notices;

(B) Minister's honorarium;

(C) Cemetery costs.

(d) Incidental items available as appropriate:

(A) Music;

(B) Flowers;

(C) Clothing;

(D) Extra transportation;

(E) Other requested items.

(e) In determining the nature and amount of services to be rendered for a "plain and decent funeral," consideration shall be given to the amount of assets available in the estate, the expressed desires of the decedent's friends and associates concerning appropriate funeral services, the number of persons expected to attend any funeral services offered, and the prominence of the decedent in the local community.

(5) Burial, cemetery costs. Cemetery costs are considered separate from funeral costs and the amount payable is contingent upon the amount of funds available in the estate. The funeral director shall notify the probate agent of the proposed cemetery and the cost estimate for burial expenses. Expenses are limited to the available resources in the estate.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0030

Protection of Assets

(1) The probate agent shall:

(a) As soon as possible and within five working days of notification, travel to the locality where the deceased resided to prepare an inventory of all assets tangible and intangible;

(b) Secure all papers and records of the deceased to provide a source of information that may be reviewed to determine

whether or not a will exists, and whether or not there are persons to take in accordance with ORS 112.025, 112.035 and 112.045;

(c) Contact local banks, savings and loan associations, credit unions, and other financial institutions to freeze accounts pending delivery of appropriate documents to withdraw the accounts. Obtain balances of accounts and information regarding safe deposit boxes;

(d) Contact utilities, delivery services, and postal authorities to forward billings and statements to the Division of State Lands. Arrange for the termination of services if in the best interest of the estate to protect the property.

(2) The probate agent may contact the local sheriff or police to request assistance to provide for the security of real property, personal property, and household goods.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0035

Inventory

(1) Within seven working days of notification of a deceased person, the probate agent shall compile a full and complete inventory of the assets of the deceased.

(2) A value estimate shall be assigned to each item of inventory. Investment-type assets shall be recorded at the value of the asset at date of death.

(3) Miscellaneous household items may be boxed in unit categories and inventoried as a box.

(4) All major household appliances, antiques jewelry, vehicles, trailers, recreational vehicles, shop equipment, and real property shall be noted individually on the inventory.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0040

Filings, Notices and Claims

(1) Filings with the court:

(a) If the value of the estate does not exceed the amounts stated in ORS 114.515, for a Small Estates Affidavit, the Director of the Division of State Lands as a distributee, claiming successor of the decedent may file a "Small Estates" proceeding with the appropriate court in the form of an affidavit as described in ORS 114.505 to 114.555;

(b) If the value of the estate exceeds the limits authorized under the Small Estates proceedings, the Director shall file a petition with the appropriate court to be appointed personal representative.

(2) Notice of admitting the estate to probate shall be published once a week for three consecutive weeks in the county in which the probate is filed, or in a newspaper designated by the court. Notice shall instruct creditors and debtors to contact the Director of the Division of State Lands.

(3) Claims:

(a) Claims against the estate must be filed within four months of the first publication to interested persons or Small Estates Affidavit filing date. If approved, they will be paid four months after the public notice or small estates filing date;

(b) Funeral and cemetery costs may be paid prior to four months when the probate agent has determined that enough funds will remain to pay administrative costs;

(c) A formal claim against the estate may be allowed, contingent on the availability of funds. If it appears there are insufficient funds to pay all claims in full, the provisions of ORS 115.125 shall be followed.

Stat. Auth.: ORS 113.085, Ch. 114 & 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 3-1982, f. & ef. 6-10-82; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0045

Search for Heirs

(1) The personal representative shall conduct a search of records to locate any heirs that may legally have a right to inherit. The search shall include but not be limited to the following:

(a) Papers, records, albums, newspaper clippings included in the personal effects of the deceased;

(b) Friends and neighbors;

(c) Employee unions, businesses or places of employment, retirement funds, insurance companies or any other association of which the deceased may have been a member;

(d) Banks, savings and loan associations, mortgage and investment funds with which the deceased may have conducted financial affairs;

(e) Public agencies.

(2) The probate file is a public record under Oregon's public meetings and records law. Researching firms or heir finders must make an appointment with the probate agent to view the Division files once they have been filed with the probate court.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0046

Renunciation of Heirs or Devisees

Pursuant to ORS 112.650 to 112.657, any heir(s) or devisee(s) to an estate may disclaim and renounce all interest in an estate by delivering a written disclaimer not later than nine months after the death of the decedent:

- (1) Upon notification to the Division of any heir(s) or devisee(s) who refuses to act as personal representative of the estate of a decedent, and who refuses an interest in the estate, the Director may forward a disclaimer and renunciation affidavit to the disclaimant(s).
- (2) The affidavit shall describe the property and interest disclaimed, declare the disclaimer and extent thereof, and be signed by the disclaimant(s).
- (3) The disclaimant(s) shall deliver the disclaimer and renunciation affidavit in person or by certified or registered mail to the Director not later than ten working days from receipt of the affidavit.
- (4) Upon receipt of the properly executed disclaimer and renunciation affidavit by the Division, the decedent shall be treated as through he or she died wholly intestate and without heirs with respect to the renouncing heir(s) or devisee(s), and the Director shall be appointed as personal representative to administer the estate in the usual manner.

Stat. Auth.: ORS 112.650 - 112.667

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 5-1989, f. & cert. ef. 11-2-89

141-035-0047

When Heirs are Discovered

- (1) If a person claims to be an heir of the deceased during the administration of a full probate or Small Estates Affidavit, proof must be submitted to the probate agent to substantiate kinship. Acceptable proof includes but is not limited to certified copies of death and birth certificates and family Bibles. The Division shall continue to administer the estate until the probate agent determines that evidence submitted is sufficient to prove legal entitlement to the decedent's assets. Full Probates:
- (a) If the probate has been filed, and an heir subsequently found, a substitution of personal representative must be filed with the probate court, and a court certified copy of the order of substitution filed with the Division;
 - (b) Upon receipt of the order of substitution of personal representative the Director shall file an accounting with the court, including the personal representative expenses and information about bills and claims still owing, and forward a copy to the successor personal representative. If the accounting is in order, the successor personal representative may sign a waiver of hearing and consent to an immediate entry of decree of distribution;
 - (c) Upon notification of the order approving distribution of assets to the successor personal representative, the probate agent shall turn over all assets to the successor personal representative, including all bills and claims still owing, and obtain receipts therefor.
- (2) If a valid will is found before filing a full probate or Small Estates Affidavit, the probate agent shall immediately contact the personal representative named in the will. If the personal representative cannot be located, the primary beneficiary will be notified. Arrangements will then be made to turn over all assets, less personal representative expenses of administration, to the appropriate individual upon proof of identity. Small Estates:
- (a) If the administration is by a Small Estates Affidavit, the heir shall file an amended Small Estate Affidavit with the court which shows that the heir is taking over control and responsibility of the estate from the Division, and submit a

court certified copy to the Director;

(b) Upon receipt of the court certified copy of the Small Estates Affidavit, the probate agent shall turn over the assets, less personal representative costs of administration, to the successor affiant, including all bills and claims against the estate.

Stat. Auth.: ORS 113.085

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 5-1989, f. & cert. ef. 11-2-89

141-035-0050

Sale of Real Property and Personal Effects

- (1) It is the responsibility of the personal representative to obtain the greatest cash value for all property and personal effects belonging to the deceased at the time of death.
- (2) The probate agent is authorized to obtain the services of a qualified appraiser to assist with the determination of values.
- (3) Sales shall be conducted through public, oral competitive bidding conducted by a licensed auctioneer who is not an employee of the Division.
- (4) Public sales shall be preceded by at least one publication at least ten days before the sale, in an English language newspaper of general circulation in the county where the property will be sold.
- (5) Items with little or no commercial value such as used clothing and common houseplants may be donated to charitable service organizations or other persons such as friends or neighbors of the decedent. Food may be sold, or disposed of on the site.
- (6) If the cost of an oral, public auction would exceed the value of a particular item, the probate agent, with prior approval from the probate agent's supervisor, may dispose of the item by obtaining at least three oral bids or request sealed bids from interested parties, selling the item to the highest bidder. Examples are old vehicles, trailers, and extremely heavy or awkward items which would require special handling.
- (7) No donations, sales, or other disposition any property belonging to estates may be made to employees of the Division of State Lands or the State Land Board or members of their immediate household, parents, or children not living at home except when the transaction is a sale by an oral, public auction conducted by a person or agency other than the Division of State Lands.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0055

Accounting for Funds

- (1) There is created within the Common School Fund a separate trust account for estate administration. Prior to the

- receipt of any cash assets the probate agent is authorized to incur costs to obtain a death certificate and necessary fees for filing a Small Estates Affidavit or Petition for Probate.
- (2) All receipts received shall be deposited daily into the trust account, and to the appropriate subsidiary account for each separate estate.
- (3) Just, proper and approved claims may be paid from the trust account within the limits of the estate's resources.
- (4) The probate agent shall file with the Division's accountant an "other than cash assets" value report at the end of each quarter.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0060

Taxes: Income and Inheritance

- (1) It is the responsibility of the personal representative to file and pay all taxes due on the estate. The probate agent is authorized to obtain the services of a tax consultant when necessary to prepare:
- (a) Personal income tax;
- (b) Fiduciary income taxes;
- (c) Federal inheritance taxes.
- (2) State inheritance taxes are not due and payable from the estate of a deceased person when the distributee of the estate is the State of Oregon, Common School Fund.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0065

Closing the Estate and Escheat of Assets

- (1) The Division shall make every effort to close full estates admitted to probate within one year of the court appointment date. Small estates are completed four months from the filing date. If the full probate cannot be closed in one year an annual accounting shall be filed with the appropriate probate court.
- (2) Prior to closing the probate agent shall compute the administrative and Attorney General expenses. If the estate was admitted to full probate, fees shall be computed in accordance with ORS 116.173. If there were extraordinary expenses such as special trips by the probate agent, additional manpower required to inventory, transport or dispose of personal property they shall be computed and included as administrative expenses in the final account submitted to the court.
- (3) If the estate was admitted to probate under the Small Estates procedures, administrative and legal expenses shall be

computed by the probate agent as actual costs incurred in accordance with ORS 116.183.

(4) The amount remaining after payment of expenses shall be placed in a trust fund of the Division of State Lands and held on behalf of heirs for ten years from the distribution date. If the estate is claimed by heirs during that period, the procedures of OAR 141-030-0025 and ORS 116.253 will apply. If no claim is made after ten years from the final distribution date, the total amount credited to the estate account will be deposited in the Common School Fund.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

141-035-0070

Appeal

Any person aggrieved by a decision of the personal representative or the designated probate agent may file for a hearing before the Director of the Division of State Lands in accordance with ORS 183 or file an objection directly with the probate court.

Stat. Auth.: ORS 113.085 & Ch. 273

Stats. Implemented: ORS Ch. 113 & 273.045

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 40

UNCLAIMED PROPERTY CLAIMS/FINDERS RULES

Establishment of Administrative Fee Charge

141-040-0005

Administrative Fees

A maximum charge of ten percent or \$10 (Ten Dollars), whichever is less, will be deducted from the proceeds of each unclaimed property claim with a value of \$100 or more which is approved and for which the Division expended efforts to locate the owner(s), pursuant to ORS 98.356(4).

Stat. Auth.: ORS 98.302 - 98.436

Stat. Implemented: ORS 98.302 - 98.436

Hist.: LB 16, f. 4-4-74, ef. 4-25-74; LB 2-1995, f. & cert. ef. 6-15-95

**Procedures for Publication of Reports About Unclaimed and
Escheated Accounts**

141-040-0010

Purpose

The purpose of these rules is to establish a uniform procedure for responding to requests for information about unclaimed and escheated money and property reported or remitted to the Division of State Lands.

Stat. Auth.: ORS 98.302 - 98.436

Stat. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0020

Definitions

- (1) "Division" means the Division of State Lands.
- (2) "Escheated Property" means:
 - (a) Property paid or delivered to the Division of State Lands pursuant to ORS 116.203 because the distributee, devisee, or heir could not be found, or refused to accept the property;
 - (b) Funds paid or delivered to the State of Oregon pursuant to ORS 179.540 from state institutions where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence has not claimed property left behind.
- (3) "Finder" (Also called "Researcher", "Tracer", "Heirsearcher" or "Heirfinder") means any person who independently searches for and finds the owners of unclaimed or escheated property for a fee paid by the owner.
- (4) "Finder's Report of Unclaimed and Escheated Property" means a report that lists the names of owners of unclaimed and escheated property in the custody of the Division, and may include additional information that would assist in finding the owners.
- (5) "Holder" means any person or entity who is in possession of property belonging to another.
- (6) "Owner" means a person or entity whose name appears on the holder's records as the rightful owner of unclaimed or escheated property held by the Division. The address and other identification may also appear if available.
- (7) "Subscription Report of Accounts Claimed" means a report which details unclaimed property or escheated accounts that have been refunded to owners or their heirs by the Division.
- (8) "Unclaimed Property" means any asset that is paid or delivered to the Division of State Lands pursuant to ORS 98.352 because the owner cannot be found by the company or person holding the asset.

Stat. Auth.: ORS 98.302 - 98.436

Stat. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0030

Finder's Report

- (1) The Division may compile information and produce a Finder's Report of Unclaimed and Escheated Property including all accounts in its custody having an individual value of \$250 (Two Hundred Fifty Dollars) or more.
- (2) The Finder's Report shall provide information about unclaimed property and escheated records by calendar year (January 1 through December 31) in a format chosen by the Division. It shall include the name of the apparent owner and any co-owner(s) of each account, the value of the account, and if provided by the holder, the last known address of

the apparent owner.

(3) Finder's Reports are available for accounts received by the Division since January 1, 1981. Information which is not available to report in a format chosen by the Division may be made available in a manner, format, and cost determined by and at the discretion of the Division.

(4) Pursuant to ORS 98.352(4), information about unclaimed property or escheated accounts for calendar year 1994 forward may be available once a year, in the month of June, at least 24 months after the property is received by the Division during the normal report/remit period ending each November 30. (For instance, information about property received by the Division through December 31, 1994 will be available in June 1997).

(5) To obtain a Finder's Report, a written request shall be submitted to the Division along with the appropriate fee. A waiting period of up to 20 days may be required if payment is made by other than cashier's check or money order.

(6) The fee for the Finder's Report shall be a minimum of \$100 (One Hundred Dollars) per calendar year plus actual postage.

Stat. Auth.: ORS 98.302 - 98.436

Stat. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0035

In-House Review of Owner Records

(1) Members of the public are entitled to reasonable opportunity to inspect and copy owner records in the Division's custody which are not considered confidential pursuant to ORS 98.352(4).

(2) A person wishing to review such records shall make an appointment with the Division's Examiner and specify which records will be reviewed as follows:

(a) To review microfilm records, the appointment shall be made at least two (2) working days in advance, and at the discretion of the Division;

(b) To assure record security, supervision of access is required to review non-microfilmed records. The appointment shall be made at least ten working days in advance. No more than ten non-microfilmed records may be reviewed during one visit unless special arrangements are made to cover staffing costs (i.e., overtime or temporary staff).

(3) There shall be a limit of two people at a time for each appointment time slot.

(4) Copies of records shall be secured in the manner and at the cost determined by the Division and as set forth in OAR Chapter 141, Division 91.

(5) The computer terminals in the public room are for private citizen use only. A Finder shall not use the computer terminals in the public room for professional, commercial or business purposes or for any monetary gain.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1995, f. & cert. ef. 6-15-95

141-040-0040

Subscription Report of Accounts Claimed

- (1) In addition to the Finder's Report described in OAR 141-040-0030, the Division may prepare a Subscription Report of unclaimed and escheated property accounts which are claimed from the Division during the current reporting year.
- (2) Each report shall be prepared monthly, reflecting cumulative claims paid from July 1 through June 30. The reports may be purchased for an annual fee of \$25. However, fees shall not be pro-rated. Purchasers of the service will receive monthly reports from the subscription date to June 30.
- (3) Each monthly report shall be mailed by the 15th of the following month to all persons subscribing by the 25th of the preceding month.
- (4) The annual fee for a monthly subscription report shall be \$50 (Fifty Dollars). Fees shall not be pro-rated.
- (5) To subscribe, a written request shall be submitted to the Division along with the fee. A waiting period of up to 20 days may be required if payment is made by other than cashier's check or money order.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95

Rules for Recovery of Unclaimed Property

141-040-0200

Purpose

The purpose of these rules is to establish a uniform procedure for making claims to recover unclaimed money and property reported and/or remitted to the Division pursuant to ORS 98.352.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0210

Definitions

- (1) "Division" means the Division of State Lands.
- (2) "Claimant" means a person or entity who claims to be the rightful owner and legally entitled to unclaimed property held by the Division.
- (3) "Finder" (also called "Researcher," "Tracer," "Heirsearcher" or "Heirfinder") means any person who assists in finding the owners of unclaimed or escheated property for a commission.

- (4) "Holder" means any person or entity who is in possession of unclaimed property belonging to another.
- (5) "Owner" means a person or entity whose name appears on the holder's records as the rightful owner of unclaimed property held by the Division. The address and other identification may also appear if available.
- (6) "Unclaimed Property" means any asset that is paid or delivered to the Division of State Lands pursuant to ORS 98.352 because the owner cannot be found by the company or person holding the asset.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0212

Proof of Ownership

- (1) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.
- (2) Name similarity alone shall not be sufficient to prove entitlement to an account.
- (3) Documents submitted to establish ownership may include, but are not limited to:
- (a) Copies of any documents showing addresses, for instance utility bills, tax records, or original correspondence addressed to the owner at the address shown on the Division's records;
 - (b) Passbooks, statements of accounts, cancelled checks, deposit slips;
 - (c) Copy of, or original stock certificate in the owner's name, copy of prior dividend payment or statement, stock transmittal receipt, brokerage firm statement;
 - (d) Original insurance policies, premium or dividend statements;
 - (e) Original deposit slips or receipts;
 - (f) Safe deposit box rental receipt or statement regarding the box;
 - (g) Original, certified or photo copies of court documents;
 - (h) Newspaper articles including marriage announcements, birth or obituary notices;
 - (i) Family or church records, baptismal certificates, or personal correspondence;
 - (j) Public or business records;
 - (k) Signature verification cards from financial institutions;
 - (l) Testimonial evidence, including properly notarized affidavits; or
 - (m) Any other forms of evidence the Division may consider sufficient to satisfy a reasonable and prudent person under the circumstances of the particular claim.

(4) When the claim is made on behalf of the original owner of the account, the claimant shall provide evidence to link the claimant with the account.

(5) When the claim is made on behalf of a successor to the original owner of the account (for example if the original owner is deceased), the claimant shall provide:

(a) Evidence to link the original owner with the account; and

(b) Evidence establishing the legal relationship between the original owner and the claimant, including but not limited to certified copies of probate documents, small estate affidavits or affidavits of heirship, Final Decree of Distribution, wills, death certificates, Letters Testamentary/ Guardianship/Conservatorship or other appropriate heirship documentation.

(6) If the claim is on behalf of a business entity, documentation showing the claimant's authority to claim on behalf of the company.

(7) If the claim is for a negotiable instrument, (cashier's check, money order, certified check, traveler's check) the payee shall be deemed to be the owner unless the purchaser possesses the instrument or provides evidence of payment satisfying the obligation to the payee.

(8) If the claim is for securities or negotiable instruments, the certificate or the original instrument shall be surrendered to the Division with the claim, if the claimant possesses it.

(9) If a claim is being made on behalf of a creditor through a garnishment, the creditor shall provide evidence linking the original owner to the account. The Division shall review the claim in the order received with other claims.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1995, f. & cert. ef. 6-15-95

141-040-0214

Review Criteria/Time

(1) The Division shall review claims in the order of receipt, unless the claimant provides evidence of extenuating circumstances warranting early review. After reviewing any such request, the Division will make a determination whether to advance the claim ahead of others.

(2) In determining if there is sufficient evidence to support a claim, the Division shall consider;

(a) The age and likelihood of the existence of direct evidence to support the claim;

(b) The existence of any competing claims for the account;

(c) Any other related evidence the Division determines appropriate under the circumstances of the particular claim.

(3) The standard the Division shall use to determine a claim is whether the documents submitted are sufficient to prove legal entitlement by a preponderance of the evidence.

(4) If the claim is approved, the Division shall make payment.

(5) If the account is being recovered by a Finder who has submitted a Power of Attorney which authorizes disbursement

to the Finder, the check may be made payable to both the claimant and Finder and mailed to the Finder.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1995, f. & cert. ef. 6-15-95

141-040-0215

Claim Format

(1) Claimants claiming an interest in unclaimed property shall file a claim with the Division on forms provided by the Division.

(2) Each claim shall include:

(a) The name and current mailing address of the claimant(s);

(b) A current photo identification of the claimant(s) (a driver's license for example), or other proof of residence;

(c) A description of the claimant(s)' interest in the account;

(d) A copy of the claimant(s)' Business Tax ID, or Federal Tax ID number;

(e) Evidence of ownership satisfactory to establish the validity of the claim;

(f) An executed, notarized indemnification agreement signed by the claimant(s), that is provided by, or acceptable to the Division;

(g) If the claimant is the original owner, a description of the nature of the account;

(h) If the claimant is other than the original owner, a description of the relationship of the claimant to the original owner, and documentation of the basis on which the claimant has a legal interest in the account (e.g., proof of heirship if the original owner is deceased and the claimant is a lawful heir of that owner, or proof of current court appointment for guardianship/ conservatorship/probate);

(i) If the claim is being filed by a Finder:

(A) The claim shall include an original Power of Attorney or written, notarized statement provided by each claimant to the finder authorizing the finder to act on behalf of the claimant(s);

(B) The indemnification agreement affidavit shall be signed by the claimant(s).

(3) The Division also requests that claimants voluntarily include their Social Security number in their claim. This information is of great assistance to the Division in determining the rightful owner of the account number under the authority of the unclaimed property law.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95

141-040-0220**Claim Denial/Closure**

(1) If the Division requests more information from the claimant to substantiate a claim, and there is no response from the claimant within 90 days of the request, the Division may close the file and return it to the claimant. If the claimant discovers additional evidence in support of ownership, all documentation shall be returned to the Division along with the original claim file documents.

(2) If the Division is unable to determine legal entitlement from the evidence submitted and any supporting documentation received or provided by supplemental filings, the Division may give written notice of denial.

(a) The notice of denial shall include the specific reason(s) for denial and shall provide an opportunity for a contested case hearing to be held before the Division of State Lands.

(b) Within 60 days of the date of written notice of denial, the claimant may resubmit the claim with additional information or request a hearing on the matter;

(c) A request for hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.

(d) Within 30 days after the receipt of the written request, the Division shall contact the claimant to schedule a hearing date by mutual agreement. The hearing date shall be confirmed by written notice to the claimant from the Division.

(e) The hearing shall be conducted by the Director of the Division of State Lands or by a hearing's officer appointed by the director.

(f) Additional evidence shall not be admissible at the hearing, except by mutual consent of the hearing's officer, the claimant and any other parties to the proceeding. If such additional evidence is not admitted, the hearings officer shall terminate the hearing and allow the claimant to resubmit the claim with the new evidence.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 36, f. & ef. 9-1-76; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 45

ADMINISTRATION OF UNCLAIMED PROPERTY

141-045-0005

Purpose

The purpose of these rules is to provide consistent procedures for the administration of the Uniform Disposition of Unclaimed Property Act, ORS 98.302 through 98.436 and 98.991 through 98.992, and to ensure that all unclaimed money and property held in safekeeping are reported and paid over to the Division of State Lands in an accurate and timely manner.

Stat. Auth.: ORS 98.304-98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0010

Definitions

- (1) "Aggregate" means a method of reporting unclaimed property in which the holder reports small amounts in a lump sum representing various accounts without breaking it down per account or per owner.
- (2) "Dividend" means cash which accrues by the earnings of a company and which is paid to the owner of securities issued by that company.
- (3) "Dividend Reinvestment" (DRP) means additional securities of the same company which are credited to an owner's account in lieu of cash.
- (4) "Division" means Division of State Lands.
- (5) "Dormant" means without activity or owner contact for a prescribed time.

- (6) "Due Diligence" means the degree of effort required by statute that holders of unclaimed property must take to find the rightful owner of property before the property is remitted to the state.
- (7) "Financial Institution" means a banking institution, savings and loan association, building and loan association, or investment company as defined in ORS 706.005 and credit union as defined in ORS 723.006.
- (8) "Holder" means any person or business entity who is in possession of property belonging to another.
- (9) "Inactive" means a lack of activity or owner contact for a prescribed time.
- (10) "Insurance Company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, but not limited to, accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety and wage protection insurance.
- (11) "Intangible Property" includes but is not limited to:
 - (a) Credit balances, customer over-payments, gift certificates, security deposits, refunds, certificates of deposits, credit memos, unpaid wages, unused airline tickets and unidentified remittances;
 - (b) Stocks and other intangible ownership interests in business associations;
 - (c) Money deposited to redeem stock, bonds, coupons and other securities, or to make distributions;
 - (d) Amounts due and payable under the terms of insurance policies;
 - (e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and
 - (f) Money, checks, drafts, deposits, interest, dividends and income.
- (12) "Last-Known Address" means a description of the location of the apparent owner sufficient for the purposes of delivery of mail.
- (13) "Negative Report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.
- (14) "Reportable" means the appropriate dormancy period as set forth in OAR 141-045-0031, after which time an owner has not claimed his or her asset from a holding company, and the holder has taken appropriate steps to find the owner as described in OAR 141-045-0061. For example, under the five-year dormancy requirements, unclaimed accounts dated through June 30, 1991 will be reportable after October 1 and before November 1, 1996.
- (15) "Safekeeping Depository" means any leased or rented depository which is used as a deposit for safekeeping of tangible or intangible property.
- (16) "Security" means the actual instrument or book entry shares which shows ownership or interest in stocks, bonds or mutual funds.
- (17) "Tangible Property" means:
 - (a) Property actually being held in a safekeeping depository and includes, but is not limited to:
 - (A) Contents of safe deposit boxes in financial organizations;
 - (B) Contents of rented safekeeping repositories in custody of public transportation entities; and

- (C) Contents of safekeeping repositories located in hospitals, health care facilities, motels, hotels, jewelry stores, department stores, professional offices, or any other site where the holder is acting as a safekeeping custodian for the rightful owner.
- (b) Property held for the owner by a court, state or governmental agency or law enforcement agency, public corporation or public authority (for instance unclaimed court exhibits).
- (18) "Undeliverable Share" means stock or other certificate of ownership of a business association which has been returned to the holder, who cannot find the owner.
- (19) "Underlying Share" means the duplicate certificate of ownership of dividends or other distribution for stock or other certificates of ownership of a business association which has been issued in the name of the Division of State Lands as custodian of unclaimed property. The original certificate of ownership is presumed to be in the possession of the missing owner.

Stat. Auth.: ORS 98.302 - 98.436 & Ch. 273

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0020

Who Must File Reports

Every person holding funds or other property, tangible or intangible, shall annually review all accounts that appear to be dormant or unclaimed according to ORS 98.302 through 98.436 and prepare a report to the Division of State Lands. Persons or entities that manage account records for holders shall notify the holder annually of any unclaimed amounts reportable according to ORS 98.302 through ORS 98.436. Such entities include, but are not limited to, firms and financial institutions that provide payroll recordkeeping services.

Stat. Auth.: ORS 98.302 - 98.436 & Ch. 273

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0024

Dormancy Periods

All property has a five (5) year dormancy period except the following:

- (1) One (1) year for:
 - (a) Utility deposits;
 - (b) Assets of dissolved corporations.
- (2) Two (2) years for:
 - (a) Safe deposits repositories;

- (b) Assets of dissolved cooperatives, business associations and financial institutions;
- (c) Stale dated government checks/warrants;
- (d) Tangible personal property held by a governmental or law enforcement agency;
- (e) Life or endowment insurance policies where the insured would have attained the limiting age under the mortality table of an existing policy;
- (3) Seven (7) for money orders; and
- (4) Fifteen (15) years for travelers checks.

Stat. Auth.: ORS 98.304 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 5-1994, f. & cert. ef. 10-20-94

141-045-0031

Examples of Unclaimed Property

(1) The following types of property are considered unclaimed and reportable to the Division after five (5) years without owner contact:

- (a) Any account deposited in a financial institution and any accrued interest and dividend;
- (b) Any account including shares, dividends, deposits accounts and interest held by credit union as defined in ORS 723.006 that are due or standing in the name of a member, beneficiary or other person who cannot be contacted by first class mail at the last address shown on the records of the credit union;
- (c) All intangible personal property and any accrued interest held in a fiduciary capacity;
- (d) Gift certificates or credit memos issued in the ordinary course of the holder's business which become payable or distributable;
- (e) Unpaid wages, including commissions and wages represented by uncashed payroll checks owing in the ordinary course of the holder's business;
- (f) Any sums payable for which a financial institution is directly liable, including checks, drafts, cashier's checks, certified checks or similar instruments;
- (g) Any stock, mutual fund, or other certificate of ownership, dividend, profit, distribution interest, payment on principal or other sum held or owing by a business association for a shareholder, certificate holder, member, bondholder or other security;
- (h) Any certificate of deposit. If the account is in the form of a dividend reinvestment plan (DRP), the dormancy period shall begin at the first maturity date after the holder has determined the owner cannot be located;
- (i) All intangible personal property, not other-wise covered by ORS 98.302 through 98.436 that is held or owing in the ordinary course of the holder's business after it becomes due and payable.
- (j) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or

terminated and has become due and payable as established from the records of the insurance company.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or a similar account or plan established according to the Internal Revenue laws of the United States of America are considered unclaimed and payable to the Division five (5) years after the account holder reaches age 70-1/2. If the account is in the form of a time certificate or certificate of deposit dividend reinvestment plan (DRP), the dormancy period shall begin at the first maturity date after the account holder reaches age 70-1/2.

(3) The following types of property are considered unclaimed and payable to the Division after two (2) years without owner contact:

(a) A life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company pursuant to ORS 98.314(3).

(b) All tangible and intangible property held in safe deposit boxes or any other safekeeping depository in the ordinary course of the holder's business after the lease or rental period has expired. It does not include property that has been willfully abandoned by the owner, such as automobiles, furniture, household goods or property covered by other statutes;

(c) All intangible property held for the owner by any court, county fiscal officer, public corporation, public authority, public officer of this state, political subdivision of this state, or Public Employees' Retirement System, except those with a court order prohibiting the withdrawal of same, including, but not limited to:

(A) Fines;

(B) Bail;

(C) Restitution;

(D) Child support;

(E) Condemnation payments;

(F) Judgment proceeds.

(d) Tangible personal property held for the owner by a court, state or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority;

(e) Property held by all dissolved cooperatives.

(4) All unclaimed intangible personal property distributable in the course of a dissolution of a business association, or financial institution.

(5) The following types of property are considered unclaimed and reportable to the Division after one (1) year without owner contact:

(a) Assets of a dissolved corporation including any employee pension plans and profit shares that should be distributed to a creditor, claimant, employee or shareholder of the corporation as a result of the dissolution;

(b) Deposits made by a subscriber with a utility to secure payment or any sum paid in advance for utility services;

(c) Sums received for utility services which a utility has been ordered to refund.

(6) Any sums payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than seven (7) years after its issuance is considered unclaimed and reportable to the Division.

(7) Any sum payable on a travelers check that has been outstanding for more than fifteen (15) years is considered unclaimed and reportable to the Division.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 2-1995, f. & cert. ef. 6-15-95

141-045-0041

Report Forms

(1) Report forms are available from the Division of State Lands, and may be mailed annually to each holder who has previously reported unclaimed dormant accounts to the State of Oregon.

(2) Reports will be accepted in the form of computer print outs or other electronic or automated processes with prior approval by the Division.

(3) Report forms and instructions may be mailed on or about each July 1 to all holders.

(4) A separate reporting form may be mailed to holders of any safekeeping depository for a detailed listing of all contents and owners.

(5) The Division may, at its discretion, require holders to file negative reports.

Stat. Auth.: ORS 98.304 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0061

Actions Required of Holders Before Reporting

(1) As soon as it appears that an account with a value of \$50 (Fifty Dollars) or more is inactive, but no less than 90 days before the reporting date of October 1, holders shall make a reasonable, good faith effort to confirm that inactive accounts are in fact inactive. Such efforts may include:

- (a) Verifying that the owner has not communicated in writing with the holder concerning the asset;
- (b) Verifying that the owner has not otherwise indicated an interest in the asset as evidenced by a memorandum or other record on file prepared by an employee of the holder;
- (c) Verifying that the owner does not own other accounts in the holder's organization about which the owner has communicated with the holder (for example: the Trust Department of a financial institution should contact other departments of that institution);
- (d) Where the account is a deposit, verifying that its amount has not increased or decreased, or that a passbook or similar evidence of deposit has not been presented by the owner for the crediting of interest; and
- (e) Where the account is that of a credit union member, verifying that the member has participated in voting during a

regularly scheduled credit union meeting.

(2) After determining, in accordance with (1) above, that an account is inactive, the holder shall, no less than 60 days before the reporting date of October 1, send the owner a written notice warning that the account will be reported to the Division as unclaimed property. The notice shall be sent to the owner's last-known address and include the following:

(a) The date of the owner's last contact regarding the account, (or, for property in a safekeeping repository, when the rent became past due);

(b) The date that the account or safekeeping repository will become presumed unclaimed by law;

(c) A statement that if the status of the account continues to be inactive, it may be turned over to the State; and

(d) A statement that, to prevent the account from being presumed unclaimed, the owner must respond to the holder before the reporting due date. The holder may set a deadline for response sufficient to allow the holder to communicate with the owner before filing its report. The holder may also include in such notice a response form for the owner's use.

(3) No less than 30 days before the report date of October 1, holders shall, for all inactive accounts with a value of \$50 (Fifty Dollars) or more for which the holder has been unable to locate the owner, make a reasonable, good faith effort to locate and contact the owner before reporting the account. Such effort shall include, but is not limited to:

(a) Verifying that the owner is not a current employee of the holder;

(b) Reviewing telephone books to verify address and telephone number;

(c) Verifying that the owner is not a well-known individual or organization (for example, Department of Treasury, IRS); and

(d) Any other effort the holder may take to find owners.

(4) A holder shall retain records or documentation of its compliance with the requirements of this section for five (5) years and make them available for inspection by the Division upon request.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 98.302 to 98.436 & 98.991 to 98.992

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96

141-045-0100

Report and Delivery of Unclaimed Property to Division of State Lands

(1) Every person holding funds or other property, tangible or intangible, presumed abandoned according to ORS 98.302 through 98.352 shall report and pay or deliver all such property to the Division of State Lands, except that funds transferred to the General Fund by governmental agencies pursuant to ORS 293.455(1)(a) shall only be reported (but not paid or delivered) to the Division.

(2) Holders shall be responsible for the content, accuracy, and timeliness of their report, regardless of whether the report is prepared by the holder or its agent. The holder shall designate a staff contact person responsible for the report.

(3) The report shall be filed after October 1, but no later than November 1 of each year for accounts dormant as of June 30.

(4) The Division may, at its discretion, postpone the reporting date, or allow early reporting and payment or delivery upon written request by any person required to file a report.

(5) Property, whether tangible or intangible, having a value of \$50 (Fifty Dollars) or more per account or owner of record, shall be reported individually, and include the following information, if known:

(a) The complete name, address of record, Social Security number, previous names, and any previous addresses of each listed owner;

(b) The type of account, identification number, reference number, and any specific description of the unclaimed property according to the records of the holder;

(6) Property, whether tangible or intangible, having a value of \$49.99 or less per account or owner of record, may be reported in aggregate. However, any one owner who has several small accounts that individually total \$49.99 or less, but collectively equal or exceed \$50, shall be reported as the larger amount, if possible.

(7) In addition to the information required above, life insurance companies shall also report the following information, if known:

(a) The full name of each insured or annuitant, or if a class of beneficiaries is named, the full name of each current beneficiary in the class, and last known address according to the holder's records;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

(8) Holders of safekeeping depositories shall comply with the following additional requirements:

(a) In addition to the information required in (5) above, list each item left in a safekeeping depository, and the owner(s)' identity. Information about the original box must be included if items were moved to a safekeeping area.

(b) The package of safekeeping depository contents, shall be marked "to be delivered unopened," and shall be forwarded to the Division by certified mail, return receipt requested or hand carried by a courier. A receipt will be signed for the unopened package upon delivery to the Division, and forwarded to the holder within five (5) working days.

(c) The holder's complete name and return address shall be clearly identified on the package.

(d) The complete contents of safekeeping depositories shall be forwarded to the Division intact. Coins and currency found in the box shall not be converted, substituted, or exchanged.

(e) The holder may include information about safekeeping depository costs in its report to the Division. When the owner files a claim for the property, the Division shall require the owner to furnish a paid receipt or waiver for these costs from the holder before the claim will be approved.

(9) Holders, business associations, transfer agents, registrars or other persons acting on behalf of the holder of an intangible equity ownership interest deemed unclaimed according to ORS 98.322 shall, in addition to supplying the information required in (5) above:

(a) Where the original certificate is being held by the holder for the owner (i.e., an undeliverable share), cancel that certificate and issue a replacement certificate of ownership to the Division, or

(b) When the holder does not hold the original certificate (i.e., it is presumed to be in the possession of the owner), issue a replacement certificate (underlying share) to the Division.

(c) In either case, all outstanding accrued dividends shall be reported and forwarded to the Division, along with the certificate.

(10) In addition to the information in (5) above, holders reporting mutual funds in book entry form shall:

(a) Forward a confirmation of account transfer to the Division along with the report, and

(b) Forward future income in the form of cash, payable to the Division of State Lands from mutual fund accounts with dividend reinvestment plans (DRP).

(11) The original reports detailing unclaimed dissolved agricultural cooperative accounts shall be forwarded to the Division along with the funds, and a copy of the report shall be filed with the State Board of Higher Education. The Division shall reconcile the report to the delivered funds, deduct the costs as provided for in ORS 62.720 and forward the funds to the State Board of Higher Education within 14 working days of receipt of the funds.

(12) The receiver or other liquidating agent for a dissolved corporation shall prepare a report containing the names and last-known addresses of the persons entitled to such funds.

(13) On August 1, each year, each state agency shall prepare a report of all checks, warrants, and orders drawn by it which have been outstanding for a period of more than two (2) years prior to July 1, and that have not been paid by the State Treasurer. The report shall not include checks or orders that have already been paid pursuant to indemnity bonds. The report shall be forwarded to the State Treasurer, who shall:

(a) Transfer and credit the amounts of the unrepresented checks or orders dedicated for general funding to the General Fund.

(b) Transfer all other funds to the Division.

(c) Within ten (10) working days of this transfer, forward the agency reports to the Division.

(d) Include information about any payment made to an owner subsequent to filing the report, but before transferring the funds to the Division.

(14) If the holder of the unclaimed account is a successor to other persons who previously held the property, or if the holder has had a name change, the holder shall include in the initial report prior known names and addresses of the original or previous holder(s).

Stat. Auth.: ORS 273.045, 273.051

Stats. Implemented: ORS 98.302 to 98.436, 98.991 to 98.992

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96

141-045-0105

Confidentiality of Records

(1) All records of dormant accounts shall be exempt from public review as follows:

(a) The holders shall withhold dormant account information for 12 months from the time the property becomes reportable to the Division. (For example, under the five-year dormancy period, dormant records dated 7-1-1990 through 6-30-1991, will be reported in 1996. Thus, these accounts will become confidential 7-1-1995.)

(b) The Division shall withhold unclaimed account information for 24 months after receipt of the report and property.

(2) The Division shall not disclose to any other state or any person any confidential information provided by the

Department of Revenue from taxpayer returns.

Stat. Auth.: ORS 273.045, 273.051

Stats. Implemented: ORS 98.302 to 98.436 & 98.991 to 98.992

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96

141-045-0115

Requirements of the Division of State Lands to Locate Owners

- (1) Within one year of receipt of reports, payment, and delivery of accounts as required by OAR 141-045-0100, the Division shall publish the names of the owners of these accounts at least once each week for two (2) successive weeks in a newspaper or other generally circulated periodical published in this state.
- (2) Notwithstanding (1) above, the Division is not required to publish information concerning accounts which have a value of less than \$100 (One Hundred Dollars), unless the Division deems such publication to be in the public interest.
- (3) The Division shall also undertake reasonable efforts to locate the owners of unclaimed property reported and received by the Division, which shall include, but not be limited to the following:
 - (a) Contracted services with established firms, credit bureaus, telephone networking companies; or
 - (b) Interagency agreements with other governmental agencies, such as Social Security Administration, Insurance Commission, Motor Vehicles Division, Corporation Commission; or
 - (c) Use of reverse directories, telephone books, or other such publications.

Stat. Auth.: ORS 273.045, 273.051

Stats. Implemented: ORS 98.302 to 98.436 & 98.991 to 98.992

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96

141-045-0120

Examination of Holder Accounts

- (1) Pursuant to ORS 98.412, the Division may examine the records and other accounts of any holder to determine whether the holder has complied with the provisions of ORS 98.302 through ORS 98.436
- (2) Among the reasons for which an examination may be conducted are erratic or inconsistent reporting practices, or the fact that the holder has never reported unclaimed property (even if the holder believes it is not in possession of any property reportable according to this statute).
- (3) The examination may be performed by personnel employed by the Division of State Lands, employees of the Department of Commerce, Banking Division or Insurance Division, Division of Audits of the Office of the Secretary of State, or any other designated person under contract with the Division of State Lands. The Division may enter into agreements and establish procedures to perform joint examinations with other state or federal entities who regular examine the records of financial institutions defined in ORS 706.005(33) and ORS 723.006.
- (4) The types of records and accounts subject to examination include but are not limited to:

- (a) Contractual agreements between depositors and the financial institution regarding the deduction of service charges authorized according to ORS 708.500, account increases or decreases, and the cessation of interest payments;
 - (b) Records of current accounts, dormant accounts, and accounts that may have been closed and archived;
 - (c) The holder's procedures for administering dormant accounts, including searching for and notifying owners to ensure compliance with OAR 141-045-0061.
- (5) The Division shall give written notice at least (ten) 10 days prior to an examination of all records and accounts subject to the Unclaimed Property Act.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; Renumbered from 141-45-120(5) & (6) to 141-45-125(1) & (2)

141-045-0125

Owner Identification Information

- (1) Every holder shall maintain a record of the name and last-known address of the owner, any signature cards, or other evidence which would assist in the identification of the owner for five (5) years after the property has been remitted to the Division.
- (2) Any holder that sells traveler's checks, gift certificates, cashier's checks, credit memos, money orders, or other similar written negotiable instruments, other than third party bank checks for which the business is directly liable, or that provides such instruments to others for sale, shall maintain a record of those instruments while they remain outstanding, including the state and date of issue, for five (5) years after the date the property has been remitted to the Division.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 98.302 to 98.436 & 98.991 to 98.992

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94, Renumbered from 141-45-120(5) & (6); LB 6-1996, f. & cert. ef. 10-15-96

141-045-0130

Service Charges and Payments of Interest on Deposit Accounts

- (1) With respect to demand, savings, or time deposit accounts held by financial institutions, the financial institution may not impose a service charge based on dormancy or inactivity, or cease payment of interest based on dormancy or inactivity unless:
- (a) A written contractual agreement exists between the financial institution and the account owner, which clearly and prominently sets forth the conditions under which a service charge may be imposed or the payment of interest terminated. For the purposes of this rule, a card which is held in the files of the financial institution merely to establish a record of the owner's signature, and which does not contain contractual provisions applicable to the account, will not be treated as a written contractual agreement. However, any other written contractual agreement between the financial institution and the account holder, including a signature card which contains contractual provisions and which clearly

and prominently sets forth the conditions under which a service charge may be imposed or payment of interest terminated, will be treated as satisfying the requirement of this subsection. The contractual agreement required by this subsection need not be signed by the account owner if the owner has otherwise indicated the owner's acceptance of the agreement. An agreement meets the "clear and prominent" test set forth above if:

(A) It contains a list of each of the circumstances or conditions which must exist or occur before the financial institution will impose a service charge or cease payment of interest; and

(B) The list referred to in paragraph (A) of this subsection is set apart from the other provisions of the contractual agreement or is printed in a larger type size or different color than the other provisions, or is highlighted, underlined, placed in a box or otherwise reasonably distinguished so as to bring it to the attention of the account holder.

(b) The financial institution uniformly applies its policies regarding service charges and cessation of interest payments based on dormancy or inactivity with respect to all dormant or inactive accounts as to which the financial institution and the account holder have a contractual agreement as described in subsection (a) of this section; and

(c) The financial institution gives:

(A) Written notice to the owner at the owner's last-known address when the account becomes dormant or inactive, stating that the account has become dormant or inactive; and

(B) Written notice by certified mail to the owner at the owner's last-known address, stating that unless the owner activates the account within three (3) months from the date the notice is mailed, the financial institution may apply a service charge to the account or stop paying interest on it. This notice must be mailed at least three (3) months before the financial institution applies a service charge or ceases payment of interest.

(2) The financial institution may combine these notices into a single document, so long as the time requirements set forth above are observed. In the event the account is owned by two or more persons, these notices may be sent to any one of them.

(3) A holder may not deduct from the amount of any check, draft, cashier's check, certified check, or similar instrument, on which a financial institution is directly liable, any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) A holder shall not deduct a service charge or fee or otherwise reduce an owner's unclaimed account unless:

(a) The owner has signed a separate, valid written contractual agreement which clearly and prominently sets forth the conditions under which a service charge may be imposed; and

(b) The service charge or fee is imposed uniformly on every account, whether active or dormant; and

(c) Three (3) months' written notice is given by certified mail to the last-known address of all account owners before a charge or fee is levied.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0150

Disposition of Unclaimed Property

- (1) If the Division determines after investigation that any item delivered has insubstantial commercial value, the Division may destroy or otherwise dispose of the property at any time, pursuant to ORS 98.384.
- (2) Contents of safe deposit boxes received from banks or credit unions may be sold after one (1) year unless the Division considers it in the best interest of the state to do otherwise.
- (3) All other property presumed abandoned and delivered to the Division shall be sold by the Division at such time and place and in such manner as the Division determines will bring the highest return.
- (4) Securities shall be sold on the exchange at prices prevailing at the time of the sale or by any other method the Division considers advisable.
- (5) The Division may employ the services of a qualified investment advisor to assist with the custody and sale of Securities.
- (6) Sales of unclaimed property (other than securities and money with no historic or other unusual value) shall be conducted through public oral competitive bidding conducted by a licensed auctioneer who is not an employee of the Division.
- (7) Public sales shall be preceded by at least one (1) publication of notice of the sale, at least ten (10) days before the sale, in a newspaper of general circulation in the county where the property will be sold.
- (8) The Division may decline the highest bid and re-offer the property for sale if the Division considers the bid price insufficient.
- (9) The Division need not offer any property for sale if the probable cost of the sale exceeds the value of the property.
- (10) The purchaser of property at any sale conducted by the Division takes the property free of all claims of the owner or previous holder, and of all persons claiming through or under them. The Division shall execute any documents necessary to complete the transfer of ownership.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0155

Indemnification

- (1) Upon delivery or payment of unclaimed property to the Division, the state shall assume custody of the property and the holder is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, to the extent of the value of the property so paid or delivered.
- (2) The Division shall indemnify the holder of securities presumed abandoned according to ORS 98.322 to the extent allowed under the Oregon Constitution.
- (3) A person making a claim pursuant to ORS 98.392 for securities is entitled to receive either the securities delivered to the Division by the holder, if they still remain with the Division, or the proceeds received from sale, less any amounts deducted pursuant to ORS 98.386.

(4) No person shall have any claim against the state, the holder, any transfer agent, registrar or other person acting for or on behalf of a holder for any change in market value of the property occurring after delivery by the holder to the Division, or after sale of the property by the Division.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 5-1994, f. & cert. ef. 10-20-94

141-045-0160

Deposit of Funds

(1) All funds received pursuant to ORS 98.302 through 98.436, including the proceeds from the sale of unclaimed property, shall be deposited by the Division of State Lands in the Common School Fund Account with the State Treasurer.

(2) Before making a deposit, the Division shall record the name and last-known address of each person reported by the holder to be entitled to the unclaimed property, the amount due the owner, the name of the holder, and any identifying account, policy or contract number.

(3) Before making a deposit the Division may deduct:

(a) Any costs in connection with the sale of unclaimed property;

(b) Any costs of mailing, publication, or other efforts to locate owners of unclaimed property as set forth in OAR 141-045-0115; and

(c) Reasonable service charges.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0170

Claims for Recovery of Unclaimed Property

(1) All claims for recovery of unclaimed property reported to the Division of State Lands in accordance with ORS 98.302 through ORS 98.436 shall be submitted to the Division pursuant to Oregon OAR 141-040-0200 through 141-040-0220.

(2) If the claim allowed is for property deposited in the Common School Fund Account, the Division shall return the property or make payment of the proceeds of the sale of the property to the claimant.

(3) If the claim allowed is for funds deposited in

the General Fund, the Division shall pay the claim and file a request for reimbursement with the State Treasurer. The State Treasurer shall reimburse the Division within five working days from the fund against which the check or order represented in the claim was issued.

(4) A holder, subsequent to payment or delivery of accounts to the Division, may make payment to the apparent owner, and file a claim with the Division. The Division shall reimburse the holder within 60 days of receiving proof from the holder that the owner was paid. The Division shall not assess any fee or other service charge. Upon receiving the funds from the Division, the holder shall assume liability for the claimed asset, and hold the Division harmless from all future claims to the account.

(5) A person making a claim pursuant to ORS 98.392 for securities is entitled to receive either the securities delivered to the Division by the holder, if they still remain with the Division, or the proceeds received from sale, less any amounts deducted pursuant to ORS 98.386.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

141-045-0180

Penalties

(1) Any person who willfully fails to file any report, to pay or deliver property, or perform other duties required by ORS 98.302 to ORS 98.436 is guilty of a misdemeanor under ORS 98.991, and may be required to forfeit and pay an amount determined by the Division of State Lands pursuant to ORS 183.909.

(2) The Division may waive any penalty due according to this section with appropriate justification.

Stat. Auth.: ORS 98.302 - 98.436

Stats. Implemented: ORS 98.302 - 98.436

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 50

OREGON NATURAL HERITAGE PROGRAM RULES

General Provisions

141-050-0500

Definitions

As used in these rules, unless the context provides otherwise:

- (1) "Agency" means any federal, state or local government agency, department, board, or commission.
- (2) "Board" means the State Land Board.
- (3) "Candidate Natural Area" means a natural resource area which may be considered for registration or dedication.
- (4) "Council" means the Natural Heritage Advisory Council as established in ORS 273.571.
- (5) "Data Bank" means the Natural Heritage Program element inventory by computer, manual files and maps of element classification, data analysis, priority setting, owner and other data as provided in ORS 273.576(1)(a).
- (6) "Dedicated" means the formal recognition and protection of a natural area for natural heritage conservation purposes.
- (7) "Document" means a documented record, report or map pertaining to the Natural Heritage Program data.
- (8) "Elements" means both the natural heritage resources and the special species.
- (9) "Instrument" means any written document intended to convey an interest in real property pursuant to ORS 93.710, or an agreement between parties pursuant to the Natural Heritage Program, the Natural Heritage Plan, or matters related thereto.
- (10) "Introduced Species" means exotic or non-native species.

- (11) "Managed Area" means a registered or dedicated Natural Heritage Conservation Area that, by management agreement between the Board and private landowner, or agency, the area and its elements are maintained in a manner to protect the natural character.
- (12) "Management Scheme" means a plan that sets forth in detail the responsibilities for the administration of an individual Natural Heritage Conservation Area.
- (13) "Natural Area" means a unit of land or water, or both, which may be considered for dedication under ORS 273.561 to 273.591. It means a natural heritage resource area which has substantially retained its natural character, or, if altered in character, shall in addition to its natural heritage resource values be valuable as habitat for plant and animal species or for the study and appreciation of natural features. Ref. ORS 273.566(1).
- (14) "Natural Heritage Conservation Area" means an area dedicated under the provisions of ORS 273.586.
- (15) "Natural Heritage Resources" means the plant community types, aquatic types (or terrestrial ecosystems and aquatic ecosystems) and unique geologic types as defined in the Oregon Natural Heritage Plan; means a unit of land or water which contains a natural resource(s).
- (16) "Plan" means the Natural Heritage Plan as established in ORS 273.576, which governs the Natural Heritage Program in the selection of areas for natural heritage conservation. Ref. ORS 273.566, Oregon Laws 1981, C. 208.
- (17) "Program" means the Natural Heritage Program as established in ORS 273.566, which provides for the establishment of a limited system of natural heritage conservation areas representing a full range of Oregon's natural heritage resources and includes special species of plants and animals.
- (18) "Register" means the Oregon Register of Natural Heritage Resources as established in ORS 273.581. The Register contains an official list of areas which have significant natural heritage resources and special species.
- (19) "Special Species" means those species of plants and animals determined by the Council to be of significant value in a Natural Heritage Conservation Area and defined in the Plan.
- (20) "Wildlife" means any wild or free living vertebrate or invertebrate animal.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82; Renumbered from 141-50-895 and 141-50-950

Schedule of Fees and Charges

141-050-0505

Purpose

The purpose and scope of these rules are to defray costs of providing the public with established and continuing data pertaining to the Oregon Natural Heritage Program, the Plan and natural areas, Ref. ORS 273.561 to 273.591, Chapter 208, Oregon Laws 1981, and to set forth reasonable charges and fees for documents and services.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

141-050-0510**Categories of Documentation and Services**

Documents and services available, subject to stock and staff, include, but not limited to, the following:

(1) **Oregon Natural Heritage Plan, March 1981.** Compiled and published by the Council by authority of ORS 273.576(1)(b), and Chapter 208, Oregon Laws 1981; includes a projected system of a full range of Oregon's natural heritage elements, criteria and priorities for selecting Natural Heritage Conservation Areas, methods of protection, and listing of established natural areas in Oregon; includes figures, illustrations, tables, maps and goals of the program. Softback, 141 pages.

(2) **Oregon Register of Natural Heritage Resources.** Individual sites which have been formally documented and recognized by registration for natural area purposes as outlined in OAR 141-050-0900 through 141-050-0930, and may or may not be dedicated; category also includes some pre-register data:

(a) Register Dedicated Natural Heritage Conservation Area, comprehensive file of individual site;

(b) Register non-dedicated natural area comprehensive file of individual site;

(c) Selected written records from individual Register file;

(d) Selected map(s) from Register file;

(e) Pre-published, pre-registered natural area report;

(f) Published natural area analysis report;

(g) List of sites in **Register of Natural Heritage Resources**;

(h) List of Candidate Natural Heritage Conservation Areas qualifying for the Register, subject to review by the Council, and not formally registered. Ref. ORS 273.581(2).

(3) **Oregon Natural Heritage Data Bank.** The Program data storage system is a source for the selection of natural areas for conservation. The data classification and inventory includes the locations of nearly all the ecologically significant elements identified by the Plan, and some elements which may be considered in the future for the Plan. As research continues the data base is continually updated and records on certain elements or regions may be incomplete to date. The data storage system, referenced more fully in the Plan, and subject to staffing, includes, but not limited to, the following:

(a) Element file -- Information on element characteristics, biology, abstracts, research reports;

(b) Element Occurrence file -- Information on specific occurrence of each of the elements, including location, ownership and protected status;

(c) Map file, Oregon USGS quadrangle -- An indexed and coded locality for each element occurrence, including boundaries of managed areas;

(d) Geographic Map file -- Details information about each element occurrence re: field surveys, maps and reports;

(e) Managed area file -- Information about protected land, including Parks, Wilderness Areas, and Research Natural Areas. The file also includes, but is not limited to, reports and field surveys;

(f) Special requests -- Site specific or comparison analysis, assessment of potential impacts, scientific interpretation, or any other project-type determination, may be available from the Council, subject to staffing.

(4) Laws and Rules pertaining to Oregon Natural Heritage Program:

(a) Oregon Revised Statute 273.561 to 273.591, Oregon Natural Heritage Program, four pages;

(b) Oregon Administrative Rules 141-050-0500 through 141-050-0535 and 141-050-0895 through 141-050-0999, pertaining to Oregon Natural Heritage Program.

(5) Oregon Natural Area Preserves Program Reports to the State Land Board on activities of the Natural Area Preserves Advisory Committee (NAPAC) (predecessor to the Council). Includes lists of proposed and established natural area sites, registry procedures, chronology of resolutions and other information varying with each report:

(a) NAPAC first report for 1973-75, issued February 1975, 63 pages;

(b) NAPAC second report for 1975-77, January 1977, 34 page;

(c) NAPAC third biennial report for 1977-78, January 1979, 48 pages.

(6) **Rare, Threatened and Endangered Vascular Plants in Oregon -- An Interim Report**, Jean L. Siddall, Kenton L. Chambers, David H. Wagner, issued by the Oregon Natural Area Preserves Advisory Committee to the State Land Board, October 1979. Lists 395 native vascular plant species by scientific and common names, occurrence and status; includes criteria for listing and distribution categories, regions of botanical interest, and list of 130 species still under review. Softback, 109 pages.

(7) Annual updated list of available documents, services and fees, issued by the Council.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0515

Schedule of Fees

Charges for documents, services and related data:

(1) Published documents:

(a) **Oregon Natural Heritage Plan** -- each \$4;

(b) **Individual area analysis report** -- each \$4;

(c) **Oregon Natural Area Preserves Program first report 1973-75** -- each \$4;

(d) **Oregon Natural Area Preserves Program second report 1975-77** -- each \$4;

(e) **Oregon Natural Area Preserves Program third report 1977-78** -- each \$4;

(f) **Rare, Threatened and Endangered Vascular Plants in Oregon -- an Interim Report** -- each \$5.

(2) Materials from the following at \$0.25 per copy page:

(a) Register Dedicated Natural Heritage Conservation Area;

(b) Register non-dedicated natural area;

(c) Selected written record from individual register file;

(d) Selected map from register file;

(e) Pre-published, pre-registered natural area report;

(f) List of sites in Register;

(g) List of Candidate Natural Heritage Conservation Areas.

(3) Responses to requests for data and services from the Data Bank System have the following schedule of fees:

(a)(A) **USER CLASS:** Private -- **MANUAL SEARCHES:** No charge for search of 20 minutes or less; thereafter \$12 per hour; copy text material charge at rate of 10¢ per page; quote (cost) for maps upon request -- **COMPUTER SEARCHES:** \$30 base fee, plus 50¢ per page.

(B) **USER CLASS:** Public -- **MANUAL SEARCHES:** No charge for search of 20 minutes or less; thereafter \$12 per hour; copy text material charge at rate of 10¢ per page; quote (cost) for maps upon request -- **COMPUTER SEARCHES:** \$30 base fee, plus 50¢ per page.

(C) **USER CLASS:** Commercial -- **MANUAL SEARCHES:** No charge for search of 20 minutes or less; thereafter \$50 per hour; copy text material charge at rate of 25¢ per page; quotes (cost) for maps upon request -- **COMPUTER SEARCHES:** \$60 base fee, plus 50¢ per record.

(b) No charge will be made for manual or computer searches which result in no information.

(c) Fee schedules may be adjusted for users who provide new information to the Data Bank.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0520

Location and Distribution of Documents/ Records

(1) Published documents (1)(a), (b), (c), (d), (e) and (f) are available, subject to stock, at Division of State Lands Office, 1445 State Street, Salem, OR 97310.

(2) Make check payable to State Land Board.

(3) Requests for other documents or information may be made to the Council, c/o Division of State Lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0525

Acceptance of Funds

- (1) The State Land Board may accept monies for, but not limited to, documents and services under these rules.
- (2) The Board may apply for and accept grants, contributions and assistance from any federal, state or local government agency and any private foundation for the purpose of carrying out the provisions of ORS 273.561 to 273.591 and Chapter 208, Oregon Laws 1981.
- (3) All monies received by the Board shall be paid into the State Treasury and credited to the account of the Natural Heritage Program. Ref. ORS 273.591.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

Natural Heritage Data Bank

141-050-0530

Purpose

The purpose of the Data Bank is to maintain a continuing inventory and classification system of ecologically significant elements identified by the Plan.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0535

Data Bank System

Management of the data storage system includes, but is not limited to, the following:

- (1) Data obtained from on-ground observations on private land after October 3, 1979, may be entered into the Data Bank only with the written consent of the landowner.
- (2) Elements reported on private land after October 3, 1979, are not part of the Data Bank for public information until written consent is obtained.

- (3) All data proposed to be entered into, or removed from, the Data Bank shall be reviewed by the Council.
- (4) The system may contain data on potentially qualified Natural Heritage Conservation Areas, natural areas on which data may be incomplete, and natural areas which are dedicated, registered or candidate status.
- (5) The selection of Natural Heritage Conservation Areas may be made from the Data Bank.
- (6) Any data on a Registered or Dedicated Natural Heritage Conservation Area, or proposal thereof, not in the Data Bank, may be inventoried, classified and entered in the Data Bank following review by the Council.
- (7) The system of data may include, but is not limited to, the following storage file structure:
 - (a) The name of the natural area, county in which located, description by township and range, physiographic province and ownership under each mode of storage;
 - (b) Element file -- Information on each element, such as characteristics, biology and management, including abstracts and research data;
 - (c) Element occurrence file -- Specific occurrence of the element, protected status and cross-reference of each element location(s);
 - (d) Map file -- An indexed and coded locality for each element occurrence, including boundary description;
 - (e) Geographic map file -- Detailed information about each element occurrence, including field survey(s), map(s) and report(s); and
 - (f) Managed Area file -- Information on protected areas such as Parks, Wilderness Areas, Research Natural Areas and similar designated areas, including protected status, report(s), map(s) and field survey(s).
- (8) The Board, with the assistance of the Council, may maintain an office to provide for the Data Bank system; or the Data Bank may be managed by contract between the Board and a consultant, following review of contract by the Council.
- (9) Operation of the Data Bank under a contract shall include:
 - (a) The application of the rules; and
 - (b) A quarterly written report to the Council of services rendered such as number and nature of inquiries and responses.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

Oregon Register of Natural Heritage Resources

141-050-0890

Purpose

The purpose of these rules is to provide a central and continuing register of areas in Oregon which contain significant natural heritage resources and special species, and which meet the criteria of the Plan for registration under the Oregon Register of Natural Heritage Resources. Ref. ORS 273.581, Chapter 208, Oregon Laws 1981.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0900

Criteria for Inclusion in Register

Criteria to be included within the Register must be determined by the Council to fulfill not only the definition of a natural area but the element and site considerations within the Priorities and Criteria for Conservation in the Plan, ORS 273.561 to 273.591 and Chapter 208, Oregon Laws 1981. The following criteria will be used in evaluating a natural area proposed for inclusion in the Register:

- (1) The priority for protection of the primary element objective and other elements in the site as presented in the Plan;
- (2) The element occurrence(s) is an adequate representative of the type;
- (3) The extent to which each natural heritage resource has retained its natural character, i.e., a measurement of the degree of human caused disturbance;
- (4) The health and viability of the element occurrence(s), i.e., the ability of each element occurrence to perpetuate itself or its natural sequence of development in the area;
- (5) The number of natural heritage resources or elements which will be adequately represented in the area;
- (6) The degree of uniqueness, and educational and natural interpretation values of a geologic resource(s);
- (7) The priority of protection given to each special species of plant or animal presented in the Plan;
- (8) The contribution the particular are will make to the protection of the special species; and
- (9) Manageability, i.e., the capability of being managed so as to protect and to maintain the natural values, as well as to make it available and useful for its designated purposes.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0905

Procedures for Registering

Each proposal for the Register, together with field evaluation, maps and sufficient data to complete the register file, shall be reviewed by the Council:

- (1) A proposal for the Register of private land shall contain the written consent of the landowner.
- (2) After review and recommendation by the Council, the Board may place a site onto the Register, or remove a site from the Register.
- (3) A voluntary management agreement may be developed between the Board and a private landowner, or agency, of a site on the Register, with the assistance of the Council.
- (4) Any area(s) designated by a federal or state agency, having been established by public hearing, may be entered onto the Register by the Council.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0910

Register Categories

The Register shall include the following as determined by the Council:

- (1) A Dedicated Natural Heritage Conservation Area -- an area that meets Register criteria, has been registered by the State Land Board, and is either dedicated as, but not limited to, State Natural Heritage Conservation Area, federal Research Natural Area, or other recognized public or private natural area that is dedicated and managed in a manner consistent with the Plan;
- (2) A Candidate Natural Area -- An area that has been registered by the Board or Council, but has not been dedicated;
- (3) Other recognized public or private natural areas that qualify for registration or are managed in a manner consistent with the Plan.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0915

Register File

The Register may include file(s) of registered natural areas:

- (1) The card file may include name of natural area, location, size, ownership, register category, and principal Natural Heritage Resource(s) and special species. The card file may be cross referenced by county and principal resource.
- (2) The data file may include:
 - (a) Data Form -- Comprehensive information compiled for each natural area;
 - (b) Instrument of Dedication -- Or other documents certifying official dedication;

- (c) Consent Form -- Written consent for natural areas on private land;
- (d) Supportive Data -- Includes maps, photographs, remote sensing imagery, species lists, field notes, reports, research papers, and references to other information available;
- (e) Cross references to the Data Bank -- To data file, computer and manual file consistent with data bank components;
- (f) Implementation Data -- Written management agreement pertaining to the natural area;
- (g) Summary Sheet -- A map and one page summary of information about each area which can be duplicated and circulated to appropriate authorities.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0920

Location and Maintenance of Register

The card file and data files of the Oregon Register of Natural Heritage Resources will be located in the Division of State Lands Office in Salem, Oregon, and will be maintained by the Council.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0925

Register Review

The Register shall be reviewed and updated every five years by the Council.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

141-050-0930

Register Withdrawal

Registered natural areas may be withdrawn from the Register by the State Land Board upon the recommendation of the Council. Specific reasons must be given for withdrawal.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 26, f. 8-5-75, ef. 8-25-75; LB 9-1982, f. & ef. 10-1-82

Dedication and Management of a Natural Heritage Conservation Area

141-050-0935

Purpose

The purpose and scope of dedication is to establish and maintain the integrity of the Plan, and the Program, by means of written formal recognition and protection of an area of land and/or water for natural heritage conservation purposes.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0940

Instruments of Dedication

- (1) Private Dedication -- A private individual or organization which is the owner of any registered natural area may voluntarily agree to dedicate that area as a Natural Heritage Conservation Area by executing with the Board, following review by the Council, an instrument of dedication. Instrument provisions and policies include, but are not limited to, the following:
- (a) An agreement that provides each element in the Natural Heritage Conservation Area with the most secure protection obtainable;
 - (b) An unlimited period of time, or a term sufficiently long to warrant dedication protection;
 - (c) Permission for conducting scientific research and other activities shall be commensurate with Program objectives;
 - (d) Management policies for the site, which may include all or part of the Management of Natural Heritage Conservation Areas in OAR 141-050-0935 through 141-050-0999;
 - (e) Termination of dedication may occur upon written notification to the Board, including specific reasons for termination, and provision by the Council of opportunity for adequate public notice and hearing.
- (2) The Instrument of Dedication of an area under private ownership shall be filed by the Board in the office of the clerk of the county in which any or all of the Natural Heritage Conservation Area is located, and shall be effective upon its recording.
- (3) A copy of the dedication and management agreement(s) shall be provided to the private owner of a Natural Heritage Conservation Area.
- (4) Public Agency Dedication -- Any public agency may dedicate lands under the provisions of ORS 273.561 to 273.591, and the Plan, after providing the opportunity for adequate public notice and hearing by the agency.

(5) The Oregon Transportation Commission, the State Fish and Wildlife Commission, the State Board of Forestry, the State Board of Higher Education and the State Land Board shall, with the advice and assistance of the Council, establish procedures for the dedication of Natural Heritage Conservation Areas on land or water, the title of which is held by the State of Oregon, and which is under that agency's management and control. The instrument(s) of dedication and management shall contain any information or provisions as the agency and Council consider necessary to complete the dedication.

(6) Termination of the dedication of a Natural Heritage Conservation Area by a public agency requires:

- (a) Provision of opportunity for adequate public notice and hearing;
- (b) A finding by the agency of an imperative and unavoidable necessity due to natural disaster in the site, need of the natural resource during time of declared war, or the need of the natural resource because of extreme economic crisis of the state;
- (c) A finding by that agency, with the approval of the Council that the Natural Heritage Conservation Area is no longer needed according to the guidelines of the Plan, or has permanently lost its character.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.563 - 273.591
Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0945

Ceremony of Dedication

At the option of the Council, and upon agreement between the Council and the private owner or agency, the Council may arrange a dedication ceremony on site of the to-be-dedicated Natural Heritage Conservation Area, and may include, but not limited to:

- (1) Invitation notices to interested individuals or agencies;
- (2) Signing of instrument of dedication, and any other applicable document(s);
- (3) Review of the significant natural heritage elements; and
- (4) Other activities pertinent to a memorable occasion.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.563 - 273.591
Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0952

Publicity

Information about a Natural Heritage Conservation Area and appropriate descriptive material may be developed and made available to interested persons. However, publicity which would tend to encourage the general public to visit a Natural Heritage Conservation Area in greater numbers than its carrying capacity shall be avoided.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0954

Reports

At regular intervals the Council shall make or cause to be made for each Natural Heritage Conservation Area a record of management activities and other influences affecting each Natural Heritage Conservation Area.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0956

Instruments

The instruments of dedication shall include, but not be limited to:

- (1) The size, location, purpose, and resources of the Natural Heritage Conservation Area;
- (2) A management scheme written for each Natural Heritage Conservation Area which describes:
 - (a) The conservation objective of the area;
 - (b) Proscribed, allowed and prohibited activities on the area; and
 - (c) Provisions as consistent as possible with the following practices in OAR 141-050-0952 through 141-050-0996, which shall, unless otherwise noted, be a part of each management scheme.
- (3) Agreements between the Board and any agency necessary to establish the Natural Heritage Conservation Area.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0960

Natural Heritage Conservation Area Manager

Notwithstanding the instruments of dedication, managers of a Natural Heritage Conservation Area shall not take any action or fail to take any action which is in conflict with a statute, rule regulation or policy relating to an agency having an interest in or responsibility for the Natural Heritage Conservation Area.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0962

Fire

Prescribed fire may only be used as a management tool in such areas or situations where fire is needed to maintain or protect a Natural Heritage Conservation Area as an ecosystem type specified in the management scheme

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-8

141-050-0964

Water Level Control

Natural Heritage Conservation Areas shall be managed to maintain their natural water levels. Water levels which have previously been altered by man may be changed if provided for in the management scheme as essential for the restoration of natural conditions.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0965

Disturbance of Natural Features

The management of Natural Heritage Conservation Areas shall not include the cutting or removal of vegetation or the disturbance of other natural features, except that which is essential to carry out the management functions enumerated in these rules.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0966

Visitor Protection

Guard rails, fences, steps, and bridges may be provided when essential to the safety of a reasonable alert and cautious visitor.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0967

Erosion Control

Erosion and soil deposition due to disturbances of natural conditions by man within or outside a Natural Heritage Conservation Area may be controlled as provided in the management scheme.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0968

Scenic or Landscape Management

No measures or actions shall be taken to alter the natural growth or features of a Natural Heritage Conservation Area for the purpose of enhancing its neatness, beauty, or amenities.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0970

Control of Succession

Control of succession may be undertaken only if maintenance or restoration of a particular ecosystem type or preservation of threatened or endangered species is designated in the instruments of dedication as an objective of the Natural Heritage Conservation Area. Based on scientific evidence of necessity, successional control measures may be undertaken as provided in the management scheme. Such measures shall be applied with caution and only to that part of the area as is necessary.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0972

Control of Introduced Plant Species

Control of Introduced plant species may be undertaken as provided in the management scheme. However, there shall be no attempt to eradicate introduced plants from a Natural Heritage Conservation Area unless this can be accomplished without undue disturbance of natural conditions.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0974

Control of Wildlife Populations

The control of wildlife populations on Natural Heritage Conservation Areas shall be by agreements between the Board and Oregon Department of Fish and Wildlife, or other agency. Insofar as practical any control measures applied shall be to correct those situations where wildlife populations are significantly affecting natural conditions on a Natural Heritage Conservation Area.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0976

Introduction and Management of Special Species

The introduction into or the management of a Natural Heritage Conservation Area for special wildlife species shall be by agreement between the Board and the Oregon Department of Fish and Wildlife or other agency.

Stat. Auth.: ORS Ch 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0980

Use Tolerance

The management scheme shall set forth the use tolerance or durability of all or any portion of a Natural Heritage Conservation Area and specify the steps to be taken if overuse occurs.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0982

Research and Collecting Permits

A person wishing to engage in research or educational activities involving collecting within a Natural Heritage Conservation Area shall secure written permission from:

- (1) The Board; or
- (2) The owner of the land; and
- (3) The appropriate agency if any, including but not limited to the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0990

Boundary Markers

When feasible, boundaries of a Natural Heritage Conservation Area may be made clearly evident by placing markers at corners or other strategic locations or by boundary signs.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0992

Fences

Fences and barriers may be installed as provided in the management scheme.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0994

Trails

The location and specifications of any trails may be established in the management scheme. Trails shall be adequate to provide for permitted use of a Natural Heritage Conservation Area, but otherwise kept to a minimum. The use of paving materials, footbridges and elevated walks may be permitted when necessary.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0996

Other Structures and Improvements

Signs and temporary research installations may be permitted within a Natural Heritage Conservation Area. No other structures or facilities shall be located within a Natural Heritage Conservation Area except as provided in the management scheme on these rules.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

141-050-0998

Amendments

The Board may review and approve or disapprove any modification to the Plan submitted by the Council.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 9-1982, f. & ef. 10-1-82

141-050-0999

Waiver of Rules

The State Land Board may waive all or any part of these rules which would prevent the establishment, management, or protection of a Natural Heritage Conservation Area if such rule is in conflict with a statute, rule, regulation, or policy relating to an agency having an interest in or responsibility for the Natural Heritage Conservation Area.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.563 - 273.591

Hist.: LB 18, f. 7-29-74, ef. 8-25-74; LB 9-1982, f. & ef. 10-1-82

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 60

OREGON RURAL REHABILITATION FUND

141-060-0005

Purpose

The purpose of these rules is to provide criteria and procedures to be used by the Oregon State Land Board and the Division of State Lands in distributing monies from the Oregon Rural Rehabilitation (ORR) Fund. The rules are to be construed in accordance with ORS 566.310 through 566.360 and with the 1975 Use Agreement between the Board and the U.S. Department of Agriculture, Farmers Home Administration Program.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0010

Definitions

- (1) "Fund" means the Oregon Rural Rehabilitation (ORR) Fund.
- (2) "Assets" means the principle of the Fund and all income, proceeds, and acquisitions derived from it.
- (3) "Farms" means farms or ranches located within the boundaries of this state.
- (4) "Farmers" means individuals who operate farms or ranches located within the boundaries of this state and who are residents of this state.
- (5) "Board" means the Oregon State Land Board.
- (6) "Division" means the Division of State Lands.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0015

Uses of the Fund

As outlined in the 1975 Use Agreement between the state and the federal government, assets of the Fund may be used for one or more of the following farm-related purposes:

- (1) Loans to farmers made for acquisition or development of farms or for refinancing farm real estate debts;
- (2) Loans to farmers for farm operating expenses;
- (3) Loans or grants to farmers for flood prevention or restoration projects;
- (4) Loans or grants for farm labor housing and related facilities;
- (5) Loans or grants for educational expenses for farmers, members of their families, or farm laborers; and
- (6) Loans or grants for farming-oriented projects carried out by youth organizations including Future Farmers of America, Future Homemakers of America, and 4-H Clubs.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0020

Financial Awards

- (1) The Board may require retention of a minimum balance in the Fund to ensure that monies will be available for future awards.
- (2) Awards shall be made only in the form of loans and only to qualified applicants for approved uses of the Fund:
 - (a) The loans shall be made from the loanable balance of the ORR Fund, from the interest income of the Fund, and from annual loan repayments;
 - (b) The number of loans shall be determined by the Board.
- (3) Maximum loan amounts shall be determined by the Board prior to notifying the public of available funds.
- (4) The Board shall establish the maximum interest rate for each funding cycle prior to giving public notice of available funds.
- (5) The Board shall determine the interest rate to accompany each award based on the applicant's financial ability to repay interest on the award.

- (6) The Board shall determine repayment schedules on each award based on the financial ability of the applicant to repay the award and interest imposed under section (4) of this rule.
- (7) The Board shall determine appropriate security for each award based on the availability and value of the security and the nature and extent of encumbrances upon such security.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0025

Needs Assessment

- (1) To determine effective uses of the Fund, the Division shall, upon the request of the Board, conduct an assessment of Oregon's farm needs before each funding cycle.
- (2) The needs assessment shall include submission of a written questionnaire to the state's major farm organizations and the holding of public hearings.
- (3) Notice for such public hearings shall be mailed to the state's major farm organizations, individuals and other organizations who have indicated an interest in the Fund; and to major newspapers, television, and radio stations throughout the state.
- (4) The Division shall analyze the results of the needs assessment and recommend to the Board loan priorities for the funding cycle.
- (5) The Board may establish priorities or preferred uses for each funding cycle.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0030

Requests for Applications

- (1) At least 45 days in advance of the application deadline in any funding cycle, the Division shall issue a request for loan applications, which gives notice of the total amount of monies available for loans during the cycle, the maximum amount of individual loans, the maximum interest rate on loans and the Board's priorities, if any, for loans.
- (2) The Notice shall be mailed to the state's major farm organizations; individuals and other organizations who have asked to be notified when funds are available; and to the state's major newspapers, television, and radio stations.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0035

Loan Applications

- (1) The Division shall not accept loan applications from previous recipients of awards from the Fund.
- (2) Loan applications shall be submitted to the Division no later than the deadline date specified in the request for applications.
- (3) Loan applications shall contain the following information:
 - (a) A description of the proposed project;
 - (b) An itemization of costs of the proposed project;
 - (c) The expected number of project beneficiaries;
 - (d) Letters from at least two lending institutions stating the applicant does not qualify for loans under rates and terms which the applicant can reasonably be expected to meet;
 - (e) A list of real property owned by the applicant and a verified report of all financial encumbrances against the described property(ies);
 - (f) A financial statement of the applicant; and
 - (g) Any other information required under the request for loan applications and application form.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0040

Review of Applications

- (1) Within 30 days after the deadline for loan applications, the Division shall evaluate each application under the following criteria:
 - (a) Compliance with application requirements and annual priorities or preferred uses approved by the Board;
 - (b) Need for the project and solution effectiveness;
 - (c) Number of project beneficiaries; and
 - (d) Applicant's financial need.
- (2) Results of the analysis shall be forwarded with recommendations for loan approvals to the Board at the next regularly scheduled meeting immediately following the evaluation.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

141-060-0045

Funds Made Available

Upon approval by the Board, the Division shall issue approved loans subject to the terms and conditions described in OAR 141-060-0015, and such additional provisions as the director may require.

Stat. Auth.: ORS Ch. 566

Stats. Implemented: ORS 566.310 - 566.360

Hist.: LB 3-1987, f. & ef. 5-6-87

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 65

**GRANTING EASEMENTS ACROSS COMMON SCHOOL FUND LANDS AND OTHER STATE LAND
BOARD-OWNED UPLANDS**

141-065-0010

Definitions

As used in these rules, unless the context requires otherwise:

- (1) "Director" means the Director of the Division of State Lands or his delegate.
- (2) "Division" means the Division of State Lands.
- (3) "Easement" means the right to use Common School Fund lands and other State Land Board-owned lands granted by the Division in accordance with these rules. For purposes of these rules, the term "easement" includes rights-of-way, a type of easement embodying the right to pass over, through or across another's land.
- (4) "Grantee" means one to whom the easement is granted.
- (5) "Grantor" means one who grants the easement to the other.
- (6) "Land" means Common School Fund and all other State Land Board-owned lands above the elevation of the Ordinary High Water line.
- (7) "Ordinary High Water" means the line on the bank or shore to which the water ordinarily rises in season; the term is synonymous with Mean High Tide in tidal waters where the water surface elevation is not significantly affected by non-tidal flows. (ORS 274.005(3))

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0050

Existing Agreements

Adoption of these rules does not alter, amend, or otherwise change existing agency agreements regarding the administering of easements between the Division of State Lands and any federal, state, county, or municipal corporation.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 2-1988, f. & cert. ef. 7-25-88

141-065-0070

Exemptions

- (1) Temporary easements, permits and licenses the State Forester may grant on Common School Forest lands under the authority of ORS 530.490 and 530.500 are exempt from these rules.
- (2) Permanent easements over, upon, and across Common School Forest lands managed by the State Forester are exempt from the fees in OAR 141-065-0400 and 141-065-0500.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 2-1988, f. & cert. ef. 7-25-88

141-065-0100

Purpose

The purpose of these rules is to establish procedures relating to new applications for easements and to existing facilities with easements on, under, or over Common School Fund and other State Land Board-owned lands. Except as otherwise provided in these rules, any use of State Land Board lands by the federal government, any agency of the State of Oregon, any political sub-division of the State of Oregon, any public or private corporation, association, or person requires an easement from the Division.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0105

Compliance with Other Laws

An easement conveys a limited portion of the state's proprietary interest and is not a substitute for compliance with legal

requirements under other laws, or with leasing requirements of the State Land Board pursuant to ORS Chapter 274 and OAR 141-082.

Stat. Auth.: ORS Ch. 273 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87

141-065-0110

Application of These Rules to Existing Facilities

(1) Statutory Easements. These rules shall not apply to any existing physical use, facility, or structure in existence on May 15, 1986, for which an easement has been granted by statute, unless such use, facility, or structure is relocated outside the confines of the existing easement. In such an event, an application for the relocation shall be filed as provided in OAR 141-065-0200.

(2) Non-Statutory Easements. These rules shall not apply to any physical use, facility, or structure in existence prior to May 15, 1986, under an easement previously granted by the Division unless such use, facility, or structure is relocated outside the confines of the existing easement. In such an event, an application for the relocation shall be filed as provided in OAR 141-065-0200.

(3) Existing Facilities Without Easement. These rules shall apply to any existing physical use, facility, or structure which was in existence on May 15, 1986, for which an easement has not been obtained. Purchase of an easement is not required for those existing physical use facilities or structures which are within the jurisdiction of a city, county, state, or federal roadway or highway operated for public transportation purposes. However, an easement will be required when a major structural alteration, replacement or relocation of the physical use facility or structure is undertaken. An easement for these purposes will be accompanied by an administrative fee.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0150

Statutory Easements

Uses of Common School Fund and other State Land Board-owned lands for which easements are granted by statute include:

- (1) Construction of a water ditch used for irrigation, manufacturing, or mining purposes, ditches, or water pipes for conveying water to political subdivisions for domestic purposes, or for the extinguishment of fires under ORS 273.761(1).
- (2) Construction, maintenance, and operation of domestic and industrial water supply mains, sanitary pressure mains, and storm water outfalls, under ORS 273.761(2).
- (3) Railroad rights-of-way and railroad bridges over state land under ORS 273.751.

NOTE: These rules do not apply to the "necessary grounds" for stations, depots, shops, side tracks, turntables, and water stations, not exceeding 10

acres in any one place.

(4) Construction and maintenance of skylines, logging lines, ferry skylines, and cable footbridges, under ORS 376.620; and

(5) Construction, maintenance, and operation of water, gas, electric, or communication service lines, fixtures, and other facilities, outside of incorporated cities, under ORS 758.010. An application for statutory easements must be submitted to the Division before use of the easement area is made.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0160

Non-Statutory Easements

Uses of Common School Fund and other State Land Board-owned lands which require an easement from the Division include:

(1) Construction, maintenance, and operation of water, gas, electric, or communication service lines, fixtures, and other facilities within incorporated cities;

(2) Construction and maintenance of roadways, including roadways for motor traffic, bicycles, pedestrians, etc.;

(3) Any and all other uses, structures, and facilities not specifically covered by statute.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0180

Scope of Interest Granted by Easement

Any new easement granted under these rules, unless otherwise specified in the legal instrument, shall be non-exclusive.

Stat. Auth.: ORS Ch. 273 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87

141-065-0200

Application

(1) Each application for an easement shall contain the following information, in addition to such other specific

information as may be requested by the Division:

- (a) Applicant's name, address, and telephone number(s). Name should be written as it will appear as Grantee on the document. The name shall be the same as the owner of the use, facility, or structure served by the easement or current name of the company as filed with the Building Codes Division;
- (b) Name of county where real property is located;
- (c) Township, Range, Section, Tax Lot Number or legal description of the real property;
- (d) Legal description of the center line of the requested easement and the width on either side of the center line of the requested easement or other suitable descriptions approved by the Division;
- (e) Length of time easement is needed;
- (f) Purpose for the easement request;
- (g) Signature of applicant or authorized representative.

(2) Included with the application shall be:

- (a) A description of the proposed use, facility, or structure;
- (b) A location map or plot plan showing the property and the real property boundaries. A formal survey is not required.

NOTE: County Assessor maps are suitable for this purpose.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0250

Division Action

- (1) The Division shall review and take appropriate action on all easement applications in accordance with these rules and applicable statutes.
- (2) During the review and consideration of any easement application, the Division shall:
 - (a) Determine that the proposed use, facility, or structure complies with environmental considerations for the appropriate local, state, and federal laws;
 - (b) Identify the location of the use, structure, or facility and make certain that no existing easement or legal restrictions will interfere with or be interfered with by the proposed use, structure, or facility.
- (3) The Director may also:
 - (a) Request additional information from the applicant to clarify a specific question or issue raised during the review relating to the use, structure, or facility;
 - (b) Request that other regulatory agencies review the proposed use, structure, or facility as it relates to each agency's particular concern; and/or

- (4) The Division may reject any application for an easement if the use, structure, or facility would violate state or federal law, or unreasonably interfere with existing public uses of the land or any other public trust responsibilities.
- (5) The Division shall not issue an easement for a strip of land exceeding 500 feet in total width without the approval of the State Land Board.
- (6) The Division shall not issue an easement for a consideration in excess of \$10,000 without the approval of the State Land Board.
- (7) Easement applications from political subdivisions of the state for modifications to existing facilities which are used for the public benefit may be submitted by division staff to the State Land Board for direct approval.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0350

Duration of Easements

Easements shall be issued for the following time periods:

- (1) Easements for overhead electrical transmission lines and for roadways for state, city, county, and federal transportation purposes as well as for access to private lands may be perpetual.
- (2) Except as otherwise provided in this section, all other types of easements shall not exceed 40 years unless a longer term is approved by the Director.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0355

Termination

- (1) The easement may be terminated by the Grantor causing all rights herein granted cease immediately:
 - (a) If for a period of five years the Grantee shall fail to use or otherwise abandon said easement;
 - (b) If the Grantee shall fail, neglect, or refuse to keep, observe, or perform any of the conditions or agreements herein contained, for a period of 30 days after having been given written notice to comply therewith;
 - (c) Upon the Grantor's written notice of termination, the Grantee shall execute a recordable document evidencing termination of the easement.
- (2) Following termination, the Grantor may give the Grantee 30 days written notice to initiate activities to remove facilities and appurtenances from the land. The Grantee shall have six months from the date of such notice to complete removal of facilities and appurtenances.

(3) The Grantor may cause removal of the Grantee's facilities and restoration of the land to its natural condition prior to the granting of the existing easement to the extent practical or to that reasonable condition acceptable to the Director, in the event the Grantee fails to do so. In such event, the Grantor may recover from the Grantee all costs incurred in such removal and restoration.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0360

Conditions of Easement

The Division shall include the following conditions in all easements unless, in the judgment of the Director, a particular condition is inappropriate. The Division may include other conditions the Director deems necessary to protect the public interest:

- (1) The surrounding land shall be restored to a condition acceptable to the Division as soon as construction or maintenance of the easement is complete.
- (2) The Grantor reserves the exclusive right and may grant other easements across the above-described land.
- (3) Public access to the land must be maintained and/or restored upon completion of construction or periodic maintenance of the easement.
- (4) The termination condition is as outlined in OAR 141-065-0355.
- (5) The Grantee shall pay to the Grantor the current market value, as determined by the Grantor, for any unnecessary and non-approved damage to state-owned lands caused by construction or maintenance of the easement. Such damages shall include the loss of state resources such as any mineable material or timber.
 - (a) For easements granted to public bodies, to the extent of existing federal and state law, the Grantor shall be held harmless from any liability claims resulting from accident and/or injury that occurs within the easement area;
 - (b) For easements granted to private bodies, the Grantor shall be held harmless from any liability claims resulting from accident and/or injury that occurs within the easement area.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0400

Administrative Fees and Costs

Except as to easements granted by statute where compensation is not authorized, an applicant shall reimburse the Division within 30 days of billing for all administrative costs incurred in the preparation, processing, and administration of the easement. The maximum administrative fee shall not exceed \$1,000.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0500

Fee Schedule

With the exception of easements granted by statute and easements for existing city, county, state, or federal facilities outlined in OAR 141-065-0110(3) where compensation is not authorized, all easements issued under these rules are subject to a one-time proprietary charge as follows:

- (1) Perpetual private, city, county, and state highway road easements; the per-acre fee shall be the county true-cash per-acre value of the land.
- (2) Overhead easements; the per-acre fee shall be 3/4 of the county true-cash per-acre value of the surrounding property.
- (3) For underground easements, the per-acre fee shall be 1/2 of the county true-cash per-acre value of the surrounding property.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

141-065-0600

Review by State Land Board

Any person adversely affected or aggrieved by any action taken by the Division under these rules may, within 30 days of the date of the transmittal letter accompanying the easement document (or the letter denying the easement application), request, in writing, State Land Board review of the Division's action.

Stat. Auth.: ORS Ch. 273, 530 & 758

Stats. Implemented: ORS Ch. 273, 530 & 758

Hist.: LB 4-1987, f. & ef. 6-18-87; LB 2-1988, f. & cert. ef. 7-25-88

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 67

SALE OF COMMON SCHOOL GRAZING LANDS

141-067-0005

Authority and Purpose

- (1) These rules are adopted under the following authorities:
- (a) Section 4 of the Act of Congress admitting Oregon into the Union, approved February 14, 1859, and granting certain lands to the state "for the use of the schools";
 - (b) Article VIII, Section 5(2) of the Oregon Constitution, providing that the object of the State Land Board in managing lands under its jurisdiction is to provide the greatest benefit to the people of this state, consistent with conservation of the resource under sound techniques of land management;
 - (c) ORS 273.413, relating to the sale of scattered and isolated parcels of common school grazing land, and authorizing the proceeds from the sale of such lands to be placed in a revolving fund to be used to purchase lands more suited to the long-range management objectives of the State Land Board;
 - (d) ORS 273.825, according a preference right to purchase to qualified lessees of common school grazing land classified for sale by the Division of State Lands.
- (2) It is the purpose of these rules to establish:
- (a) Uniform standards for the classification for sale of scattered and isolated parcels of common school grazing lands; and
 - (b) Procedures under which a qualified lessee of common school grazing lands may purchase such lands.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0010

Definitions

- (1) "Director" -- Director of the Division of State Lands.
- (2) "Division" -- The Division of State Lands.
- (3) "Common School Grazing Lands" -- Lands owned by the State of Oregon and under the control of the Division of State Lands that are chiefly suited for the grazing of animals, as determined by the Division.
- (4) "Indemnity Lands" -- Lands selected to compensate for the unavailability of sections 16 and 36, as provided by **sections 851 and 852 of Title 43, United States Code**, as amended, or any other laws of the United States.
- (5) "Individual Person" -- Natural person or individual.
- (6) "Lessee" -- Holder of grazing lease issued by the Division.
- (7) "Minerals" -- Oil, gas, sulfur, coal, gold, silver, copper, lead, cinnabar, iron, manganese and other metallic ore, and any other solid, liquid, or gaseous material or substance excavated or otherwise developed for commercial, industrial, or construction use from natural deposits situated on or in state lands, including mineral waters of all kinds.
- (8) "School Lands" -- Sections 16 and 36 of each township granted to Oregon under the Admissions Act of 1859, title to which is held by the State of Oregon, and any land subsequently received by the state in exchange for these lands.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0020

Classifying Lands for Sale

- (1) Parcels of common school grazing lands may be classified for sale by the Division if the Division determines that such lands are:
 - (a) 640 acres (a section) or less in size; and
 - (b) Surrounded on at least three sides by lands not owned by the Division; or
 - (c) Isolated from other larger tracts of common school grazing land; or
 - (d) Difficult or uneconomical to manage due to access, location, isolation, low production value or other factors.
- (2) More than 640 acres of common school grazing land may be sold to a single qualifying lessee only upon a determination by the State Land Board that:
 - (a) The land subject to sale is school or indemnity land; and
 - (b) Sale of a single contiguous parcel larger than 640 acres is necessary to achieve maximum financial return to the

Common School Fund.

(3) Prior to classifying common school grazing land for sale the Division will address:

(a) The known or likely occurrence of federal or state listed threatened and endangered species on candidate properties; and

(b) Special public values that may be present.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0030

Qualifications to Purchase

To be qualified to purchase common school grazing land under these rules, a lessee must be an individual person, and an Oregon resident, and must own, in fee simple, land immediately adjacent to the common school grazing land subject to purchase. For purposes of this section, lands are considered to be adjacent if their boundaries are common or intersect at a common point. When two or more non-contiguous parcels of land are subject to a single lease, one leased parcel adjacent to land owned in fee simple by the lessee qualifies all leased parcels for purchase, provided all leased parcels are classified for sale by the Division.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0040

Notice to Lessee

(1) The Division shall notify a lessee by certified mail within 15 days of:

(a) Classification for sale by the Division of common school grazing land under lease to that lessee; or

(b) Receipt of an application to purchase common school grazing land by a person other than the lessee of such land. (If the Division and lessee have already been negotiating a sale, and the transaction has been terminated by operation of these rules, then the Division is not required to give notice to the lessee of another party's application. Notice is only required if the lessee has not yet had an opportunity to exercise the preference right.)

(2) Not later than the 90th day after notice was mailed to the lessee, the lessee may apply to the Division to purchase the lands. If the Division determines that the lessee is qualified to purchase the subject lands, the Division shall sell the land to the lessee as described in these rules.

(3) If the Division determines that the lessee does not qualify to purchase, or if the lessee fails to apply to purchase within 90 days of notification, the lessee shall lose the preference right to purchase. The Division may then sell the land under any other provisions of law.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0050

Application to Purchase

Each application to purchase state lands under these rules shall be in writing, on forms provided by the Division, and shall contain the following information:

- (1) Applicant's name, address, and telephone number(s). Name should be written as it is to appear on the deed from the Division. The name shall be the same as that on copies of deeds provided to establish proof of adjacent ownership;
- (2) Name of county where property is located;
- (3) Legal description of property lessee is applying to purchase;
- (4) Copies of deed(s) to establish proof of adjacent ownership;
- (5) Copy of driver's license, voter registration, or other identification, acceptable to the Division, to establish proof of Oregon residency;
- (6) The names and addresses of any other public or private owners of lands adjacent to the subject state lands;
- (7) A statement indicating whether the applicant intends to pay cash or request terms of sale;
- (8) The signature of the applicant or an authorized representative; and
- (9) Any other information requested by the Division.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0060

Review of Application

Upon receipt of a completed application to purchase state lands, the Division shall determine that:

- (1) The lands described in the application have been classified for sale by the Division as provided for in these rules; and
- (2) The applicant has a preference right to purchase the classified lands as defined under ORS 273.413.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0070

Notice

After determining that the lands described in the application have been classified for sale, and that the applicant has a preference right to purchase the lands, the Division shall:

- (1) Notify and obtain approval of the proposed sale from the governing body of the county or counties within which the land is located;
- (2) Notify and request comment from all public and private owners of land adjacent to the parcel or parcels subject to the proposed sale; and
- (3) Give public notice in a newspaper of general circulation in the county or counties in which the subject land is located requesting public comment on the proposed sale. The Division shall hold a public hearing on the sale if comments are received from ten or more individuals. The Director shall provide appropriate notice of the hearing.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0080

Division Action

After reviewing any comments received under the public notice provisions of these rules, the Division shall notify the applicant in writing whether the application has been approved or denied. If an application to purchase common school grazing lands is denied, the reasons for the denial shall be stated clearly in the written notice to the applicant.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0090

Appraisal

- (1) Upon approval of the proposed sale by the Director, the Division shall:
 - (a) Obtain an appraisal of the land. The appraisal is valid for six months from the appraisal date;
 - (b) Set a price for the land, based on the appraised value, plus one-half the cost of the appraisal.
- (2) If the affected lessee disagrees with the price set by the Division, the lessee may obtain a second appraisal at the lessee's expense. The Division and lessee will then attempt to negotiate a mutually acceptable value based upon the

results of both appraisals. If the parties cannot agree on a value, the application to purchase will be cancelled. The lands may then be sold under other provisions of law.

(3) Within ten working days of agreement on the sale price, the Division and applicant will enter into an Earnest Money Agreement. The agreement shall require an Earnest Money Deposit equal to at least ten percent of the agreed upon sale price and shall define the performance required by each party.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0100

Terms

(1) The applicant may pay cash at the time of purchase and receive a Bargain and Sale Deed, and a policy of Title Insurance from the Division.

(2) If the applicant does not pay cash, the applicant shall make a deposit of ten percent of the purchase price at the time of purchase, and pay the remainder in ten equal installments, at least one installment to be paid each year over a maximum period of ten years from the date of purchase. Installments shall include interest at a rate fixed by the Division for the purposes of ORS 327.425 (a loan of Common School Fund monies).

(3) Upon receipt of the ten percent deposit, the Division shall provide the purchaser with a Certificate of Sale that the purchaser has contracted to purchase the lands. The certificate shall contain a legal description of the lands being purchased.

(4) Any Earnest Money Deposit made under these rules shall either be deducted from the cash sales price or, if the purchaser elects to buy the land through installments, counted as the first annual installment payment.

(5) When all installments have been paid, the purchaser, or the heirs or assigns of the purchaser, shall be entitled to a Bargain and Sale Deed for the purchased lands.

(6) If any installment, or part of any installment, principal or interest, remains unpaid for one year after the same becomes due, the Certificate of Sale shall be cancelled by order of the Division. All payments previously made shall be forfeited and the land considered vacant and subject to sale as if it had not been contracted to be sold.

(7) Certificates of Sale may only be assigned with the written consent of the Division. All assignments shall be executed and acknowledged on forms provided by the Division. The assignee, upon full payment of the amount due on the purchase price and delivery to the Division of executed assignment forms and the Certificate of Sale, shall receive a deed for the land described in such Certificate in the name of the assignee.

(8) Whenever any purchaser of state lands holding a Certificate of Sale has paid three-fifths or more of the purchase price, the Director may execute a deed conveying the lands to the purchaser, upon the purchaser's executing:

(a) A note for the remainder of the purchase price; and

(b) A mortgage on the premises in the form and manner as other mortgages are executed for loans from the Common School Fund under ORS 327.405 to 327.480.

(9) Upon full payment of the purchase price and any accrued interest, the Director shall execute a Bargain and Sale Deed and provide a policy of Title Insurance.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0110

Minerals

The Division will retain mineral rights to all lands sold under these rules, except upon findings and release of the mineral rights as provided in ORS 273.780.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

141-067-0120

Proceeds

After deducting the costs of sale, the net proceeds of any sales made pursuant to this chapter shall be deposited in a revolving fund for use in acquiring additional property for the Common School Fund, pursuant to ORS 273.413.

Stat. Auth.: ORS 273.055, 273.413 & 273.825

Stats. Implemented: ORS 273.055, 273.413 & 273.825

Hist.: LB 6-1991, f. & cert. ef. 7-15-91

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 70

LEASING OF ONSHORE STATE-OWNED OIL AND GAS RIGHTS

141-070-0000

Purpose

The purpose of these rules is to provide a uniform system for leasing onshore oil and gas rights to individuals, corporations, and public bodies to encourage exploration and extraction of the state-owned oil and gas resources. These rules are promulgated and will be administered by the Division of State Lands under the authorities of ORS 273.551 et seq. and 273.775 et seq.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0010

Definitions

- (1) "Anniversary Date" means the annual anniversary of the month and day specified in the first paragraph of the lease agreement.
- (2) "Cash Bonus" means a per-acre sum of cash offered by a bidder as consideration for the execution of an oil and gas lease. A cash bonus is neither rent nor royalty but in addition thereto.
- (3) "Director" means the Director of the Division of State Lands or his or her designee.
- (4) "Division" means the Division of State Lands.
- (5) "Environmental Impact Assessment" means an environmental analysis prepared by the lessee on a form provided by the Division describing how the lessee's proposed activity will affect the natural resources including fish, wildlife, water, recreational, scenic and other resources of the leased lands; and describing the actions lessee will take to

minimize these impacts.

(6) "Geophysical Survey" means the investigation of subsurface geological conditions by any method, including but not limited to the following: seismic, gravity, magnetics, electric and geochemical sampling.

(7) "Long Ton" means an amount equal to 2,240 pounds.

(8) "Negotiated Lease" means a lease varying from the standard form of lease, negotiated for lease parcels of less than the minimum 40 acres in size, pursuant to the requirements of OAR 141-070-0050(6).

(9) "Operations Plans" means the written plan of operations for oil and gas production and associated activities required by the State Department of Geology and Mineral Industries in conjunction with obtaining a drilling permit.

(10) "Surface Entry" means entry upon the surface of the leased premises to drill, mine, produce, lay pipelines or otherwise disturb the surface of the property. As used herein, a surface entry permit is not required to conduct geophysical or other nondestructive survey techniques such as geological mapping of the surface.

(11) "Shut in Well" means a well that is capable of producing oil and gas but production from the well has been temporarily halted.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0020

Qualification Requirements

(1) To qualify for a State of Oregon geophysical permit or oil and gas lease, an applicant must be:

- (a) A citizen of the United States of legal age;
- (b) A partnership conducting business under an assumed business name or a corporation registered with the State Corporation Division; or
- (c) A domestic governmental body.

(2) Members of the State Land Board and employees of the Division of State Lands shall not take or hold leasehold interests in state-owned oil and gas rights.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0030

Geophysical Survey Permit

A geophysical survey permit is required from the Division to explore state-owned land for potential oil and gas resources. A permit may be requested in writing from the Division's mineral leasing manager and will be issued, if approved, on a form approved by the Director. Each application for a geophysical survey permit shall be accompanied by a \$50.00 processing fee:

- (1) The geophysical survey permit allows surface entry to explore the subsurface by techniques acceptable to the Division.
- (2) Permission to conduct surveys across state leased lands must be obtained from state's lessee prior to surface entry.
- (3) The geophysical survey permit does not grant any rights to extract oil and gas nor grant any preference rights to an oil and gas lease.
- (4) The Director may require the permittee to submit a post-exploration map to the Division identifying the exact location of all tests conducted.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0040

Title Warranty

The state makes no representation or warranty whatsoever with respect to its title to any lands offered for lease.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 3-1988, f. & cert. ef. 9-19-88

Lease Procedure

141-070-0050

General Leasing Conditions

- (1) The Division of State Lands may conduct an auction of oil and gas rights upon receipt of applications nominating state-owned lands. The minimum acreage required for an auction to be conducted shall be determined by the Director. The Division may also nominate state-owned lands for auction.
- (2) Nomination of oil and gas rights for auction shall be submitted on an application form provided by the Division pursuant to OAR 141-070-0060 below and will be considered an offer to lease and pay the minimum advance rental amounts for all lands nominated.
- (3) State-owned oil and gas rights may be leased by oral bid auction or sealed bid auction, at the discretion of the Director. Under special circumstances, certain oil and gas rights may be leased through negotiation without an auction. (See section (6) of this rule.)

(4) All applications shall be presumed to be requests to lease state lands by the oral lease auction procedure. If the Director elects to lease the nominated lands by sealed bid procedure, all processing fees shall be refunded if applicants do not wish to participate.

(5) The legal descriptions of all lands nominated for auction shall be forwarded to affected government agencies, surface rights owners and other interested parties for review and comment. This notice is given pursuant to the Land Conservation and Development Commission governmental action coordination plan.

(6) The Director will determine which lands are available for auction or lease following consideration of comments received from government agencies and interested parties. Prior to holding an auction or offering parcels for lease, the Director may hold a public hearing to obtain public input on the desirability of leasing state lands for oil and gas production. The hearing will be an informational hearing only, to aid the Division in its leasing decision.

(7) The Division will not auction oil and gas leases for tracts of land that contain less than 40 acres, except in the case of isolated parcels, or where the Division determines that the public interest will best be served by waiving the minimum acreage requirement.

(8) A written request for a negotiated lease of less than 40 acres of state lands without an auction will be considered if the parcel is within a designated drilling unit and a drilling permit has been issued or other sufficient evidence is provided to assure that drilling for oil or gas will be accomplished within a reasonable period of time. The terms of any negotiated lease will include a royalty of not more than 3/8 and an advance rental bonus based on the lease term and parcel size.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0060

Lease Application

All requests to lease state-owned oil and gas rights shall be submitted on application forms provided by the Division.

(1) The completed application form must be accompanied by a \$50 per parcel processing fee payable by cash or check to the Division of State lands.

(2) Each application shall be deemed an offer to lease the oil and gas rights to the lands described therein, including a commitment to pay one year's annual rental in advance for all lands nominated by the applicant if no other bids are received on the subject lands.

(3) Lands included in a lease application will be described as parcels, with each parcel comprised of not less than 40 acres nor more than a platted section of approximately 640 acres except as allowed in OAR 141-070-0050(7) and (8) above.

(4) There is no limitation on the total number of parcels that an applicant may nominate for auction.

Stat. Auth.: ORS Ch 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0070

Rejection

The Director may reject any application that is not in compliance with these rules or that is not in the public interest. If rejected, all fees shall be returned to applicant.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0080

Auction Notice

When the Director determines that sufficient lands have been nominated as described in OAR 141-070-0050, an auction date will be established and details pertaining thereto will be announced to all interested parties as follows:

- (1) The Division will maintain a mailing list consisting of oil and gas lessees, previous bidders, parties who have requested inclusion on the list, affected state agencies, other governmental bodies and other interested parties as determined by the Division. When arrangements are finalized, a notice of auction, including date, time, place, minimum bid amount, legal description of the offered lands, and the type of auction, will be mailed to those on the above described list.
- (2) The Division will give at least one public notice of each auction by publication in a newspaper of general circulation in the county in which the lands are located, at least 30 days prior to the auction date. The published notice will include the date, time, place, minimum bid amount, legal description of the offered lands, and the type of auction.
- (3) All parties on the mailing list will be notified if the auction is cancelled or postponed.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0090

Auction Procedure

The procedure for auctioning state oil and gas leases shall be either by sealed bid or oral bid. The selection of auction procedure shall be at the discretion of the Director based on the public interest. Bids shall include the minimum bid amounts set by the Director plus any additional per-acre cash bonus amount the applicant desires:

- (1) Oral Bid Procedure. The minimum starting bid amount per acre, minimum raise in bid per acre, and bidding unit parcels will be set forth in the notice of auction:
 - (a) The highest qualified bidder shall pay one year's advance annual rental at the close of the auction and any cash bonus bid within five working days after the close of the auction. Upon compliance with these rules and applicable statutes, the

highest qualified bidder shall be awarded the lease;

(b) If no bids are received at the auction, the Division may award the lease to the original nominating applicant by accepting that applicant's offer pursuant to OAR 141-070-0060(2);

(c) The Division reserves the right to reject any and all bids on any tract offered for lease.

(2) Sealed Bid Procedure. The minimum acceptable bid will be established by the Director and will be announced in accordance with OAR 141-070-0080:

(a) The number of acres within each bidding unit shall be established by the Director;

(b) Each bidder shall submit a completed bid form provided by the Division together with a check in an amount not less than ten percent of the total bid amount per bidding unit. All bids received by the deadline stated in the auction notice shall be opened and announced at the specified place, date, and hour;

(c) The Director shall award a lease to the highest qualified bidder for each bidding unit within 30 days of the bid opening. The successful bidder shall pay the balance of the cash bonus bid amount and the first year's rental within ten working days of the date the Director notifies the successful bidder by certified mail.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0100

Lease Conditions and Requirements

All oil and gas leases shall be on a form approved by the Director of the Division of State Lands. The oil and gas lease form contains specific contractual rights and obligations including, but not limited to, the following:

(1) The lease agreement allows only limited right of surface entry to the leased lands. After the Environmental Impact Assessment has been approved by the Division and the Operations Plan has been approved by the Department of Geology and Mineral Industries, and all necessary bonds, insurance, permits, and approvals have been received, pursuant to OAR 141-070-0110 below, the Division may issue a surface entry permit to accomplish the purpose of the lease.

(2) The lessee shall be responsible for all damages resulting from its operations on the leased lands.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0110

Surface Entry Permit

When the State owns the surface as well as the oil and gas rights, no road construction, site preparation or drilling for oil or gas shall take place on the surface of the leased premises prior to the issuance of a surface entry permit. When the state owns oil and gas rights but not surface, the lessee must pursue obtaining surface entry in the manner provided by

law for exercising access to severed estate mineral rights. The Division may issue a surface entry permit upon receipt and approval of the following:

- (1) An Operations Plan as required by the Department of Geology and Mineral Industries in conjunction with obtaining a drilling permit.
- (2) A payment, production and performance bond or bonds in the amount stipulated in the lease agreement in addition to any performance bond that may be required by the Department of Geology and Mineral Industries in connection with issuance of an oil and gas drilling permit.
- (3) A certificate of insurance for not less than \$1,000,000 combined single limit per occurrence showing that the lessee is insured for personal injury, property damage to third persons and liability under the terms of the lease agreement. The insurance amount shall be for each occurrence and shall name the State of Oregon as an additional insured.
- (4) An Environmental Impact Assessment completed by the lessee on a form provided by the Division. The environmental assessment shall include but will not be limited to adverse effects on the human and natural resources of the area, including scenic, recreational, public health, and plant and animal resources. It will also require a description of procedures the lessee will take to mitigate said impacts. The approval or disapproval of the Environmental Impact Assessment will be determined by the Division within 90 days of receipt of the completed form.
- (5) Permits as required by governmental bodies.
- (6) A designated agent, if lessee is a nonresident. Lessee shall designate, in writing, an Oregon resident as a designated agent upon whom may be served written notices or orders respecting the lease agreement.
- (7) Operator. Any operator appointed by the lessee shall be jointly responsible for the faithful performance of all covenants and obligations of the lease.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0120

Rental Amounts

Lessee shall pay to the state annually in advance, the following rental amounts per acre or fraction of an acre per year:

- (1) Annual Rental -- The amount of \$1 per acre or fraction of an acre payable in advance on an annual basis during the primary ten-year lease term and any extended term of the lease.
- (2) Delayed Rental -- The amount of \$1 per acre or fraction of an acre in addition to the annual rental to defer the lease agreement drilling requirement. Delayed rental is payable on or before the 5th through the 9th anniversary dates of the primary lease term unless the drilling requirements are satisfied or the lease agreement is terminated.
- (3) The lease shall automatically terminate if all annual and delayed rental payments required by the lease are not received by the Division on or before the anniversary date of the lease.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0130

Royalties

The minimum royalties on all leases shall be:

- (1) Oil -- One-eighth of the market value at well head.
- (2) Gas -- One-eighth of the proceeds from sale of gas as calculated at well head.
- (3) Sulphur - One dollar per long ton.
- (4) At the discretion of the Director, royalties for negotiated leases and for leases within six miles of a shut in or producing oil and gas well may be in excess of the minimum royalty but not to exceed 3/8 of the value as described under sections (1) and (2) of this rule.
- (5) The lessee shall furnish monthly royalty statements specifying the total production, sales price, taxes, and the state's share of production attributable to each leased parcel of state land.
- (6) Any person authorized by the state may examine all books and records pertaining to oil and gas resources taken from the leased lands.
- (7) The state shall have the right to measure, sample and/or witness the removal of all substances from the leased lands at any reasonable time.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0140

Assignment of Lease

The assignment of a divided or undivided lease interest, in whole or in part, may only be accomplished by compliance with the following:

- (1) Divided Interests. All request for assignment of divided interests must be submitted on forms provided by the Division and are subject to approval by the State Land Board. Assignment of a separate portion of the lease shall release the assignor from further lease obligations only with respect to the assigned lands.
- (2) Undivided Interests. All request for assignment of undivided lease interests must be submitted on forms provided by the Division and are subject to approval by the Director. Undivided assignment of lease interests does not segregate the lease, and the original lessee and assignee shall both be responsible for the performance of all duties and obligations of the lease agreement.
- (3) Fee. The processing fee shall be \$50 for each assignment. All assignment forms shall be submitted in duplicate.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0150

Production Requirements

Whether or not the state owns the surface, no production of oil, gas, and the constituents thereof shall be commenced until the lessee has submitted, and the Director has approved, an Operations Plan and an Environmental Impact Assessment, or an amendment of a previously approved impact assessment.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0160

Lease Termination

At the expiration of the lease or upon sooner termination, the lessee shall execute and deliver to the state a release or a recorded quitclaim of the leased premises if the original lease was recorded.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

141-070-0170

Leases Issued Prior to the Effective Date of These Rules

All upland oil and gas lease agreements issued prior to the effective date of these administrative rules remain subject to the provisions of OAR 141-072-0205 et seq., under Division 72 of Chapter 141, Division of State Lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 71

ONSHORE MINERALS PROSPECTING AND LEASING RULES

141-071-0400

Purpose

The purpose of these regulations is to prescribe uniform procedures for obtaining and conducting operations under mineral prospecting permits and mining leases covering onshore state-owned lands and mineral rights under the jurisdiction of the Division of State Lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0405

Definitions

- (1) "Division" means Division of State Lands.
- (2) "Director" means the Division Director.
- (3) "Mining claim" means as defined in ORS Chapter 517.
- (4) "Mining lease" means the completed lease following the form adopted by OAR 141-071-0690.
- (5) "Lands" means the state-owned lands as listed in the Registry of Mineral Rights for which the Division may execute mining leases under ORS 273.780. (Certain minerals and lands are excluded by ORS 273.785.)
- (6) "Surface Rights" means all property rights and usage exclusive of the mineral estate or reserved mineral rights.
- (7) "Valuable Minerals" those metallic minerals and uranium covered by these rules which have sufficient values to

justify expenditure by a prudent man for development and extraction.

(8) "Commercial Quantities" those valuable minerals, as defined herein, which exist in sufficient amounts to justify expenditures by a prudent man for development and extraction.

(9) "Hard Mineral Resource" all state-owned metallic and non-metallic minerals except oil, gas and sulphur, geothermal resources and their by-products, and construction grades of rock, sand, and gravel.

(10) "Discovery" finding of one or more valuable minerals in commercial quantities.

(11) "Exploration" means electrical and electronic surveys, seismic, gravimetric, geochemical surveys, shallow core drilling, assay work, and other measurements of a like nature.

(12) "Registry" means the inventory of mineral rights established by the Division of State Lands pursuant to ORS 273.790 listing lands owned by all state agencies in which mineral rights were transferred to the Division for leasing.

(13) "Operations Plan" means the planned series of measurements, tests, and surveys which a permittee expects to employ; multiple plan segments may be employed to allow sequence adjustments whenever data warrants.

(14) "Qualified Applicant" means any United States citizen of legal age, or any firm, association, or corporation which is qualified to do business in the State of Oregon and is not in default under the laws of the State of Oregon relating to qualifications to do business within this state; and governmental units, including without limitation, municipalities; provided, that no member of the State Land Board or employee of the Division of State Lands may take or hold a lease upon state-owned mineral rights.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0410

State Land Board Policy

In order to more fully manage the mineral rights in property owned by any state agency as directed by ORS 273.780, the State Land Board adopts the following program policies:

(1) The Division's program should provide for environmental protection on a parcel-by-parcel basis, protect the long-term use of surface rights, and obtain an equitable return to the proper state fund.

(2) Mining production leases shall be issued on the following terms: \$1 per acre per year; royalty rate of 5 percent for most metallic minerals; escalating development expense from \$1 per acre per year to \$3 per acre after the third year; and ten year primary term on leases covering a maximum of 640 acres.

(3) Competitive bidding should be utilized to obtain the highest available return from discovered mineral occurrences.

(4) Lease applications which include assay valuations in excess of \$100,000 shall be subject to final approval by the State Land Board.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

General Conditions

141-071-0420

Fees and Service Charges

The Division shall collect nonrefundable service charges to cover the expense of processing the following matters:

- (1) Original application -- \$50 for each lease or permit.
- (2) Assignment -- \$25 for each assignment.
- (3) Mineral prospecting permit fee -- \$.50/acre annually.
- (4) Renewal prospecting permit fee -- \$5/acre annually.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0425

Insurance

Prior to any operations on state-owned land, permittees and lessees shall provide evidence of insurance as follows:

- (1) Public liability of \$100,000, \$300,000 and property damage of \$100,000, including fire coverage; and
- (2) Contractual liability covering the permittee's or lessee's duty of indemnification of the state -- \$200,000. The State of Oregon, the Division of State Lands, and the appropriate surface-owing agency shall be named as co-insured; or
- (3) Self-insurers -- In lieu of required types and amounts of insurance coverage an applicant or lessee may provide a certified balance sheet for a segregated self-insurance fund showing net worth of liquid assets in amounts equal to or exceeding the required insurance coverage.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0430

Bonds

Applicants for permits or mining leases shall furnish corporate surety bonds in amounts and with sureties acceptable to the Division. Bonds will be conditioned on compliance with all the terms of the permit or lease.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0440

Reservations

- (1) The Division may withdraw any mineral rights from availability for exploration or leasing at any time prior to receipt of notice of a discovery. Withdrawals based on applicants' environmental reports or state investigation shall be subject to appeal under ORS Chapter 183.
- (2) The Division reserves the right to conduct competitive bid sales on lands not subject to preference rights or otherwise encumbered, whenever deemed necessary on or nearby discovered mineral occurrences.
- (3) The Division may refuse to grant a lease for state-owned mineral rights because of considerations of environmental quality or other public interest.
- (4) The Division may, by agreement with interested parties, provide special rules, interagency agreements, compensatory development or other means which deviate from these mineral leasing rules where the statutes, rules, and regulations defining and implementing the dedicated purpose for which state-owned surface rights were acquired are in conflict with mineral rights exploration and development.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0445

Refunds and Withdrawals

- (1) If an application for a Mineral Prospecting Permit is rejected, all checks tendered by applicant, except the filing fee, will be returned. If part of an application is rejected, per acre fees applicable to the rejected acreage will be refunded.
- (2) Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the Division approves the application, all checks tendered by the applicant, except the filing fee, will be returned. If the request is received after approval, then, unless the applicant accepts the offered permit, all money tendered is forfeited to the state, unless otherwise ordered by the Director for good cause shown.
- (3) Should an applicant desire to withdraw an application which has been filed under the simultaneous filing or competitive bidding rules, the applicant must make a written request. If the request is received before the public drawing or bidding, all checks tendered by the applicant, except the filing fee, will be returned. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the state, unless otherwise ordered by the Director for good cause shown.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0450

Records

Copies of all exploration data, including for example drilling logs, geochemical readings, and field notes, shall be deposited with the State Geologist within five years after performance of the work. If ongoing exploration work or lease performance warrants secrecy of such information, it shall be held under such conditions as the State Geologist and permittee or lessee may agree upon.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

Mineral Prospecting Permit

141-071-0455

Lands Subject to Permit

All state-owned lands and mineral rights under the Division's jurisdiction are available for prospecting except:

- (1) Lands and mineral rights classified as containing commercially valuable mineral deposits; and
- (2) Lands reserved for a Natural Area Preserve or otherwise withdrawn from exploration;
- (3) Lands and mineral rights already subject to exclusive permit or lease. State-owned parcels not included in the State Minerals Registry but under the jurisdiction of the Division may be made available for minerals exploration by special arrangement.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0460

Mineral Prospecting Permit Required

No person shall conduct mechanized exploration operations on, in, or under land or mineral rights owned by the State of Oregon and under the jurisdiction of the Division without a permit or lease issued pursuant to these regulations. Casual prospecting, using hand tools, may be conducted without a Division of State Lands Mineral Prospecting Permit provided that the land surface is otherwise available for public access. Please note that state parks, state tree nurseries, streams, lakes, and waterways are made unavailable or require additional permits under other state agency regulations.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0465

Application for Mineral Prospecting Permit

Any qualified applicant wishing to obtain an original, amended, or renewal mineral prospecting permit from the Division shall submit at least two copies of a mineral prospecting application on a form provided by the Division together with the required fees. All such forms shall be completed in full, signed by the applicant of his (its) authorized representative with proof of authorization, and shall include two copies of all necessary exhibits. Maps shall be in reproducible form. The Division may require submission of such other information as it deems necessary to make a decision on granting, modifying, or denying the permit.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0470

Priority

Applications will be accepted in the order received and priority of permit issuance will be established on the same basis except as provided in the case of simultaneous filings.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0475

Application Approval

- (1) Upon receipt of a mineral prospecting permit application, the Division shall cause copies of the application to be sent to the surface rights holder and affected state agencies, including the Department of Environmental Quality, Department of Geology and Mineral Industries, Public Utility Commissioner, State Fish and Wildlife Commission, Department of Energy, State Historic Preservation Office, and Land Conservation and Development Commission and to such other agencies or persons as the Division deems appropriate.
- (2) Each agency shall be requested to respond within 30 days by making a recommendation as to whether the permit should be granted. Agencies may recommend conditions to be contained in the mineral prospecting permit to satisfy requirements within their respective statutory jurisdictions. Applicants will be advised of conditions recommended by state agencies and, where advisable, a conference between agencies and applicants will be held.
- (3) The Division shall make such investigation as it considers necessary.

(4) The Division or any state agency holding the surface rights may refuse to grant a permit for exploration of mineral rights under the jurisdiction of the Division of State Lands if it has reason to believe that a mineral lease could not be issued because of considerations of environmental quality or other public interest.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0480

Mineral Prospecting Permit Terms

- (1) Except for additions and modifications required to protect natural resources and environmental quality, the Division of State Lands Mineral Prospecting Permit form as adopted August 15, 1977, will be issued upon approval of a prospecting permit application. Prospecting Permits shall expire three years from date of issuance.
- (2) In the event that a discovery is not obtained during the initial term of an exploration permit, the Division may agree to renew for an additional three year term provided:
- (a) An exploration operations budget equal to or exceeding nine times the annual permit fee is submitted by the permittee together with an exploration plan approved by the State Geologist; or
 - (b) Applicant has commenced actual drilling prior to the expiration date of the initial term and agrees to continue with due diligence to reach a promising geologic structure; and
 - (c) Upon payment of a renewal annual permit fee of \$5 per acre.
- (3) Mineral Prospecting Permits allow exclusive use of the mineral estate (not exclusive as to the surface) but are not to be construed as a possessory right.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0485

Conversion

Upon discovery of valuable minerals in commercial quantities, the permittee shall immediately notify the Division in writing (giving sufficient detail to enable the Division or an impartial consultant to evaluate the discovery). Thereafter, for a period of sixty days, the Division will suspend action on the mining lease applications for lands or mineral rights within four miles of the discovery site. Mining lease applications by the permittee for state-owned land and mineral rights within the suspension zone will be given first priority if properly filed within the sixty days suspension period.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

Mining Lease

141-071-0490

Mining Lease Required

No person, association, or corporation shall dig, extract, mine, drill and sell, remove or dispose of any hard mineral resource in commercial quantities from state-owned land under the jurisdiction of the Division of State Lands without a lease issued under these rules.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0495

Availability

State-owned lands are available for mineral leases if:

- (1) A certified or proven discovery has been made under an exploration permit; or
- (2) A nearby discovery warrants inclusion of the state land in a unit agreement or in competitive bidding as provided in these rules; or
- (3) The lands have been formally classified by the State Land Board, or the Division, for minerals leasing.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0500

Size of Leasable Tract

- (1) Minimum -- Except for good cause shown, no minerals lease will be issued for a tract less than a quarter-quarter section (40 acres) or surveyed lot, which could be more or less than 40 acres, except where state lands within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area of state lands within such quarter-quarter section or surveyed lot.
- (2) Maximum -- Upon certification of a discovery, the permittee shall be entitled to apply for four mineral leases of not more than 640 acres each of the land embraced in the exploration permit. The areas selected by the permittee/ applicant shall be in compact form and shall conform to government surveys wherever possible.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0505

Application

Any qualified applicant wishing to obtain an original, amended, or renewal mining lease shall submit at least two copies of a written application on forms provided by the Division. The application must be completely filled out and duly signed by the applicant and be accompanied by the required fee and advance rental. Any false or willfully incomplete statement will be considered misrepresentation and may be cause for rejection. Any person purporting to act for an applicant in making application for a mining lease shall accompany the application form with a properly executed power of attorney or shall have same on file in the Division of State Lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0510

Receipt of Application

Applications for mineral leases will be received for filing in the office of the Division during office hours. Because lease priority is obtained only by discovery, drawing, or competitive bidding, time of receipt will be recorded in the same manner as other correspondence.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0515

Priority

A permittee under a current minerals prospecting permit shall obtain a preferential right to a minerals lease if:

- (1) The permittee certifies that it has discovered a valuable mineral deposit and will obtain commercial production of a mineral or minerals; and
- (2) The permittee completes the requirements of OAR 141-071-0505 and 141-071-0520.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0520

Application Supplement

The application priority afforded an applicant by OAR 141-071-0515, or awarded by means of simultaneous filing drawing, or competitive bidding shall be maintained provided that, within 120 calendar days following acceptance of the application form, the applicant submits the following supplemental information to the Division:

- (1) An environmental impact report following the form adopted by the Division.
- (2) When deemed necessary or advisable, the Division may require an applicant to submit copies of all technical data relied upon by the applicant as proof of discovery.
- (3) A proposed plan for mined land reclamation (copy of Department of Geology and Mineral Industries Reclamation Permit application acceptable).
- (4) Such other information as the Division advised the applicant to be necessary.
- (5) Mining Lease applications may include a corporate surety bond of not less than \$1,000, or, if not submitted at the time of application, must be provided prior to issuance of a mineral lease.
- (6) The Division may require additional amounts of bonding from time to time during the lease term whenever the monthly proceeds from royalties exceeds 1/3 of the bond amount.
- (7) Extension during exploration. The Division may grant an extension of time for submission of supplemental information whenever the applicant is proceeding under a valid mineral prospecting permit to determine the nature of the mineral resources included in the mineral lease application. Such extension(s) shall not exceed one year's time.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0525

Application Rejection

If application supplements are not received by the Division within the time limit specified in OAR 141-071-0520 or if such application supplements are not complete, the entire application shall be rejected and returned to the applicant with an explanation of the reasons for rejection.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0530

Application and Supplement Consideration

- (1) Upon receipt of a lease application, the Division shall cause notice of the application to be sent to affected state agencies, including the agency having jurisdiction over the surface rights, the Department of Environmental Quality, Department of Geology and Mineral Industries, State Fish and Wildlife Commission, Land Conservation and Development Commission, Department of Energy, State Historic Preservation Office, and such other agencies or persons as the Division deems appropriate.
 - (2) Upon receipt of the environmental impact report, the Division shall send copies to the same affected state agencies.
 - (3) Each agency shall be requested to respond within 60 days of its receipt of the environmental impact report making a recommendation as to whether the lease should be granted to the applicant. Agencies may also recommend conditions to be contained in the lease to satisfy requirements within their respective statutory jurisdictions.
- Applicants will be advised of conditions recommended by state agencies and, where advisable, a conference between agencies and applicants will be held.
- (4) The Division shall make such investigations as it considers necessary and shall notify the public of its opportunity to request a hearing or hearings upon the granting of the application, together with the timetable and procedures to be followed. The Division will provide written notice to any person or organization which has requested in writing of the Division that such notices be provided to it directly.
 - (5) If the Division approves the application, and the state agency controlling the surface rights concurs, the application will be placed before the State Land Board for its final approval, when required by OAR 141-071-0410. Upon approval by the State Land Board, if required, the Division shall promptly forward to the applicant a mining lease incorporating all conditions which are deemed necessary by the Director, taking into consideration the recommendations of other affected agencies, the protection of natural resources, public health, and safety.
 - (6) The Division or Board may refuse to grant a lease for state-owned minerals because of considerations of environmental quality, inadequate cost-benefit ratio, or other public interest.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

Simultaneous Filing

141-071-0535

When Applicable

Upon an order of the Director, when he deems it necessary to insure competitive equity, the Division shall offer mineral resource rights for leasing by public drawing. Additionally, Prospecting Permit applications received for the same land or mineral rights in any single mail delivery shall be awarded priority by following OAR 141-071-0540(4) and (5).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0540

Procedures

The following procedures shall be employed in leasing mineral resource rights by public drawing:

- (1) A notice of the mineral resource rights available for leasing by public drawing shall be posted in the offices of the Division and distributed to all persons who have informed the Division in writing of their desire to receive such notice. The Division shall describe the mineral resource rights available for leasing, and state the last date, which shall be at least 30 days after the date the notice is posted, on which applications will be received.
- (2) Applications for the mineral resource rights described in the notice shall be submitted in sealed envelopes labeled "**Simultaneous Filing# date**" on a form supplied by the Division, and shall be accompanied by the filing fee required by OAR 141-071-0420 and the advance rental required by OAR 141-071-0600 and a stamped business reply envelope.
- (3) All applications for the leasing of such mineral resource rights filed on or before the closing date stated in the notice shall be considered to have been filed simultaneously. Such applications shall be opened in the Division's Salem office at 10 a.m. of the first day following the closing date stated in the notice.
- (4) After reviewing each application for compliance with the requirements of these rules, the Division shall select the successful qualified applicant by a random drawing which shall be held in public. Unless otherwise noted in the notice for simultaneous filing, successful mining lease applicants shall be required to comply with OAR 141-071-0520.
- (5) After the awarding of mining leases or prospecting permits to the successful qualified applicants, all rental checks shall be returned to the unsuccessful applicants, together with a list of the successful applicants.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

Competitive Bidding

141-071-0545

Competitive Bidding

Upon a determination that mineral rights lying near a discovery site are not leased or subject to application under OAR 141-071-0535 or 141-071-0485, the Division may offer one or more parcels not exceeding 640 acres each for competitive bidding, by sealed bids or at oral public auction, to the bidder offering the highest bonus in addition to the minimum annual rental.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0550

Notice of Bidding

The Division will publish a notice of opportunity to bid for leases within the discovery area in a newspaper of general circulation in the county or counties where the discovery is located. The Division will provide written notice to any person or organization which has requested in writing of the Division that such notices be provided to it directly.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0555

Contents of Notice

The notice will specify the time and place of bid opening, the manner in which bids shall be submitted, a description of the mineral rights in each bidding unit, and the terms and conditions of the lease, including royalty and rental rates. The notice will also state that a proposed development and operations plan and an environmental analysis of development and production alternatives will be required before a lease can be issued.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0560

Bidding Requirements

Each bidder shall submit with his bid an application to lease mineral rights, the filing fee required by OAR 141-071-0420, and a certified or cashier's check, bank draft, or money order in the amount of one-half of the amount of the applicant's bonus bid.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0565

Opening of Bids and Award of Leases

The following procedures will be employed in opening bids and awarding leases:

- (1) All bids received within the deadline stated in the notice shall be opened and announced at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.
- (2) The Division shall have the right to reject any and all bids submitted. Incomplete and non-conforming bids shall be rejected and the bonus bid deposits thereon returned.

(3) Within 30 days of the bid opening, or such longer periods as may be specified in the notice of bids, the Director shall award a lease for each bidding unit to the qualified applicant who is highest bidder. If the Director does not award a lease within the required period, all bids shall be considered rejected.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0570

Oral Bidding Procedure

Oral bidders will be required to conform to specific directions published in the bidding notice. Within 30 days of the oral bidding, or such longer periods as may be specified in the notice of bidding, the Director shall award a lease for each bidding unit to the qualified applicant who is highest bidder. If the Director does not award a lease within the required period, all bids will be considered rejected. OAR 141-071-0575.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0575

Lease Execution

If a lease is awarded, a form of lease shall be sent to the successful bidder, who must execute it within 30 days of receipt, pay the first year's rental, and pay the balance of (his) bonus bid. Within 120 days, and prior to commencing the operations under the lease, the lessee shall file the corporate surety bond required by the Division, file evidence of required insurance, and file completed agreements for environmental protection and surface management.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0580

Forfeiture of Competitive Bid Leases

If a successful bidder fails to execute the lease or otherwise fails to comply with these rules, his deposit will be forfeited and the bidding unit will be reoffered for competitive leasing.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0585

Restoration of Bidding Units

If no bids are received on a bidding unit, the Division, at its discretion, may offer the lands and mineral rights for non-competitive leasing.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

Lease Terms

141-071-0590

Mineral Lease Form

Generally, the Division of State Lands mining lease form (OAR 141-071-0690) as adopted and currently in use will be issued upon approval of a lease application. Modifications and additions of lease terms deemed necessary by the Division shall thereafter be included in each lease issued for the same parcel.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0595

Term of Lease; Renewal

- (1) Mineral leases shall have a primary term of ten years, commencing with the date of execution.
- (2) If royalties from minerals produced during any year of the primary term or a succeeding ten-year term equal or exceed twice the annual rental due under the lease, the lessee may renew for successive ten-year periods up to a maximum of 50 years.
- (3) In no event shall a lease continue beyond the period of 50 years from the date of execution, except that the lessee shall have a right of first refusal in the event that the Division decides to continue leasing the premises.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0600

Rental Rate

Rentals at the rate of \$1 per acre per year shall be due and payable in advance on or before the annual anniversary of the effective date of the lease. Rentals paid each year will be deducted from royalties due accruing during the rental year.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0605

Development Requirement

The operations contemplated in each lease shall be carried on with due diligence and in a workmanlike manner. Lessees will conduct such examinations, explorations, testing, and samplings as may, in competent judgment, be necessary to determine the extent, quality, feasibility, and economic potential of the mineral resource in, upon, and under the leased premises, together with such other studies as may be necessary for it to reach a determination as to development methods, preparations, equipment, and mining of the leased premises:

The lessee shall expend for approved development work within the times and in the amounts as follows:

- (1) According to the total number of acres covered by advance rental payment each year under this lease, prior to the end of the first year of each mineral lease -- an amount equal to the total number of acres leased in each lease multiplied by \$1; and
- (2) Prior to the end of second year of each mineral lease -- an additional amount equal to the total number of acres in possession under each lease at the beginning of the second year multiplied by \$2; and
- (3) Prior to the end of each subsequent year of each mineral lease -- an additional amount annually equal to the total number of acres in possession under each lease at the year's beginning multiplied by \$3.
- (4) Development work or improvements, to be acceptable, must contribute directly to the mining or mineral potential of the property.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0610

Royalties

All valuable minerals and specific materials removed by any person from lands or mineral rights subject to ORS 273.780 shall be subject to payment of royalties to the Division of State Lands in accordance with these rules, except that any person may remove minerals, sand and gravel, or rock materials in quantities not exceeding ten yards per year without payment of royalties. Royalties rates shall be charged upon the gross value of the minerals removed from the

lease premises and sold or otherwise utilized by the lessee during each month of the lease, as follows:

- (1) For metallics and uranium -- 5 percent.
- (2) For non-metallics except those covered by OAR 141-014-0300 through 141-014-0370 et seq., sand, gravel, and rock -- A rate per ton to be determined by the Director to be fair and reasonable under the particular lease to be issued.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 44, f. & ef. 8-16-77

141-071-0615

Measurement

The lessee shall accurately measure or gauge the quantity and quality of all production in accordance with the standard practices, procedures and specifications used in the industry.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 44, f. & ef. 8-16-77

141-071-0620

Basis of Value

The value of minerals or specified materials shall be determined by the gross market value at the mine mouth. In the event that minerals are not sold in raw form but are furnished to a plant owned or controlled by the lessee, the gross market value may be determined by an appraisal of values for minerals of like quality and quantity. Should the Division believe that any charges imposed and deducted are excessive or that the price received by lessee is unreasonable, lessee shall, upon 30 days written notice, produce evidence that the charges or price or both comply with the above requirements.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 44, f. & ef. 8-16-77

141-071-0625

Commingling

All production shall be maintained segregated until an approved system of measurement has accounted for the quantity and quality of the leased minerals. Approval may be obtained to commingle production upon proof that royalty payable to the state shall not be diminished.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0630

Assignment

- (1) A mineral lease shall not be assigned, in total or in part, without written approval of the Director.
- (2) Each request for total or partial assignment of lease must be accompanied by the following:
 - (a) A completed "Assignment of Lease" form (available from the Division);
 - (b) A fee in the amount of \$50 payable by check;
 - (c) If a corporation, written verification that the assignee is registered to conduct business in Oregon. Registration must be through the Corporation Division, Secretary of State's Office, Salem, OR 97310.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77; LB 1-1981, f. & ef. 6-19-81

141-071-0635

Surface Management

In all leases where the state has no interest in the surface estate, the lease shall contain the following provision for protection of the surface owner:

Unless waived in writing, the lessee shall annually pay to the surface owner a sum equal to the amount of damages sustained by the surface owner for loss caused by mining activity. The amount of damages may be determined by any formula mutually agreeable between the surface owner and the lessee.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0640

Reclamation

It shall be a continuing obligation of the lessee to pay the cost of the surface reclamation necessitated by that lessee's mining operation. This obligation as to state-owned land or mineral rights shall not be limited by the bond limitation required under ORS 517.810. If a lessee fails to begin reclamation of the leased premises as scheduled in the plan required under OAR 141-071-0520 or within one year after termination of the mining operation, the Division may conduct such reclamation operations as it finds necessary and levy the costs thereof as a charge upon the lessee. Such

action shall not preclude any other action at law by the state.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0645

Relinquishment

(1) A mining lease, or any portion of the mineral rights covered by such lease, may be relinquished by the lessee by filing a written statement with the Division which:

- (a) Describes the mineral rights to be relinquished by legal sub-division or survey;
- (b) States that the land surface above the mineral rights have not been disturbed, drilled, mined or otherwise affected, or if disturbed or otherwise affected, describing the manner in which such lands were restored to their original condition;
- (c) States that all monies due and payable to workmen employed by the lessee on the leased premises have been paid;
- (d) Is accompanied by a release from the State Department of Geology and Mineral Industries of Mined Land Reclamation Act permit.

(2) A relinquishment shall take effect upon approval by the Division, subject to the continuing obligation of the lessee and the lessee's surety to pay all accrued rentals, royalties and taxes, if any, and to comply with all conditions of the lease and of these rules related to the restoration of the leased premises.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0650

Investigation of Leased Premises

The Division may conduct scheduled and unscheduled inspections of operations conducted by the lessee under a mining lease. Upon receipt of a complaint related to the conduct by the lessee of its mineral resource exploration, development, or production, the Division or any governmental official appointed to the task by it may make an investigation and collect facts and opinions.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

141-071-0655

Suspension of Operation

Upon the occurrence of any of the following events, the Director may issue an order suspending operations under a mining lease executed by the Division:

- (1) Violation of the regulatory requirement of the Oregon State Department of Geology and Mineral Industries, the Oregon Department of Environmental Quality, the Division of Employment, Bureau of Labor, Workmen's Compensation Board, Public Utility Commissioner, Department of Revenue or other authority having jurisdiction, in excess of 30 days after notice in writing from any such agency, except that requirements undergoing further consideration or reconsideration by such agency, or appeal to the courts of such agency's decision, shall allow continued operation of the leased premises.
- (2) Any violation of the terms and conditions of a mining lease which, in the judgment of the Director, jeopardizes the environment, public health, welfare, or safety of the State of Oregon.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 44, f. & ef. 8-16-77

141-071-0660

Cancellation of Mining Lease

The Division may commence proceedings to cancel a mining lease if:

- (1) A lessee is in continued violation of terms and conditions of the lease including but limited to the requirement thereof to exercise due diligence in exploring, developing, and operating under the mining lease, beyond 30 days after receipt of notice in writing of such violation from the Division.
- (2) The lessee submitted false information in its application or in any other document required to be submitted to the Division; or
- (3) The lessee has changed its method of exploring, developing, or producing mineral resources under the lease without first securing the approval of the Division.

Stat. Auth.: ORS Ch. 273
Stats. Implemented: ORS 273.780 - 273.790
Hist.: LB 44, f. & ef. 8-16-77

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 73

MINERALS RESERVATION AND RELEASE

141-073-0100

Purpose

Under Section 2(3) of Chapter 51, Oregon Laws 1974 (Special Session), the state, acting through its various agencies, must retain mineral and geothermal resource rights owned by it unless the Board finds, upon adequate facts, that the sale or exchange of such mineral and geothermal resource rights is for the purpose of obtaining the greatest benefit for the people of the State of Oregon, consistent with the conservation of lands under the Board's jurisdiction under sound techniques of land management. The following procedures are intended to provide a mechanism whereby the Board will review proposed sales or exchanges of properties by state agencies to determine whether mineral and geothermal resource rights must be retained.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0105

Definitions

- (1) "Isolated". Less than ten acres of other state-owned mineral or geothermal rights exists within one mile of the parcel.
- (2) "Non-Mineral". No discovery or known source of mineral resources as defined in ORS 273.775 exists within six miles of the parcel.
- (3) "Non-Geothermal". No discovery or known source of geothermal resources as defined in ORS 273.775 exists within six miles of the parcel.
- (4) "Known Source". Seismic or other geophysical exploration, geochemical exploration, other studies, research data, maps, or other reliable information indicate the existence or the possibility of the existence of minerals or geothermal

resources.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0110

State Land Board Policy and Finding

That the sale or exchange of mineral and geothermal resource rights in isolated, non-mineral and non-geothermal or unsuitable parcels is for the purpose of obtaining the greatest benefit for the people of this state in that:

- (1) Such parcels do not contain significant amounts of mineral and geothermal resources rights;
- (2) The disposition of such insignificant amounts of minerals and geothermal resources as may exist in such parcel remnants is necessary to permit the disposition of the parcel remnants;
- (3) Such disposition is otherwise consistent with the state's policy of conserving such mineral and geothermal resource rights; and
- (4) The failure to permit disposition in such cases will result in financial loss to the state because of inability to dispose of the parcel remnants.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0115

Division Review

- (1) State agencies wishing to sell or exchange land shall report in writing the details of the sale to the Division of State Lands. Such report shall contain a description of the land proposed to be sold. The Division shall review such sale proposals within 30 days of receipt. If the Division determines that the parcel is less than ten acres and:
 - (a) Is non-mineral or non-geothermal; or
 - (b) Is unsuitable for future mineral or geothermal resources development, the Division shall provide notice of the determination to the requesting agency, which may then sell or exchange such land without reservation of mineral and geothermal resource rights, citing the Division's determination in support thereof. The Division shall list its determinations each calendar month and submit such list by information list to the members of the State Land Board.
- (2) The Division may determine that a parcel is unsuitable for future mineral or geothermal resources development upon the basis of any of the following facts: urban character, low value of the identified mineral, isolated and unduly small size of the parcel, or combinations of these and other factors.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0120

Board Review

Sales or exchange of state-owned land in parcels of ten acres or more or in parcels not otherwise complying with the conditions of this order shall be reviewed by the State Land Board and findings made individually.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0125

Form of Reservation

(1) Whenever mineral or geothermal resources rights are retained in lands other than filled submerged and submersible lands, the deed executed by the state agency selling or exchanging the surface rights shall contain the following reservation clause:

"Excepting and reserving to itself, its successors, and assigns all minerals as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel*, and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials*, and geothermal resources.

In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from state's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities."

NOTE: *To be deleted in the individual case, as approved by the State Land Board.

(2) Whenever mineral or geothermal resources rights are retained in filled lands subject to ORS 274.905 to 274.940, the deed executed by the Division of State Lands shall contain the following reservation clause:

"Excepting and reserving to itself, its successors and assigns, all geothermal resources, as defined in ORS 273.775(2), and all mineral, as defined in ORS 273.775(1) excluding soil, clay, stone, sand and gravel, together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals and geothermal resources.

Provided however, that before any soil, clay, stone, sand and gravel may be removed and sold or used as an article of commerce, the Division shall be duly notified in writing of such intended removal and sale or use as an article of commerce and payment shall be made to the Division of such royalty as it may fix therefor.

In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from State's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the

State's lessee conducts any of the above activities."

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; LB 45, f. & ef. 10-21-77; LB 2-1982(Temp), f. & ef.3-17-82; LB 8-1982, f. & ef. 8-25-82; LB 3-1984(Temp), f. & ef. 4-26-84; LB 5-1984, f. & ef. 10-10-84

141-073-0130

Valuation of Release

The value of the mineral estate to be released and included in a deed shall be clearly included as an appraisal item in the purchase price.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

Interagency Procedures

141-073-0150

Minerals Management Agreements

The Division may enter into agreements with one or more surface rights managing agencies for the communication and coordination of actions affecting either surface resources or mineral and geothermal resources.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0155

Statutes, Rules, and Regulations

Whenever the rules of the Division for minerals management are in conflict with the statutes, rules, and regulations defining and implementing the dedicated purpose for which state-owned surface rights were acquired, the Division reserves the right to provide special rules, interagency agreements, compensatory development, and/or other means to provide the maximum public benefit from the entire state-ownership.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0160

Common Minerals

Whenever common minerals (not excluded by Section 4, Chapter 51, Oregon Laws 1974, Special Session) occur at the surface, the state agency may allow any person to take up to ten cubic yards of such materials annually for private, non-commercial use.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0165

Mineral Waters

Whenever mineral waters occur at the surface or in wells drilled by the state agency, the agency may dispose of such waters in any appropriate manner.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0170

Exploration Permit and Lease Review

Copies of all applications for exploration permits or mineral, oil and gas, and geothermal leases shall be submitted to the state agency for review and approval, conditional approval, or disapproval. Whenever required by Division rules, plans submitted in connection with minerals, oil and gas, or geothermal applications or in conformity to lease terms, shall be submitted to the state agency for review and approval, conditional approval, or disapproval. No lease, permit, agreement, option, or other document purporting to convey rights for minerals, oil and gas, or geothermal resources shall be issued without the concurrence of the state agency.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0175

Cross Haulage

The mineral, oil and gas, or geothermal rights conveyed in the Division's leases shall include the right of cross-haulage

over the surface lands. The Division's lessee shall be required to enter into an agreement with or otherwise compensate state agencies for timber removed or improvements damaged by the crosshaulage.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0180

Co-Insurance

All insurance policies required under exploration permits or minerals, oil and gas, or geothermal leases shall name the state agency as a co-insured along with the Division.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0185

Duties of the Divisions

- (1) Operational consultation. Upon issuance of a lease, the Division will fix a schedule for periodic joint review by the Division, the lessee, State Department of Geology and Mineral Industries, and the state agency. Unscheduled consultation may be held at the option of the Division.
- (2) Reports. The Division will provide annual reports of exploration permit and lease activity on geothermal, oil and gas, and mineral rights under each state agency's land.
- (3) Enforcement. Except for agreements with lessees and specific lease terms requiring enforcement decision by the state agency, all lease terms shall be enforced by the Division and, as necessary, by the Attorney General.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0190

Conservation

In addition to the regulation under statutory authority of the State Department of Geology and Mineral Industries, the leasing program of the Division may restrict or allocate leasing according to resource potential or requirement without regard for surface ownership boundaries or acreage totals.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0195

Drainage

If the state's oil and gas or geothermal resources are not leased and the Division determines, after a discovery of commercial quantities of oil and gas or geothermal resources on adjacent federal or private land, that the state-owned resources are likely to be reduced by drainage, the state agency shall stipulate lease conditions for a sufficient number of offset wells to avoid waste of the state's resources or such other equitable means as the State Department of Geology and Mineral Industries may recommend.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

Minerals Registry

141-073-0205

Purpose

The purpose of these rules is to establish and provide for the use of the Registry of Mineral and Geothermal Resource Rights in and under certain state-owned lands as required by ORS 273.780.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0210

Definitions

- (1) "Geothermal Resource Rights". Rights to the geothermal resources in or under real property as listed in the Registry of Geothermal Resources Rights or otherwise placed under the jurisdiction of the Division of State Lands.
- (2) "Mineral Rights". Rights to oil, gas, sulfur, coal, gold, silver, copper, lead, cinnabar, iron, manganese, and other metallic ore, and any other solid, liquid, or gaseous material or substance excavated or otherwise developed for commercial, industrial, or construction use from natural deposits situated within or upon state lands, including mineral waters of all kinds.
- (3) "Registry". Unless the context requires otherwise, "Registry" shall mean the entire inventory of the full fee land, reserved mineral rights, reserved geothermal rights, and other rights, if any, placed under the jurisdiction of the Division

by Chapter 51, Oregon Laws 1974 (Special Session).

(4) "Division". The Division of State Lands.

(5) "Board". The State Land Board.

(6) "Revising Action". Any action which revises the leasing availability status of rights listed in the Registry, including but not limited to, leasing, sale or exchange, or withdrawal.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

Establishment

141-073-0215

Establishment

The Division shall establish and maintain a Geothermal Registry and Minerals Registry listing the respective geothermal resource rights and minerals rights placed under its jurisdiction showing their availability for leasing.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0220

Sequence

Each Registry shall list the respective rights by section or legal subdivision thereof within township in township and range order within each county.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0225

Surface Owner

The surface owner shall be identified wherever possible. Except for surface rights owned by state agencies, the Division is not obliged to provide such identification.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0230

Exemption

State-owned geothermal resource rights and/or mineral rights in parcels of less than 40 acres shall not be listed in the Registry. Such parcels, when identified, may be applied for and leased if legally under the Division's jurisdiction.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0235

Accuracy

The Division will not knowingly record a mineral or geothermal resource right which it does not own or hold legal jurisdiction over, but the state and Division does not warrant its title to any rights listed in the Registry.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

Maintenance

141-073-0240

Additions

The Division shall add mineral and geothermal resources rights to the respective registries upon receipt of notice from an agency acquiring and/or transferring such rights.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0245

Deletions

The Division shall delete mineral and geothermal resources rights from the respective registries after approval of release for sale or exchange by the State Land Board.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0250

Leased Rights

The Division shall record the issuance of each mineral or geothermal resources lease in the appropriate registry.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0255

Withdrawal

The Division shall record withdrawals of mineral or geothermal resource rights previously leased or otherwise unavailable, subject to the prescribed simultaneous filing period.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0260

Restoration

The Division shall record the restoration of mineral or geothermal rights previously leased or otherwise unavailable, subject to the prescribed simultaneous filing period.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0265

Updating

The Registry shall be considered revised as of the effective date of approval of a revising action by the State Land Board or effective date of any agency notice to the Division in the case of acquired rights. The Division shall enter all revisions to the Registry within 30 days following their effective date. Applications for rights revised but not entered may be amended or rejected as necessary. No application can be accepted unless it conforms to the Registry.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

Access

141-073-0270

Hours

The Registry shall be open to public use and inspection at the Division's Salem office during regular office hours.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0275

Security

Users of the Registry shall not remove any records from the Division's office.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

141-073-0280

Copies, Services, and Charges

Copies of the Registry or parts thereof may be obtained by the public upon one day notice for a service charge of 25¢ per page. Records search by Division staff may be undertaken only as workload permits. Any search project requiring over 1/2 hour of Division staff time will charged and billed at the rate of \$7.50 per hour.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 75

GEOTHERMAL LEASE REGULATIONS

141-075-0010

Purpose

The purpose of these regulations is to prescribe uniform procedures for obtaining permits and leases for exploration and development of state-owned geothermal resources under the jurisdiction of the Division of State Lands as provided for by Chapter 51, Oregon Laws 1974 (Special Session).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0015

Authority

These rules are adopted pursuant to Section 2(2) of Chapter 51, Oregon Laws 1974 (Special Session).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0020

Definitions

(1) "Geothermal Resource Rights". Rights to the geothermal resources in or under real property as listed in the Registry

of Geothermal Resources Rights or otherwise placed under the jurisdiction of the Division of State Lands.

(2) "Surface Rights". Rights in and over the surface of real property, including the statutory jurisdiction of other state agencies as well as possessory rights of persons holding leases and easements.

(3) "Person". All citizens of the United States; associations of such citizens, including partnerships; corporations qualified to do business in Oregon and authorized to do business in real property; and governmental units.

(4) "Geothermal Resources". The natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas, or other hydrocarbon substances, but including specifically:

(a) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(5) "By-Products". All commercially valuable products other than heat energy obtained in conjunction with the development of geothermal resources excluding oil, hydrocarbon gas, and other hydrocarbon substances.

(6) "Registry". The inventory of geothermal resource rights established by the Division of State Lands pursuant to Chapter 51, Oregon Laws 1974 (Special Session) listing lands owned by all state agencies, in which geothermal rights were transferred to the Division for leasing.

(7) "Geothermal Production" -- "Commercial Production". The sale, exchange, lease, or other disposition or use of geothermal resources for commercial purposes.

(8) "Geothermal Exploration". The drilling of shallow, temperature-gradient wells, core drilling, seismic surveys, electrical and electronic surveys, gravimetric surveys, and others of like nature.

(9) "Geothermal Development". Well drilling to develop commercial geothermal resources.

(10) "Design Review". Review of the design of all the physical components to be constructed or installed for the commercial utilization of geothermal resources or by-products, applications of available technology, feasibility, utility consideration, electricity transmission, serviceability, esthetics, and social consideration.

(11) "Division". The Division of State Lands.

(12) "Director". The Director of the Division of State Lands.

(13) "Qualified Applicant". Any person except a member of the State Land Board, an employee of the Division of State Lands, or a member of the family of such member and employee.

(14) "Testing Program". The planned series of flow tests, stratigraphic tests, structure tests, and step-out wells that will enable a determination of commercial feasibility after a discovery.

(15) "Development Plan". The lessee's predicted series of step-out wells and development wells necessary to bring a geothermal field into full production, together with such piping, reinjection wells, and controls as may be required to achieve production status.

- (16) "Profitable Production". Production in quantities sufficient to yield a return in excess of operation costs.
- (17) "Operating Plan". The lessee's predicted maintenance, redrilling, flow cycle, and closure requirements to achieve optimum benefits from geothermal resource. Also must include utilization of by-products.
- (18) "Cooperative or Unit Plan (agreement)". A plan for joint operation of all or some portion of a producing reservoir. May or may not include allocation of production. The plan usually will be reduced to an agreement between the parties.
- (19) "Well-spacing or well-development". The planned location of wells to achieve optimum production.
- (20) "Evaporation Pans". Flat shallow ponds used to hold water until evaporated for recovery of chemical in the waters.
- (21) "Archaeologic Survey". A factual report written by professional archaeologist delineating sites of minor and major historic and/or archaeologic significance.
- (22) "Subsidence". The enhanced settling or lowering of land due to release of pressures after removal of fluids or other materials from the subsurface.
- (23) "Commingling". Intermixing of geothermal resources from geothermal resource rights owned by different parties.
- (24) "Designate Geothermal Resources Area". An area containing state-owned geothermal resource rights in which the geologic conditions or a nearby discovery proves that a high probability of geothermal development and production exists.
- (25) "Geothermal Discovery". Drilling of an initial well to a formation capable of producing geothermal resources.
- (26) "Lessee". The person named in a lease of geothermal resource rights.
- (27) "Proprietary Information". "Trade secrets" as used in ORS 192.500(1)(b).
- (28) "Bonus". The cash consideration paid by a lessee for an upon the execution of a lease.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; LB 28-1975, f. 8-29-75, cert. ef. 9-25-75

Policy

141-075-0030

State Land Board Policy

The geothermal policy adopted by the State Land Board States: **"It is the policy of the State Land Board to encourage the use of this state-owned resource for production of additional electrical energy by management programs consistent with the state's environmental policy and the Land Board's trusteeship of the Common School Fund"**.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0035

Environmental Protection

- (1) The Division must consider alternative actions that will minimize adverse impacts and both the long and short range implications to man, his physical and social surroundings, and to nature, in order to avoid or minimize to the fullest practicable extent all undesirable consequences for the environment. Environmental impact assessment parallels and is concurrent with the process by which alternative means are developed to meet objectives based on expressed needs.
- (2) Therefore, the Division will require an environmental impact assessment which documents the factors considered by the applicant in his formulation of the geothermal project for which a state lease is required. Lease terms subsequently submitted to the applicant will include the specific environmental protections deemed necessary by the Division in concurrence with the state agency holding jurisdiction over surface rights.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

General Obligations and Records

141-075-0040

Service Charges

- The Division shall collect nonrefundable service charges to cover the expense of processing the following matters:
- (1) Original Applications -- \$50 for each lease or exploration permit application;
- (2) Assignments -- \$50 for each assignment;
- (3) Plan Amendments -- \$50 for approval;
- (4) Unitization -- \$75 for each lease;
- (5) Exploration Permit Issuance -- \$100.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; LB 3-1981, f. & ef. 6-19-81

141-075-0045

Bond Types

Applicants for permits or geothermal resource leases shall furnish corporate surety bonds in amounts and with sureties acceptable to the Division. Bonds will be conditioned on compliance with all the terms of the permit or lease and on indemnification for damages to persons or property as a result of operations on state-owned land.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0050

Statewide Bonds

In lieu of any bonds required for two or more specific permits or leases, the lessee or permittee may furnish a statewide bond applicable to Oregon. The amount will be determined by the cumulative liability of permittee or lessee to the Division reduced by 25 percent.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0055

Refund

If an application for a geothermal resources lease is rejected, all money tendered by applicant, except the filing fee, will be returned. If part of an application is rejected, money tendered for rental of such part will be refunded.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0060

Property Information

Whenever the reports, methods, tests, or data required to be submitted under these rules are deemed proprietary information by the applicant or lessee, the Division shall hold such information exempt from disclosure under ORS 192.410 through 192.500 and otherwise act so as to maintain the confidentiality of the information during the primary term of the lease.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0080

Domestic Use -- Noncompetitive Lease

A nonexclusive lease of state-owned geothermal resource rights may be granted for domestic use when the surface is not owned by the State. "Domestic Use" means geothermal resources used for heating, cooling and electrical generation for the lessees dwelling, associated outbuildings and for other noncommercial purposes:

- (1) Total depth of well may not exceed 2,000 feet and the geothermal fluids produced must be less than 250 degrees Fahrenheit bottom hole temperature.
- (2) Application for a domestic use geothermal resource lease shall be on forms provided by the Division. Each application shall include:
 - (a) A \$50 application fee;
 - (b) A location map showing the well location and where the resource will be used.
- (3) The Division may refuse to grant a domestic use lease for any reason considered necessary to protect the public interest.
- (4) The terms of a domestic use lease shall be:
 - (a) Annual rental of no less than \$150;
 - (b) Primary term of five years -- Renewable for five-year periods providing lessee conforms to all provisions of the lease agreement.
- (5) Lessee shall provide evidence of insurance and performance bond as provided in the lease agreement.
- (6) Lessee shall be responsible for compliance with all regulatory requirements of other state, county and city agencies.
- (7) The Division may cancel the lease agreement if lessee fails to adhere to the terms and conditions of the lease agreement or if there is resource waste, environmental degradation, adverse aquifer disturbance, or if continued use for other reasons would be detrimental to the public interest.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 7-1982, f. & ef. 8-25-82

Geothermal Exploration Permit

141-075-0110

Availability

Geothermal resource rights should be considered available unless otherwise noted:

- (1) State-owned lands in which both surface rights and mineral rights are vested in the state if listed on the Geothermal

Registry are available for geothermal exploration.

(2) State-owned deed reservations of geothermal rights are available for geothermal exploration.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0130

Exploration Permit Required

No person shall explore by any means whatever on, in, or under land owned by the State of Oregon and under the jurisdiction of the Division of State Lands to detect or assess geothermal resources without a permit or lease issued pursuant to these regulations and under authority of ORS 273.551.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0140

Application for Exploration Permit

Any person wishing to obtain an original, amended, or renewal geothermal resource exploration permit from the Division shall submit at least three copies of a geothermal application on a form provided by the Division.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0145

Application Requirements

All application forms must be completed in full, signed by the applicant or his authorized representative with proof of authorization, and shall be accompanied by three copies of all necessary exhibits. Maps shall be in reproducible form.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0150

Compliance Requirement

Any applicant may be required to show that all applicable state laws and regulations have been complied with up to the date of application.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0155

Permit Application Exhibits

The applicant shall submit, as exhibits to the application form:

- (1) Evidence of insurance as follows:
 - (a) Public liability and property damage in amounts according to the number of acres covered by the application. For areas less than or exactly 640 acres -- \$20,000, \$40,000, \$20,000, and for areas greater than 640 acres -- \$50,000, \$100,000, \$50,000; and
 - (b) Contractual liability covering the permittee's duty of indemnification of the state -- \$200,000.
- (2) A corporate surety bond of not less than \$1,000 conditioned upon compliance with all the terms of the exploration permit.
- (3) A description of the applicant's exploration plan including, but not limited to, exploration methods, dates of exploration, types of equipment to be used, and crew size.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; ; LB 28-1975, f. 8-29-75, cert. ef. 9-25-75

141-075-0160

Limitations

There are no limitations upon number of acres of state land which may be applied for.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0165

Application Approval

- (1) Upon receipt of an exploration permit application, the Division shall cause copies of the application to be sent to the surface rights holder and affected state agencies, including the Department of Environmental Quality, Department of Geology and Mineral Industries, State Engineer, Public Utility Commissioner, State Wildlife Commission, Fish Commission of Oregon, Nuclear and Thermal Energy Council, and Land Conservation and Development Commission and to such other agencies or persons as the Division deems appropriate.
- (2) Each agency shall be requested to respond within 30 days by making a recommendation as to whether the permit should be granted. Agencies may recommend conditions to be contained in the exploration permit to satisfy requirements within their respective statutory jurisdictions. Applicants will be advised of conditions recommended by state agencies and, where advisable, a conference between agencies and applicants will be held.
- (3) The Division shall make such investigation as it considers necessary.
- (4) The Division or state agency holding the surface rights may refuse to grant a permit for exploration of geothermal rights under the jurisdiction of the Division of State Lands if it has reason to believe that a geothermal lease could not be issued because of considerations of environmental quality or other public interest.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0170

Exploration Permit Terms

Except for additions and modifications required to protect natural resources and environmental quality, the Division of State Lands Geothermal Exploration Permit form as adopted June 1, 1975, will be issued upon approval of an exploration permit application.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0175

Permit Period

Exploration permits shall expire one year from date of issuance. A new permit may be issued to replace an expiring permit.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0180

Non-Exclusive Permits

Geothermal exploration permits allow only non-exclusive access to land for geothermal exploration.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0190

Investigation

The Division may conduct scheduled and unscheduled inspections of operations conducted under exploration permits. Upon receipt of a complaint concerning operations covered by an exploration permit, the Division or any governmental employee appointed to the task may make an investigation and collect facts and opinions.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0195

Suspension of Permit

The Director may issue an order immediately suspending operations under a geothermal exploration permit if:

- (1) The permittee remains in violation of the regulatory requirements of the Oregon State Department of Geology and Mineral Industries, the Oregon Department of Environmental Quality, The Oregon Division of Employment, Health, Oregon Bureau of Labor, Oregon Workmen's Compensation Department, State Engineer, Department of Revenue, or other legally constituted authority, in excess of 30 days after notice in writing from the appropriate agency.
- (2) The permittee is in violation of any exploration permit terms or conditions which, in the judgment of the Director, jeopardizes the public health, welfare, and safety.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0200

Cancellation

The Division may cancel a geothermal exploration permit if it finds, after notice to the permittee and allowance of an opportunity for hearing, that:

- (1) Permit requirements are not being observed after notification to the permittee.
- (2) False information was submitted in the application or other required reports.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

Geothermal Resources Leases

141-075-0205

Geothermal Resources Lease Required

No person shall drill for, mine, operate, prospect for, extract, remove, or dispose of any geothermal resources from any geothermal resources rights without a lease issued under these rules.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0210

Geothermal Resource Rights Available for Leasing

All geothermal resource rights shall be considered available for leasing except:

- (1) Geothermal resource rights in lands designated as "natural areas" pursuant to ORS 273.582.
- (2) Geothermal resource rights in or under lands within the bed of a stream of lake unless:
 - (a) The stream or lake has been judicially determined to have been navigable at the time of Statehood or in the reasonable judgment of the Division, was navigable at that time; or
 - (b) The issuance of a geothermal resources lease to an applicant would serve to protect the applicant as to the abutting riparian uplands.
 - (c) Ownership is established in federal and state records by virtue of riparian rights in a non-navigable lakebed or non-navigable stream.

Stat. Auth.: ORS CH. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; LB 1-1979(Temp), f. & ef. 7-10-79; LB 2-1979, f. & ef. 10-29-79

141-075-0215

Withdrawal From Leasing

The Division may withdraw any geothermal resource rights from availability for leasing or declare any geothermal resource rights to be within a designated geothermal resources area pursuant to OAR 141-075-0520 through 141-075-0575 at any time prior to the approval of a lease of such geothermal resource rights.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0220

Minimum Size of Leasable Tracts

Except for good cause shown, no geothermal resources lease will be issued covering tracts of land less than a quarter-quarter section (40 acres) or surveyed government lot, except where the geothermal resource rights in any quarter-quarter section or surveyed government lot are in or under less than the whole thereof.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0225

Application for Geothermal Resources Lease

Any qualified applicant wishing to obtain an original, amended, or renewal lease for geothermal resource rights shall submit at least three copies of a written application on forms provided by the Division.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0230

Lease Application Filing Requirements

All application forms must be completed in full, signed by the applicant or his authorized representative with proof of authorization, and be accompanied by the filing fee specified in OAR 141-075-0040.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0235

Advance Rental

The application for a geothermal resources lease shall be accompanied by an advance rental of one dollar per acre, multiplied by the number of acres sough to be leased.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0240

Receipt of Application

Applications for geothermal resources leases will be received for filing in the office of the Division during office hours. Except as hereinafter expressly provided, all such applications received, whether by U.S. Mail or by personal delivery over the counter, shall be immediately stamped with the exact date and time of receipt. The date indicated on the time stamp shall be deemed the date of filing unless the Division shall determine that the application is deficient in any particular or particulars. If an application is determined to be deficient in minor respects, it shall be returned to the applicant with instructions for its amendment or completion. If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing date. If the application is resubmitted at any later time, it shall be deemed filed at the time of resubmission.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0245

Incomplete Application

Applications which are incomplete as to identity of applicant, legal description, or signature of applicant, or do not include the established filing fee shall be rejected and the applicant shall be notified in writing of the deficiency(s).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0250

Priority Among Applicants

Except where state lands have been withdrawn from leasing and except as otherwise provided by law or regulations, the

Division shall grant a lease to a qualified applicant whose application is first filed in the offices of the Division of State Lands in Salem, Oregon. The Division expressly reserves the right to issue a lease to a person, association, or corporation other than a first applicant when it appears to the Division that said person, association, or corporation, by virtue of ownership of the right to explore and develop geothermal resources in lands adjacent to state lands, is unusually likely to explore and develop the geothermal resources in the state lands.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0255

Application Supplements

The application priority afforded an applicant by OAR 141-075-0250 shall be maintained provided that, within 120 calendar days following receipt of the application form, the applicant submits the following supplemental information to the Division:

- (1) A geologist's preliminary survey report indicating land formation, faulting, geothermal heat flows, ground water and surface water flows and an opinion related to the likelihood of subsidence resulting from geothermal resource development.
- (2) A proposed program for monitoring and surveillance of the geothermal resource and of groundwater quality and quantity.
- (3) An environmental impact report following the form adopted by the Division.
- (4) A copy of the State Department of Geology and Mineral Industries geothermal permit issued to the applicant for the lease site, and a copy of each other application or lease pertaining to geothermal resources held by the applicant in the immediate vicinity of the geothermal resource rights it seeks to lease.
- (5) Geothermal resources lease applications may include, or if not submitted at the time of application, applicants will be required to provide prior to issuance of a lease, evidence of insurance as follows:
 - (a) Public liability and property damage in form and with insurers acceptable to the Division with limitations of \$100,00, \$200,000, \$100,000; and
 - (b) Contractual liability insurance covering the lessee's duty of indemnification of the State -- \$500,000.
- (6) Such other information as the Division advises the applicant to be necessary.
- (7) Geothermal resources lease applications may include, or if not submitted at the time of application will be required prior to issuance of a lease, a corporate surety bond of not less than \$10,000 conditioned upon compliance with all the terms of the lease.
- (8) The Division may require additional amounts of insurance and/or bonding prior to issuance of a geothermal resources lease if, in its judgment, the above listed minimum amounts are insufficient to protect the public health, safety, and welfare and insure restoration of the state-owned land covered by the lease application.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; LB 21(Temp), f. & ef. 11-15-74 thru 1-28-75; ; LB 28-1975, f. 8-29-75, cert. ef. 9-25-75

141-075-0260

Application Rejection

If application supplements are not received by the Division within the time limit specified in OAR 141-075-0255, or if such application supplements are not complete, the entire application shall be rejected and returned to the applicant with an explanation of the reasons for rejection. The next application received from a different applicant may be given priority over a reapplication of the rejected applicant.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0265

Consideration of Lease Applications

(1) Upon receipt of a lease application, the Division shall cause notice of the application to be sent to affected state agencies, including the agency having jurisdiction over the surface rights, the Department of Environmental Quality, Department of Geology, and Mineral Industries, State Engineer, State Wildlife Commission, Fish Commission of Oregon, Land Conservation and Development Commission, Nuclear and Thermal Energy Council, and such other agencies or persons as the Division deems appropriate.

(2) Upon receipt of the environmental impact report, the Division shall send copies to the same affected state agencies.

(3) Each agency shall be requested to respond within 60 days of its receipt of the environmental impact report making a recommendation as to whether the lease should be granted to the applicant. Agencies may also recommend conditions to be contained in the lease to satisfy requirements within their respective statutory jurisdictions. Applicants will be advised of conditions recommended by state agencies and, where advisable, a conference between agencies and applicants will be held.

(4) The Division shall make such investigations as it considers necessary and shall notify the public of its opportunity to request a hearing or hearings upon the granting of the application, together with the timetable and procedures to be followed. The Division shall hold the hearing before the Director in the manner prescribed by ORS Chapter 183. Prior to the hearing, the Division shall give public notice in the manner prescribed by the Division's rules for hearing.

(5) The Division shall render its decision within 60 days following the hearing, and shall cause notice of its decision to be given to the applicant by certified mail. If the application is refused, all payments tendered by the applicant, except its filing fee, shall be returned and the Division shall include in its notice the necessary information for the taking of an appeal of its decision.

(6) If the Division approves the application, and the state agency controlling the surface rights concurs, the application will be placed before the State Land Board for its final approval. Upon approval by the State Land Board, the Division shall promptly forward to the applicant a geothermal resources lease incorporating all conditions which are deemed necessary by the Director, taking into consideration the recommendations of other affected agencies, to protect the state's environment, natural resources, public health and safety.

(7) The Division may refuse to grant a lease for state-owned geothermal resource rights because of considerations of environmental quality or other public interest.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0270

Withdrawal of Application

An applicant may withdraw its application by written request. If the request is received prior to the time the Division approves the application, all payments tendered by the applicant, except its filing fee, shall be returned. If the withdrawal request is received after the Division has approved the application an the applicant does not accept the offered lease, all payments tendered by the applicant shall be retained by the Division, unless otherwise ordered by the Director for good cause shown.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0275

Geothermal Resources Lease Terms

Generally, the Division of State Lands' geothermal lease form as adopted June 1, 1974, will be issued upon approval of a lease application. Modifications and additions of lease terms once deemed necessary by the Division shall thereafter be included in each lease issued for the same parcel.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0280

Specific Actions to Reduce Environmental Impacts

In addition to the conditions contained in the geothermal resources lease, a lessee shall comply with the following specific requirements to minimize environmental damage:

- (1) Intake structures for cooling water must be screened in the manner approved by the Oregon Wildlife and Fish Commissions.
- (2) All use of surface waters for cooling, including discharge of heat effluent or radiator systems, must comply with the Department of Environmental Quality regulations.

(3) All changes in ground water supplies, including changes in ground water table levels and chemical contamination, shall be approved by the appropriate state agency.

(4) All surface lands disturbed in geothermal resource development shall be revegetated with tolerant plant species.

(5) Air or water discharges which might create fog shall avoid proximity to established transportation routes.

(6) Discharges into the atmosphere of heat or any chemical contaminants shall comply with the Department of Environmental Quality regulations.

(7) If evaporation pans are used to recover by-products, the land upon which evaporation pans are established shall be restored to its optimum contour slope and shall be revegetated with tolerant plant species, and restored to optimum condition if subjected to leaks during the operation of evaporation pans.

(8) If subsidence occurs as a result of geothermal resource development or production, operation shall be suspended. The Director may order such suspension released if no serious damage will result from continued operation.

(9) The Lessee shall comply with Department of Environmental Quality noise and solid waste regulations. An archaeological survey to standards established by the Director shall be submitted to the Division prior to any excavation or fill of the leased premises.

(10) No wells other than shallow prospect wells shall be drilled within 100 feet of the outer boundary of the leased premises or within 100 feet of a public road or highway in existence prior to the commencement of drilling.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0285

Term of Geothermal Resources Lease; Renewal

(1) Geothermal resource leases shall have a primary term of ten years, commencing with the date of execution.

(2) If royalties during any year of the primary term equal or exceed the annual rental due under the lease, the lessee may renew for a subsequent ten year period.

(3) Leases requiring renewal prior to achieving commercial production may be renewed for a maximum additional term of five years if a geothermal discovery has been made or is deemed by the Director to be imminent. The Director may require the lessee to submit and implement a development plan and timetable as an added condition of the extended lease.

(4) If royalties during any year of each subsequent ten year renewal period equal or exceed the annual rental due under the lease, the lessee may renew for successive ten year periods up to a maximum of 50 years.

(5) In no event shall a lease continue beyond the period of 50 years from the date of execution, except that the lessee shall have a right of first refusal in the event that the Division decides to continue leasing the premises.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0290

Rental Rates

Rental rates will be charged as follows:

(1) Geothermal Lease -- Annual rental:

(a) 1st year -- \$1/acre;

(b) 2nd year -- \$1/acre;

(c) 3rd year -- \$1/acre;

(d) 4th year -- \$3/acre;

(e) 5th year -- \$5/acre;

(f) 6th-10th year -- \$5/acre.

(2) Renewal Geothermal Lease -- Annual rental: \$5/acre.

(3) Rentals paid each year will be deducted from royalties due accruing during the rental year.

(4) If the lessee makes a discovery of geothermal resources on the lease promises, the Division and the lessee may negotiate a rental of less than \$5 per year, commencing with the annual rental payment following the discovery and continuing until commercial production of the discovered geothermal resource is achieved. Such reduced rental shall not be less than \$1 per acre per year.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0295

Requirements After Discovery

Upon making an initial geothermal discovery, the lessee shall:

(1) Submit a proposed testing program to the Division of State Lands. The Director may require amendments to the testing program by written notice to the lessee within 30 days following receipt of the submission.

(2) Proceed to obtain legal confirmation of the well's primary purpose, i.e. geothermal production.

(3) The lessee shall provide certified copies of all tests and measurements made in conjunction with the testing program. If the Director finds the tests, as performed, or the data therefrom are not adequate to evaluate the geothermal resource, he may require other tests to be made, consistent with the usual operating practices of the geothermal industry.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0300

Design Review

No geothermal production shall be allowed under a geothermal resources lease until the lessee has submitted a Design Review report detailing the design alternatives considered in planning the development of leased geothermal resources. Thereafter, for a period of 60 days, the Director may order amendments of the proposed development and operating plans to reduce environmental impact. Appeals of such orders may be taken in the manner provided in ORS Chapter 183.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0305

Royalties on Geothermal Resource Production

During the term of the lease, or any renewal thereof, a royalty at the rate of 10 percent shall be paid upon the production value of the geothermal resources produced under the lease each month and sold or utilized by the lessee.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0310

Production Value

The value of geothermal production shall be determined by the gross sale price paid by plant or other legal purchaser for value. In the event that geothermal production hereunder is not sold but is furnished to a plant owned or controlled by lessee, the gross purchase price of such geothermal production shall reasonably equal the price being paid to other geothermal wells (or producers) for geothermal production of like quality and quantity. Should the Division believe that any charges imposed and deducted are excessive or that the price received by lessee is unreasonable, lessee shall, upon 30 days written notice, produce evidence that the charges, or price, or both, comply with the above requirements.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0315

Production Measurement

The lessee shall accurately measure or gauge the quantity and quality of all production in accordance with the standard practices, procedures, and specifications used in the industry. All measuring equipment shall record cumulative amounts or continuously record in reproducible form. All measuring equipment shall be tested periodically by the lessee and, if found defective, the Division will determine the quantity and quality of production from the best evidence available.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0320

Royalties on By-Products

Upon the sale, exchange or other disposition for value of by-products produced in conjunction with the production of geothermal resources under a lease, the lessee shall pay royalties as follows:

- (1) Demineralized water -- One percent of the gross sale price of demineralized water sold, exchanged, or otherwise disposed of for value in any calendar month.
- (2) Heavy metals, nonhydrocarbon gases, and miscellaneous precipitates -- A royalty of five percent of the gross sale price of all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of for value in any calendar month.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0325

Assignment of Geothermal Resources Leases

- (1) A geothermal resource lease shall not be assigned, in total or in part, without written approval of the Director.
- (2) Each request for total or partial assignment of lease must be accompanied by the following:
 - (a) A completed "Assignment of Lease" form (available from the Division);
 - (b) A fee in the amount of \$50 payable by check;
 - (c) If a corporation, written verification that the assignee is registered to conduct business in Oregon. Registration must be through the Corporation Division, Secretary of State's Office, Salem, OR 97310.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74; LB 3-1981, f. & ef. 6-19-81

141-075-0330

Relinquishment of Geothermal Resource Lease

- (1) A geothermal resources lease, or any portion of the geothermal resource rights covered by such lease, may be relinquished by the lessee by filing a written statement with the Division which:
- (a) Describes the geothermal resource rights to be relinquished;
 - (b) States that the lands above the geothermal resource rights have not been disturbed, drilled, or otherwise affected, or if disturbed, drilled, or otherwise affected, describing the manner in which such lands were restored to their original condition;
 - (c) States that all monies due and payable to workmen employed by the lessee on the leased premises have been paid;
 - (d) Be accompanied by a release from the State Department of Geology and Mineral Industries of permits for any wells drilled on the leased premises.
- (2) A relinquishment shall take effect upon approval of the Division, subject to the continuing obligation of the lessee and the lessee's surety to pay all accrued rentals, royalties, and taxes, if any, and to comply with all conditions of the lease and of these rules related to the restoration of the leased premises.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0335

Investigation of Leased Premises

The Division may conduct scheduled and unscheduled inspections of operations conducted by the lessee under a geothermal resources lease. Upon receipt of a complaint related to the conduct of the lessee of its geothermal resource exploration, development, or production, the Division or any governmental official appointed to the task by it may make an investigation and collect facts and opinions.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0340

Suspension of Operations

Upon the occurrence of any of the following events, the Director may issue an order suspending operations under a geothermal resource lease executed by the Division:

- (1) Violation of the regulatory requirements of the Oregon State Department of Geology and Mineral Industries, the

Oregon Department of Environmental Quality, the Division of Employment, Bureau of Labor, Workmen's Compensation Department, Public Utility Commissioner, Department of Revenue, or other authority having jurisdiction, in excess of 30 days after notice in writing from any such agency, except that requirements undergoing further consideration, reconsideration by such agency, or appeal to the Courts of such agency's decision, shall allow continued operation of the leased premises.

(2) Any violation of the terms and conditions of a geothermal resources lease which, in the judgment of the Director, jeopardizes the environment, public health, welfare, or safety of the State of Oregon.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0345

Cancellation of Geothermal Resources Lease

The Division may commence proceedings to cancel a geothermal resources lease if:

(1) A lessee is in continued violation of terms and conditions of the lease including but not limited to the requirement thereof to exercise due diligence in exploring, developing, and operating under the geothermal resource lease, beyond 30 days after receipt of notice in writing of such violation from the Division.

(2) The lessee submitted false information in its application or in any other document required to be submitted to the Division; or

(3) The lessee has changed its method of exploring, developing, or producing geothermal resources under the lease without first securing the approval of the Division.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

Leasing By Simultaneous Application

141-075-0400

When Applicable

From time-to-time, when geothermal resource rights become available for leasing by the Division, either because they are added or returned to the Geothermal Registry after August 1, 1974, or upon the cancellation, relinquishment, surrender, or other termination of an outstanding geothermal resources lease or upon an order of the Director, the Division shall offer such geothermal resource rights for leasing by public drawing. Additionally, applications received for the same geothermal resource rights in any single mail delivery shall be awarded priority by following OAR 141-075-0405(4) and (5).

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0405

Procedures

The following procedures shall be employed in leasing geothermal resource rights by public drawing:

- (1) A notice of the geothermal resource rights available for leasing by public drawing shall be posted in the offices of the Division and distributed to all persons who have informed the Division in writing of their desire to receive such notice. The notice shall describe the geothermal resource rights available for leasing, and state the last date, which shall be at least 30 days after the date the notice is posted, on which applications will be received.
- (2) Applications for the geothermal resource rights described in the notice shall be submitted in sealed envelopes labeled "**Simultaneous Filing _____ date**" on a form supplied by the Division, and shall be accompanied by the filing fee required by rule 141-075-0040, and the advance rental required by rule 141-075-230 and a prepaid, stamped business reply envelope.
- (3) All applications for the leasing of such geothermal resource rights filed on or before the closing date stated in the notice shall be considered to have been filed simultaneously. Such applications shall be opened in the Division's Salem office at 10 a.m. of the first business day following the closing date stated in the notice.
- (4) After reviewing each application for compliance with the requirements of these rules, the Division shall select the successful qualified applicant by a random drawing which shall be held in public. Unless otherwise noted in the notice for simultaneous filing, successful applicants shall be required to comply with OAR 141-075-0255 through 141-075-0270 prior to receiving a geothermal resources lease.
- (5) After the awarding of geothermal resource leases to the successful qualified applicants, all rental checks shall be returned to the unsuccessful applicants, together with a list of the successful applicants.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

Unit or Cooperative Plans of Development

141-075-0460

Unit or Cooperative Plans of Development Authorized

Lessees under geothermal resources leases are authorized, with the prior consent of the Division, to commit state-owned geothermal resources rights to unit, cooperative, or other plans of development along with other geothermal resource rights located in or under other state lands, federal lands, Indian lands, or privately owned lands, and, to implement such unit, cooperative, or other plans of development, the Division may, with the consent of its lessee, modify and change any and all terms of geothermal resources leases issued by it which are committed to such unit, cooperative, or other plan of development.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0465

Unitization Required

The Director may, when separate geothermal resource rights under lease cannot be developed and operated independently in accordance with an approved well-spacing or well-development program, require lessees to enter into unitization or drilling agreements, providing for the apportionment of production or royalties among separate tracts of land comprising the drilling or spacing unit for the lease, or any portion thereof, with other geothermal resource rights whether or not owned by the state of Oregon, when it is necessary to do so in the public interest. Operations or production pursuant to such an agreement shall be deemed to be operations or production as to each lease committed thereto.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0470

Term of Lease Under Unit Agreement

The term of any geothermal resources lease included in the unit, cooperative, or other plan of development shall be extended automatically for the term of such unit, cooperative, or other agreement. Rentals and royalties on leases so extended shall be at the rate specified in the lease.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0475

Issuing Leases in Established Units

Before issuing a geothermal resources lease for geothermal resource rights within a unit area approved by the Division under OAR 141-075-0355 or 141-075-0360, the applicant or successful bidder will be required to file evidence that he has entered into an agreement with a unit operator for the development and operation of the geothermal resource rights, or provide a statement giving satisfactory reasons of the failure to enter into such an agreement. The Director may permit the applicant to operate geothermal resource rights leased within such an approved unit agreement independently, but will require the applicant to perform its operations in a manner in which the Director deems to be consistent with the unit operations.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0480

Subsidence Monitoring Required

Whenever a unit is established in which the majority of geothermal resource rights are held by a State of Oregon lessee, the lessee shall install and maintain a subsidence monitoring program.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

Competitive Leasing

141-075-0520

"Designated Geothermal Resources Areas" Authorized

In order to establish priorities for effective development of the energy capability of geothermal resource rights owned by the state, the Division may classify such geothermal resource rights as being within Designated Geothermal Resources Areas upon finding that a high probability of geothermal resource development exists.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0525

Basis for Making Designation

The Division may designate geothermal resource rights as being within a Designated Geothermal Resource Area:

- (1) Upon receipt of notice of the discovery of geothermal resources under a geothermal resources lease, or upon learning that geothermal resources have been discovered on lands adjacent to state-owned geothermal resource rights.
- (2) After conducting its own investigation of a particular area with reference to geothermal occurrences, either natural or man-made, geologic structures, present land uses, recreational potential, wildlife potential, geologic and geophysical test data, and other information of a factual nature.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0530

Public Notice of Designation

Prior to designating a Designated Geothermal Resources Area, the Division shall publish a notice of its intention to do so in a newspaper of general circulation in each county in which the particular state-owned geothermal resource rights are located.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 17-1974(Temp), f. 5-31-74, cert. ef. 6-1-74; LB 19-1974, f. & cert. ef. 9-18-74

141-075-0535

Establishment of Bidding Unit

After establishing a Designated Geothermal Resources Area, the Division shall establish quadrants which divide that area into four bidding units of approximately equal size. Unleased geothermal resource rights within each bidding unit shall be grouped for bidding purposes

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0540

Division Action After Discovery

Upon notification of a discovery, the Division will reject applications for geothermal resources leases for all geothermal resource rights lying within seven miles of the discovery site.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0545

Notice of Bidding

The Division will publish a notice of opportunity to bid for leases within the Designated Geothermal Resources Area in a newspaper of general circulation in the county or counties where the Designated Geothermal Resources Area is located. The Division will provide written notice to any person or organization which has requested in writing of the

Division that such notices be provided to it directly.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0550

Contents of Notice

The notice will specify the time and place of bid opening, the manner in which bids shall be submitted, a description of the geothermal resources rights in each bidding unit, and the terms and conditions of the lease, including loyalty and rental rates. The notice will also state that a proposed plan for reduction of environmental impacts and an environmental impact analysis of development and production alternatives will be required before a lease can be issued.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0555

Bidding Requirements

Each bidder shall submit with his bid an application to lease geothermal resource rights, the filing fee required by rule 141-075-0040, and a certified or cashier's check, bank draft, or money order in the amount of one-half of the amount of the applicant's bonus bid.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0560

Opening of Bids and Award of Leases

The following procedures will be employed in opening bids and awarding leases:

- (1) All bids received within the deadline stated in the notice shall be opened and announced at the place, date, and hour specified in the notice. No bids will be accepted or rejected at that time.
- (2) The Division shall have the right to reject any and all bids submitted. Incomplete and nonconforming bids shall be rejected and the bonus bid deposits thereon returned.
- (3) Within 30 days of the bid opening, or such longer periods as may be specified in the notice of bids, the Director shall award a lease for each bidding unit to the qualified applicant which is highest bidder. If the Director does not award a lease within the required period, all bids shall be considered rejected.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0565

Lease Execution

If a lease is awarded, a form of lease shall be sent to the successful bidder, who must execute it within 30 days of receipt, pay the first year's rental and pay the balance of its bonus bid. Within 120 days, and prior to commencing the operations under the lease, the lessee shall file the corporate surety bond required by the Division, file evidence of required insurance, and file completed agreements for environmental protection and surface management.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0570

Forfeiture of Competitive Bid Leases

If a successful bidder fails to execute the lease or otherwise fails to comply with these rules, its deposit will be forfeited and the bidding unit will be re-offered for competitive leasing.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74

141-075-0575

Restoration of Bidding Units

If no bids are received on a bidding unit, the Division, at its discretion, may remove the Geothermal Resource Rights therein from the Designated Geothermal Resources Area and offer the lands for non-competitive Geothermal Resource Rights leasing.

Stat. Auth.: ORS Ch. 273

Stats. Implemented: ORS 273.045, 273.551 & 273.780

Hist.: LB 19-1974, f. & cert. ef. 9-18-74; LB 6-1982, f. & ef. 7-21-82

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 80

LOWER WILLAMETTE RIVER MANAGEMENT PLAN

141-080-0105

Lower Willamette River Management Plan

The **1992 Lower Willamette River Management Plan** as promulgated by the State Land Board and the Division of State Lands is hereby adopted by reference.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.045

Hist.: LB 12(Temp), f. & ef. 10-18-73; LB 14, f. 1-21-74, ef. 2-11-74; LB 30, f. 9-22-75, ef. 9-26-75; LB 1-1986, f. & ef. 1-22-86; LB 4-1992, f. & cert. ef. 9-15-92

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 81

NAVIGABLE RIVERS OF OREGON

141-081-0050

Navigable Rivers of Oregon

(1) The State of Oregon, acting by and through its State Land Board, hereby declares, on the basis of investigations and hearings held under ORS 274.029 and ORS 274.034, that the Rogue River is a navigable river of the State of Oregon from Grave Creek (River Mile 68.4) to Gold Beach, Oregon, (River Mile 0.0). The Rogue River is navigable by virtue of the fact that on February 14, 1859, it was susceptible of being used in its ordinary condition as a highway for commerce, trade, and travel in the customary modes of trade and travel on water.

NOTE: This determination and declaration applies only to the river reach referred to herein and does not imply that any other reach of the river is navigable or non-navigable pursuant to ORS 274.029 and 274.034.

(2) The State of Oregon, acting by and through its State Land Board, hereby declares, on the basis of investigations under ORS 274.029 and 274.034, that the McKenzie River is a navigable river of the State of Oregon from its confluence with the Willamette River to a point known as Dutch Henry Rock, near River Mile 37.

(3) The State of Oregon, acting by and through its State Land Board, hereby declares, on the basis of investigations under ORS 274.029 and ORS 274.034, that the Umpqua River is a navigable river of the State of Oregon from its mouth (River Mile 0.0) near Winchester Bay, Oregon, to the head of tidewater (approximately River Mile 28) near Scottsburg, Oregon.

Stat. Auth.: ORS Ch. 274

Stats. Implemented: ORS Ch. 274

Hist.: LB 25(Temp), f. & ef. 8-5-75; LB 29, f. 9-17-75, ef. 10-10-75; LB 38, f. & ef. 10-15-76; LB 41, f. & ef. 12-16-76

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 82

**RULES FOR LEASING STATE-OWNED SUBMERGED
AND SUBMERSIBLE LANDS**

141-082-0005

Definitions

- (1) "Adjacent Owner" means a person who owns property fronting and abutting state-owned submerged and submersible lands.
 - (2) "Aquaculture" means the culture and/or farming of food fish, shellfish, and other aquatic plants and animals in fresh or salt water areas. Aquaculture practices include hatching; seeding or planting, cultivating, feeding, raising, harvesting of planted crops or of natural crops so as to maintain an optimum yield, and processing of aquatic plants or animals.
 - (3) "Director" means the Director of the Division of State Lands.
 - (4) "Division" means the Division of State Lands.
 - (5) "Extension of Upland Use" means a use that is not water-related or water-dependent.
- EXAMPLE:** Apartments and hotels, private residences (condominiums and houseboats), restaurants and bars, office buildings and retail sales outlets.
- (6) "Governmental Body" means the Federal Government, the State of Oregon and every political subdivision thereof.
 - (7) "Historical Vessel" means a vessel listed or eligible for listing on the **National Register of Historic Places**.
 - (8) "Houseboat" means a floating structure capable of being used as a residence.
 - (9) "Log Boom Area" means the water surface area bounded by floating, connected logs or other devices and used for confining loose logs, grading and sorting logs, making log rafts, or to feed whole or partially processed wood products into the mill.
 - (10) "Log Raft" means a flat log raft is a group of loose logs surrounded by boom logs which can be stored or moved on water as needed. A bundled log raft is comprised of log bundles held together by metal straps and enclosed with boom

logs which can be stored or moved on water as needed.

(11) "Log Raft Storage Area" means the unbounded water surface area used for mooring and storing log rafts, usually marked by piles and dolphins to which the rafts are fastened.

(12) "Marina" means a small harbor, boat basin, or moorage facility providing dockage for small craft.

(13) "Navigation Aids" are structures or devices such as buoys, channel markers, beacons, etc., placed in or along a waterway, by or with the consent of appropriate state and federal authorities, to aid persons engaged in navigation of a waterway.

(14) "Ordinary High Water Line" means the line on the bank or shore to which the water ordinarily rises in season; synonymous with Mean High Water. (ORS 274.005)

(15) "Ordinary Low Water Line" means the line on the bank or shore to which the water ordinarily recedes in season; synonymous with Mean Low Water. (ORS 274.005)

(16) "Person" means all citizens of the United States or lawfully admitted resident aliens; associations of such persons, including firms and partnerships; corporations qualified to do business in Oregon; and governmental bodies.

(17) "Preference Right" means the right of the adjacent owner to preempt a lease of state-owned submerged and submersible land lying riverward of and fronting the adjacent owner's property prior to advertisement for competitive bid.

(18) "Private Docks, Floats and Boathouses" are structures constructed for the personal, exclusive use of the adjacent owner, built over or floating upon the water, and used as a landing place or storage place for small craft.

(19) "Qualified Nonprofit Organization" means a corporation or other entity exempt from federal taxation for scientific or educational purposes under 26 USC 501 (c)(3).

(20) "Temporary Log Raft Tieup Area" means an area not usually used for storage or booming and not regularly used for tying up log rafts in transit. An area used to temporarily secure rafts-in-transit during an emergency or short layup period. Areas that are regularly used to hold log rafts for short time periods are not temporary log raft tieup areas.

(21) "Water-Dependent Use" means a use that must occur on water. Generally benefits navigation or commerce.

EXAMPLES: Workboats, barge moorages, vessel construction yards, drydocks, service and repair facilities, marinas and mooring areas.

(22) "Water-Related Use" means a use normally occurring on upland that utilizes water transport of raw materials or finished products.

EXAMPLES: Wood processing firms, fish canneries and receiving stations, log booming and log raft storage.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84; LB 1-1996, f. & cert. ef. 1-12-96

141-082-0010

Purpose

The purpose of these rules is to establish procedures for leasing state-owned submerged and submersible lands.

(1)(a) All submerged and submersible lands have been placed, by the legislature, under the jurisdiction of the Division of State Lands. It is not the Land Board's desire to impose hardship on the public by the application of these rules and the Board intends to continue working with the public to eliminate problems when they are made apparent:

(b) The State Land Board, through the Division of State Lands, has a constitutional responsibility to manage "the lands under its jurisdiction with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management" pursuant to **Article 8, Section 5(2)**, of the **Oregon State Constitution**;

(c) The State Land Board's policy for the development and administration of leasing rules will be guided by the following considerations.

(A) The public's navigable waterways constitute a resource of great value and utility to all the citizens of Oregon;

(B) This resource is not unlimited. It is finite in terms of space and the amount of private uses that can be accommodated;

(C) Leasing regulations are designed to allocate a private use, on as fair a basis as possible. That only portions of the resource can be so allocated without interfering with the use of the waterway for the public as a highway for navigation, commerce, fishing and recreation. Such private uses diminish opportunities that belong to the public and leases are required to compensate the public for the loss of those opportunities:

(d) Promotion of education is a legitimate use of the Common School Fund.

(2) Uses of state-owned submerged and submersible lands which require leases from the Division include, but are not limited to:

(a) Aquaculture projects involving the cultivation of aquatic plants and animals for domestic or commercial purposes;

(b) Industrial and/or commercial business areas;

(c) Houseboats and houseboat moorages;

(d) Commercial and workboat moorages;

(e) Log storage or booming areas including millside log boom areas (both makeup and breakdown areas);

(f) Historical vessels;

(g) Other uses not exempted by law.

(3) Uses which do not require leases include, but are not limited to:

(a) Barges and vessels engaged in navigation or engaged exclusively in the receipt and discharge of goods or merchandise; navigational aids;

(b) Temporary log tieups approved by Division of State Lands;

(c) Material removal leases under ORS 274.550 and 274.530;

(d) Public boat ramps providing that only a nominal fee to cover maintenance of the facility is charged for use by the public;

(e) Uses exempted by law.

(f) Any structure or use authorized by an easement from the Division of State Lands.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 thru 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84; LB 1-1996, f. & cert. ef. 1-12-96

141-082-0015

Lease Application

(1) Any person engaged in a permanent or long-term use of state-owned submerged or submersible lands not exempted from leasing by statute or these regulations must obtain a lease from the Division. Each application for lease shall contain the following information:

(a) Name, address, and telephone number of the applicant, each fronting and abutting landowner, and any and all persons having a legal interest in the lease;

(b) Name of waterway;

(c) County and city;

(d) Township, Range, Section, Tax Lot number(s) of lease area and adjacent uplands;

(e) A description of the purpose for which the lease area will be used.

(2) Each application shall include:

(a) A location map showing the lease area relative to its surrounding.

NOTE: Aerial photographs, U.S.G.S. Quadrangle maps, Coast Survey Charts, and County Assessor maps are all suitable for this purpose.

(b) A description of the area to be leased sufficient to permit the Division to identify its boundaries, corners, and acreage with reasonable accuracy and to preclude the granting of conflicting leases. A formal survey by a Civil Engineer or licensed surveyor is not required;

(c) A plot plan (suggested scale 1" = 100') showing the lease area, proposed or existing facilities, the adjacent lands and property boundaries, the location of the Ordinary High and Ordinary Low Water lines, and the direction of water flow.

(3) Each application to lease state-owned submerged and submersible lands submitted by a person other than the adjacent owner shall be accompanied by a check for \$100 which shall be refunded if:

(a) The applicant is the successful bidder;

(b) The applicant bids, but is not the successful bidder;

(c) The lease is taken by the adjacent owner.

Stat. Auth.: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84

141-082-0020

Division Action

- (1) During the review and consideration of any lease application, the Division shall:
 - (a) Determine whether or not the proposed use is consistent with existing local, state, and federal laws and these regulations;
 - (b) Determine whether or not the proposed lease unreasonably interferes with the preference rights of adjacent landowners;
 - (c) Subdivide the lease area into smaller parcels by extending the boundaries of adjacent owners so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area;
 - (d) Establish a minimum annual rental for each lease parcel;
 - (e) Notify each adjacent owner that an application for lease has been filed and that there are 14 days to exercise the preference right to take the lease at the minimum annual rental fixed by the Division.
- (2) If an adjacent owner does not exercise the preference right to take a lease applied for by another person, the Division shall prepare and publish an advertisement for bids as required by ORS 274.040. In addition to other pertinent information, the advertisement shall contain the following statements:
 - (a) The minimum annual rental for this parcel is \$_____;
 - (b) Each sealed bid must contain a check or money order in the amount of the bid. Checks or money orders accompanying unsuccessful bids will be returned.
- (3) The Division may, at its discretion, hold a hearing to help decide whether or not to issue any lease.

Stat. Auth.: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84

141-082-0025

Reservation of Rights

- (1) The Division may reject an application for a use which is contrary to local, state, or federal law, or these regulations, or which would result in an unreasonable interference with the public rights of navigation, fishery, and recreation.
- (2) The Division reserves the right to reject any and all bids received for lease of state-owned lands.
- (3) A lease granted under these rules does not authorize any injury to private property or invasion of private rights, or any infringement of federal, state, or local laws or regulations, nor does it obviate the necessity of obtaining other federal, state, or local government's consent required by law for the structure or work proposed.

Stat. Auth.: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84

141-082-0030

Lease Terms

- (1) State-owned submerged and submersible lands may be leased for:
 - (a) Any period up to 20 calendar years if the proposed use may be reasonably expected to exist for the period of time requested; or
 - (b) A period which allows the owner to amortize the investment under generally accepted accounting procedures; or
 - (c) The term remaining on any existing or proposed mortgage plus ten years.
- (2) Leases for log raft storage areas and log boom areas shall not exceed ten years without specific approval of the State Land Board.
- (3) The minimum annual rental for any lease parcel shall be determined by the Division in accordance with rates established by the State Land Board.
- (4) Except as provided under OAR 141-082-0032(1) and (5), the formula to determine the annual rental for the use of submerged and submersible land may be redetermined at any time by revision of these administrative rules and shall become effective on the annual anniversary of the lease.
- (5) Lessees and lease applicants may appeal any proposed rental or redetermined rental by filing a written appeal within 14 days of the date they are notified by the Division of a rental or redetermined rental. An appeal must include market data or other information to support the request for review.
- (6) If the Division and Lessee cannot reach agreement, the Lessee may challenge the annual lease rent by requesting arbitration through the three appraiser method set out in ORS 274.929(3).

Stat. Auth.: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 39(Temp), f. 11-5-76, ef. 11-10-76 - 3-9-77; LB 43, f. & ef. 4-20-77; LB 4-1984, f. & ef. 9-11-84

141-082-0032

Lease Rates

- (1) Except as provided under 141-082-0032(2) the base rate or minimum on all leases shall be no less than \$200 per acre per year. The base rental will be adjusted annually based on the percentage of increase or decrease of the U.S. Department of Labor, Bureau of Labor Statistics, **All Urban Consumers Price Index** for Portland (Base: 1967-100). Except that increases or decreases shall be limited to 4% in any one year, however, the base rate or minimum shall be no less than \$200 per acre per year. In the event the index increases or decreases by more than 40% in any 10 year period, the Division or any lessee may request a revision of the base annual rental provision by modification of the

administrative rule.

(2) The base annual rental for log storage leases shall be \$200 for the first acre and \$120 for each additional acre within the lease area. Commencing September 11, 1984, the base rental will be adjusted annually based on the percentage of increase or decrease of the U.S. Department of Labor, Bureau of Labor Statistics, **All Urban Consumers Price Index** for Portland (Base: 19 167-100). Except that increase or decreases shall be limited to 4% in any one year, however, the base annual rental shall be no less than \$200 for the first acre and \$120 for each additional acre. In the event the index increases or decreases by more than 40% in any 10 year period, the Division or any lessee may request a revision of the base annual rental provision by modification of the administrative rule.

(3) The annual rental for marinas and houseboat moorages shall be determined in the following manner: Marinas and boat moorages, houseboats and boathouses shall be twice the annual log raft rate. Rent to be assessed annually on the anniversary of lease.

(4) Except for aquaculture facilities, the annual per acre rental for all other water-dependent, water-related and extension of upland uses shall be 6% of the per acre appraised value of the adjacent upland, subject to rental adjustments after five (5) years from the effective date of the lease, and after five (5) years from the effective date of each rental adjustment. Challenges of the appraised values shall be made pursuant to OAR 141-082-0030(6).

(5) The annual rental for leases with terms in excess of 20 years, or leases involving new, hardship cases or unusual uses, such as aquaculture facilities, condominium projects, and facilities subject to unit ownership shall be set by Division staff appraisal. Challenges of such appraisals shall be made pursuant to OAR 141-082-0030(6).

(6) Historical vessels may apply for a lease rate equal to the base rate established under subsection (1) of this section provided that:

- (a) The historical vessel is owned and operated by a qualified non-profit organization;
- (b) The historical vessel is open to the public primarily for educational or historical interpretation purposes; and
- (c) The historical vessel is open to organized kindergarten through high school (K-12) groups for an admission charge no greater than 50 percent of that charged for general student admission.

Stat. Auth.: ORS 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 40(Temp), f. 11-5-76, ef. 11-10-76 - 3-9-77; LB 42 f. & ef. 4-20-77; LB 4-1984, f. & ef. 9-11-84; LB 1-1996, f. & cert. ef. 1-12-96

141-082-0035

Implementation

The Division may enter into appropriate forms of contract or agreement as required to implement these rules. An example of such a contract is set out in **Exhibit 1**.

[ED NOTE: The Exhibit referenced in this rule is not printed in the OAR Compilation. Copies are available from the Division of State Lands.

Stat. Auth.: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.040

Hist.: LB 24(Temp), f. & ef. 7-17-75 - 11-13-75; LB 33, f. & ef. 11-20-75; LB 4-1984, f. & ef. 9-11-84

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 83

**GRANTING EASEMENTS AND RIGHTS-OF-WAY ACROSS STATE-OWNED SUBMERGED AND
SUBMERSIBLE LANDS**

141-083-0010

Definitions

As used in these rules, unless the context requires otherwise:

- (1) "Director" means the Director of the Division of State Lands, or his delegate.
- (2) "Division" means the Division of State Lands.
- (3) "Easement" means the right to use state-owned submerged or submersible land granted by the Division in accordance with these rules. For purposes of these rules, the term "easement" includes rights-of-way, a type of easement embodying the right to pass over, through or across another's land.
- (4) "Grantee" means one to whom the easement is granted.
- (5) "Grantor" means one who grants the easement to another.
- (6) "Ordinary High Water" means the line on the bank or shore to which the water ordinarily rises in season; synonymous with Mean High Tide in tidal waters where the water surface elevation is not significantly affected by nontidal flows. ORS 274.005(3).
- (7) "Ordinary Low Water" means the line on the bank or shore to which the water ordinarily recedes in season; synonymous with Mean Low Tide in tidal waters. ORS 274.005(4).
- (8) "State-Owned Submerged and Submersible Lands" means:
 - (a) Submerged Lands -- Lands lying below the line of Ordinary Low Water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal. ORS 274.005(7).
 - (b) Submersible Lands -- Lands lying between the line of Ordinary High Water and the line of Ordinary Low Water of

all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore and hereafter established, whether such waters or lands are tidal or nontidal. ORS 274.005(8).

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0100

Purpose

The purpose of these rules is to establish procedures relating to statutory and non-statutory easements and to existing facilities without easement on, under or over submerged and submersible lands owned by the State of Oregon. Except as otherwise provided in these rules, any use of submerged and submersible lands by the federal government, any agency of the State of Oregon, any political subdivision of the State of Oregon, any public or private corporation, association or person requires an easement from the Division.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0105

Compliance with Other Laws

An easement conveys a limited portion of the state's proprietary interest and is not a substitute for compliance with legal requirements under other laws such as the fill and removal statutes in ORS 541.605 et seq.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0110

Application of These Rules to Existing Facilities

- (1) Statutory Easements. These rules shall not apply to any existing physical use, facility or structure in existence on March 13, 1985 for which an easement has been granted by statute, unless such use, facility or structure is relocated outside the confines of the existing easement. In such event an application for the relocation shall be filed as provided in OAR 141-083-0200.
- (2) Non-Statutory Easements. These rules shall not apply to any existing physical use, facility or structure under an easement previously granted by the Division unless such use, facility or structure is relocated outside the confines of the existing easement. In such event an application for the relocation shall be filed as provided in OAR 141-083-0200.

(3) Existing Facilities Without Easement. These rules shall apply to any existing physical use, facility or structure for which an easement has not been obtained. However, an easement is not required until a major structural alteration, replacement or relocation of the physical use, facility or structure is undertaken. An application therefor shall be filed as provided in OAR 141-083-0200.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0125

Authority of Director

The Director has the authority to grant and renew easements and promulgate rules for their administration pursuant to the provisions of ORS 273.041 to 273.061.

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0150

Statutory Easements

Uses of state-owned submerged and submersible lands for which easements are granted by statute include:

- (1) Construction of a water ditch used for irrigation, manufacturing or mining purposes, ditches or water pipes for conveying water to political subdivisions for domestic purposes, or for the extinguishment of fires under ORS 273.761(1);
- (2) Construction, maintenance and operation of domestic and industrial water supply mains, sanitary pressure mains and storm water outfalls, under ORS 273.761(2);
- (3) Railroad rights-of-way and railroad bridges over navigable waters under ORS 273.751.

NOTE: These rules do not apply to the "necessary grounds" for stations, depots, shops, side tracks, turntables and water stations, not exceeding 10 acres in any one place. ORS 273.751(2). As originally enacted by General Laws of Oregon of 1891, Section 1, page 179, it is clear that the Legislature intended those lands to be sold for \$1 per acre. By amendment in Oregon Laws 1907, Chapter 232, page 415, the Legislature required such lands to be sold for "... such sum therefor as is or shall be fixed by the State Land Board in the sale of similarly situated lands...". The Legislature, however, in the 1907 law, apparently neglected to amend a companion provision in Section 2 of the General Laws of Oregon of 1891, page 180, which required that after the tracts of lands for depots, etc., had been selected, the Land Board was to give deeds therefor upon payment at the rate of \$1 per acre. Nevertheless, the 1907 amendment at least amended that provision by implication. When the Oregon Revised Statutes were legislatively adopted in 1953, they were worded in such a way that it is clear that the Division retained the discretion to fix an appropriate sum for each acre up to 10 acres for the depot stations and other facilities and to fix compensation for bridges. However, the Division was also still required in ORS 273.755(2) to collect \$1 per acre for any tract of land selected for any purpose mentioned in ORS 273.751. Conceivably, the \$1 fee retained in ORS 273.755(2) could be construed as an administrative fee in addition to the proprietary charges authorized by ORS 273.751(2) and (4). In any event, for the purposes of applying these rules, the Division has excluded "necessary grounds" for stations, depots and related facilities.

- (4) Construction and maintenance of skylines, logging lines, ferry skylines and cable footbridges, under ORS 376.620; and

(5) Construction, maintenance, and operation of water, gas, electric or communication service lines, fixtures and other facilities, outside of incorporated cities, under ORS 758.010.

Stat. Auth.: ORS Ch 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0160

Non-Statutory Easements

Uses of state-owned submerged and submersible lands which require an easement purchased from the Division of State Lands include:

- (1) Construction, maintenance and operation of water, gas, electric or communication service lines, fixtures and other facilities within incorporated cities;
- (2) Construction and maintenance of bridges, including bridges for motor traffic, bicycles, pedestrians and pipeline crossings;
- (3) Construction and maintenance of outfall structures including sewer outfalls, cooling water outfalls and any other pipeline or structure which discharges material other than storm water onto state-owned submerged and submersible lands; and
- (4) Any and all other lines, structures and facilities not specifically covered by statute;
- (5) Rights-of-ways required by the Bonneville Power Administration pursuant to **16 U.S.C. § 832 a(C)**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0180

Scope of Interest Granted by Easement

Any existing easement and any new easement gives only such interest to the Grantee as is specified either in the instrument of conveyance or in the applicable statute and the right to use the property for the specified purpose without interference by the Grantor. The right to use the property for all purposes not inconsistent with the Grantee's interest remains with the Grantor.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0200

Application

(1) Each application for an easement shall contain the following information plus such other specific information as may be requested by the Director:

(a) Applicant's name, address and telephone number(s). Name should be written as it will appear as Grantee on the document;

(b) Name of waterway;

(c) Name of county where property is located;

(d) Township, Range, Section, Tax Lot Number or legal description of adjacent upland property;

(e) Legal description of center line of requested easement and width on either side of the center line of the requested easement;

(f) Signature of applicant or authorized representative.

(2) Included with the application shall be:

(a) A description of the proposed project;

NOTE: A U.S. Army Corps of Engineers Public Notice under some circumstances may be adequate for this purpose.

(b) A location map or plot plan showing the adjacent land and property boundaries, the location of the Ordinary High and Ordinary Low Water Lines; or in the case of tideland location, Mean High and Mean Low Tide Lines; and the direction of the water flow. A formal survey is not required.

NOTE: USGS Coastal Survey Charts, and/or County Assessor maps are suitable for this purpose.

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0250

Division Action

(1) The Director shall review and take appropriate action on all easement applications in accordance with these rules and applicable statutes.

(2) During the review and consideration of any easement application the Director shall:

(a) Determine if the proposed project complies with existing state and federal laws and these regulations;

(b) Identify the location of the project and make certain that no existing easement or other legal restrictions will interfere with or be interfered with by the proposed use.

(3) The Director may also:

- (a) Request additional information from the applicant to clarify a specific question or issue raised during review;
 - (b) Request that other regulatory agencies review the proposed project as it relates to each agency's particular concern; and/or
 - (c) Hold a hearing to gather additional information, views, and opinions.
- (4) The Director may reject any application for an easement if the use of the land would violate state or federal law, or unreasonably interfere with the public's right of navigation, fishery or recreation.
- (5) The Director shall not issue an easement for a strip of land exceeding 100 feet in total width or *one-quarter* mile in total length without the approval of the State Land Board.
- (6) The Director shall not issue an easement for a consideration in excess of \$5,000 without the approval of the State Land Board.

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0350

Duration of Easements

Easements shall be issued for the following time periods:

- (1) Easements for railroads bridges and for state, city, county and federal transportation purposes, including structures such as bridges and ferry facilities shall be perpetual;
- (2) Except as otherwise provided in this section, easements shall not exceed 40 years unless a longer term is approved by the State Land Board.

Stat. Auth.: ORS Ch 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0355

Termination

- (1) If the facilities for which an easement is granted are not used for a period of five consecutive years, the easement shall automatically terminate:

NOTE: For purposes of this section, a structure in public ownership which is being preserved for scientific, educational or historical purposes shall be deemed in use even though it is no longer serving its original function

- (2) Following termination, the Division shall give Grantee 30 days written notice to initiate activities to remove facilities and appurtenances from the land. Grantee shall have six months from the date of such notice to complete the removal of facilities and appurtenances.

- (3) The Director may cause removal of Grantee's facilities and restoration of the land to its natural condition to the extent practicable or to that reasonable condition acceptable to the Director, in the event the Grantee fails to do so. In such event, the Director may recover from the Grantee all costs incurred in such removal and restoration.
- (4) Grantee shall be responsible for restoring the state-owned land to the condition which existed at the time the easement is granted, or to a condition which is acceptable to the Director.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0360

Conditions of Easement

The Director shall include the following conditions in all easements unless in the judgement of the Director, a particular condition is inappropriate. The Director may include other conditions the Director deems necessary to protect the public interest:

- (1) Construction in navigable waters shall conform to standards and specifications set by the U.S. Army Corps of Engineers or the U.S. Coast Guard for the project;
- (2) The bed and banks of the waterway shall be restored to a condition acceptable to the Division as soon as construction or maintenance is completed;
- (3) Any blasting during construction shall be performed according to the laws of the state. Underwater blasting permits are required under ORS 509.140;
- (4) The Director may lease or otherwise use the lands within the easement area if the secondary use does not interfere with the easement;
- (5) Public access to the navigable waters must be maintained and/or restored upon completion of construction or maintenance;
- (6) Any effluent discharged from any pipeline or outfall must comply with applicable water quality standards;
- (7) If a facility is not used for a period of five consecutive years the easement will automatically terminate and the land shall be restored by the Grantee to its original condition;
- (8) The Grantee shall pay to the Division the current market value, as determined by the Director, of any actual damages to state-owned submerged and submersible lands, for example, the loss of mineable gravel. This provision shall not apply to materials taken under ORS 273.751(3). For the purpose of this section materials means materials as defined in ORS 273.006(6);
- (9) Any removal-fill activity in waters of the state shall require a permit from the Director in accordance with ORS 541.605 et seq.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0370

Revocation of Easements

The Director, after 30 days written notice may revoke any purchased easement for noncompliance with the terms or conditions of the easement.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0400

Administrative Fees and Costs

With the exception of public utility easements outside of incorporated cities under ORS 758.010, an applicant shall reimburse the Division within 30 days of billing for all administrative costs incurred in the preparation, processing and administration of the easement. The minimum administrative fee is \$250. The minimum administrative fee shall be reviewed annually by the State Land Board.

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0500

Fee Schedule

(The Director does not have legal authority to require compensation for railroad rights of way over navigable waters or for railroad bridges over navigable waters where the bridges were constructed prior to February 25, 1907.)

(1) Except as to easements granted by statute where compensation is not required or authorized (e.g., railroad rights-of-way under ORS 273.751(1)), all easements issued under these rules are subject to a one-time proprietary charge as follows: Perpetual City, County and State Highway Bridge Easements:

(a) Fees for perpetual city, county and state highway bridge easements shall be the present worth of the Division's interest in the easement area, recognizing its highest and best use, and using current Division leasing rates and current interest rates for real property transactions to calculate present worth;

(b) For overhead easements (high tower power lines) the per acre fee shall be 1/3 of the per acre appraised value of the adjacent uplands;

(c) For surface easements (private roads, bridges, trestles) the per acre fee shall be 2/3 of the per acre appraised value of the adjacent uplands;

(d) For submerged (buried) easements the per acre fee shall be 1/3 of the per acre appraised value of the adjacent uplands.

- (2) Utility service lines and facilities located outside of incorporated cities are not subject to charges for use of public lands. See 41 Op Attorney General 486, 488-489 (1981).
- (3) Easement fees for utilities within incorporated cities shall be determined in accordance with subsections (1)(a), (b), (c) and (d) of this rule.

Stat. Auth.: ORS Ch. 273, 274 & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0600

Damages

The applicant shall pay to the Division the current market value, as determined by the Director, of any actual damages to state-owned submerged and submersible lands, for example, the loss of mineable gravel. This provision shall not apply to materials taken under ORS 273.751(3). For the purpose of this rule materials means materials as defined in ORS 273.006(6).

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

141-083-0700

Review by State Land Board

Any aggrieved person dissatisfied with any action taken by the Director under these rules may request the State Land Board to review the Director's action.

Stat. Auth.: ORS Ch. 273, 274, & 758

Stats. Implemented: ORS 273.751, 273.761 & 758.010

Hist.: LB 2-1985, f. & ef. 3-27-85

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 84

MANAGING STATE-OWNED SUBMERGED AND SUBMERSIBLE LANDS

141-084-0010

Closure of Sand Lake Estuary

- (1) All submerged and submersible land below Head of Tide within the Sand Lake estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.
- (2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).
- (3) The elevation of Mean High Tide corresponds to a tide stage of 7.5 feet (Mean Lower Low Water Datum). The Head of Tide in the Sand Lake estuary extends to the upper limit of the lake. (Sections 19, 20, 29, 30, 31 and 32 of Township 3 South, Range 10 West, Willamette Meridian.)

Stat. Auth: ORS Ch. 274

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 3-1980, f. & ef. 5-5-80; LB 1-1987, f. & ef. 4-29-87

141-084-0020

Closure of Siltcoos River Estuary

- (1) All submerged and submersible land below Head of Tide within the Siltcoos River estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in

repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide state of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Siltcoos River estuary is approximately River Mile 3, at the Siltcoos Lake Outlet (Sections 32, 33, and 34 of Township 19 South, Range 12 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273 & 274

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 12-1982, f. & ef. 12-20-82; LB 1-1987, f. & ef. 4-29-87

141-084-0030

Closure of Tenmile Creek Estuary

(1) All submerged and submersible land below Head of Tide within the Tenmile Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Tenmile Creek estuary is approximately River mile1.1, at the Tenmile Lake Outlet (Sections 22, 23, and 14 of Township 23 South, Range 13 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273 & 274

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 12-1982, f. & ef. 12-20-82; LB 1-1987, f. & ef. 4-29-87

141-084-0040

Closure of Tahkenitch Creek Estuary

(1) All submerged and submersible land below Head of Tide within the Tahkenitch Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are Government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet (Mean Lower Low Water Datum). The location of Head of Tide in the Tahkenitch Creek estuary is approximately River Mile 1.2 at the Tahkenitch Creek

Outlet (Sections 19 and 20, Township 20 South, Range 12 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273 & 274

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 2-1983, f. & ef. 6-20-83; LB 1-1987, f. & ef. 4-29-87

141-084-0050

Closure of Berry Creek Estuary

(1) All submerged and submersible land below Head of Tide within the Berry Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of the Mean High Tide corresponds to a tide stage of about 6.3 feet (Mean Lower Low Water Datum). The location of Head of Tide on Berry Creek is approximately the same as the line of Mean High Tide on the beach.

Stat. Auth: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

141-084-0060

Closure of Sutton Creek Estuary

(1) All submerged and submersible land below Head of Tide within the Sutton Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.

(2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).

(3) The elevation of Mean High Tide corresponds to a tide stage of about 6.5 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Sutton Creek is approximately River mile 0.4 (Section 28, Township 17 South, Range 12 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

141-084-0070

Closure of Twomile Creek Estuary

- (1) All submerged and submersible land below Head of Tide within the Twomile Creek estuary is closed to any and all use by motor vehicles. Excepted from the estuary closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.
- (2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).
- (3) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Twomile Creek is approximately River Mile 0.6 (Section 13, Township 29 South, Range 14 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

141-084-0080

Closure of New River, Floras Creek and Fourmile Creek

- (1) All submerged and submersible land below Head of Tide within New River and its tributaries, Fourmile Creek and Floras Creek, is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.
- (2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).
- (3)(a) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet (Mean Lower Low Water Datum).
- (b) The Head of Tide in New River is approximately River Mile 3.1 (Section 15, Township 30 South, Range 15 West, Willamette Meridian).
- (c) The location of Head of Tide in Fourmile Creek is approximately River Mile 0.7 (Section 2, Township 30 South, Range 15 West, Willamette Meridian).
- (d) The location of Head of Tide in Floras Creek is approximately River Mile 0.2 (Section 5, Township 31 South, Range 15 West, Willamette Meridian).

Stat. Auth: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

141-084-0090

Closure of Euchre Creek Estuary

- (1) All submerged and submersible land below Head of Tide within the Euchre Creek estuary is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.
- (2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).
- (3) The elevation of the Mean High Tide corresponds to a tide state of about 6.6 feet, (Mean Lower Low Water Datum). The location of Head of Tide of Euchre Creek is approximately the same as the line of Mean High Tide on the beach.

Stat. Auth: ORS Ch. 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

141-084-0100

Closure of Pistol River Estuary

- (1) All submerged and submersible land below Head of Tide within the Pistol River estuary is closed to any and all use by motor vehicles. Excepted from the closure are government-owned vehicles on official business, motor or non-motorized boats, vehicles used in the launching of boats at designated launching sites, public and private utility vehicles performing company business, vehicles involved in rescue or emergency activities, and vehicles engaged in repair of fences and placement of bank protection material.
- (2) Head of Tide means the inland-most extent of tidal influence as measured by an increase in water surface level at Mean High Tide (Mean Lower Low Water Datum).
- (3) The elevation of Mean High Tide corresponds to a tide stage of about 6.3 feet, (Mean Lower Low Water Datum). The location of Head of Tide on Pistol River is approximately River Mile 1.4 (Section 20, Township 38 South, Range 14 West, Willamette Meridian).

Stat. Auth: ORS Ch 273, 274 & 390

Stats. Implemented: ORS 274.005, 274.705, 390.615 & 390.620

Hist.: LB 5-1986, f. & ef. 5-20-86; LB 1-1987, f. & ef. 4-29-87

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 85

REMOVAL AND FILL PERMITS

Issuance and Enforcement of Removal and Fill Permits

141-085-0005

Purpose

These rules shall govern the administration, enforcement and control of the removal of material from the beds and banks or filling of the waters of this state (ORS 196.800 to 196.990, 390.825, 390.835) and are to be used in conjunction with the rules governing estuarine resource replacement (OAR 141-085-0240 to 141-085-0266) and management of the Lower Willamette River (OAR 141-080-0105) where applicable.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-103; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0010

Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905 and administrative rules in OAR 141-085-0240 to 141-085-0266 for estuarine mitigation:

- (1) "Aquatic Life and Habitats" means the aquatic environment including those fish, wildlife and plant species dependent upon environments created and supported by the waters of the State of Oregon. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.
- (2) "Bankfull Stage" means the stage or elevation at which water overflows the natural banks of streams or other waters of this state and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval

flood elevation may be used to approximate the bankfull stage.

(3) "Beds or Banks" means the physical container of the waters of this state lying below bankfull stage.

(4) "Compensatory Mitigation Sites" are replaced or substituted wetlands or water resources which are created, enhanced or restored as provided in ORS 196.825(5).

(5) "Drainage Ditch" as used in ORS 196.905:

(a) Includes channels constructed entirely from upland that do not have a free and open connection to other natural waters, or, if connected, do not have food or game fish;

(b) Includes channels legally constructed in wetlands that do not have food or game fish; and

(c) Does not include natural streams that have previously been straightened, channelized, relocated, or otherwise altered.

(6) "Emergency" means unforeseen circumstances which present an immediate and direct threat to public health, safety and/or welfare.

(7) "Established Shore Vegetation" means that point along the Pacific Ocean shore where vegetation cover becomes continuous.

(8) "Forest Lands" means land for which a primary use is the growing, harvesting, or processing of forest tree species, restricted to areas covered by the Forest Practices Act (OAR 624-024-0101 to 624-024-0648), ORS 527.610 to 527.730 and 527.990.

(9) "Free and Open Connection", as used in section (20) of this rule, means the connection to or between natural waterways and other bodies of water by surface flow at bankfull stage or at or below mean higher high tide. The connection can be by open channel or through culverts, or at water passage facilities at weirs, dams or by other means.

(10) "General Authorization" means permission issued to the general public or a specified person for limited removals and/or fills that is adopted as an administrative rule and requires no individual permit application as specified by ORS 196.850 and these rules in OAR 141-085-0070.

(11) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(12) "Highway", as used in ORS 196.810(4), means any public thoroughfare designated and maintained by a governmental body.

(13) "Impounded Waters", as used in section (18) of this rule, means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(14) "Line of Non-Aquatic Vegetation" means the upper limit of wetlands or the point at which characteristic upland species become dominantly established in the vegetation.

(15) "Maintenance", as used in ORS 196.905, means the repair, rehabilitation or reconstruction of a fill or structure in accordance with the criteria set forth in OAR 141-085-0020(4).

(16) "Movement by Artificial Means", as used in ORS 196.800(12), means to alter or otherwise displace material. Alteration activities include, but are not limited to, mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, excavating, blasting, plowing, and landclearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by ORS 196.905 for normal farming and ranching activities and other exempted actions).

(17) "Natural Resources in and Under the Waters of this State" means aquatic life and habitats and includes resources

such as shellfish beds, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(18) "Natural Waterways" as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways included under the definition of "Other Bodies of Water".

(19) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of authorized navigation channels.

(20) "Other Bodies of Water", as used in ORS 196.800(14) include:

(a) Wetlands and ponds created by human activity entirely from uplands, unless specified in subsection (c) of this section, that are:

(A) Greater or equal to an acre; or

(B) Protected as a water resource in the local comprehensive plan; or

(C) Compensatory mitigation sites.

(b) Created stream channels or ditches that are:

(A) Constructed from upland; and

(B) Have food and game fish; and

(C) Have free and open connection to other natural waters.

(c) Other bodies do not include wetlands or ponds created by human activity entirely from uplands for the purpose of:

(A) Waste treatment;

(B) Stormwater treatment;

(C) Farm or stock watering;

(D) Settling of sediment;

(E) Cooling water;

(F) Surface mining where the site is protected for interim wetland values or not protected as a wetland resource in the local comprehensive plan; or

(G) Log ponds not protected for wetland values in the local comprehensive plan.

(21) "Person" means natural person, corporations, associations, firms, partnerships, joint stock companies and governmental bodies.

(22) "Project" means any removal and/or fill activity or both in waters of this state. Activities at more than one location within a single natural waterway for a related purpose by the same person shall be treated as a single project.

(23) "Removal-Fill Law" means the statutes ORS 196.800 to 196.905 and 196.990 and rules adopted thereunder, relating to the filling and/or the removal of material in the waters of this state.

(24) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(25) "Tidal Bay" includes estuaries and ocean coves and inlets containing water influenced by the tide.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0015

Jurisdiction

The removal-fill law requires permits for the removal, filling or movement by artificial means (alteration) of material within the bed or banks of the waters of the state unless exempted by ORS 196.905 or OAR 141-085-0020:

- (1) The removal-fill law applies to every removal or fill project in waters of this state.
- (2) Filling or removal of any materials, regardless of the amount, within the bed and banks of any waterway designated as a State Scenic Waterway requires Land Board approval.
- (3) The landward limits of removal-fill law jurisdiction over waters of this state are as follows:
 - (a) Tidal and non-tidal bays to the line of non-aquatic vegetation or the elevation of highest measured tide, whichever is higher;
 - (b) Intermittent streams, which are habitats to aquatic life, to the line of non-aquatic vegetation or bankfull stage, whichever is higher;
 - (c) Constantly flowing streams to bankfull stage or the line of non-aquatic vegetation, whichever is higher;
 - (d) Lakes to bankfull stage or the line of non-aquatic vegetation, whichever is higher;
 - (e) Other bodies of water, to bankfull stage, maximum pool elevation, or the line of non-aquatic vegetation, whichever is higher;
 - (f) Pacific Ocean to the line of established upland shore vegetation or the highest measured tide, whichever is higher.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-105; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0020

Exemptions

- (1) Filling or removal within the beds and banks of non-navigable waterways in forest lands for forest management practices in accordance with the Forest Practices Act (ORS Chapter 527) is exempt from regulation under the removal-

fill law.

(2) Filling for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS Chapters 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.620 are exempt from permit requirements of the removal-fill law. Nonetheless, a removal-fill permit is not required for projects involving the construction, operation and maintenance of dams or other diversions for which permits or certificates have been or shall be issued under ORS Chapters 537 or 539 or for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.620. Fill for activities associated with dam or water diversions for purposes other than operating or maintaining the dam or water diversion (fishways, erosion protection, etc.) and removal for projects authorized by ORS Chapters 537, 539, or 541.010 to 543.620 require permits under the removal-fill law and these rules.

(3) The removal-fill law does not apply to the Federal Government acting in its capacity of navigational servitude.

(4) Criteria for Conducting Maintenance Activities. Maintenance activities, as used in ORS 196.905 and defined in OAR 141-085-0010(15), must meet the following applicable management practices:

- (a) The activity shall not adversely affect a public water supply;
- (b) The activity shall not adversely affect shellfish populations;
- (c) The activity shall not adversely affect a threatened or endangered species;
- (d) The activity shall not restrict existing fish passage;
- (e) The activity shall not adversely affect existing public uses;
- (f) The activity shall not adversely affect historic or cultural resources;
- (g) The activity shall not adversely affect salmonid spawning areas;
- (h) The activity shall be compatible with the applicable local comprehensive plan(s) and implementing ordinances;
- (i) Fill material shall be free of toxic pollutants;
- (j) All temporary fills shall be removed in their entirety upon completion of maintenance;
- (k) All spoils or excavated material shall be placed on uplands, not in any wetland area;
- (l) No concrete rubble, asphalt, tires, automotive parts or other refuse shall be used as fill material;
- (m) All reasonable attempts shall be made to conduct the work using landbased equipment;
- (n) In-water work shall be accomplished during the time period set forth by the District Biologist of the Oregon Department of Fish and Wildlife unless otherwise authorized or restricted by the Division;
- (o) All areas of soil disturbance shall be revegetated with grass and/or legumes to prevent erosion and turbidity; and
- (p) Removal of existing vegetation shall be minimized.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0025**Application for Removal or Fill Permit**

Each person desiring a permit to remove material from the bed or banks or fill any waters of this state shall file a written application with the director:

- (1) Each application shall be on forms provided by the director.
- (2) Each application shall include a map (USGS quadrangle, BLM district map, etc.), showing the project site with sufficient accuracy to permit easy location.
- (3) Each application shall include a project plan of suitable scale (1" = 100' recommended) showing the project site and proposed alterations. Both plan view and section views should be included.
- (4) Each application must be accompanied by a fee in accordance with the schedule in ORS 196.815(3).
- (5) Each application and report required by the director shall be completed with truthful responses.
- (6) Each application for fill or removal from an estuary involving inter-tidal or tidal marsh areas shall be accompanied by a proposed estuarine resource replacement plan developed according to OAR 141-085-0240 to 141-085-0266.
- (7) The director may require that applicants for maintenance dredging permits provide a long range (10-20 years) dredged material disposal plan showing:
 - (a) Amount of material to be removed annually;
 - (b) Statement of the likelihood of dredge material being contaminated. The applicant may be required to analyze sediments from the removal area for contaminants;
 - (c) Location and capacity of dredged material disposal sites;
 - (d) Possible future use of dredged material disposal sites.
- (8) Applicants requesting placement of fill in an estuary for a nonwater dependent use (ORS 196.825(4)) shall evaluate and provide a written statement about:
 - (a) The public use of the proposed project;
 - (b) The public need of the proposed project;
 - (c) The availability of alternative sites for the proposed use;
 - (d) The proposed project's impacts to navigation, fishery and recreation.
- (9) Applicants for permits involving projects which may cause substantial change in the hydraulic characteristics of a water body may be required to conduct an investigation into such changes in hydraulic characteristics and develop a project plan which will minimize the adverse effects.
- (10) Applicants for projects involving fill or removal of less than 50 cubic yards of material within State Scenic Waterways shall be notified of the necessity to obtain State Land Board approval and to be consistent with the policies of the Scenic Waterway Law and the Removal-Fill law.
- (11) If the director determines that the proposed project may cause substantial adverse effects to the aquatic life and habitats of this state, the applicant may be required to provide documentation of existing conditions and resources and

identify potential impacts if the project is accomplished.

(12) The director may require other pertinent information necessary to make an informed decision.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-205; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0030

Renewal of Removal-Fill Permits

Permits for activities that occur annually or require an extended period of time to be completed may be renewed by the director:

- (1) Within 30 days prior to the expiration of a valid removal or fill permit, the director shall determine the status of project completion and the applicant's desire to renew the permit.
- (2) If the annual fee is not received by the expiration date of the permit, the permit is no longer in force.
- (3) A new application or additional information shall be required if:
 - (a) There is a proposed change in the project that may significantly change the effects of the project on the water resources of the state;
 - (b) There is a change in the method of operation of the project that would result in significant effects of the activity on the water resources of the state; or
 - (c) There is a change in natural conditions at the project site that may significantly change the effects of the project on the water resources of the state.
- (4) Notice of intent to renew shall be sent to Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Water Resources, Oregon Division of Soil and Water Conservation, Oregon Department of Economic Development, the local government planning office and any interested party who has submitted a written expression of interest.
- (5) If no adverse comments are received within 15 days of the notice provided, the permit may be renewed.
- (6) If adverse comments or comments requesting a change in conditions are received, the renewal of the application may be processed as specified in OAR 141-085-0035.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1992, f. & cert. ef. 6-15-92

Permits, Permit Findings and Public Hearings

141-085-0032**Multi-Year Permits**

Projects that occur on a continuing basis or will take more than one year to complete, may be issued a permit with a duration of up to five years:

(1) For commercial aggregate removal projects, the director may issue a permit for up to five years upon a determination that:

- (a) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and
- (b) The applicant has conducted removal activities within permit conditions for at least one year preceding the multi-year application.

(2) For any permit issued under section (1) of this rule, the director shall require annual reporting of the physical character of the site. Reporting shall be in the form of a long range restoration plan if the aggregate source is non-renewable (e.g., island removal). If the source is renewable (e.g., gravel bar build-up by high stream flow), the permittee shall demonstrate annually to the director, the capacity of the removal site to sustain the requested level of aggregate harvest.

(3) For maintenance dredging projects, the director may issue a permit for up to five years upon a determination that:

- (a) There is a sufficient capacity for dredged material disposal in an approved location for the duration of the permit;
- (b) There is no indication that toxic or polluted materials would enter the waterway to the extent that the Department of Environmental Quality's Water Quality Standards would be violated; and
- (c) The applicant has conducted maintenance dredging activities within permit conditions for at least one year preceding the multi-year application.

(4) For other projects, the director may issue a permit for up to three years upon a determination that:

- (a) The project is expected to require more than one year to complete;
- (b) The project purpose, location or methods of construction or operation described in the application are not expected to change during the course of the project; and
- (c) The project does not require mitigation under ORS 196.825(5).

(5) Before approving any request to significantly modify a multi-year project permit, the director will circulate the request for review and comment in the same manner as a new application (see OAR 141-085-0035).

(6) If a person fails to comply with reporting requirements or any other condition of a multi-year permit the director may revoke the multi-year status and require annual renewal, or take other enforcement action available to the director under the removal-fill law and associated administrative rules.

(7) Each application for multi-year permit must be accompanied by a fee in accordance with ORS 196.815(3). For multi-year removal permits, the holder shall pay an annual fee on or before the anniversary date of issuance for each year of the multi-year permit.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 3-1986, f. & ef. 3-31-86; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0035**Review of Applications**

In reviewing an application, the Director shall consult with appropriate governmental agencies and individuals and conduct the necessary investigations to develop a factual basis for a permit decision:

(1) The Director may consult with any person, group, or local, state, or federal agency interested in or affected by the issuance or denial of a permit. Recommendations and comments regarding the project should be submitted in writing to the Director within 21 calendar days from the date the public notice is mailed by the Division.

(2) The Director shall consult with the public in the form of a public notice of the proposed action including pertinent drawings, description and notice of input and informational hearing opportunities:

(a) The Director shall provide application notice for comment to Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture Division of Soil and Water Conservation, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Department of Geology and Mineral Industries and any other affected state agency;

(b) The Director shall provide application notice to adjacent property owners listed on the application and interested persons who request notice;

(c) The Director shall provide application notice to the appropriate local government planning department for a determination of compatibility or non-compatibility with the local comprehensive plan and ordinances. The determination shall provide assurance that the project conforms with local floodplain ordinances.

(3) The Director may arrange an interagency coordination meeting to clarify procedures and issues and inform applicants of permit requirements.

(4) At the Director's discretion, the Director may hold a public informational hearing to gather information necessary to make a decision.

(5) With concurrence of the applicant, the Director may suspend processing of the application for the applicant to resolve issues having a bearing upon the Director's decision on the application.

(6) Modifications to permit applications may be accepted by the Director prior to the time when a decision would be required on the original application. If the modification is determined to be substantially different in the nature or effect from the original project, the Director may begin new review procedures at the time of receipt. The Director's deadline for making a decision on the modified application shall be measured from the date the modified application is received. The Director shall respond to the applicant within 21 calendar days to indicate whether the proposed modification shall be treated as a substantial modification requiring additional review.

(7) Written determinations from local governments whose plan and ordinances have been acknowledged and address or control the proposed activity, shall constitute final determination of land use compatibility. Written determinations from local governments whose plan and ordinances have not been acknowledged or do not address or control the activity or where the acknowledged plan allows the activity or use subject to future Goal considerations by an agency, shall be utilized by the director in evaluating land use compatibility.

(8) The Director shall utilize the state permit compliance and compatibility rules (OAR 660-031-0005 to 660-031-0040) and the coordination agreement between the Division of State Lands and the Department of Land Conservation and Development to apply the Statewide Planning Goals to permit decisions.

(9) Notwithstanding a determination by the Department of Land Conservation and Development that a permit or designation in a comprehensive plan complies with the Statewide Planning Goals, the director may deny a permit that does not satisfy the criteria in ORS 196.825 or these rules.

(10) Each new permit shall be supported by written findings from the Director for:

- (a) Fills of two acres or more in freshwater wetlands;
- (b) Fills in estuaries for activities not involving cable crossings, pipelines, or bridge construction;
- (c) Removals from estuaries for more than 10,000 cubic yards of material except for maintenance dredging;
- (d) Riprap in coastal streams and estuaries for greater than 2,500 cubic yards of material; or
- (e) Permit issuance or denial by the Director which is inconsistent with a state resource agency recommendation.

Stat. Auth.: ORS 196.668 - 196.692, 196.800 - 196.990, 215.418, 227.350, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1986, f. & ef. 3-31-86; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0040

Permits Generally

The director shall prescribe the form of permit issued under the removal-fill law:

(1) The permit shall include, but not be limited to, the following:

- (a) Expiration date. Each permit shall be assigned an expiration date, and no permit shall be issued for more than five years;
- (b) Name, address and telephone number of permittee and person responsible for on-site operations;
- (c) General and Special Conditions deemed necessary by the director to carry out the purposes of the removal-fill law, including actions to reduce, eliminate or mitigate adverse impacts to the water resources.

(2) Permit decisions shall be made based on factual determinations developed by site review, agency coordination, public review, hearings and/or other forms of input.

(3) The director may grant a waiver or modification of permit conditions only after agency and interested party coordination. Waiver or modification of permit conditions shall be made only after a determination is made that the waiver or modification will not result in adverse effects on the water resources of the State of Oregon. Modifications that may result in a substantial change will require public review as specified in OAR 141-085-0035.

(4) The director may grant one 30-day extension of a soon-to-expire permit. The extension may be granted only in cases where the permittee certifies that the 30-day extension will allow completion of a nearly finished project. Requests for extensions shall be made in writing or orally at least 15 days before the permit expires.

(5) The director shall recognize the separate and independent criteria for fills and removals in making a decision on permit applications.

(6) For projects that comply with the removal and/or fill policies, the director shall impose conditions which:

- (a) Minimize interference with existing, or where appropriate, future designated land uses in the permit vicinity;
 - (b) Alleviate adverse impacts of the proposed activity;
 - (c) Minimize loss or damage to the water resources of this state; and
 - (d) Promote the protection, conservation and best use of the waters of this state.
- (7) For estuarine removals and/or fills, estuarine resource replacement or waiver of estuarine resource replacement under OAR 141-085-0240 to 141-085-0266 will be required.
- (8) The director may impose further conditions as necessary to protect and conserve the water resources of this state and provide for:
- (a) Creation, restoration or enhancement of aquatic life and habitats to offset loss or damage to the waters of this state;
 - (b) Protection of the navigation, fishery and recreation uses of the waters of this state; or
 - (c) Prevention of hazards to the health, safety and welfare of the people of this state.
- (9) As a permit condition, the director may require bonding of the permittee or a contractor operating under the permit to ensure compliance with permit conditions.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-305; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0045

Removal Permit Policy

Before issuing a permit to remove material from the waters of the state, the director shall determine that the proposed removal will not be inconsistent with the protection, conservation and best use of the water resources of this state. In making the determination whether or not to issue a removal permit, no one of the following considerations is necessarily determinative; it being the responsibility of the director where reasonable, possible, and appropriate to provide for multiple use of the water resources of the state consistent with long-term conservation of those resources under sound techniques of waterway management. The director shall consider the following:

- (1) The environmental and economic benefits and detriments of the proposed removal.
- (2) Whether the proposed removal activity adversely affects the health, safety and welfare of the people of this state.
- (3) Whether the proposed removal activity is inconsistent with existing and potential uses of the water resources of this state, such as:
 - (a) Water and materials for domestic use, agricultural use and industrial use;
 - (b) Habitats and spawning areas for fish;
 - (c) Avenues for transportation; or
 - (d) Sites for commerce and public recreation.

- (4) Whether the proposed removal activity significantly adversely affects the hydraulic characteristics of the water body such as direction and velocity of flow, elevation of water surface, sediment transport capacity, or stability of the bank or shore.
- (5) Whether the proposed removal activity adversely affects water quality or aquatic life and habitats.
- (6) Whether the proposed removal is consistent with local comprehensive plan and ordinances and Statewide Planning Goals and the other policies of the Removal Fill Law and these administrative rules.

Stat. Auth.: ORS 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0050

Fill Permit Policy

Before issuing a permit to place fill in the waters of the state, the director shall determine that the proposed fill would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation:

- (1) The director shall evaluate the probable impacts, including cumulative impacts, of the proposed activity and its intended use on the water resources by considering:
 - (a) The environmental and economic consequences of the proposed fill;
 - (b) Direct and indirect effects of the fill on submerged and/or submersible lands;
 - (c) Effects of the fill on the hydraulic characteristics of the fill site and surrounding areas, such as water circulation, tidal fluctuation, current patterns and flood hazards;
 - (d) Effects of the fill on special aquatic sites and refuges, sanctuaries and scenic waterways;
 - (e) Effects of the fill on water supply, water access, public recreation and aesthetics; and
 - (f) Effects of the fill on water quality and aquatic life and habitats.
- (2) The director shall confer with local government to determine that the proposed fill activity is consistent with the applicable local comprehensive plan and ordinances and Statewide Planning Goals and the other policies of the removal-fill law and these administrative rules before approving permit issuance.
- (3) No permit to fill material shall be issued without a determination that:
 - (a) The project is consistent with the water quality and toxic effluent standards of the State of Oregon as administered by the Oregon Department of Environmental Quality and would not result in significant degradation of the waters of the state;
 - (b) The project meets historical and archaeological site preservation requirements of ORS 390.235;
 - (c) There is no practicable alternative to the proposed fill which would have less adverse impact on the water resources of the State of Oregon;

- (d) The project would not adversely affect rare, threatened or endangered species in the State of Oregon. If rare, threatened or endangered species could be affected, the director will work with the Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service and National Marine Fisheries Service, Endangered Species Office to develop, if possible, permit conditions to protect these resources. If such conditions cannot adequately protect these resources, the permit shall be denied;
- (e) The project individually or collectively would not cause significant degradation of municipal water supplies; aquatic life and habitats; functions of the aquatic ecosystem; or recreational, aesthetic and economic values of the water resources of the state; and
- (f) Appropriate and practicable steps have been taken which will minimize adverse impacts of the fill on aquatic life and habitats.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0055

Erosion and Flood Repair Permits

Where accelerated bank erosion has occurred and repair is required, the director may issue a permit after considering the other criteria in OAR 141-085-0050 for fills and the following:

- (1) Except for repairing extensive, recent cuts into the bank, bank repair shall generally follow the existing bankline without encroaching significantly into the waters of this state.
- (2) Preference shall be given to non-structural erosion repair methods (i.e., bank sloping and revegetation). Structures shall be of rock or other clean, durable, erosion-resistant material and designed to encourage bankline vegetation growth.
- (3) Tires, concrete rubble, asphalt and automobile parts are not generally acceptable for use in bank repair.
- (4) Along the Pacific Ocean Shoreline, erosion repair permits will only be issued where physical improvements (i.e., buildings, roads, water lines or sewer lines) existed on oceanfront lots platted before January 1, 1977.

NOTE: Beach front structure permits and/or beach access permits for structures and construction activities extending west of the Beach Zone Line may be required from Oregon State Parks Division.

Stat. Auth.: ORS Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-270

141-085-0060

Multiproject Permits

Where storm or flood damage occurs necessitating multiple projects to maintain and repair existing facilities or land in numerous locations along a single waterway, more than one project may be authorized in one permit with multiple

attachments. Multiproject permits may be issued where the project meets the conditions for fills in OAR 141-085-0050, erosion and flood repair requirements in OAR 141-085-0055, and the following:

- (1) The applicant shall be the agency, industry or group charged with the responsibility to maintain and repair the damaged facilities or land.
- (2) The application shall be signed by an individual responsible for supervising the project.
- (3) The director may request that the applicant sponsor a field inspection tour of the project sites prior to issuance of a permit.
- (4) The director may request that the applicant provide on-site evaluation and reporting as the work is being performed.

Stat. Auth.: ORS Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-265

141-085-0065

Emergency Letters of Authorization

The Director may issue an emergency letter of authorization orally or in writing:

- (1) If authorization is issued orally, a written letter of authorization shall follow within 5 days confirming the issuance and setting forth the conditions of operation.
- (2) Emergency letters of authorization may be issued to protect existing shorelines or structures under immediate threat by flood or storm waters or for the prevention of channel changes that threaten immediate and significant loss of property.
- (3) A representative of the Division or other state resource agency may inspect the project site to verify that an emergency condition exists and that the emergency action will not significantly impact water resources.
- (4) Emergency letters of authorization shall be in effect for the time required to complete the authorized emergency action and shall not exceed 60 days.
- (5) The Director shall condition emergency letters of authorization to protect and conserve the waters of this state.

Stat. Auth.: ORS 196.668 - 196.692, 196.800 - 196.990, 227.350, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-280; LB 2-1991, f. & cert. ef. 3-15-91

141-085-0070

General Authorizations

As provided in this rule, persons may be exempted from the permitting requirement and issued a general authorization:

- (1) The Director shall prepare a public notice for circulation in the manner prescribed in OAR 141-085-0035(2). The

public notice shall include the draft general authorization, conditions of authorization, and draft findings of fact which establish that:

- (a) The activities covered by each general authorization are substantially similar in nature, would cause only minimal individual and cumulative environmental impacts, and will not result in long term harm to the water resources of the state;
 - (b) The activities of each general authorization shall have minimal cumulative adverse effects on the waters of this state; and
 - (c) The activities of the general authorization meet the requirements for permits in OAR 141-085-0040, 141-085-0045 and 141-085-0050.
- (2) During public review of the draft general authorization, at the Director's discretion, the Director may hold a public hearing to hear testimony and gather information on the proposed general authorization.
- (3) General authorizations shall not be valid where prohibited by local ordinance.
- (4) Each general authorization shall be adopted as an administrative rule according to the Attorney General's Model Rules of Procedure (Division 1).
- (5) The Director shall require reporting of activities authorized by general authorization.
- (6) Each general authorization shall be reviewed every five years. Public notice shall be issued and the opportunity for public informational hearing provided pursuant to OAR 141-085-0075. Following public notice and the opportunity for hearing, the general authorization shall be reissued in a similar or amended form, or rescinded.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 6-1984, f. & ef. 12-17-84; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0075

Hearings Procedure

- (1) Persons desiring further information as a result of public notification of permit application or general authorization may request a public informational hearing:
- (a) Requests for informational hearing shall be in writing and shall clearly state the reasons for requesting the hearing;
 - (b) A informational hearing shall be held if the Director determines that information may be obtained that is not available by other means or significant public interest is expressed in a permit application;
 - (c) Informational hearings will normally be held in the vicinity of the project described in the application.
- (2) An applicant or other persons aggrieved or adversely affected by issuance or denial of permits by the Director or persons against whom the Director has proposed enforcement orders may request a contested case hearing in the manner provided by ORS 196.825(6) or 196.835, whichever is applicable:
- (a) Requests for contested case hearing shall be in writing and shall clearly state the reasons for requesting the hearing. Each written request for a hearing concerning a proposed enforcement order shall admit or deny all factual matters stated in the proposed enforcement order and shall state any and all claims or defenses regarding the alleged violation.

Any factual matters not denied shall be presumed admitted, and failure to raise a claim or defense shall be presumed to be a waiver of such claim or defense. Evidence shall not be taken at the hearing on any issue not raised in the written request for hearing;

(b) Interested persons requesting notification of the Director's decision on a permit will be notified at the time of issuance or denial. The Director's failure to notify an interested person will not extend the statutory 60 days timeframe for hearing requests;

(c) When a contested case hearing has been requested, and there are reasonable grounds to believe that the controversy may be resolved without a hearing, the Director, or any party to the proceeding, may request the parties to meet informally before the hearing to seek resolution of the issue;

(d) The rules of procedure set forth in this Division are in addition to the procedural requirements of the Attorney General's Model Rules of Procedure adopted under OAR 141-001-0005;

(e) Contested case hearings on permit issuance or denial will normally be held in the vicinity of the project described in the application;

(f) Private individuals who are parties in a contested case hearing may represent themselves or may be represented by counsel. Corporations shall be represented by an attorney as required by ORS 9.320;

(g) A contested case hearing concerning a proposed civil penalty of less than \$2,000 shall not be subject to the procedural rules in subsections (h) through (m) of this section unless the Director determines that the issues involved require such procedures;

(h) Prior to a hearing, the hearing officer shall conduct a pre-hearing conference by telephone or in person to:

(A) Establish a procedural schedule, including dates for pre-filed testimony and exhibits;

(B) Identify, simplify and clarify issues;

(C) Eliminate irrelevant or immaterial issues;

(D) Obtain stipulations, authenticate documents, admit documents into evidence and decide the order of proof;

(E) Encourage settlement; and

(F) Consider other matters which may expedite the orderly conduct and disposition of the proceeding.

(i) Except as provided in subsection (g) of this section, the record shall reflect the results of any conferences, which shall be binding on all parties;

(j) Unaccepted proposals of settlement at conference shall be privileged and shall not be admissible as evidence in the proceeding;

(k) If the person against whom a proposed enforcement order is directed fails to attend the prehearing conference, the Division may, in lieu of the prehearing conference, determine the person in default. The Division may immediately conduct a contested case hearing or designate the agency file as the record. If the hearing officer determines that the Division has presented a prima facie case, the proposed order shall become a final order. The Division shall provide notices required by ORS 183.413 and 183.415(1) and (2) for contested case hearing in the prehearing notice. "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Division of State Lands to enforce the requirements of the Removal-Fill Law;

(l) Unless allowed by the hearing officer upon good cause shown, no party may reopen any matter determined at the conference or hearing;

(m) Not less than 21 days before the date set for hearing, any party may file a motion for summary judgment in that party's favor on all or any issues (including claims and defenses) in the proceeding. Such motion shall be accompanied by affidavits or other supporting documents. Opposing parties may file responses within seven days after service of such a motion. The judgment sought shall be rendered if the pleadings, affidavits, supporting documents and the record in the proceeding show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law;

(n) Parties shall file all documentary evidence no less than seven days before the date set for hearing. The hearing officer may admit additional documentary evidence at the hearing upon good cause shown for failure to file before the hearing.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0080

Violations

The Division shall conduct investigations of reported violations and make compliance inspections to determine if violations of the Removal-Fill Law have occurred:

- (1) A violation of the Removal-Fill Law shall include, but is not limited to:
 - (a) Fill, removal, or channel relocation without a valid permit;
 - (b) Violation of any condition of a valid permit;
 - (c) Obtaining a permit or reporting on conditions of a permit by misrepresentation or failure to fully disclose known material facts;
 - (d) Failing to comply with any terms of a valid enforcement order; or
 - (e) Violation of any condition of an approved wetlands conservation plan.
- (2) Alleged or suspected violations may be reported to the Division by telephone or in writing.
- (3) When reports of alleged or suspected violations are submitted to the Division in confidence and the information is not otherwise required by law to be submitted, the Division may keep the name of the person making the report confidential if the criteria set forth in ORS 192.501 or 192.502 are met.
- (4) The Division may inspect any removal or fill project site to determine compliance with the Removal-Fill Law or the terms and conditions of any issued permit, enforcement order, or approved wetlands conservation plan.

Stat. Auth.: ORS 196.668 - 196.692, 196.800 - 196.990, 227.350, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-405 and 141-85-420; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92

141-085-0085**Enforcement Procedures**

The Director is authorized to take civil, criminal or administrative action to enforce the Removal-Fill Law as provided by ORS 196.860 to 196.875:

- (1) When the Director makes a preliminary determination that a violation of the Removal-Fill Law has occurred, the Director may pursue any or all of the remedies available under the Removal-Fill Law.
- (2) The Director may seek voluntary compliance from a violator by allowing the violator to submit an after-the-fact permit application for projects that have been started without a required permit but not yet completed. The purpose of an after-the-fact permit is to allow a partially completed, unauthorized removal or fill activity to be suspended while a determination is made as to whether the permit will be issued to complete the project. An after-the-fact permit applies to removal or fill activity already accomplished at the time the application is submitted, as well as the additional activity proposed in the after-the-fact application to complete the project.
- (3) Allowing the violator to apply for an after-the-fact permit does not prohibit the Director from pursuing any other remedies, including imposing civil penalties.
- (4) A violator may apply for an after-the-fact permit only if the project complies with the local land use plan and ordinances. A fill or removal which does not comply with local land use plans or ordinances shall be subject to enforcement measures to achieve compliance.
- (5) Violations involving fills or removals which were completed at the time of discovery by the Division shall not be reviewed under after-the-fact applications but, instead, shall be subject to enforcement measures to achieve compliance with the Removal-Fill Law.
- (6) Existence of any of the following circum-stances will normally lead to direct enforcement action rather than an after-the-fact permit application:
 - (a) The violator was aware of the Removal-Fill Law while the project was in process;
 - (b) The violator has previously violated the Removal-Fill Law;
 - (c) The project has on-going impacts which must be remedied by immediate full or partial restoration; and
 - (d) The purpose of the project is primarily to dispose of waste or surplus material rather than to develop the site.
- (7) Before a violator is allowed to apply for an after-the-fact permit, the violator shall agree in writing to:
 - (a) Minimize impacts and cease filling or removal on the project site while the permit application is being processed;
 - (b) Restore the project site if the permit application is denied, withdrawn, or abandoned; and
 - (c) Comply with any other conditions that the Director determines are necessary and consistent with the protection, conservation, and best use of the water resources of this state.
- (8) An after-the-fact permit application shall be processed by the Division in the same manner as a timely application. The applicant shall be entitled to administrative and judicial review as provided by ORS 196.825.
- (9) Any person aggrieved or adversely affected by the issuance of an after-the-fact permit may request a hearing pursuant to ORS 196.835.
- (10) When the Director determines the conditions of any permit have been violated, the Director may initiate the following proceedings to revoke the permit:

- (a) The Director shall issue a preliminary order indicating the intent to revoke the permit;
- (b) The preliminary order shall include, but not be limited to, the following information:
 - (A) A statement of the permittee's right to a hearing before the permit may be revoked, and the time period in which such a request may be made;
 - (B) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (C) A reference to the particular sections of the statutes and rules involved; and
 - (D) A short and plain statement of the matters asserted or charged as constituting the violation(s).
- (c) The preliminary order may include a statement of the action, if any, that may be taken by the permittee to correct or offset the effects of the violation including, but not limited to, removal of filled material:
 - (A) If such action is specified in the preliminary order, the order shall include a reasonable time period of not less than 20 days in which to complete the corrective action;
 - (B) If the permittee completes such action within the specified time period, the revocation procedure shall be terminated.
- (d) If the permittee fails to request a contested case hearing within the time period provided, the Director may issue a final order revoking the permit after presenting a prima facie case demonstrating that a violation has occurred.

Stat. Auth.: ORS 196.668 - 196.692, 196.800 - 196.990, 227.350, Ch. 273, 390 & 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-85-435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92

State Removal-Fill Law

141-085-0090

Civil Penalty Provisions

In addition to any other remedy, the Director has authority to assess a civil penalty for any violation of the Removal-Fill Law:

- (1) For purposes of these rules relating to civil penalties:
 - (a) "Violation" means failure to comply with any provision of the Removal-Fill Law, or any rule, order or permit adopted or issued thereunder;
 - (b) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the Removal-Fill Law, or any rule, order or permit adopted or issued thereunder.
- (2) Upon notice to the Division of an apparent violation, the Director shall conduct an investigation to determine whether a violation has occurred.

(3) After completion of a staff investigation, if the Director determines a violation has occurred, the Director may assess a civil penalty as prescribed in these rules.

(4) More than one civil penalty may be assessed for an unauthorized removal or fill action. Example: A civil penalty assessed on an initial violation may be followed by a separate civil penalty for failure to comply with a restoration order issued on the same violation.

(5) The Director shall give written notice of a civil penalty by personal service or by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to, the following:

- (a) The particular section of the statute, rule, order or permit involved;
- (b) A short and plain statement of the matter asserted or charged;
- (c) A statement of the party's right to request a hearing within 20 days of receiving the notice; and
- (d) A statement of the amount of penalty assessed and terms and conditions of payment.

(6) The person incurring the penalty may request a contested case hearing within 20 days from the date of personal service or mailing of the notice. The request shall be made in writing to the Director, and shall be received within the 20-day period.

(7) Hearings shall be conducted under the provisions of ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470 applicable to contested cases. If no hearing is requested or if the party requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency.

(8) Penalty Formulas for Violations Other than Violations of Compensatory Mitigation Conditions -- The amount of civil penalty (F) per day of violation shall be determined by a formula of $F = BVPCI$, where B is base fine, V is water resource value, P is prior violations or knowledge, C is cooperation, and I is water resource impact, as defined in section (9) of this rule. The formula above is subject to the following modifications:

- (a) In cases where the cooperation value (C) is greater than 1 and the water resource impact value (V) is greater than 1, the amount of the civil penalty (F) as determined above shall be doubled;
- (b) In cases involving the violation of permit conditions, where I equals 1, the formula shall be $F = CX$ (\$100), where X is the number of violations of conditions of the permit. Where there have been five or more violations, X is 5;
- (c) After final adjudication of any penalty listed above, for every 20 working days which pass without payment, the amount of the penalty owing shall increase by the amount of the original penalty. No penalty shall be increased by more than ten times the original penalty amount.

(9) The following values and computations apply to the civil penalty formulas set forth in section (8) of this rule:

(a) The base fine (B) is the amount of a permit application fee as defined in ORS 196.815(3)(a). The volume fee, defined in ORS 196.815(3)(b) et seq., is not included in the determination of the base fine;

(b) The water resource value (V) shall be based on the Director's determination of biological, recreational, navigational or fishery or wildlife value, and shall be assessed as follows:

(A) A value of 1 shall be applied to areas the Director determines to be of minor value. Possible examples are, streams or lakes with insignificant public resource or recreational value and wetlands of low resource value as a result of historical disturbances or physical alterations that were not violations existing prior to the violation under consideration;

(B) A value of 1.5 shall be applied to areas the Director determines to be of average value. Possible examples are, straight sections of streams not of value for rearing or spawning habitat for salmon, trout or other game fish, wetlands

with low diversity and low public resource value, and ocean beaches of minor recreational use;

(C) A value of 2 shall be applied to areas the Director determines to be of major value. Possible examples are salmon or trout spawning areas, significant waterfowl habitat, tidal salt marshes and mudflats, freshwater wetlands with high diversity and high public resource value, heavily used recreational beaches and State Scenic Waterways designated under ORS 390.805 - 390.925 or administrative rules adopted thereunder and the Willamette River Greenway designated under ORS 390.310 to 390.368.

(c) The prior violation or knowledge value (P) shall be determined by the Director as follows:

(A) A value of 1 shall be applied where the Director determines the person was unaware of the Removal-Fill Law at the time of the violation;

(B) A value of 1.5 shall be applied where the Director determines the person was aware of Removal-Fill Law at the time of the violation;

(C) A value of 2.5 shall be applied where the Director determines the person was aware of the Removal-Fill Law at the time of the violation, and has previously violated the Removal-Fill Law or any statute, rules, orders or permits pertaining to waters of the state.

(d) The cooperation value (C) shall be determined by the Director after reviewing the past history of the person in taking all feasible steps or procedures necessary or appropriate to correct the violation for which the penalty is being assessed. The value shall be assessed as follows:

(A) A value of 1 shall be applied where the person complies with restoration as requested by the Director without the need for an enforcement order or court action by the Director, or where the Director determines that restoration efforts would be unlikely to benefit the resource;

(B) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Director and the Director must issue an enforcement order or obtain a court order to restore.

(e) The water resource impact value (I) shall be determined by the Director as a measure of extent or relative size of water resource impact as follows:

(A) A value of 1 shall be applied where the Director determines the impacts of the violation are minor and the affected waters of this state would naturally self-restore within one year;

(B) A value of 1.5 shall be applied where the Director determines the impacts of the violation are moderate and the affected waters of this state would restore within two years either naturally or through artificial means;

(C) A value of 2 shall be applied where the Director determines the impacts are major and the affected waters of this state would not restore or would take over two years to restore, whether by natural or artificial means.

(10) Penalty Formula for Violation of Compensatory Mitigation Conditions -- If the Director determines that a violation of compensatory mitigation conditions associated with a permit or an enforcement action has occurred, the Director may assess a civil penalty.

(11) The amount of civil penalty (F) per violation or day of violation shall be determined by using the table below, where B is the mitigation base fine and C is the cooperation value.

Time Elapsed from Required Amount of

Date of Compliance Penalty (F)

1 day to 3 months $F = BC$

3 months to 15 months $F = 3BC$

greater than 15 months $F = 5BC$

(12) The mitigation base fine (B) shall be determined by the Director as follows:

(a) For "minor" violations, the mitigation base fine is \$100. Possible examples of "minor" violations include late filing of monitoring reports and violation where less than 25 percent of the area requiring planting was not planted;

(b)(A) For "major" violations, the mitigation base fine is assessed according to the following table:

Size of Compensatory Mitigation

Mitigation Site Base Fine (B)

less than 0.25 acre \$ 200

0.25 to 1.0 acre \$ 300

1.0 to 5.0 acres \$ 500

greater than 5.0 acres \$1000

(B) Possible examples of "major" violations include violations where less than 75 percent of the required compensatory mitigation area was completed, there was failure to plant buffer areas where required by permit, and where more than 25 percent of the area requiring planting was not planted.

(13) The cooperation value (C) shall be determined by the Director as follows:

(a) A value of 1 shall be applied where the Director determines the person achieved compliance with the required mitigation conditions after notification of non-compliance by the Director, without the need for an enforcement order or court action by the Director;

(b) A value of 3 shall be applied where the Director determines the person is not cooperative in complying with the required mitigation conditions after notification of non-compliance by the Director and the Director must initiate an enforcement order or court action.

(14) Limit on Amount of Civil Penalty -- The amount of civil penalty assessed per day of violation shall be F or \$10,000, whichever is less.

(15) Remit or Mitigate Penalty -- Pursuant to ORS 196.900(3), upon written request of the person assessed, and presentation of evidence of financial hardship, the Director may remit or mitigate the amount of any civil penalty. The request shall be made in writing to the Director and shall be received within 20 days from the date of personal service or mailing of the notice of civil penalty. Evidence of the person's economic and financial condition may be presented by

the person without prejudice to any claim by the person that no violation has occurred or that the person is not responsible for the violation.

Stat. Auth.: ORS 196.800 - 196.990 & Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 4-1986, f. & ef. 4-8-86; LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92

Freshwater WetlandCompensatory Mitigation

141-085-0101

Application

- (1) These rules shall be used by the Director to determine the mitigation requirements necessary to compensate for freshwater wetlands adversely impacted due to projects authorized under the Oregon Removal-Fill Law (ORS 196.800 to 196.990).
- (2) These rules shall not apply to compensatory mitigation:
 - (a) For estuarine wetlands covered by ORS 196.830 and OAR 141-085-0240 through 141-085-0264; or
 - (b) Approved as part of a Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.
- (3) The Director shall consider applications incomplete and shall not begin the review period required by ORS 196.825(7) until the applicant has demonstrated:
 - (a) Why wetlands cannot practicably be avoided by the proposed project; and
 - (b) How the proposed project minimizes impacts to wetlands.
- (4) Purpose: The purpose of these rules is to meet the policy of the State of Oregon as described at ORS 196.672 and 196.805.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0110

Definitions

- (1) "Applicant" means any person requesting a Removal-Fill permit.
- (2) "Compensatory Mitigation" means wetland resource replacement or, in limited circumstances, payment or protection in lieu of replacement for wetlands damaged or destroyed by a permitted activity.
- (3) "Compensatory Mitigation Plan" means a document that describes in detail a proposed compensatory mitigation

project.

(4) "Compensatory Mitigation Project" means a project to replace permitted wetland losses by the creation, restoration, or enhancement of a wetland according to a compensatory mitigation plan.

(5) "Creation" means to convert an area that has never been a wetland to wetland conditions.

(6) "Degraded" refers to a wetland with diminished functions or values resulting from alteration by the invasion of exotic species, or hydrologic manipulation, or other actions or events.

(7) "Director" means the Director of the Division of State Lands or the Director's designee.

(8) "Enhancement" means the alteration and/or active management of existing wetlands for improvement of particular functions and values.

(9) "Functions and Values" are those ecological characteristics or processes associated with a wetland site and the social value placed on them (see the Oregon Freshwater Wetland Assessment Methodology).

(10) "Hydrologically Isolated Wetland" is a wetland which has no surface hydrological connection to streams or other waters of the state.

(11) "In-Kind" means replacement of a particular Cowardin wetland class, with the same Cowardin wetland class.

(12) "Linear Project" means a corridor type project, such as a transportation or utility transmission project.

(13) "Long-Term Protection" means a legally enforceable action taken to ensure that compensatory mitigation site vegetation, structures, buffers, water quality, jurisdictional status, and functions and values are maintained indefinitely.

(14) "Maintenance" means the process of supporting or preserving the condition or functions of a wetland.

(15) "Minor Project" means a single project involving a permitted impact of 0.5 acres or less to a hydrologically isolated or degraded wetland.

(16) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the 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 action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetland or water resources.

(17) "Permit" means a Removal-Fill permit issued by the Director under the authority of ORS 196.810.

(18) "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.

(19) "Project" means any removal or fill activity or both in waters of the state.

(20) "Reference Site" means a site or sites that have the same characteristics as those proposed for compensatory mitigation.

(21) "Restoration" means to rehabilitate a previously drained area by providing wetland hydrology or removing fill material or other means of reestablishing freshwater wetland features.

(22) "Standard" is an established guideline or basis against which the condition of a wetland, or the success of a mitigation project can be compared.

(23) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0115

General Compensatory Mitigation Requirements

(1) The Director shall:

(a) Determine whether an applicant's demonstration of impracticability is sufficient;

(b) Require, as a permit condition, compensatory mitigation to offset unavoidable adverse impacts to wetlands authorized by the permit;

(c) Require applicants to replace impacted wetland functions and values with equal or greater functions and values; and

(d) Require, for non-minor compensatory mitigation projects, long-term protection of the compensatory mitigation site including, donating the site to a land trust or protecting the site by a wetland conservation easement.

(2) Applicants shall:

(a) Compensate for unavoidable losses to wetland functions and values by restoring historic wetlands, creating new wetlands, or enhancing existing wetlands; and

(b) Provide, at the time the compensatory mitigation plan is submitted, the demonstration of impracticability and all supporting documentation intended to justify the particular mitigation approach proposed in the compensatory mitigation plan. This requirement includes demonstrations of impracticability related to off-site and out-of-kind mitigation.

(3) Permit applications shall be considered incomplete and the review period required by ORS 196.825(7) shall not begin until the applicant submits a compensatory mitigation plan that includes a monitoring program.

(4) Compensatory mitigation plans:

(a) May, for linear projects with impacts in several watersheds, propose to compensate for all impacts at a single mitigation site;

(b) May propose to compensate for impacts at a mitigation bank site approved by the Director; and

(c) May propose to compensate for impacts at more than one site and with more than one mitigation technique.

(5) Off-site compensatory mitigation shall be conducted adjacent to or connected with other protected sites unless the

applicant demonstrates the impracticability of doing so. Protected site, for the purpose of this rule, includes protected under local comprehensive plans, state or federal natural resource land"and conservation easements.

(6) The Director shall not accept compensatory mitigation plans that impact areas with existing high natural resource values unless the applicant demonstrates that:

(a) There are no practicable alternatives; and

(b) No loss of the existing functions and values that qualify the area as being of high value will occur.

(7) Payment or protection in lieu of compensatory mitigation are not acceptable to offset wetland impacts caused by permitted projects unless:

(a) The applicant demonstrates that on-site and off-site enhancement, restoration or creation is impracticable or will not adequately replace impacted functions or values; or

(b) Payment in lieu is implemented through an existing mitigation bank authorized under ORS 196.600 to 196.665.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0120

Compensatory Mitigation Priorities

(1) The Director shall authorize compensatory mitigation according to the following priorities:

(a) Restoration of historic wetlands unless the applicant demonstrates that restoration is impracticable or will not adequately replace lost functions or values;

(b) Creation of wetlands or enhancement of existing wetlands which does not result in secondary impacts to the wetland or aquatic system.

(2) Compensatory mitigation shall be conducted on-site unless:

(a) On-site compensatory mitigation is impracticable; or

(b) On-site compensatory mitigation will not adequately replace lost functions or values; or

(c) The Director determines off-site compensatory mitigation to be environmentally advisable considering the type of wetland impacted, and the historic loss of wetland types and functions in the watershed.

(3) Compensatory mitigation intended to offset impacts to habitat functions or values shall be in-kind unless:

(a) The applicant demonstrates the impracticability of in-kind habitat mitigation; or

(b) The Director determines out-of-kind habitat mitigation to be environmentally advisable considering the type of wetland expected to be impacted, and the historic loss of wetland type and functions and values in the watershed.

(4) Off-site compensatory mitigation shall replace impacted functions and values within the same watershed as the proposed project unless:

- (a) The applicant demonstrates the impracticability of compensatory mitigation within the same watershed; or
- (b) Out-of-watershed compensatory mitigation will significantly improve or enlarge habitat for rare, threatened or endangered species or geographically rare habitat; or
- (c) Out-of-watershed compensatory mitigation will significantly improve the water quality in a water quality limited basin.

Stat. Auth.: ORS 196.692
Stats. Implemented: ORS 196.600 - 196.990
Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0125

Application and Review Procedure

- (1) When reviewing applications for permits, the Director shall evaluate the compensatory mitigation plan against OAR 141-085-0101 to 141-085-0180 to determine its adequacy.
- (2) The Director may accept, reject, amend or require the applicant to amend a compensatory mitigation plan.
- (3) If the Director rejects a compensatory mitigation plan, the application is deemed to be incomplete until the plan is modified and resubmitted.
- (4) If a rejected compensatory mitigation plan is not modified and resubmitted within 90 days after the Director's rejection, the application shall be returned as incomplete. A returned application may be completed and resubmitted by the applicant as a new application.
- (5) If the Director amends or accepts the applicant's compensatory mitigation plan, it shall be incorporated as a part of the issued permit.
- (6) The Director shall notify the applicant of substantive amendments to compensatory mitigation plans before issuing the permit.
- (7) Compensatory mitigation projects shall be completed prior to or concurrent with the permitted project unless the applicant demonstrates that this is impracticable. At the time the permit is issued, the Director will set the deadline by which the compensatory mitigation must be completed. The compensatory mitigation required for delayed projects may be increased according to the provisions of OAR 141-085-0135(2)(a).
- (8) All permit conditions relating to compensatory mitigation remain in effect until the applicant is notified by the Director of compliance with the conditions.

Stat. Auth.: ORS 196.692
Stats. Implemented: ORS 196.600 - 196.990
Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0130

Intergovernmental Coordination and Cooperation

The Director shall:

- (1) Provide notice of and opportunity to comment on compensatory mitigation plans to state agencies, local governments, affected property owners, and interested parties;
- (2) Authorize only compensatory mitigation plans compatible with local comprehensive plans and ordinances; and
- (3) In areas with an approved WCP, that WCP may be used as guidance for locating compensatory mitigation projects not covered in the WCP. Watershed plans addressing wetland mitigation may also be used as guidance for locating compensatory mitigation projects.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0135

Compensatory Mitigation Ratios

- (1) Compensatory mitigation shall be conducted, in proportion to the impacts expected to result from a particular project, according to the following ratios, unless modified by the Director:
 - (a) 1.0 acre of wetland restored for each acre of wetland impacted;
 - (b) 1.5 acres of wetland created for each acre of wetland impacted;
 - (c) 3.0 acres of wetland enhanced for each acre of wetland impacted.
- (2) The Director may increase the ratio when:
 - (a) Mitigation, as allowed under OAR 141-085-0125(7), will not be conducted concurrently with a development project; or
 - (b) Replacing the impacted wetland resource is likely to be difficult, for example mitigation for bogs or forested wetlands; or
 - (c) Out-of-watershed mitigation is proposed; or
 - (d) Other relevant circumstances make increases in the ratio appropriate.
- (3) The Director may establish other ratios where a compensatory mitigation plan:
 - (a) Includes restoration of wetland functions or values lost historically in the area; or
 - (b) Is based on regional priorities as developed in watershed or wetland conservation plans.
- (4) The Director shall double the ratio for projects impacting existing mitigation sites.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0140

Conceptual Wetland Compensatory Mitigation Proposals

- (1) The Director encourages applicants to submit conceptual compensatory mitigation plans to the Director for comment as part of a preapplication consultation.
- (2) The Director may consider innovative mitigation plans using new techniques to be experimental but may allow innovative compensatory mitigation as part of a permit.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0145

Minor Project Compensatory Mitigation Plans

- (l) A compensatory mitigation plan for minor projects shall at a minimum include a:
 - (a) Map showing the location of the compensatory mitigation site;
 - (b) Plan map illustrating proposed wetland types and the water source for the mitigation project;
 - (c) Written description of the proposed mitigation including, mitigation goals, water sources, grading plan and planting plan;
 - (d) Plan map showing photographic monitoring locations;
 - (e) Cross-sectional drawings showing the depth of excavations and the height of retention and other relevant structures;
 - (f) Monitoring report as required by OAR 141-085-0150; and
 - (g) Plan map of existing conditions including wetland types, acreages, elevations, hydrologic features and land uses within 500 feet of the site.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0150

Minor Project Compensatory Mitigation Monitoring Requirements

- (1) Applicants proposing minor projects shall provide annual monitoring reports that:
 - (a) Are submitted on forms provided by the Director; and

- (b) Include supporting data needed to document the status of the mitigation project.
- (2) Monitoring shall be conducted for 3 years unless otherwise specified by the Director.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0155

Compensatory Mitigation Plans for Non-minor Projects

A compensatory mitigation plan for non-minor projects shall, at a minimum, include:

- (1) Maps showing the locations of the project site and the compensatory mitigation site and their spatial relationship.
- (2) A detailed project site plan, scaled at 1"=200' or larger, locating:
 - (a) The wetland types present according to Cowardin class and hydrogeomorphic setting; and
 - (b) Water sources.
- (3) A list and description of the wetland acreage and functions and values at the project site expected to be lost or altered due to the proposed project.
- (4) A description of the proposed compensatory mitigation site-including:
 - (a) The wetland types present according to the Cowardin class and the hydrogeomorphic setting;
 - (b) The water sources;
 - (c) An evaluation of the natural resource functions expected to be impacted by the mitigation project; and
 - (d) An evaluation of possible adverse impacts from existing and planned adjacent activities.
- (5) The compensatory mitigation design assumptions.
- (6) The wetland restoration, creation, and enhancement goals.
- (7) A location map and a description of the reference site and of its relationship to the mitigation goals.
- (8) A description, in summary form, of expected losses and gains in wetland functions or values and of the target wetland goals by Cowardin class and hydrogeomorphic setting and water source.
- (9) A description of the methods used to implement the mitigation plan.
- (10) An implementation schedule that includes the initiation of the mitigation project and accomplishment of the defined compensatory mitigation goals.
- (11) The mitigation design details including:
 - (a) Construction limits and methods;

- (b) Grading and planting plans;
 - (c) Water control structures and other hydrologic alteration designs; and
 - (d) The engineering analysis of soil structural stability for earth works, if necessary.
- (12) The name, address and telephone number of the person responsible for implementing, maintaining and monitoring the compensatory mitigation project.
- (13) The proposed monitoring plan in conformance with OAR 141-085-0160.
- (14) A description of the method(s) proposed to ensure long-term protection of the compensatory mitigation project site (for example, donation to land trust, wetland conservation easement, performance bond, etc.).
- (15) A demonstration, when necessary, that water rights or registrations have been requested or received.
- (16) An explanation of proposed contingency measures intended to prevent failure of the mitigation.
- (17) A summary of the mitigation plan on forms provided by the Director.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0160

Compensatory Mitigation Monitoring Requirement for Non-minor Projects

- (1) The purpose of the monitoring program for non-minor projects is to have the permittee provide information to allow the Director to:
- (a) Determine if the compensatory mitigation project complies with the conditions of the permit;
 - (b) Evaluate whether the compensatory mitigation project meets the goals of the compensatory mitigation plan; and
 - (c) Determine the success of the permit program in meeting the policy goals and performance measures in state benchmarks, statutes, rules, and agency evaluation programs.
- (2) The permittee shall submit monitoring reports that include:
- (a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Director, the post construction report shall be submitted within 60 days of completing grading;
 - (b) An annual written monitoring report that includes all data necessary to document compliance with mitigation conditions and success in meeting the compensatory mitigation goals. These data include photographs, topographic surveys, plant survival data, hydrologic data and other information;
 - (c) Monitoring data presented on forms provided by the Director.
- (3) Monitoring shall be conducted for 5 years unless otherwise specified by the Director.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0165

Additional Requirements Applicable to All Compensatory Mitigation Projects

- (1) The permittee's evaluation of success of the compensatory mitigation project shall be deemed accepted if the Director does not respond to the annual written monitoring report within 90 days.
- (2) The Director may require modifications to the compensatory mitigation site and additional monitoring at any time it becomes evident that the mitigation project is failing to meet the mitigation goals.
- (3) At the end of the monitoring period, the Director shall determine if the mitigation project meets the compensatory mitigation goals. If it fails to meet the goals, the Director may require modifications to the mitigation site and additional monitoring.
- (4) When the mitigation project complies with the compensatory mitigation goals, the Director shall notify the applicant in writing of compliance with the permit's conditions and that additional monitoring is not required.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0170

Security Bonding and Instruments

- (1) Applicants shall obtain and provide the Director with a bond, a security instrument, or a secured account sufficient to ensure completion of the required compensatory mitigation if:
 - (a) The compensatory mitigation plan involves an area greater than one and one-half (1.5) acres; or
 - (b) The Director determines the compensatory mitigation is an experimental approach or presents a significant risk of failure.
- (2) The Director shall authorize release of the bond or other security instrument when the compensatory mitigation project fulfills the purpose and goals in the compensatory mitigation plan.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0175

Enforcement of Compensatory Mitigation Permit Conditions

The Director shall enforce compensatory mitigation permit conditions according to the policies and provisions in the Removal-Fill Law and OAR 141-085-0080 to 141-085-0090.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

141-085-0180

Program Monitoring

- (1) The Director shall develop and maintain a database of compensatory mitigation sites, activities and impacts that shall be available to the public.
- (2) The Director shall review and evaluate the effectiveness of this rule on a triennial basis. The review shall include a summary of actions taken, an analysis of trade-offs made, an identification of issues raised and problems identified, and recommendations for changes to make the program more effective.
- (3) The Director may conduct occasional site monitoring to evaluate the effectiveness of these rules and of permit conditions.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95

Estuarine Mitigation in Oregon Estuaries

141-085-0240

Purpose

- (1) The purpose of these rules is to set out the policy of the Director of the Division of State Lands relating to estuarine mitigation. Mitigation is required as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.
- (2) The purpose of mitigation is to maintain the functional characteristics and processes of an estuary -- such as its natural biological productivity, habitats and species diversity, unique features and water quality -- when intertidal or tidal marsh resources are destroyed by removal or fill activities.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0242**Definitions for Estuarine Mitigation**

The following definitions apply specifically to implementation of estuarine mitigation. Additionally, the definitions set out in OAR 141-085-0010, relating generally to administration of the Oregon Removal-Fill Law, shall apply to estuarine mitigation. In the event of conflict between definitions, the definitions contained in these sections shall control the implementation of estuarine mitigation:

- (1) "Mitigation" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features, and water quality (ORS 541.626).
 - (2) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island (ORS 541.605).
 - (3) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation. (See **Figure 1**, OAR 141-085-0248.)
 - (4) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet MLLW. (See OAR 141-085-0266, Tidal Elevations in Oregon Estuaries.)
 - (5) "Line of Nonaquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary. (See OAR 141-085-0266 for "Highest Water".)
 - (6) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.
 - (7) "Restoration of an Estuarine Area" means to revitalize or re-establish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.
- NOTE:** Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system. (See section (8) of this rule.)
- (8) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.
 - (9) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface.
 - (10) "Habitats and Species Diversity" means habitat diversity and species diversity. Habitat diversity means the number of different "general" habitats found in an estuary such as high salt marsh, tidal sand flat, and low fresh marsh. Species diversity is the number of plant and animal species found in an estuary.
 - (11) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.
 - (12) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's statewide water quality standards set out in OAR Chapter 468.

(13) "Compensating Activity" means enhance-ment of one or more habitats or resources due to adjacent or nearby removal-fill activity.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0244

Application and Review Procedure

(1) Whenever any person submits an application for permit for filling or removal of material from an intertidal or tidal marsh area, the Director shall advise the applicant that mitigation will be required as a condition of any permit for such activity as may be issued.

(2) The Director shall notify the applicant that the application for permit is not complete until a written proposal for mitigation has been received. The Director shall also advise the applicant that the 45 or 90-day review period required by ORS 541.625(7) will not begin until receipt of the written mitigation proposal. The Director shall, however, circulate the incomplete application to interested parties so that they may be apprised of the proposed removal-fill project.

(3) The Director shall review any application for intertidal removal or fill permit in conjunction with a written mitigation proposal. The Director's review shall consider the statutory criteria set out in ORS 542.625 to determine whether a permit shall be issued. When a permit is to be issued, the Director shall consider the mitigation proposal and determine its adequacy in accordance with law and these rules.

(4) The Director may accept, reject, or amend the mitigation proposal submitted by the applicant:

(a) If the proposal is rejected, processing of the permit is suspended pending receipt of a revised or amended mitigation proposal. If a revised or amended mitigation proposal is not received within 120 days of the date the prior mitigation proposal was rejected, the application shall be denied. The application fee shall be retained by the Director;

(b) If the Director accepts or amends the applicant's mitigation proposal, the proposal -- as accepted or amended -- shall be imposed as a condition of the issued permit.

(5) Each application for a removal or fill permit involving mitigation shall provide the following information relating to mitigation in addition to such other information as may be required:

(a) A location map and site plan of the area that will be affected by intertidal removal and fill. The development site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The development site plan shall also show the boundaries and area of each estuarine habitat type present at the site. (See OAR 141-085-0246 through 141-085-0254 for a description of estuarine habitats found in Oregon estuaries);

(b) A written mitigation proposal for the intertidal removal or fill activity described in the application. The mitigation proposal shall include a location map and site plan. The mitigation site plan must show water depths and land surface elevations relative to Mean Lower Low Water datum. The mitigation site plan shall also show the boundaries and area of each estuarine habitat type present at the site;

(c) Any provisions of the comprehensive land use plan for the area as those provisions relate to the proposed intertidal removal-fill site and the proposed mitigation site. The requirements of this subsection are best fulfilled by a letter to the Director from the appropriate planning jurisdiction.

- (6) In reviewing an application for a removal-fill permit involving mitigation, the Director shall determine:
- (a) The adverse impacts of the proposed activity, i.e., the type and areas extent of habitats destroyed or adversely affected; the nature and magnitude of associated water quality degradation; unique features destroyed or adversely affected;
 - (b) The extent of compensating activity inherent in the proposed activity, e.g., uplands converted to intertidal or shallow subtidal areas; water quality enhancement caused by improved circulation or flushing. Creation of a subtidal area by removing material from an intertidal area is not a compensating activity under these rules;
 - (c) The availability of areas in which mitigation activities could be performed. The Director may rely on local comprehensive land use plans and local, state, and federal planning and resource agency staff to develop this information;
 - (d) How and to what extent an estuarine area will be created, restored or enhanced;
 - (e) How the proposed mitigation will maintain the functional characteristics and processes of an estuary such as its natural biological productivity, habitats and species diversity, unique features and water quality.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0246

Estuarine Systems Described

- (1) Oregon estuaries have three general aquatic subsystems -- marine, brackish, and fresh -- which are generally described in terms of the salinity range produced by the interaction between sea water and fresh water runoff. OAR 141-085-0264 shows each major Oregon estuary and the location of various salinity subsystems.
- (2) The *marine subsystem* is frequently a high energy zone located near the estuary mouth. The bottom is influenced by strong currents, and the substrate is primarily coarse marine sand, cobble and rock. Salinities are generally high (15 o/oo - 35 o/oo) due to the dominance of ocean water, but may be greatly reduced during high river flows in winter. Kelp and other algal species often cover the rock substrates and form micro-habitats for many species. Benthic invertebrates in this zone may include marine and estuarine species. Most fish utilizing this subsystem are marine species.
- (3) The *brackish subsystem* is a relatively protected environment, often characterized by a broad embayment between the estuary mouth and narrow, upriver reaches of tidewater. Normally the bay subsystem has a large percentage of intertidal land. Because it is a transition zone between marine and fresh-water environments, sediments of the subsystem are primarily a mixture of coarse marine sand and fine river-borne silts and clays. Salinities (0.5 o/oo - 15 o/oo) during summer are moderate to high depending on the size of the drainage, but may vary considerably with tidal state and fresh-water flow. Most bays have a wide diversity of habitats with extensive intertidal flats, eelgrass beds, algal beds, and marshes.
- (4) Sloughs are narrow, isolated arms of an estuary. Fresh-water drainage into the slough subsystem is usually low and may be from a number of small creeks. The current flowing through a slough channel is usually slow. The salinity is frequently in the brackish range and is influenced by the proximity of the slough to the estuary mouth. Sloughs usually have fine organic sediments and high percentages of intertidal land, consisting of extensive flats, eelgrass beds and marshes.
- (5) The *fresh-water subsystem* includes the upper tidewater portions of the larger tributaries which enter the estuary. A

large percentage of the subsystem is narrow, subtidal river channel. Current velocities exhibit dramatic seasonal changes which influence benthic communities. Salinities are low most of the year (0.0 o/oo - 0.5 o/oo) and portions of the subsystems may be entirely fresh water. Sediments range from fine silts and clays to cobble and gravel. Small fringing marshes occur on the narrow, intertidal portions of the river bank.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0248

Estuarine Land Described

- (1) Intertidal and tidal marsh areas of an estuary can be described in terms of substrate material, vegetative cover and salinity regime.
- (2) Lower elevation intertidal landforms having a gradual slope and normally occurring in areas sheltered from strong currents are called *Beds and Flats* (see **Figure 1**). Beds and flats may be vegetated or unvegetated depending on current and wave conditions. Locations of beds and flats vary, but most occur in the bay and slough subsystems. Beds and flats are broader, more gradual in slope, and subject to slower current than adjacent shores.
- (3) Community structure is influenced by sediment characteristics, currents, wave action, temperature, and salinity. Regularly flooded beds and flats support diverse populations of tube-dwelling and burrowing invertebrates including worms, clams, and crustaceans.
- (4) These invertebrates are primarily detritus feeders. Beds and flats also are commonly colonized by macroalgae, diatoms, and seagrasses. Animals and plants have adopted to the wide ranges of temperature and salinity characteristics of flats. A flat may be relatively stable, or may increase in total area, elevation, or percentage of vegetative cover. Beds and flats seldom decrease in elevation or size under normal conditions.
- (5) Higher intertidal landforms that are more than 30 percent covered by erect, rooted herbaceous hydrophytes are called *Tidal Marshes*. The tidal marsh generally occurs from slightly below mean high water (MHW) inland to the line of nonaquatic vegetation. Community composition varies primarily with tidal elevation but is also influenced by sediment type and salinity.
- (6) Plant producers in salt marshes include not only marsh grasses but also macroalgae entwined among the vascular plant stems, microalgae on the mud surface, and phytoplankton in the water column. Organic material and nutrients stored by marsh producers are consumed directly or transported to other portions of the estuary as detritus. Marshes provide habitat for fish, invertebrates, waterfowl, and small terrestrial mammals. A diversity of insects live among and graze on marsh plants.

[ED NOTE: The Figure referenced in this rule is not printed in the OAR Compilation. Copies are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0250

Substrate Types Described

Substrate material, i.e., grain size, organic content, are very important descriptors for flats because they reflect current and wave conditions as well as the nature of plant and animal productivity in the area:

- (1) Rocky-bedrock subclass. The rocky-boulder substrate consists primarily of rock fragments larger than 256 mm in diameter (about one foot). Often finer material is mixed with the larger fragments. The bedrock substrate consists primarily of bedrock surfaces. Unconsolidated sediments may seasonally cover portions of the rock surfaces.
- (2) Cobble/gravel subclass. This substrate consists primarily of cobble or gravel (fragments less than 256 mm but greater than 1 mm in diameter), often with shell fragments or finer sediments intermixed.
- (3) Sand subclass. The substrate is composed primarily of sand (75 percent or more of the sediment is 0.0625 mm to 1 mm in diameter) often with particles of other sizes intermixed.
- (4) Sand-mud mixed subclass. The substrate is a mixture of sand and mud. Sand-mud flats are typically higher in organic content than sand flats and are firmer and more aerated than mud flats.
- (5) Mud subclass. This substrate is primarily silt and clay (75 percent or more of the sediment is less than 0.625 mm in diameter) and is often anaerobic below the surface. Organic content is generally higher than in the other subclasses of flats (except wood debris/organic).

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0252

Vegetative Covers Described

Estuarine lands typically have different types of vegetative cover depending on substrate, salinity, elevation, and exposure to currents and waves:

- (1) Unvegetated. These areas are typically found in high energy zones where heavy wave and current action prevent growth of significant vegetation.
- (2) Algal. Intertidal algal beds consist of macroalgae attached to rock and unconsolidated substrates. Genera common in Oregon estuaries include *Enteromorpha*, *Ulva*, and *Fucus* spp.
- (3) Seagrass subclass. Intertidal seagrass beds are composed primarily of aquatic vascular plants and algae, such as eelgrass (*Zosteramarina*, *Z. nana*), growing on lower intertidal habitats with at least a 30 percent vegetative cover during the majority of the growing season.
- (4) Low salt marsh subclass. Low salt marshes are entirely flooded by most high tides, and, therefore, contribute to the estuarine food supply on a daily basis. Tidal runoff is generally diffuse rather than contained by deep ditches. The marsh surface is generally flat but slopes slightly upward toward land. Depending on the substrate a colonizing marsh community near mean high water is comprised of pickleweed (*Salicorniavirginica*), seaside arrow grass (*Triglochinmaritima*), Seacoast bullrush (*scirpusmaritimus*), or Lyngbyei's sedge (*Carexlynbyei*) (Frenkel and Eilers 1976). This lower intertidal marsh frequently shows high species dominance and low diversity (Eilers 1975).
- (5) Low fresh marsh subclass. Fresh marshes occur inland of salt marshes where soil salinity is low or in the upstream portion of the estuary where fresh water under tidal influence periodically inundates the marsh. Vegetation is

herbaceous with sedge (*Carex* sp.), Bullrush (*Scirpus* sp.), and cattails (*Typha* sp.) usually dominant (Akins and Jefferson 1973).

(6) High salt marsh subclass. High salt marshes usually rise abruptly 0.3 to 1.0 m above the adjacent flat, shore, or low marsh (Jefferson 1975). The marsh surface is irregular with generally continuous plant cover interspersed with pot holes, salt pans, and channels. The marsh surface is covered by most higher high tides and tidal runoff follows well-defined channels with natural levees. Diversity is usually greater in high marsh and transition zone species are described by Frenkel, et al (1978).

(7) Scrub/shrub subclass. Shrub wetlands may occur at the inland boundary of the estuary. In Oregon, willow (*Salix* sp.) is the primary semi-aquatic woody plant that is likely to occur. Willow, however, has a low salinity tolerance, and, therefore, is more often found in fresh-water subsystems and the Columbia River Estuary.

(8) Forested wetland subclass. Forested wetlands define the inland boundary of the estuarine zone. In Oregon, Sitka spruce and red alder are typical plants that are likely to occur. This subclass is essentially a fresh water community. Forested wetlands are not a part of the estuarine system for mitigation unless the land surface is inundated at the Highest Measured Tide.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0254

Habitat Classification

The Oregon Department of Fish and Wildlife (ODFW) under contract to the Department of Land Conservation and Development (DLCD) has developed an estuarine habitat classification system (Bottom et al., 1979, **Habitat Classification and Inventory Methods Management of Oregon Estuaries**) based on an existing U. S. Fish and Wildlife Service habitat classification system (Coward in et al., 1979, **Classification of Wetlands and Deep Water Habitats of the United States**, Fish and Wildlife Service, U. S. Department of the Interior). In addition, ODFW has mapped habitat types in all major Oregon estuaries except the Columbia River and prepared resource inventories for selected inventories for selected estuaries. These reports provide the information base for implementation of mitigation policy. **Figure 2** shows the Estuarine Mitigation Intertidal Habitat Classification System.

[ED NOTE: The Figures referenced in this rule are not printed in the OAR Compilation. Copies are available from the Division of State Lands. The publication(s) referenced in this rule are also available from the office of the Division of State Lands.]

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0256

Mitigation Policy Generally

Mitigation means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features, and water quality:

- (1) No mitigation proposal may be inconsistent with an acknowledged comprehensive land use plan and implementing ordinances for the area where the removal-fill activity will occur or where the mitigative action is located.
- (2) Mitigation must occur in the same estuary as the intertidal removal or fill activity except when the alternative is a partial waiver of mitigation under ORS 541.626(4)(a).
- (3) Mitigation shall restore or enhance estuarine lands and resources in an area proportionate to the *area affected* by the intertidal removal or fill activity. The *area affected* shall include the actual area where material is removed or filled and any surrounding intertidal or tidal marsh area adversely affected by the activity. At minimum, the mitigation action shall offset the adverse impacts of the intertidal or tidal marsh removal-fill activity.
- (4) Mitigation shall "maintain" (replace) the natural biological productivity and species diversity of the intertidal removal-fill site by creation, restoration or enhancement of an appropriate area of another estuarine habitat. Any shallow subtidal or intertidal or tidal marsh estuarine habitat may be used to "replace" the habitat lost to intertidal removal-fill, but the area will be proportionate to the Relative Value of the habitats involved. The surface area of a mitigation site may not be smaller than the surface area of the development site.

NOTE: The purpose of this policy statement is to ensure conservation of estuarine surface area. However, a mitigation proposal shall not fail because the mitigation surface area is slightly less than the intertidal removal-fill area and no other mitigation area is available or the next alternative would be far more expensive.

(5) Habitat types found in Oregon estuaries have been evaluated and compared in terms of natural biological productivity and species diversity by trained scientists and natural resource managers knowledgeable and familiar with the physical, biological, and chemical processes of estuaries. The result of this evaluation is a set of Relative Values which can be used to determine how much area of one habitat is needed to mitigate each acre of another habitat lost to intertidal removal-fill. **Figures 3 and 3A** are a matrix of habitat characteristics and Relative Values for habitats found in Oregon estuaries:

- (a) The base Relative Values for estuarine habitats shall range from 1.0 to 6.0;
- (b) The Director may adjust the Relative Value of any habitat type (except for relative values already established in a mitigation bank agreement) if site conditions and characteristics such as very low or exceptionally high resource values warrant such adjustment to carry out the provisions of the Removal-Fill Law. Such adjustment may not exceed 25 percent of base Relative Value in either direction.

(6)(a) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

$$AM = (RVd/RVm) (AD) \text{ where}$$

AM = Area of mitigation site

RVd = Adjusted Relative Value of the development site

RVm = Adjusted Relative Value of the mitigation site

AD = Area of development site

(b) The equation for determining how much shallow subtidal area is required for mitigation shall be:

$$AM = 2.0(RVd/RVm) (AD)$$

(c) Note that if shallow subtidal habitats are offered as mitigation, the required surface area is twice the size of the surface area required if an intertidal or tidal marsh area of equal Relative Value is offered. The surface area of the mitigation site (AM) may not be smaller than the surface area of the development site (AD).

(7) **Figure 4** shows the relationship between the adjusted Relative Values of the development and mitigation sites and

the ratio of the Mitigation Area to the Development Area (AM/AD) when the habitat replacement occurs under section (4) of this rule.

(8) The Mitigation Credits attributable to any created or restored habitat may be obtained by multiplying the adjusted Relative Value of the created or restored habitat by the number of acres affected.

(9) The Mitigation Credits attributable to any *enhanced* habitat may be obtained as follows:

(a) Obtain the base Relative Value of the existing habitat from **Figures 3 or 3A** and adjust appropriately;

(b) Estimate or otherwise determine what the adjusted Relative Value of the affected habitat will be after mitigation occurs;

(c) Subtract (a) from (b) to obtain enhancement Relative Value;

(d) Multiply the enhancement Relative Value (c) times the number of acres enhanced.

(10)(a) Mitigation shall "maintain" the unique features of estuaries that may be affected by intertidal removal-fill projects. The term "unique features" is defined in OAR 141-085-0242(11);

(b) The Director intends to rely upon acknowledged comprehensive land use plans for guidance in identifying "unique features" for mitigation purposes. Proposed intertidal removal-fill activities involving unique features shall be scrutinized carefully to determine whether or not a permit should be issued. If a permit is issued, mitigation shall be in-kind to the maximum extent possible and shall include the habitat replacement required under section (4) of this rule;

(c) The objective of mitigation involving unique features shall be to replace lost habitat by substituting and, additionally, to replace or relocate as much of the unique feature as possible.

(11)(a) Mitigation shall "maintain" habitats and species diversity. The law does not mandate that every habitat and species affected by intertidal removal and fill be replicated in the mitigation proposal. However, the law does require consideration of whether or not habitat or species diversity of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the impact. The Director will maintain habitats and species diversity through habitat replacement required under section (4) of this rule;

(b) "In-kind" or "like-kind" mitigation will be encouraged whenever possible by approving mitigation proposals and mitigation banks that involve a diversity of resource-habitat types. The Division will maintain a record, by estuary, of the amounts and types of habitats involved in intertidal removal-fill sites and mitigation sites. No additional mitigation is required under this subsection unless the Director determines that a mitigation proposal under section (4) of this rule would reduce or impair habitats and species diversity.

(12)(a) Mitigation shall maintain "water quality" through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(b) Oregon has stringent water quality standards that the Director routinely incorporates into removal-fill permits. The Director will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Director approve a *mitigation proposal* that would degrade water quality. The Director will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(c) A mitigation proposal that produces an identifiable enhancement in estuarine water quality may be used to offset a portion of the resource losses of an intertidal removal-fill activity provided that the mitigation proposal also includes habitat replacement under section (4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(d) A mitigation proposal claiming water quality enhancement as a mitigative action shall describe the action in detail and explain why and how the project will enhance water quality. The proposal shall identify the nature and areas extent

of habitats affected by the water quality enhancements. A water quality enhancement activity mandated by a state or federal agency to raise water quality to state or federal standards is not mitigation under this section;

(e) If the Director determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in section (9) of this rule.

NOTE: An acceptable mitigation project must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. A project that enhances water quality may serve as mitigation once sufficient estuarine area has been created, restored, or enhanced to meet the conservation of surface area requirement.

(13) Activities which do not require mitigation even though they may involve intertidal removal include:

(a) Maintenance dredging -- Provided that the applicant can show that the site has been dredged before and is part of a regularly used project. First time dredging activities that remove intertidal lands to obtain water depth will require mitigation;

(b) Aggregate mining -- Provided that the site has been used historically for aggregate removal on a periodic basis.

(14) Examples of activities which are not considered mitigation within the meaning of ORS 541.626 except when mitigation would otherwise be waived in part under ORS 541.626(4)(a):

(a) The transfer of private intertidal estuarine lands to public ownership (Att. Gen. Op. 3774, 1976);

(b) The dedication of intertidal estuarine lands for natural uses;

(c) Cash payment;

(d) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;

(e) Creation of subtidal lands except when the area was originally upland. In general, creation, restoration, and enhancement of subtidal lands produce less mitigation credit than similar actions relating to intertidal lands. Less credit is given because habitat replacement is not "in-kind", i.e., not intertidal as are the lands affected by the removal-fill activity. For purposes of these rules, the creation, restoration, or enhancement of a subtidal habitat will produce one-half the mitigation credits produced by an intertidal area of the Relative Value.

NOTE: The Relative Values for subtidal habitats may be adjusted up to 25 percent up or down in the same manner as intertidal habitats.

(15) Examples of areas and activities considered suitable for restoration and enhancement activities include:

(a) Areas where poor water quality, or similar degradation, limits fish and shellfish production and harvest or human recreation;

(b) "Dredge spoil islands" which could be lowered to create or restore intertidal surface area;

(c) Tide flat or tidal marsh areas suitable for restoration;

(d) Areas where circulation or flushing can be restored or enhanced by breaching dikes or roadfills or removing pile groups or structures.

(16)(a) Mitigation sites and activities need not be fully developed biologically at the time of acceptance, but there must be a high probability of success associated with the proposed action. There is no penalty assessed for a mitigative action that takes time to produce the anticipated resources and habitats;

(b) The Director may require bonding in an amount sufficient to cover the costs of site acquisition and any necessary physical alterations. The need for bonding will be considered especially carefully in cases where mitigation actions will

be taken after the development project, or in cases where the results of the mitigation action will not occur for several years.

NOTE: Late maturing projects are not as acceptable as those where good results may be anticipated in one or two years.

(17) The Director may require monitoring of a mitigative action to determine performance over time, especially when results are not anticipated immediately. Ordinarily, monitoring will consist of annual site inspections over a five-year period to determine whether predicted ecosystem changes have occurred as anticipated. Site inspections would be of a survey nature, conducted by state and federal resource agency personnel or by an independent consultant. Levels and details of monitoring shall be specified in the permit, or in the case of mitigation banks, in the written agreement establishing the bank.

(18) The Director may require funding for research in cases where the ramifications of a given mitigation action are uncertain. Such requirement shall be set out in detail in the permit.

(19)(a) The procedures described in this section are suitable for estimating the mitigation liabilities and credits of a proposed intertidal or tidal marsh removal-fill project and the attendant mitigative action. In most cases, these guidelines will produce a mitigation proposal acceptable to the Director and interested parties;

(b) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Director to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Director.

[ED NOTE: The Figures referenced in this rule are not printed in the OAR Compilation. Copies are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0258

Waiver of Mitigation

ORS 541.626(4)(a) provides for *partial waiver* of mitigation as follows:

" . . .(a) Waive mitigation in part for an activity for which mitigation would otherwise be required if, after consultation with appropriate state and local agencies the director determines that:

"(A) There is no alternative manner in which to accomplish the purpose of the project;

"(B) There is no feasible manner in which mitigation could be accomplished;

"(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

"(D) The project is for a public use; and

"(E) The project is water dependent or the project is publicly owned and water related; or..."

NOTE: "Public Use" means a publicly owned project that is available for use by the public. ORS 541.605(9).

(1) Requests for a partial waiver of mitigation shall be in writing and shall address each of the criteria set out in sufficient detail to inform the Director as to the basis for waiver. The Director's written waiver and decision criteria shall

be appended to the permit when issued.

(2)(a) ORS 541.626(4)(b) provides for waiver of mitigation, *wholly or in part*, as follows:

". . .(b) Waive mitigation wholly or in part for an activity for which mitigation would otherwise be required if the activity is:

"(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

"(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

"(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

"(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

"(E) Dredging or filling required as part of an estuarine resources restoration or enhancement project agreed to by local, state, and federal agencies; or

"(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources".

(b) The Director may waive mitigation under ORS 541.626 (4)(b) upon Division staff recommendation or written request of the applicant. The Director's written waiver and decision criteria shall be appended to the permit when issued.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0260

Mitigation Banks

(1) The mitigation needs of an intertidal removal-fill activity can be met using mitigation "credits" stored in a "mitigation bank". Mitigation credits result from a mitigative action accomplished under agreement with the Division. Such credits can be used to offset the mitigation needs of small projects that occur at some time after the mitigation bank is created.

(2) A "Mitigation Credit", the currency of a mitigation bank, is the product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s). For example, a mitigation action might involve a large diked former brackish marsh that could be restored to the estuarine system by breaching dikes. The site might yield acreage of high brackish marsh (Relative Value 4.0), low brackish marsh (Relative Value 5.0), and unvegetated brackish sand flats (Relative Value 3.0) that could be used for mitigation. Based on five acres of each habitat type, the bank would have some 60 mitigation credits available to offset mitigation liabilities of future projects.

(3) The following rules are established for the creation and use of mitigation banks:

(a) A mitigation bank may be created in any estuary to provide mitigation for one or more development projects in that

estuary. More than one bank may be created in any estuary. Any legal entity may create a bank;

(b) Mitigation banks shall be created by written agreement with the Director and may be administered by the Director. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

- (A) The exact location of affected real property;
- (B) Proof of ownership or control, i.e., deed, title report;
- (C) The nature and extent of the mitigative action. This analysis will require information about site salinity, elevation, wave and current actions, substrate, and other physical and biological characteristics;
- (D) How and when the mitigative action will be performed;
- (E) A statement of informed opinion as to what habitat types will result from the action and a statement as to Relative Value of each anticipated type;
- (F) How the resulting habitat changes will be monitored and evaluated;
- (G) How the mitigation site will be protected, i.e., dedication, conservation easement, deed;
- (H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding;
- (I) The maximum price that may be charged for credits from the bank.

(4)(a) The Director may authorize creation of mitigation banks making use of restoration of estuarine lands caused by a naturally occurring or human activity that occurred after July 21, 1979 even though mitigation through restoration was not the intent of the action;

(b) Such mitigation banks shall be created under the procedures set out in section (2) of this rule.

(5) Applicants for removal and fill permits requiring mitigation are not obligated, or automatically entitled, to use an existing mitigation bank to meet the mitigation needs of any project. Permit applicants must negotiate directly with the owner of a bank to secure the right to use the bank. Agreements between the owner of a bank and a permit applicant are subject to the Director's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0262

Mitigation Trust Fund

- (1) The Director may establish an Oregon Mitigation Trust Fund to provide loans for approved mitigation banks. Because the principal value of a mitigation bank is to provide mitigation for *small* intertidal fill and removal projects, mitigation banks funded wholly or in part from this trust fund may not be used to mitigate more than five acres of any intertidal removal and fill activity.
- (2) Funds for the Oregon Mitigation Trust Fund may be provided by gift, bequest, donation, grant, or other similar source.

- (3) Funds shall be loaned for a period not to exceed ten years. Repayment of the principal shall require no more than ten annual installments.
- (4) Funds shall be loaned at not more than the prime rate with interest on the unpaid balance payable annually on the anniversary of the loan.
- (5) The highest priority for loans will be given to mitigation banks in deep draft development estuaries. The next highest priority shall be given to mitigation banks in shallow draft estuaries.

NOTE: Implementation of this rule requires legislative authority to create a revolving trust fund for this purpose.

Stat. Auth.: ORS Ch. 541
Stats. Implemented: ORS 196.600 - 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0264

Maps and Charts

The following maps and charts are adopted by reference and are available from the Division of State Lands:

- (1) Salinity map, Columbia River.
- (2) Salinity map, Necanicum River.
- (3) Salinity measuring stations, Nehalem River.
- (4) Mean quarterly salinities, Nehalem Bay.
- (5) Salinity Measuring Stations, Tillamook Bay (Two maps).
- (6) Mean quarterly salinities, Tillamook Bay (Two charts).
- (7) Salinity Measuring Stations, Netarts Bay.
- (8) Mean quarterly salinities, Netarts Bay.
- (9) Salinity Measuring Stations, Nestucca River.
- (10) Mean quarterly salinities, Nestucca River.
- (11) Salinity Measuring Stations, Salmon River.
- (12) Mean quarterly salinities, Salmon River.
- (13) Salinity Measuring Stations, Siletz Bay.
- (14) Mean quarterly salinities, Siletz Bay.
- (15) Salinity Measuring Stations, Yaquina Bay.
- (16) Mean quarterly salinities, Yaquina Bay.

- (17) Salinity Measuring Stations, Alsea Bay.
- (18) Mean quarterly salinities, Alsea Bay.
- (19) Salinity Measuring Stations, Siuslaw River.
- (20) Mean quarterly salinities, Siuslaw River.
- (21) Salinity Measuring Stations, Umpqua River.
- (22) Mean quarterly salinities, Umpqua River.
- (23) Salinity Measuring Stations, Coos Bay (South Slough).
- (24) Mean quarterly salinities, Coos Bay (South Slough).
- (25) Salinity Measuring Stations, Coos Bay.
- (26) Mean quarterly salinities, Coos Bay.
- (27) Salinity Measuring Stations, Coos Bay (Isthmus Slough).
- (28) Mean quarterly salinities, Coos Bay (Isthmus Slough).
- (29) Salinity Measuring Stations, Coquille River.
- (30) Mean quarterly salinities, Coquille River.
- (31) Salinity Map, Rogue River.
- (32) Salinity Map, Chetco River.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

141-085-0266

Tidal Elevations in Oregon Estuaries

The figures and tables in **Exhibit 1** illustrate the elevations of specified tidal datum for each Oregon estuary. The tables will assist in locating areas subject to the mitigation requirement.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84

**Payment to Provide Compensatory Wetland Mitigation and
Protection of Existing Wetlands in Lieu of Compensatory**

Wetland Mitigation

141-085-0300

Purpose

These rules describe when and under what conditions the Division will allow Removal-Fill Permit applicants to compensate for wetland losses through payment of a cash amount determined by the Division, or by protecting healthy wetlands.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0306

Applicability

- (1) These rules apply when:
 - (a) Alternative methods of conducting compensatory mitigation using wetland conservation plans or mitigation banks are not available; and
 - (b) On or off-site mitigation options are not appropriate or practicable for offsetting the wetland losses expected to result from the proposed action.
- (2) These rules shall be used in conjunction with the rules governing freshwater and estuarine resource replacement (OAR 141-085-0101 through 141-085-0266).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0310

Policies

- (1) The following three (3) alternatives are available to an applicant who meets applicable requirements of these rules:
 - (a) Pay a cash amount to the Division equivalent to the actual cost of performing the compensatory mitigation required by a Removal-Fill Permit;
 - (b) Pay a cash amount to a Division-approved third party equivalent to the actual cost of performing the compensatory mitigation required by a Removal-Fill Permit; or
 - (c) Protect existing healthy wetlands in lieu of conducting compensatory wetland mitigation or payment of cash required

by a Removal-Fill Permit.

(2) The availability or use of Payment to Provide Compensatory Mitigation shall not:

(a) Be allowed when the Oregon Department of Environmental Quality (DEQ) determines that a project requiring a Removal-Fill Permit will cause more than a de minimis negative affect on parameters that limit water quality unless compensatory mitigation occurs within the impacted water quality basin; and/or

(b) Create a presumption that the proposed wetland impact is a permissible action, nor eliminate the requirement to fully demonstrate that the applicant has attempted to avoid and/or minimize the wetland losses.

(3) It shall be the Division's policy to give priority to those projects proposing to use wetland restoration, creation, and enhancement in conjunction with the compensatory wetland mitigation options consistent with Compensatory Mitigation Priorities at OAR 141-085-0120.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0315

Definitions

(1) "Applicant" means a person who has applied to the Division for a Removal-Fill Permit to undertake an activity which will result in wetland losses.

(2) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(3) "Buffer" means an upland area immediately adjacent to, surrounding, or within a wetland that improves or maintains the functioning of that wetland.

(4) "Director" means the Director of the Oregon Division of State Lands or the Director's designee.

(5) "Division" means the Oregon Division of State Lands.

(6) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between state agencies or government entities.

(7) "Payment To Provide Program" or "Program" means Oregon's Payment To Provide Compensatory Mitigation Program.

(8) "Protection" means the perpetual protection of a wetland from degradation resulting from human activities.

(9) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(10) "Water Quality Limited" means waters listed by the Oregon Department of Environmental Quality on the Clean Water Act Section 303(d) list as not meeting state water quality standards for particular parameters (for example, turbidity, oxygen, pH, fecal coliforms, etc.).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0320

Criteria for Allowing Protection of Wetlands in Lieu of Compensatory Wetland Mitigation

The Director may allow an applicant to protect wetlands as a means of compensatory mitigation if the following criteria are met:

- (1) The requirements of OAR 141-085-0325(1)-(5) below;
- (2) The wetlands to be impacted by the proposed project must be determined by the Division to be degraded and exhibit reduced wetland function;
- (3) The functions and values of the wetlands proposed for protection must be threatened by human activities outside of the control of the applicant;
- (4) The proposal to preserve healthy wetlands not likely to benefit from restoration or enhancement must include additional protections such as upland buffers, fencing, and removal of contaminated soils, in addition to appropriate long-term protection measures that will substantially reduce the threat;
- (5) Protection of existing wetlands may be granted on an area basis at no less than a 10:1 ratio for wetland(s) protected to wetland(s) lost;
- (6) The applicant provides to the Division proof of ownership of, or explicit legal and recordable permission granted by the landowner, to perpetually dedicate the protection wetland(s) and buffer(s) through any mechanism that unequivocally preserves the functions and values of the wetlands; and
- (7) The applicant provides documentation of the signed and recorded perpetual protection mechanisms.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0325

Criteria for Allowing Payment to Provide Compensatory Wetland Mitigation

The Director may allow an applicant to make a cash payment in lieu of providing compensatory mitigation if all of the following requirements are satisfied:

- (1) The area of freshwater wetland impacted by the applicant's proposed project is one (1) acre or less unless the Director determines that the environmental benefits expected from compensatory mitigation conducted through this program would exceed those expected from an applicant's best efforts at on-site or off-site compensatory mitigation.
- (2) The wetlands to be lost are not protected by a local land use comprehensive plan.

- (3) The applicant has met the substantive requirements of the Removal-Fill Law including:
- (a) Consideration of alternatives to the project;
 - (b) Demonstration that it is not practicable to avoid the wetlands which will be impacted by the proposed project; and
 - (c) Demonstration that the proposed project minimizes impacts to wetlands.
- (4) The Director determines that on and off-site compensatory mitigation is not appropriate for the particular project based on the following characteristics of potential on-site and off-site mitigation opportunities:
- (a) The sustainability of the mitigation site after considering the likely effect that adjacent land use(s) will have on the proposed mitigation; and
 - (b) The isolation of the proposed mitigation site from other waters of the state.
- (5) The applicant has explored the potential of using a mitigation bank.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0330

Information Requirements

Prior to approving a project for inclusion under the payment to provide program, the Director must receive the following information from the applicant:

- (1) The total area of the wetland compared to the amount that will be lost.
- (2) The Cowardin and hydrogeomorphic classifications of the wetland which will be disturbed.
- (3) The functions exhibited by the wetland expected to be lost at the project site. This assessment shall, at a minimum, include a qualitative estimate of the wetland's:
 - (a) Function as fish or wildlife habitat;
 - (b) Contribution to the water quality of waters of the state;
 - (c) Contribution to hydrologic control; and
 - (d) List of animal and plant species/plant communities utilizing the wetland.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0335

Payment Determination And Trust Account

- (1) The Director shall determine the amount of payment required of an applicant under this program based on the Division's estimates of required land acquisition, consulting, design, construction, maintenance, monitoring and other costs associated with restoring, enhancing, creating, and/or protecting a wetland.
- (2) The Director shall utilize the Oregon Wetlands Mitigation Bank Revolving Fund Account authorized pursuant to ORS 196.640 et seq. to hold and disperse money collected from the program.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0340

Permit Conditions

- (1) When the Director determines that payment to provide compensatory mitigation is appropriate, the Removal-Fill Permit authorizing the activity shall state:
- (a) The amount of the payment to be made by the applicant and the factors used to calculate that payment;
 - (b) The losses to the wetlands expected to occur including the area, type(s), and function(s) of wetland(s) expected to be lost;
 - (c) The applicant's remaining responsibility relating to compensatory mitigation, if any; and
 - (d) The payment made as a condition of the permit and under this program is non-refundable if the wetland loss proposed by the permit is completed.
- (2) The Director shall issue Removal-Fill Permits under this program only after receipt of full payment of the estimated cost of mitigation.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0345

Expenditure of Funds Collected Under This Program

- (1) The Director shall spend the funds collected under this program only to restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to offset the identified losses to wetlands, to monitor the compensatory mitigation project, to manage the compensatory mitigation project as necessary to assure that the mitigation is successful, or to otherwise meet the requirements of this program.
- (2) The Director shall expend funds collected under this program within the geographic region in which the wetland(s) loss(es) occur unless s/he, in the annual accounting report to the State Land Board, determines that spending funds

collected under this program is not practicable within a respective region.

(3) The Director shall expend funds collected under this program within two (2) years from the date the Removal-Fill Permit is issued unless s/he, in the annual accounting report to the State Land Board, determines that meeting the two year time limit is not practicable.

(4) Third party recipients of funds collected under this program shall sign a written agreement provided by the Division that requires the recipient(s) to utilize the funds for specific wetland mitigation projects reviewed and approved by the Division. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Division.

Stat. Auth.: ORS 73.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0350

Geographic Regions

(1) To implement the Payment To Provide Program, the Director shall refer to the basins as defined in OAR 141-085-0315(2) of these rules. The boundaries of these regions are set based on the limits of watersheds, water quality districts, and coastal zones at the time of adoption of these rules.

(2) Within each basin, the Director shall record the loss(es) to wetland types, area(s), and functions resulting from Removal-Fill Permits issued under this program.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0355

Project Responsibility

(1) The Director, by eliminating the applicant's responsibility for compensatory mitigation, if any, under OAR 141-085-0340 (1)(c) of these rules, assumes all responsibility:

- (a) Regarding the adequacy of the compensatory mitigation required to offset the impacts of the authorized project; and
- (b) Monitoring, managing, and otherwise assuring the success of the compensatory mitigation project performed by the Division or designated third party(ies) under this program.

(2) The Director, as part of an intergovernmental agreement, may transfer or extend his/her responsibility for the project to another person.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0360

Program Accounting

- (1) All funds collected and spent, as well as the ecological success of projects developed under this program, shall be tracked using a database dedicated specifically to this purpose.
- (2) The Director's annual accounting report to the State Land Board shall:
 - (a) Describe the overall compensatory mitigation program.
 - (b) Describe the compensatory mitigation projects conducted under this program, including an evaluation of the success of these projects in meeting project goals.
 - (c) Describe the wetland loss(es) expected to result from projects authorized under this program individually and cumulatively by basin.
 - (d) Indicate the amount of payments collected and spent on an individual project basis as well as cumulatively by basin.
 - (e) Describe the wetland functions expected to accrue as a result of compensatory mitigation projects funded under this program in total and for each basin.
 - (f) Relate the wetland impacts authorized under this program to total wetland loss(es) authorized under the Removal-Fill Law.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

141-085-0365

Enforcement

The Director shall enforce this program according to the policies and provisions contained in the Removal-Fill Law (ORS 196.800 through 196.990) and the Rules For Issuance And Enforcement Of Removal And Fill Permits (OAR 141-085-0080 through 141-085-0090).

Stat. Auth.: 273.045 & 273.051

Stats. Implemented: ORS 196.600 & 196.665

Hist.: LB 1-1997, f. & cert. ef. 2-14-97

Waiver of Removal-Fill Permit Requirements

141-085-0601

Waiver of Removal-Fill Permit Requirements for Commercial Shellfish Harvest Activities

- (1) Under the conditions set forth in this rule, for the purposes of commercial shellfish harvest, a person may remove or alter material from specified tidal waters of this state without a permit from the Director.
- (2) This general waiver of the requirements of ORS 541.605 to 541.665 is made pursuant to ORS 541.640 and OAR 141-085-0070 and is based upon findings of fact contained in a document entitled "**Findings of Fact and Ultimate Finding of Fact in the Matter of Waiving Permit Application Requirements for Commercial Shellfish Harvest Purposes**", issued by the Director on February 13, 1985, and by this reference incorporated into and made part of this rule. These findings are available from the Division of State Lands.
- (3) To be eligible for the general waiver provided by this rule, a project must be located within the areas depicted in **Exhibits 1, 2, 3 and 4** which by this reference are incorporated into and made part of this rule, and must conform to the following specifications:
 - (a) Harvest operations involving removal, filling or alteration in estuarine waters are restricted to suction device, pressurized jet operated by a diver or other device authorized by Oregon Department of Fish and Wildlife (ODFW) pursuant to ORS 506.129 and 508.116;
 - (b) Harvest operations involving removal, filling or alteration within the territorial sea may use any collection device authorized by ODFW pursuant to ORS 506.129 and 508.116;
 - (c) Offshore harvest operations shall be prohibited within a zone one mile north and south of known onshore razor clam resources, as specified by ODFW shellfish harvesting permits;
 - (d) Offshore harvest operations are restricted to waters deeper than 20 feet MLLW and are not allowed in known kelp beds.
- (4) To be eligible for this general waiver, a project must comply with the following operating conditions:
 - (a) There shall be no disturbance of intertidal areas, eelgrass or kelp beds;
 - (b) The timing and specific location for permitted activities shall be specified by ODFW permit;
 - (c) Activities shall be conducted in a manner that minimizes the increase in turbidity and keeps disturbed sediments localized to the harvest site;
 - (d) The shellfish harvest operation shall abide by the terms and conditions of ODFW Shellfish Harvest Permit.
- (5) The Division of State Lands shall review each Shellfish Harvest Permit for compliance with the conditions of the general waiver. The Division of State Lands will notify the permit applicant if the proposed activity does not comply with the general waiver.
- (6) This general waiver applies only if Oregon Department of Fish and Wildlife approves the project.
- (7) The Director of the Division of State Lands may deny application of the general waiver to a particular project if proposed activities are causing or have the potential to cause significant adverse affects to the aquatic life and habitats of the waters of the State of Oregon.
- (8) This rule shall be in effect from the date of adoption until December 31, 1989, at which time it shall be reviewed and considered for renewal.

[ED. NOTE: The Exhibits and Publication(s) referred to in this rule are not printed in the Oregon Administrative Rules Compilation. Copies may be obtained from the office of the Division of State Lands.]

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 3-1985, f. & ef. 3-27-85

Development of Oregon Wetlands Priority Plan

141-085-0610

Purpose

The purpose of these rules is to implement the requirements of ORS 541.575, 541.557(6), and 541.585(5), regarding development of an Oregon Wetlands Priority Plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

141-085-0620

Definitions

- (1) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the Parks and Recreation Division of the Oregon Department of Transportation pursuant to the federal land and Water Conservation Fund Act of 1965, as amended (**16 U.S.C.460-L et seq.**) ORS 541.550(5).
- (2) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).
- (3) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.
- (4) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended. (**16 U.S.C. Section 460-L et seq.**)
- (5) "Director" means the Director of the Division of State Lands.
- (6) "Division" means the Division of State Lands.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

141-085-0630

Policy

- (1) The purpose of the Oregon Wetlands Priority Plan is to promote the protection and effective management of wetlands in the state of Oregon.
- (2) The Oregon Wetlands Priority Plan will establish criteria and provide guidance and direction in determining the locations and types of wetlands and interests therein that should receive priority consideration for state acquisition utilizing state dedicated funds from the Oregon Wetlands Mitigation Bank Revolving Fund account or federal monies granted under authority of the Land and Water Conservation Fund Act (Public Law 88-578).

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

141-085-0640

Plan Development Process

- (1) The Director shall prepare a draft Oregon Wetlands Priority Plan, consistent with requirements of the Emergency Wetlands Resources Act, for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.
- (2) In preparing the draft plan, the Director shall consult with the Oregon Departments of Fish and Wildlife, Land Conservation and Development, Environmental Quality, Economic Development, and State Parks and Recreation Division of the Department of Transportation, and a representative of Oregon's local governments.
- (3) Upon completion, the draft plan shall be submitted for comment to:
 - (a) The state agencies in section (2) of this rule;
 - (b) Other state agencies including, but not limited to those on the Division of State Lands mailing list;
 - (c) Federal natural resource and regulatory agencies including but not limited to: the Corps of Engineers, National Park Service, U.S. Fish and Wildlife Service, National Marine Fisheries Services, Environmental Protection Agency, Forest Service, Bureau of Land Management, Soil Conservation Service, Bureau of Reclamation and Federal Emergency Management Administration;
 - (d) Local governments and special districts including but not limited to port districts, and soil and water conservation districts;
 - (e) Conservation organizations and interested parties who have requested to be placed on a mailing list maintained by the Division for such purposes.
- (4) The Division shall hold one or more public hearings to provide opportunity for clarifications, recommendations and other public input on the draft plan.
- (5) The Director shall review and evaluate comments received to determine appropriate revisions to the draft plan.
- (6) After consideration of comments received, the Director shall present to the State Land Board a recommended Oregon Wetlands Priority Plan. The presentation shall include a summary of comments made on the draft plan and an

explanation of how the comments were accommodated in the recommended Plan or otherwise addressed.

(7) The Director shall submit the Oregon Wetlands Priority Plan, as approved by the Land Board, to the State Parks Administrator for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

141-085-0650

Receipt and Application of Funds

(1) Funds made available to the State of Oregon from the federal Land and Water Conservation Fund to achieve the purposes of the Oregon Wetlands Priority Plan shall be transferred by the Department of Transportation into the Oregon Wetlands Mitigation Bank Revolving Fund Account pursuant to ORS 541.580(2).

(2) As provided in ORS 541.585(5), funds received pursuant to section (1) of this rule shall be reserved for disbursement by the Division for acquisition of wetland parcels or interests therein identified by the Oregon Wetlands Priority Plan.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

141-085-0660

Plan Update

(1) The Director shall complete the Oregon Wetlands Priority Plan by July 1, 1988.

(2) The Director shall review the Oregon Wetlands Priority Plan annually and update the plan at least every five years under the process set out in OAR 141-085-0640.

(3) The Director shall report to the State Land Board annually on the status of wetland acquisitions taken under the plan.

Stat. Auth.: ORS Ch. 541

Stats. Implemented: ORS 196.600 - 196.990

Hist.: LB 1-1988, f. & cert. ef. 3-18-88

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 86

WETLAND CONSERVATION PLAN

141-086-0005

Definitions

For purposes of these rules, the definitions contained in ORS 196.800 apply. In addition, the following definitions apply:

- (1) "Buffer Area" means a non-wetland area adjacent to wetlands or waters of the state that screens, shelters, protects or enhances the wetland or waterway resource value.
- (2) "Deep Draft Development Estuary" means those estuaries designated as such under OAR Chapter 160, Division 17.
- (3) "Fully Offset" means to replace all wetland functions and values proposed for development in a plan area by wetland creation, restoration or enhancement.
- (4) "Inventory" means a map or series of maps and additional data showing wetland boundaries and conditions.
- (5) "Mitigation Plan" means a written plan detailing the location, timing, type and methods to replace proposed wetland losses through creation, restoration or enhancement of wetland functions and values and the means to assure the long-term protection and maintenance, and monitoring of mitigation sites.
- (6) "Monitoring Provisions" means a written plan that details the requirements and timing for monitoring and reporting wetland resources, functions and characteristics.
- (7) "Practicable Alternatives" means those alternatives which are available and capable of being done, taking into consideration environmental, economic and social factors.
- (8) "State Wetland Inventory" means an inventory which contains the location, wetlands types, and approximate boundaries of wetlands in the State of Oregon. This inventory is continually revised as additional information is received or obtained by the Division of State Lands.
- (9) "Substantial Change in Circumstances" means any changes in law or physical conditions which would adversely affect the wetland resources of a plan area.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90; LB 6-1994, f. & cert. ef. 10-20-94

141-086-0010

Request for Approval

(1) When a local government has developed a proposed wetland conservation plan pursuant to ORS 196.678, it may request the Director to review and approve the plan. Approval requests shall be sent to the Director of the Division of State Lands, 775 Summer Street, N.E., Salem, OR 97310.

(2) The approval request shall include:

(a) A letter or resolution from the governing body of the local government requesting review by the Division;

(b) Six copies of the wetland conservation plan, containing all information required by ORS 196.678(2), and including implementing ordinances or land use regulations, inventories and other factual information used in developing the plan. All maps of regulated wetlands shall be at a scale of 1" = 400' or larger;

(c) A list of all documents used in developing the wetland conservation plan that are not included with each plan copy due to excessive volume or size. This list shall include minutes and any "record of proceedings." The list shall briefly describe the contents of the items not included and identify where those items may be examined. The local government shall make such supporting documents available at hearings before the Director held pursuant to OAR 141-086-0025;

(d) The name and address of the person authorized to receive any and all correspondence from the Division; and

(e) A list of the names and addresses of all agencies, districts, and public or private citizen groups affected by or interested in the proposed wetland conservation plan.

(3) Upon receipt of an approval request, the Division shall review the request to determine that it contains the documents and information required by section (2) of this rule:

(a) If the request is complete, the Division shall commence review of the approval request pursuant to OAR 141-086-0025, prepare a proposed order pursuant to ORS 196.681(1)(b) and OAR 141-086-0012, and provide public notice of the opportunity for comment pursuant to OAR 141-086-0015;

(b) If the approval request is incomplete, the Division shall, within 14 days of receiving the request, notify the local government in writing of the specific requirements of section (2) of this rule that have not been met. The local government has 20 days from the receipt of such notice in which to provide the Division with this required information. If the local government fails to meet this deadline, the approval request will be considered to be withdrawn unless a request for extension has been granted by the Division prior to the deadline.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0012

Proposed Order

When the Director receives an approval request for a proposed wetland conservation plan as defined by ORS 196.687, the Director shall conduct an evaluation of the submitted plan and determine if the plan complies with the requirements of ORS 196.681 to 196.684 and OAR 141-120-0000 through 141-120-0230. The Director shall then prepare a proposed written order pursuant to ORS 196.681(1)(b).

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90; LB 6-1994, f. & cert. ef. 10-20-94

141-086-0015

Notice of Opportunity for Comment

(1) The Division shall, in writing, provide notice of the opportunity for public comment on the proposed order, as required by ORS 196.681(1)(c). Such notice shall include the following:

- (a) A map showing the area affected;
- (b) A description of the city or county which would implement the plan;
- (c) The location where the order may be inspected by the general public if a copy of the order has not been included with the notice;
- (d) The location where additional information concerning the plan may be inspected; and
- (e) The date by which public comments submitted to the Division must be received.

(2) Such notice shall be posted at the Division's office at 775 Summer Street in Salem and shall specifically be sent to the following:

- (a) City or county planning office which submitted the approval request;
- (b) Department of Agriculture;
- (c) Department of Environmental Quality;
- (d) Department of Fish and Wildlife;
- (e) Department of Geology and Mineral Industries;
- (f) Department of Land Conservation and Development;
- (g) Economic Development Department;
- (h) State Parks and Recreation Department;
- (i) Water Resources Department;
- (j) Oregon State Marine Board;
- (k) Historic Preservation Office, Parks and Recreation Department;

- (l) Affected neighborhood association(s);
- (m) Corps of Engineers;
- (n) Environmental Protection Agency;
- (o) Federal Emergency Management Agency;
- (p) National Marine Fisheries Service;
- (q) U.S. Fish and Wildlife Service; and
- (r) Any other agencies, associations or individuals who request notice.

(3) The Division shall also publish notice in a local paper of general circulation. Such notice shall contain a description of the area affected by the proposed plan and a statement that this area is being considered for a wetland conservation plan.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0020

Comments

- (1) After notice has ben provided pursuant to OAR 141-086-0015, there shall be a 30-day period for all interested persons to submit written comments to the Division or to request a public informational hearing. Such request for a hearing must be in writing and must state reasonable grounds for holding the hearing.
- (2) The Director shall consider those comments and requests for hearing which are received by the Division within 30 days from the date notice is posted. At the Director's discretion, the Director may consider comments which are received after the 30-day comment period has expired. Also, if the Director holds a public informational hearing concerning the proposed order, the time allowed for public comment shall be extended up to and including the date upon which the hearing is held.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0021

Notice of Hearing

- (1) At the Director's discretion, a public informational hearing may be held before issuing a final order on the approval request.
- (2) If the Director decides to hold a public informational hearing, written notice of such hearing shall be given, as required by ORS 196.681(1)(c). Such notice shall be provided at least ten days before a hearing is held. Notice of

hearing may be included with the notice of opportunity for public comment described in OAR 141-086-0015 or it may be provided separately after public comments have been received by the Division. Notice shall include the following:

- (a) A map showing the area affected;
 - (b) A description of the city or county which would implement the plan;
 - (c) The location where additional information concerning the plan can be inspected by the general public; and
 - (d) The date, time and location of the hearing.
- (3) Such notice shall be posted at the Division's office at 775 Summer Street in Salem and shall be specifically sent to the parties listed in OAR 141-086-0015(2) and to any additional parties who provided public comment as described in that same rule.
- (4) The Division shall also publish notice of the hearing in a local paper of general circulation. Such notice shall contain a description of the area affected by the proposed plan and a statement that this area is being considered for a wetland conservation plan.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0022

Hearing

- (1) If a public informational hearing is held, the hearings officer shall state the purpose of the hearing prior to submission of comments by members of the general public. The hearings officer shall take appropriate procedural steps to accomplish the purpose of the hearing.
- (2) Interested persons may submit written or oral comments concerning the proposed order. Also, the hearings officer may request that specific persons submit written or oral comments concerning the proposed order.
- (3) This public informational hearing is neither a contested case hearing nor a rulemaking hearing as defined in ORS Chapter 183.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0025

Final Agency Decision

- (1) Before making a final decision on the approval request, the Director shall review the entire proposed plan, as well as comments submitted in accordance with OAR 141-086-0020 and presented at hearing pursuant to OAR 141-086-0021. In reviewing the plan, the Director may also rely upon information that is not presented in the proposed plan or in submitted comments. The Director may review and develop additional information and may rely upon the Director's

own knowledge.

(2) The results of this evaluation shall be set forth in a written order pursuant to ORS 196.681(6). Copies of the Director's order shall be sent to all parties listed in OAR 141-086-0015, all persons who submitted comments in accordance with OAR 141-086-0020, and all other persons who have requested a copy of the order orally or in writing.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0030

Review of Wetland Conservation Plans

As described in ORS 196.684(9), an order by the Director regarding approval, amendment or review of a wetland conservation plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0035

Annual Report

If a wetland conservation plan is approved by the Division, the local government enacting the plan shall annually prepare a written report which addresses the current status of the plan. Such annual report shall be sent to the Director of the Division of State Lands, 775 Summer Street, N.E., Salem, OR 97310. The first annual report must be received by the Division one year from the Division's issuance of the final order on the wetland conservation plan, as described in ORS 196.681(6). Each subsequent annual report shall be received by the Division during that same month every year thereafter.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0040

Amending a Wetland Conservation Plan

(1) When a local government has developed proposed amendments to a land use plan or ordinance, and such amendments will affect lands subject to a wetland conservation plan, the local government shall notify the Division pursuant to ORS 196.684. Notice shall be sent to the Director of the Division of State Lands, Salem, OR 97310.

(2) Such notice shall include:

- (a) A letter or resolution from the governing body of the local government requesting review by the Division;
 - (b) Six copies of the proposed amendments to the land use plan, including implementing ordinances, related maps and other factual information used in developing the amended plan; and
 - (c) The information described in OAR 141-086-0010(2)(c) through (e).
- (3) The Division shall review the notice for completeness as described in OAR 141-086-0010(3).

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0045

Notice of Opportunity for Comment on Amendments

The Division shall, in writing, provide notice of the opportunity for public comment on proposed amendments to a wetland conservation plan, as required by ORS 196.684(3). Such notice shall be as described in OAR 141-086-0015 and comments must be submitted as described in OAR 141-086-0020.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0050

Hearing on Amendments

At the Director's discretion, a public informational hearing may be held before taking final action on proposed amendments to a wetland conservation plan. Notice of such hearing, required by ORS 196.684(3), shall be given as described in OAR 141-086-0021. Such hearing shall be held as described in OAR 141-086-0022.

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0055

Final Agency Decisions on Amendments

- (1) The Director shall evaluate proposed amendments to a land use plan and issue an order in the manner described in OAR 141-086-0025.
- (2) In issuing an order, the Director shall also follow the procedure described in ORS 196.684(4) and (5).

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0060

Periodic Agency Review of Wetland Conservation Plans

- (1) The Division shall review each approved wetland conservation plan every five years, as required by ORS 196.684(6).
- (2) The Director shall, in writing, provide notice of the opportunity for public comment on the plan, as required by ORS 196.684(7). Such notice shall be given as described in OAR 141-086-0015.
- (3) At the discretion of the Director, a public informational hearing concerning the plan may be held. Such notice, as required by ORS 196.684(7), shall be given as described in OAR 141-086-0021. Such hearing shall be held as described in OAR 141-086-0022.
- (4) Public comments concerning the plan should address the criteria set forth in ORS 196.684(7).

Stat. Auth.: ORS Ch. 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90

141-086-0100

Duty to Notify of Proposed Activities Within Wetlands

- (1) The city or county shall notify the Division of applications proposed within wetlands, as required by ORS 215.418 and 227.350, by delivering a completed "Wetland Land Use Notification Form" for each proposed application to the Division of State Lands, 775 Summer Street, N.E., Salem, OR 97310.
- (2) The Division's response to a submitted notification form, under ORS 215.418(3) and 227.350(3), shall be sent by the Division to the reporting city or county, the landowner, and the applicant of the proposed activity.

Stat. Auth.: ORS 196.800 - 196.990, Ch. 215 & 227

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 10-1991, f. & cert. ef. 11-15-91

Wetland Conservation Plan Inventory (WCPI) Standards and Guidelines

141-086-0110

Purpose

Pursuant to ORS 196.674 and 196.678, these rules establish a system for uniform wetland identification, delineation, and comprehensive mapping. A Wetland Conservation Plan Inventory (WCPI) is developed by a local jurisdiction as part of the process of developing a Wetland Conservation Plan (WCP), which is optional. A WCPI may also be developed as an alternative inventory to a Local Wetlands Inventory (LWI), whether or not a WCP will be developed.

Stat. Auth.: ORS 196.674 & 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0115

Uses

- (1) Once approved by the Division of State Lands, the WCPI shall be used in place of the National Wetlands Inventory (NWI) and is incorporated into the statewide wetlands inventory (SWI).
- (2) A WCPI fulfills the location and quantity information required for Goal 5 analysis, but not quality. In order to meet the quality information required for Goal 5 analysis, a wetland quality assessment must be conducted. The quality assessment may be conducted in conjunction with the inventory or at a later date.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 9-1994, f. & cert. ef. 12-15-94; Renumbered from 141-86-120(1)

141-086-0120

Policy

- (1) A WCPI provides sufficient information for planning purposes and on location of potentially regulated wetlands, but is not of sufficient detail for regulatory certainty under the state Removal-Fill Law.
- (2) Wetland determinations and delineations shall be conducted according to the criteria and methodologies in the wetland delineation manual and guidance currently accepted by the Division.
- (3) Determinations and delineations are subject to review and approval by the Division before incorporation into a Wetland Conservation Plan or the statewide wetlands inventory.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94; Renumbered to 141-86-115(1)

141-086-0130

Definitions

- (1) "Delineation" means identifying and marking the wetland/non-wetland boundary of each wetland identified.
- (2) "Determination" means identifying an area as wetland or non-wetland.
- (3) "Division" means the Oregon Division of State Lands and/or its Director or designate.
- (4) "Inventory" means a systematic survey of an area to identify, classify and map the approximate boundaries of wetlands, and includes the supporting documentation required by these rules.
- (5) "Mapping" means transferring the identified and delineated wetlands to a base map.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0140

Inventory Development Process and Standards

(1) Sources of inventory information shall include:

- (a) U.S. Soil Conservation Service county soil survey and county list of hydric soils and soils with hydric inclusion;
 - (b) National Wetlands Inventory;
 - (c) Soil Conservation Service wetland maps where applicable;
 - (d) Federal Emergency Management Act floodplain maps where applicable;
 - (e) Other available local wetlands inventories or wildlife habitat inventories that include wetlands;
 - (f) Resource agencies, including the Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service;
 - (g) Division of State Lands wetland determination files; and
 - (h) Color and/or color infra-red air photos or other aerial photography approved by the Division, taken within five years of inventory initiation (minimum scale 1" = 800').
- (2) Sources of inventory information may include but are not limited to:
- (a) Agricultural Stabilization and Conservation Service aerial color slides;
 - (b) Local knowledge of area (e.g., residents); and
 - (c) The Nature Conservancy/Natural Heritage maps;
 - (d) U.S. Forest Service Soil Resource Inventory; and
 - (e) Division of State Lands and Corps of Engineers permit files.

(3) A parcel base map shall be used which includes all roads, railroads, and property boundaries:

- (a) The base map shall be scaled and shall be geographically referenced to State Plane Coordinate System and/or Public

Land Survey;

(b) The base map shall be at or close to scale of air photos and final map products (minimum scale of final wetlands maps is 1" = 200');

(c) The base map shall include hydrologic sub-basin boundaries, if any.

(4) Before beginning fieldwork, field map(s) shall be prepared from the base map and shall include the approximate location of:

(a) Any wetlands and deepwater habitats from NWI;

(b) Any wetlands from other inventories;

(c) Hydric soils and soils with hydric inclusions (keyed separately);

(d) Wetlands or possible wetlands delineated on air photos; and

(e) Sites to fieldcheck based on other leads.

(5) All mapping work shall be completed by or supervised by a knowledgeable cartographer (on staff or contracted).

(6) Onsite wetland determination is required for all wetlands or possible wetlands located through the process described in sections (1) through (4) of this rule, except where access is denied by landowner. Appropriate sampling density for wetland determination and delineation is site-specific, but at a minimum shall include:

(a) One sample plot that best characterizes the wetland and a pair of sample plots that characterize the wetland/upland boundary; and

(b) Additional sample plot(s) for each change in wetland classification, each major plant community change, and any topographic change that might substantially affect wetland hydrology.

(7) Wetland delineation sufficient for regulatory purposes is required for all wetlands designated for development under a Wetland Conservation Plan. The regulatory delineations may be done at any time prior to site alteration, and are subject to approval by the regulatory agencies.

(8) For regulatory delineations, wetland boundaries shall be measured, or staked and surveyed from two geographically referenced points or other known points.

(9) The minimum size wetland to be identified and mapped shall be 0.10 acre.

(10) Where a complex wetland/non-wetland mosaic occurs, i.e., several small wetlands each less than 0.10 acre but in close proximity, the site shall be labeled as a wetland/upland mosaic on all inventory maps and so described on the wetland summary sheet.

(11) Artificially created wetland shall be included, and the use and hydrology source documented.

(12) On field forms and field map(s), wetlands that are not field-verified (access denied) shall be indicated.

(13) Each wetland shall be assigned a distinctive identification code to be used on map(s), field data forms, wetland summary sheets, and in optional database.

(14) As fieldwork is conducted, location of hydrologically altered former wetlands shall be included on field maps.

(15) All wetlands identified shall be classified by type according to the U.S. Fish and Wildlife Service's **Classification of Wetlands and Deepwater Habitats of the United States (Cowardin 1979)**:

- (a) All wetlands shall be classified to "Class" level and special modifiers shall be included. Water regime modifiers are optional, but recommended;
- (b) When a wetland contains more than one adjoining classification, the minimum wetland type size to differentiate shall be 0.5 acre;
- (c) Each wetland type shall be described by plant community based on the one or two dominant plant species (i.e., ash/willow).

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0150

Final Maps and Reports

- (1) The final wetland map products shall consist of one or more maps (depending on size of area to be covered). If the study area is covered by more than one wetland map of the required scale, a single, smaller scale reference map of the complete study area is required. The reference map shall indicate the location of all wetlands and be keyed to the individual, large-scale maps.
- (2) Final maps shall include:
 - (a) Map name;
 - (b) Scale bar;
 - (c) Geographical reference to State Plane Coordinate System and/or Public Land Survey;
 - (d) Roads and railroads;
 - (e) Watercourses;
 - (f) Property boundaries with parcel numbers;
 - (g) Watershed boundaries, if any;
 - (h) Legend key to wetland symbology on map;
 - (i) Map Date (month and year final map prepared);
 - (j) Symbology for wetlands not field-verified, if any;
 - (k) Disclaimer such as: **"Information shown on this map is for planning purposes and all wetland boundaries are approximate. In all cases, actual field conditions determine wetland boundaries. There may be unmapped wetlands subject to regulation;"**
 - (l) All wetlands, clearly and accurately drawn and clearly identified by an individual wetland code that relates each wetland to field data sheets, database, and wetland summary sheets;

- (m) Numbered sample plots;
 - (n) Study Area boundary; and
 - (o) Wetland Classification Code(s).
- (3) Minimum map scale shall be 1" = 100' (1:1,200).
- (4) Each inventory and mapping process shall be fully documented in order to ensure accuracy and consistency throughout the process. Documentation shall include:
- (a) Wetland determination procedures used;
 - (b) Date(s) and scales of source maps and air photos used;
 - (c) Field team members and qualifications;
 - (d) Field data sheet(s) for each wetland, with wetland code, and data sheets for all sites sampled that failed to meet wetland criteria;
 - (e) Field maps with sketches, sample plots, notes, any measurements taken and air photos with wetland delineations; and
 - (f) All mapping and map transfer procedures used.
- (5) A summary sheet shall be prepared for each wetland. The summary sheet shall include but is not limited to:
- (a) Individual wetland code (used on map, data sheets, etc.);
 - (b) Street address or equivalent sufficient to locate site;
 - (c) Public Land Survey identifier (Township, Range, Section, Quarter Section);
 - (d) Each tax lot wetland falls on;
 - (e) Wetland acreage;
 - (f) Wetland Classification(s);
 - (g) Dominant plant community (or communities);
 - (h) Soil type(s);
 - (i) Hydrologic basin;
 - (j) Hydrologic source (surface flow; subsurface; precipitation), artificial;
 - (k) Description of wetland, including wetland/upland boundary characteristics; and
 - (l) Field verification date(s).
- (6) A study area summary shall be prepared that includes:
- (a) Total acreage in study area;
 - (b) Total acreage of wetlands in study area;

- (c) Total number of wetlands in study area;
 - (d) Total acreage of wetlands by classification type;
 - (e) Wetland acreages by sub-basin, if applicable; and
 - (f) Written description of any special problems or oddities encountered during the wetland inventory process.
- (7) One complete set of all final maps and reports shall be provided to the Division for in-house use, coordination with the local jurisdiction, and inclusion in the Statewide Wetlands Inventory:
- (a) Maps provided to the Division are public record and may be made available at cost to the public and state and federal agencies;
 - (b) Maps provided to the Division shall be in a stable base, reproducible form;
 - (c) If final mapping is electronic, digital map data shall also be provided to the Division.
- (8) All wetland inventory procedures, final maps, and final reports are subject to review and approval by the Division before:
- (a) Maps are accepted by the Division as part of the State-wide Wetlands Inventory; or
 - (b) Maps can be used in lieu of the National Wetlands Inventory for Wetland Land Use Notification purposes.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0160

Revisions

- (1) Annually, the local jurisdiction shall provide to the Division a revision (map(s) and report) that indicates:
- (a) Wetlands filled as permitted under an adopted Wetland Conservation Plan; and
 - (b) Wetlands restored, enhanced or created for mitigation under an adopted Wetland Conservation Plan.
- (2) Every five years, the local jurisdiction shall conduct a field reconnaissance of wetlands on the WCPI and incorporate new information received. A summary report and any map changes shall be provided to the Division, and are subject to review and approval by the Division.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0170

Landowner Notification

When final wetland maps are approved by the Division, the local jurisdiction shall notify by mail within 120 days all landowners of record whose parcel contains a wetland that:

- (1) Their parcel(s) was included in the wetlands study area; and
- (2) There is a wetland mapped on their parcel.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

Local Wetlands Inventory (LWI) Standards and Guidelines

141-086-0180

Purpose

Pursuant to ORS 196.674, these rules establish a system for uniform wetland identification, delineation, and comprehensive mapping. A Local Wetlands Inventory (LWI) is optional and is developed for all or a portion of a city or county according to the following standards and guidelines.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0185

Uses

- (1) Once approved by the Division of State Lands, the LWI shall be used in place of the National Wetlands Inventory (NWI) and is incorporated into the Statewide Wetlands Inventory (SWI).
- (2) A LWI fulfills the location and quantity information required for Goal 5 analysis, but not quality. In order to meet the quality information required for Goal 5 analysis, a wetland quality assessment must be conducted. The quality assessment may be conducted in conjunction with the inventory or at a later date.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94; Renumbered from 141-86-190(1) & (4)

141-086-0190

Policy

- (1) A LWI provides good information for planning purposes and on location of potentially regulated wetlands, but is not of sufficient detail for regulatory certainty under the state Removal-Fill Law.
- (2) Wetland determinations and delineations shall be conducted according to the criteria and methodologies in the wetland delineation manual and guidance currently accepted by the Division.
- (3) Determinations and delineations are subject to review and approval by the Division before incorporation into the State-Wide Wetlands Inventory.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94; Renumbered to 141-86-185(1) & (4)

141-086-0200

Definitions

- (1) "Delineation" means identifying and marking the wetland/non-wetland boundary of each wetland identified.
- (2) "Determination" means identifying an area as wetland or non-wetland.
- (3) "Division" means the Oregon Division of State Lands and/or its Director or designate.
- (4) "Inventory" means a systematic survey of an area to identify, classify and map the approximate boundaries of wetlands, and includes the supporting documentation required by these rules.
- (5) "Mapping" means transferring the identified and delineated wetlands to a base map.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0210

Inventory Development Process and Standards

- (1) Sources of inventory information shall include:
 - (a) U.S. Soil Conservation Service county soil survey and county list of hydric soils and soils with hydric inclusions;
 - (b) National Wetlands Inventory;
 - (c) Soil Conservation Service wetland maps where applicable;
 - (d) Federal Emergency Management Act floodplain maps where applicable;

- (e) Other available local wetlands inventories or wildlife habitat inventories that include wetlands;
 - (f) Resource agencies, including the Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service;
 - (g) Division of State Lands wetland determination files; and
 - (h) Color and/or color infra-red air photos, or other aerial photography approved by the Division, taken within five years of inventory initiation (minimum scale 1" = 800').
- (2) Sources of inventory information may include but are not limited to:
- (a) Agricultural Stabilization and Conservation Service aerial color slides;
 - (b) Local knowledge of area (e.g., residents); and
 - (c) The Nature Conservancy/Natural Heritage maps.
 - (d) U.S. Forest Service Soil Resource Inventory; and
 - (e) Division of State Lands and Corps of Engineers permit files.
- (3) A base map shall be used which includes all roads, railroads, and, when available, all property boundaries Onsite Option only.
- (a) The base map shall be scaled and shall be geographically referenced to State Plane Coordinate System and/or Public Land Survey;
 - (b) The base map shall be at or close to scale of air photos used and final map products (minimum scale of final wetlands maps is 1" = 800');
 - (c) The base map shall include hydrologic sub-basin boundaries, if any.
- (4) Before beginning field verification, field map(s) shall be prepared from the base map and shall include the approximate location of:
- (a) Any wetlands and deepwater habitats from NWI;
 - (b) Any wetlands from other inventories;
 - (c) Hydric soils and soils with hydric inclusions (keyed separately);
 - (d) Wetlands or possible wetlands delineated on air photos; and
 - (e) Sites to check based on other leads.
- (5) All mapping work shall be completed by or supervised by a cartographer (on staff or contracted).
- (6) Field verification of wetlands and possible wetlands shall be conducted as follows, except where access is denied by the landowner:
- (a) For the Onsite LWI Option, onsite wetland determination is required for all wetlands or probable wetlands located through the process described in sections (1) through (4) of this rule. Appropriate sampling density for wetland determination and delineation is site-specific, but at a minimum shall include:
 - (A) One sample plot that best characterizes the wetland and a pair of sample plots that characterize the wetland/upland boundary; and

- (B) Additional sample plot(s) for each change in wetland classification, each major plant community change, and any topographic change that might substantially affect wetland hydrology.
- (b) For the Offsite LWI Option, field verification of wetlands or probable wetlands is required for:
- (A) All wetland types identified through offsite process described in sections (1) through (4) of this rule;
- (B) Any wetland for which offsite source information is unclear or where two or more sources contradict each other (i.e., soils and NWI).
- (c) Air photo interpretation shall be tested early in the process by interpreting several wetland types, groundtruthing the interpretations, then completing the air photo interpretations.
- (7) Wetlands that are field-verified and those that are not shall be indicated on field forms and field map(s).
- (8) The minimum size wetland to be identified and mapped shall be 0.5 acre.
- (9) Each wetland shall be assigned a distinctive identification code to use on map(s), field data forms, wetland summary sheets, and in optional database.
- (10) At the option of the local jurisdiction, hydrologically altered former wetlands may be inventoried as potential restoration sites.
- (11) All wetlands identified shall be classified by type according to the **U.S. Fish and Wildlife Service's Classification of Wetlands and Deepwater Habitats of the United States (Cowardin 1979)**:
- (a) All wetlands shall be classified to "Class" level and special modifiers shall be included. Water regime modifiers are optional, but recommended;
- (b) When a wetland contains more than one adjoining classification, the minimum wetland type size to differentiate shall be 0.5 acre.
- (12) Artificially created wetlands or waterbodies shall be included, and their use and hydrology source documented.
- (13) Where a complex wetland mosaic occurs, i.e., several small wetlands in close proximity, the site shall be labeled as a wetland/upland mosaic on all inventory maps and so described on the wetland summary sheet.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0220

Final Maps and Reports

- (1) The final wetland map products shall consist of one or more maps (depending on size of area to be covered). If the study area is covered by more than one wetland map, a single, smaller scale reference map of the complete study site is required. The reference map shall be keyed to individual, large-scale maps and, where possible, indicate the location of all wetlands.

(2) Final maps shall include:

(a) Map name;

(b) Scale bar;

(c) Geographical reference to State Plane Coordinate System and/or Public Land Survey;

(d) Roads and railroads;

(e) Watercourses;

(f) Property boundaries (Onsite Option only); parcel numbers are optional);

(g) Watershed boundaries, if any;

(h) Legend key to wetland symbology on map;

(i) Map date (month and year final map prepared);

(j) For Onsite Option, Symbology for wetlands not field-verified, if any; for Offsite Option, symbology for wetlands that are field-verified;

(k) Disclaimer, such as: "**Information shown on this map is for planning purposes and all wetland boundaries are approximate. In all cases, actual field conditions determine wetland boundaries**". There may be unmapped wetlands subject to regulation;"

(l) All wetlands, clearly and accurately drawn and clearly identified by an individual wetland code that relates each wetland to field data sheets, database, and wetland summary sheets;

(m) Numbered sample plots; and

(n) Study Area boundary.

(3) Minimum map scale shall be 1" = 800' (1:9,600).

(4) Each inventory and mapping process shall be fully documented in order to ensure accuracy and consistency throughout the process. Documentation shall include:

(a) Wetland determination procedures used;

(b) Date(s) and scales of source maps and air photos used;

(c) Technical staff members and qualifications;

(d) Field data sheet(s) for each wetland field-verified, including wetland code, and for all sites sampled that failed to meet wetland criteria;

(e) Field maps with sketches, sample plot, notes, any measurements taken and air photos with wetland delineations; and

(f) All mapping and map transfer procedures used.

(5) A summary sheet shall be prepared for each wetland. The summary sheet shall include but is not limited to:

(a) Individual wetland code (used on map, data sheets, etc.);

- (b) Street address or equivalent sufficient to locate site;
 - (c) Public Land Survey identifier (Township, Range, Section, Quarter Section);
 - (d) Approximate wetland size (in acres);
 - (e) Wetland Classification(s);
 - (f) Soil type(s);
 - (g) Hydrologic basin;
 - (h) Description of wetland, including dominant plantcommunity or communities and the wetland/upland boundary characteristic (Onsite Option Only);
 - (i) Affected tax lots (Onsite Option Only);
 - (j) Hydrology source and use of artificially create wetland; and
 - (k) Field verification date(s).
- (6) A study area summary shall be prepared that includes:
- (a) Total acreage in study area;
 - (b) Total acreage of wetlands in study area; and
 - (c) Total number of wetlands in study area.
- (7) One complete set of all final maps and reports shall be provided to the Division for in-house use, coordination with the local jurisdiction, and inclusion in the State-Wide Wetlands Inventory:
- (a) Maps provided to the Division are public record and may be made available at cost to the public and state and federal agencies;
 - (b) Maps provided to the Division shall be in a stable base, reproducible form;
 - (c) If final mapping is electronic, digital map data shall also be provided to the Division.
- (8) All wetland inventory procedures, final maps, and final reports are subject to review and approval by the Division before:
- (a) Maps are accepted by the Division as part of the State-wide Wetlands Inventory; or
 - (b) Maps can be used in lieu of the National Wetlands Inventory for Wetland Land Use Notification purposes.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0230

Revisions

At a maximum ten year interval the local jurisdiction shall conduct a field reconnaissance of wetlands on the LWI and incorporate new information received. A summary report and any map changes shall be provided to the Division, and are subject to review and approval by the Division.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

141-086-0240

Landowner Notification

When the LWI (Onsite Option Only) is approved by the Division, the local jurisdiction shall notify by mail within 120 days all landowners of record whose parcel contains a wetland that:

- (1) Their parcel(s) was included in the wetlands study area; and
- (2) There is a wetland mapped on their parcel.

Stat. Auth.: ORS 196.674 to 196.681 & 196.692

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 11-1991, f. & cert. ef. 11-15-91; LB 9-1994, f. & cert. ef. 12-15-94

Identifying Significant Wetlands

141-086-0300

Purpose

ORS 197.279 (3) directs the Division of State Lands to establish these criteria and procedures for the identification of significant wetlands under Statewide Planning Goal 5. Local governments will use these technical standards to complete their planning responsibilities for wetlands, which are established by the Land Conservation and Development Commission (OAR 660-023-0100).

Stat. Auth.: ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0310

Policy

To protect the state's wetland resources, the functions and services they provide, and all interests, it is important that clear and consistent criteria be used to identify significant wetlands for planning purposes.

Stat. Auth.: : ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0320

Uses and Applicability

- (1) These rules provide standard criteria for local governments to use to meet their obligations for freshwater wetland planning as set forth by the Land Conservation and Development Commission (LCDC) in Goal 5. These rules do not address planning requirements for estuarine wetlands, which are covered under Statewide Planning Goal 16.
- (2) Local governments shall apply the criteria for identifying locally significant wetlands (LSW). As specified in LCDC's Goal 5 rules (OAR 660-023-0100), the use of these criteria is required within urban growth boundaries (UGBs) and urban unincorporated communities (UUCs). The Goal 5 rules also authorize an option for counties to conduct detailed wetland planning in areas outside of UGBs and UUCs. Should a county choose to do so, the same rules and procedures as for UGBs and UUCs shall apply, including these criteria for significant wetlands.
- (3) As provided by LCDC's Goal 5 rules (OAR Chapter 660, Division 23), local government planning and zoning responsibilities include the determination, designation, and protection of significant wetlands. A community that has identified significant wetlands prior to this rule should proceed under the provisions of OAR 660-023-0250.

Stat. Auth.: ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0330

Definitions

- (1) "Director" means the Director of the Division of State Lands or the Director's designee.
- (2) "Division" means the Division of State Lands.
- (3) "Indigenous Anadromous Salmonids" are chum, sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.
- (4) "Inhabited by" means that a plant or animal species uses the site for rearing, feeding, or breeding or as a migration or dispersal corridor. This does not include incidental use of the site by an animal species.
- (5) "Locally Significant Wetlands" or "LSW" are those wetland sites that provide functions or exhibit characteristics that are pertinent to community planning decisions made at a local scale, for example within a UGB. These wetland sites shall be identified by local governments according to the criteria and procedures in sections 141-086-0340 and

141-086-0350.

- (6) "Native Plant Community" is used here to indicate a recognized assemblage of plant species indigenous to Oregon. All such wetland plant communities are listed in the most recent version of Classification and Catalog of Native Wetland Plant Communities in Oregon (Oregon Natural Heritage Program).
- (7) "Rare Plant Community" is defined as relictual, uncommon or unique in Oregon, determined by number of occurrences and threats following national heritage program criteria (i.e., rarity ranking of G1-G3 or S1-S3). The most concise listing of wetland plant communities in Oregon that meet this standard for rarity is found in Appendix G of the Oregon Freshwater Wetland Assessment Methodology (Oregon Division of State Lands, 1996). The rarity rank of all wetland plant communities is also listed in the most recent version of Classification and Catalog of Native Wetland Plant Communities in Oregon (Oregon Natural Heritage Program).
- (8) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0340

Procedures for Identifying Locally Significant Wetlands

- (1) LSW criteria are applied by the local government.
- (2) The following base information is required prior to applying the LSW criteria:
- (a) An approved Local Wetlands Inventory (OAR 141-086-0110 through 141-086-0240) covering the plan area; and
- (b) A function and quality assessment of all inventoried wetlands using the Oregon Freshwater Wetland Assessment Methodology (OFWAM; Oregon Division of State Lands, 1996). Functional assessment descriptors from OFWAM appear in quotation marks in section 146-086-0350 of these rules. An equivalent functional assessment methodology may be used, or adjustments may be made, upon written approval by the Director. If a different assessment methodology is approved, then equivalent terminology will be set out in the Division's letter of approval.

Stat. Auth.: ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0350

Locally Significant Wetland Criteria

- (1) Exclusions. Regardless of their standing in relation to the criteria in OAR 141-086-0350 (2) or (3) of these rules, wetlands shall not be designated as locally significant if they fall within any one of the following categories:
- (a) Wetlands artificially created entirely from upland that are:

(A) Created for the purpose of controlling, storing, or maintaining stormwater; or

(B) Active surface mining or active log ponds; or

(C) Ditches without a free and open connection to natural waters of the state (as defined in OAR 141-085-0010 (9)) and which do not contain food or game fish (as defined in ORS 496.009); or:

(D) Less than one acre in size and created unintentionally as the result of:

(i) Irrigation water overflow or leakage; or

(ii) Construction activity not related to compensatory mitigation for permitted wetland impacts; or

(E) Of any size and created for the purpose of wastewater treatment, cranberry production, farm or stock watering, settling of sediment, cooling industrial water, or as a golf course hazard.

(b) Wetlands or portions of wetlands that are contaminated by hazardous substances, materials or wastes as per the following conditions:

(A) The wetland is documented as contaminated on either the U.S. Environmental Protection Agency's (EPA) National Priority List (NPL, also known as the "superfund list"), or the Department of Environmental Quality's (DEQ) Inventory of Hazardous Substance Sites (ORS 465.225).

(B) Only the portion of the wetland affected by such hazardous substances or wastes shall be excluded from the LSW analysis. Affected portions shall be delineated in consultation with EPA and DEQ, and shall include areas potentially disturbed by clean-up activities.

(C) Contaminated wetlands that have subsequently been removed from the NPL or DEQ Inventory following clean-up shall be re-evaluated under the LSW criteria at the next periodic review.

(2) Mandatory LSW Criteria. A local government shall identify a wetland as locally significant if it meets one or more of the following criteria:

(a) The wetland performs any of the following functions at the levels indicated below using the Oregon Freshwater Wetland Assessment Methodology:

(A) "Diverse" wildlife habitat; or

(B) "Intact" fish habitat; or

(C) "Intact" water quality function; or

(D) "Intact" hydrologic control function.

(b) The wetland or a portion of the wetland occurs within a horizontal distance less than one-fourth mile from a water body listed by the Department of Environmental Quality as a water quality limited water body (303 (d) list), and the wetland's water quality function is described as "intact" or "impacted or degraded" using OFWAM. The 303(d) list specifies which parameters (e.g., temperature, pH) do not meet state water quality standards for each water body. A local government may determine that a wetland is not significant under this subsection upon documentation that the wetland does not provide water quality improvements for the specified parameter(s).

(c) The wetland contains one or more rare plant communities, as defined in this rule.

(d) The wetland is inhabited by any species listed by the federal government as threatened or endangered, or listed by the state as sensitive, threatened or endangered, unless the appropriate state or federal agency indicates that the wetland

is not important for the maintenance of the species.

(A) The use of the site by listed species must be documented, not anecdotal. Acceptable sources of documentation may include but are not limited to: field observations at the wetland sites during the local wetlands inventory and functional assessments, and existing information on rare species occurrences at agencies such as the Oregon Natural Heritage Program, Oregon Department of Fish and Wildlife, Oregon Department of Agriculture and the U.S. Fish and Wildlife Service.

(B) Input originating from other locally knowledgeable sources constitutes "documentation" if verified by one of the above agencies or a university or college reference collection.

(e) The wetland has a direct surface water connection to a stream segment mapped by the Oregon Department of Fish and Wildlife as habitat for indigenous anadromous salmonids, and the wetland is determined to have "intact" or "impacted or degraded" fish habitat function using OFWAM.

(3) Optional LSW Criteria. At the discretion of the local government, wetlands that meet one or more of the following criteria may be identified as locally significant wetlands:

(a) The wetland represents a locally unique native plant community: wetland is or contains the only representative of a particular native wetland plant community in the UGB/UUC, which is only applicable if the entire UGB/UUC is inventoried. To be identified as a LSW, such a wetland must also have been assessed to perform at least one of the following functions at the levels indicated below using OFWAM:

(A) Its wildlife habitat descriptor is either "provides diverse habitat", or "provides habitat for some wildlife species"; or

(B) Its fish habitat descriptor is either "intact", or "impacted or degraded"; or

(C) Its water quality function descriptor is either "intact", or "impacted or degraded"; or

(D) Its hydrologic control function descriptor is either "intact", or "impacted or degraded".

(b) The wetland is publicly owned and determined to "have educational uses" using OFWAM, and such use by a school or organization is documented for that site.

Stat. Auth.: ORS 273.360

Stats. Implemented: ORS 197.299

Hist.: LB 7-1996, f. 12-13-96, cert. ef. 1-1-97

141-086-0360

Purpose

Pursuant to ORS 197.279, 196.672 and 196.674, these rules establish procedures and criteria for identifying wetlands of statewide significance, called "outstanding state wetlands." These rules complement the rules for identifying locally significant wetlands (OAR 141-086-0300 through 141-086-0350).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 197.279(3), 196.672 & 196.674

Hist.: LB 4-1997, f. 4-15-97, cert. ef. 5-1-97

141-086-0370**Definitions**

- (1) "**Classification**" means the designation of wetlands into hydrogeomorphic classes and subclasses. For example, "riverine" would be one class of wetlands.
- (2) "**Director**" means the Director of the Division of State Lands or the Director's designee.
- (3) "**Division**" means the Division of State Lands.
- (4) "**Functional Assessment**" means the process by which the capacity of a wetland to perform a certain function or group of functions is measured. Such functions would include but are not limited to: surface water storage, sediment removal, and maintenance of characteristic plant communities.
- (5) The "**Hydrogeomorphic Method**" or "**HGM**" is a scientific method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.
- (6) "**Outstanding State Wetlands**" or "**OSWs**" are reference standard wetlands identified within each Oregon region.
- (7) "**Reference Standard Wetlands**" are one component of an HGM and, for the purposes of these rules, are those sites that best exhibit the highest sustainable level of functional capacity for the functions performed by the regional wetland class or subclass.
- (8) "**Region**" means an ecosystem-based geographical subdivision of the state, such as the Level III and IV Ecoregions of Oregon (e.g., the Willamette Valley) mapped by the U. S. Environmental Protection Agency.
- (9) "**Wetlands**" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 197.279(3), 196.672 & 196.674

Hist.: LB 4-1997, f. 4-15-97, cert. ef. 5-1-97

141-086-0380**Applicability**

- (1) These rules set forth the criteria and procedures by which the Division will identify outstanding state wetlands and provide the information to local governments. Due to the state's interest in OSWs and the expertise required for their identification, the Division is responsible for applying these rules.
- (2) The Land Conservation and Development Commission will determine any local land use planning responsibilities regarding OSWs identified by the Division.
- (3) OSWs identified according to these rules become part of the Statewide Wetlands Inventory.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 197.279(3), 196.672 & 196.674

Hist.: LB 4-1997, f. 4-15-97, cert. ef. 5-1-97

141-086-0390

Criteria and Procedures

- (1) A wetland shall be identified as an OSW if it is judged by the Division to be a reference standard wetland as defined in sections 141-086-0370 (7).
- (2) The Division may convene one or more technical panel(s) of wetland scientists with expertise in wetland functions, wetland classification, and/or regional wetland types in Oregon. The technical panel(s) will assist the Division in developing the hydrogeomorphic classification and functional assessment method (HGM) for Oregon, identifying the regional wetland classes and subclasses, primary functions, and reference standard wetlands. The Oregon HGM will be developed in stages, region by region, as resources allow. The Oregon HGM will be developed in cooperation with the Army Corps of Engineers, Environmental Protection Agency, Natural Resources Conservation Service, state resource agencies, and others as appropriate, and will incorporate protocols developed by the U.S. Army Corps of Engineers Waterways Experiment Station (for example, Technical Report WRP-DE-9, R. D. Smith et al., 1995).
- (3) Prior to designating a reference standard wetland as an OSW, the Division shall:
 - (a) Identify and map site boundaries;
 - (b) Develop management recommendations to conserve and protect the documented wetland functions of the site;
 - (c) Develop draft findings describing how the site has met the standards for an OSW;
 - (d) Provide public notice on the draft findings to the local government, affected landowners and land managers and other interested parties, and provide a 45-day public comment period;
 - (e) Hold at least one public meeting within the area of the proposed OSW(s) during the comment period; and
 - (f) Finalize the findings and site boundaries after consideration of public comment.
- (4) The Division shall provide all maps, criteria findings and supporting information regarding an identified OSW to the appropriate local government(s) for their use in land use planning activities.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 197.279(3), 196.672 & 196.674

Hist.: LB 4-1997, f. 4-15-97, cert. ef. 5-1-97

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 87

HYDROELECTRIC PROJECTS

141-087-0001

Purpose

The purpose of these rules is to provide a uniform procedure for obtaining hydroelectric power leases and easements on lands managed by the State Land Board.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0005

Definitions

- (1) "Board" -- State Land Board.
- (2) "Division" -- Division of State Lands.
- (3) "Lands within jurisdiction of the Board" -- Lands which have been placed under the Board's jurisdiction by the Constitution of Oregon or the Oregon state legislature. These lands include, but are not limited to, Common School Fund lands and submerged and submersible lands.
- (4) "Resource" -- All values of the land including, but not limited to, timber, grazing, recreational, scenic and hydroelectric power generation.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0010

Application of Rules

These rules shall apply to all hydroelectric projects located on lands within the Board's jurisdiction which have not received final approval for all state, local, and federal permits and licenses. The approval standards of these rules shall not apply at any time to projects which are in existence or have received all state, local and federal approval on or before December 31, 1985. However, a lease shall be issued and the fee requirements imposed on all such projects at the time of renewal of the project license or exemption by the Federal Energy Regulatory Commission (FERC), or within 50 years after the date of commencing power production, whichever occurs first.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0015

Division Application Review

The Division shall review the following applications to determine if the proposed hydroelectric project is to be constructed on lands within the jurisdiction of the Board:

- (1) Applications with the Federal Energy Regulatory Commission (FERC) for a preliminary permit or license to operate a hydroelectric project or for an exemption from the FERC licensing process.
- (2) Applications for a right to appropriate water for hydroelectric power under ORS Chapter 537.
- (3) Applications for a preliminary permit or a hydroelectric license under ORS Chapter 543.
- (4) Applications for local land use approval for a proposed hydroelectric project.
- (5) Applications for a site certificate from the Energy Facility Siting Council (EFSC) under ORS Chapter 469.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0020

Division Notice to Applicants

When the Division determines that any of the applications described in OAR 141-087-0015 are for projects to be located on land within the jurisdiction of the Board, the Division shall notify the applicant and the agency to which the application has been made, advising:

- (1) That the proposed project is on lands within the jurisdiction of the Board.
- (2) That prior to commencing construction of the proposed project, the applicants must obtain a lease or easement from the Board.
- (3) The Board has determined that the location of a hydroelectric project in any of the following locations or circumstances would not be consistent with the conservation of the resource under sound techniques of land management and thus, a lease or easement shall not be granted if the proposed project:
 - (a) Is located in any of the following areas:
 - (A) National parks;
 - (B) National monuments;
 - (C) State parks;
 - (D) State wildlife refuges;
 - (E) Bureau of Land Management areas of critical environmental concern established under Public Law 94-579;
 - (F) Federal research natural areas established under **43 CFR 2070** or **36 CFR 200**;
 - (G) Scenic waterways designated under ORS 390.805 to 390.925;
 - (H) Wild and scenic rivers established under Public Law 90-542;
 - (I) Wilderness areas established under Public Law 88.577;
 - (J) Estuarine sanctuaries established under Public Law 92-583;
 - (K) State dedicated natural heritage areas established under ORS 273.563 and 273.591;
 - (L) Waterways in which anadromous salmon and steelhead or their habitat are located, except when a developer proposes to modify an existing facility or existing project in such a manner which will restore, enhance, or improve anadromous fish populations within the river system.
 - (M) Any other categories of land identified as automatically unacceptable as of the effective date of this rule by the Water Resources Commission or, if the project is in excess of 25 megawatts, identified by EFSC.
 - (b) Includes land on which a species of wildlife has been identified under the Endangered Species Act as endangered and in the judgment of the Department of Fish and Wildlife, the project is inconsistent with the protection of the species;
 - (c) Involves land for which a timely determination has been made by the Oregon Department of Fish and Wildlife or other state agencies that the project may result in a wild game fish population or the fishery it provides, being converted to a hatchery dependent resource;
 - (d) Is located on land which in the judgment of the Division, the impacts of the project on the resource are of such a serious nature that the land could no longer be managed in a manner consistent with the conservation of the resource under sound techniques of land management.
- (4) A lease will not be granted if a project is located on lands where it is clear that the economic return from the proposed project will not result in the greatest benefit to the people of the State of Oregon. This may include submerged and submersible lands where the Land Board has existing leases or Land Board ownership on adjacent properties the value of which for mineral extraction, timber, grazing or other development may be affected by the issuance of a lease.

(5) The applicant and affected agency will be notified by the Division if any of the above conditions exist. Within 30 days of issuance of the notice, the applicant may request the Board to review the Division's decision. In addition, the applicant may request Board review of the determination of the Board's jurisdiction over the land within 30 days of issuance of the notice advising the applicant that the land is within the jurisdiction of the Board.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0030

Division Review of Application for Lease

- (1) The Division shall conduct its review of a lease application after receiving all of the following information:
- (a) A copy of a water appropriations permit issued by the Water Resources Commission under ORS Chapter 537 or proposed findings on the permit approved by the Director of the Water Resources Department on all issues relevant to the Land Board's determination;
 - (b) If the applicant does not qualify for a municipal exemption under ORS 543.150, a copy of the hydroelectric permit issued by the Water Resources Commission under ORS Chapter 543 or proposed findings on the permit approved by the Director on all issues relevant to the Land Board determination;
 - (c) If the proposed project exceeds 25 megawatts, a copy of a site certificate from the Energy Facility Siting Council or proposed findings of the Council on the site certificate on all issues relevant to the Land Board's determination;
 - (d) A copy of the application for a hydroelectric license or exemption from FERC or, if issued, a copy of the license or exemption;
 - (e) Filings of the Oregon Department of Fish and Wildlife submitted in administrative proceedings before FERC, EFSC, or the Water Resources Commission;
 - (f) If the project is subject to any local permit requirements, a copy of the permit;
 - (g) A copy of the Department of Environmental Quality's order on certification of a project under section 401 of the Federal Water Pollution Control Act, Public Law 92-500, as amended, proposed findings submitted as a party to EFSC or WRC review or proposed findings approved by the Environmental Quality Commission on issues relevant to the Land Board determination;
 - (h) Any other information related to the Board criteria for approval necessary for the Division to conduct its review of the proposed project.
- (2) The Board, in its discretion, may take action on a lease application prior to receiving all of the above information, if it determines it is in the public interest to do so.
- (3) If the Board approves a lease prior to the applicant obtaining all appropriate state, local and federal approvals or permits, the Board shall condition the lease upon obtaining all such approvals.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0040

Land Board Criteria for Decision on Request for Lease

The Land Board shall base its decision on a request for a lease or easement for the development of a hydroelectric project, on lands within the jurisdiction of the Board, on the following criteria:

- (1) The proposed lease should result in the lands being managed in a manner which will confer the greatest benefit on the people of the State of Oregon. In determining whether the project will confer the greatest benefit on the people of the state, the Board may consider appropriate factors including:
 - (a) The energy needs of the region;
 - (b) The economic impacts of the project;
 - (c) The impacts of the project on the natural resources of the area.
- (2) In determining the energy needs of the region, the Board may consider all information relating to this issue, including, but not limited to:
 - (a) If the project is in excess of 25 megawatts, the findings of EFSC relating to energy needs in its action on a site certificate or proposed findings on the site certificate approved by EFSC;
 - (b) The Oregon Department of Energy's Biennial Energy Plan;
 - (c) The Pacific Northwest Power Planning Council's Northwest Conservation and Electricity Power Plan.
- (3) In considering the economic impacts of the project, the Board shall find that the proposed lease will enhance the Common School Fund and that the state is receiving just compensation for the use of the lands. In making this determination, the Board may consider all information relating to economic impacts, including, but not limited to:
 - (a) Impacts on existing Land Board leases on submerged and submersible lands;
 - (b) Impacts on grazing revenues on affected Common School lands;
 - (c) Impacts on timber values on Common School lands affected by the project; and
 - (d) Impacts on mineral values on state owned lands affected by the project;
 - (e) The proposed lease fee recommended by the Director pursuant to OAR 141-087-0050.
- (4) In considering the impacts of the project on the natural resources of the area, the Board shall find that the issuance of the lease would be consistent with the criteria in OAR 141-087-0020(3) and that the proposed lease shall result in the lands being managed in a manner which will be consistent with the conservation of the resource under sound techniques of land management. In determining whether the use of the land will be consistent with the conservation of the resource, the Board may give due consideration to the findings and conclusions of other state and local agencies as listed below with respect to issues within those agencies expertise, specifically:
 - (a) The findings of the Water Resources Commission or the Director of the Water Resources Department in the review of the applicant's request for a water appropriation permit or a hydroelectric license;

- (b) The findings of the Department of Environmental Quality in the review of the proposed project under Section 401 of the Clean Water Act;
 - (c) The findings of the Oregon Department of Fish and Wildlife, in carrying out its responsibilities under state and federal law, related to evaluation of the project;
 - (d) The findings of EFSC under its siting authority when the project exceeds 25 megawatts;
 - (e) The comments of any other state, federal or local agencies or interested persons who are affected by the proposed project.
- (5) If any provisions of an acknowledged comprehensive plan and land use regulation are applicable, the approval of the lease or easement should be compatible with such provisions. Where a comprehensive plan does not regulate the use, the Board may make findings on applicable statewide planning goals.
- (6) Conditions must be available for inclusion in the lease or easement which will assure the safety of the public and the preservation of economic, scenic and recreational values of the lands pursuant to ORS 274.040(4).

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 2-1986, f. & ef. 2-19-86

141-087-0050

Fees For Hydroelectric Projects on State-Owned Submerged and Submersible Lands

- (1) There shall be a fee for leases or easements granted by the State Land Board pursuant to OAR 141-087-0001 through 141-087-0040. The fee shall be determined with the object of obtaining the greatest benefit for the people of the State of Oregon consistent with the conservation of the resource under the sound techniques of land management.
- (2) The fee shall be established as follows:
- (a) When an application for a lease or easement is submitted, the director shall first attempt to negotiate a fee with the applicant;
 - (b) If the director and applicant are unable to negotiate a fee, the base fee shall be six percent of the per acre value of the adjacent upland for use as a hydroelectric facility or other rural industrial use. The base fee shall be adjusted annually to reflect the amount of increase or decrease of the U.S. Department of Labor, Bureau of Labor Statistics, All Urban Consumers Price Index for Portland (Base: 1967-100);
 - (c) The per-acre value of the adjacent upland shall be established as follows:
 - (A) The director shall obtain an appraisal at the Division's expense;
 - (B) If the applicant rejects the director's appraisal, the applicant and director shall agree upon a second, independent appraiser, whose appraisal shall be used to calculate the fee. The cost of the appraisal shall be shared equally by the division and the applicant.
- (3) When the application is complete the director shall submit the application to the State Land Board for review.
- (a) For new projects the State Land Board may approve or deny an application pursuant to OAR 141-087-0040, but if the application is approved, the fee shall be the amount determined under section (2) of this rule;

(b) For existing projects that are exempt from the approval standards of these rules pursuant to OAR 141-087-0010, the fee shall be the amount determined under section (2) of this rule, and shall be retroactive to the date of application.

Stat. Auth.: ORS Ch. 273 & 274

Stats. Implemented: ORS Ch. 273 & 274

Hist.: LB 6-1986, f. & ef. 5-20-86

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DIVISION OF STATE LANDS

DIVISION 88

USE OF STATE-OWNED PROPERTY

141-088-0010

Closure of State-Owned Dibblee Point Property to Overnight Camping

All property owned by the State Land Board in the area known as Dibblee Point or Slaughters Bar, between Columbia River Mile 64.0 and Columbia River Mile 66.0, lying between the Burlington Northern Railroad and the left bank of the Columbia River, west of the Longview Rainier Bridge, in Sections 1 and 12, Township 7 North, Range 3 West, and Sections 7 and 8, Township 7 North, Range 2 West, Willamette Meridian, in Columbia County, Oregon, is closed to all uses between 10 p.m. and 5 a.m. Overnight camping is prohibited and the property is open for day use only.

Stat. Auth.: ORS 273.171

Stats. Implemented: ORS 274.025

Hist: LB 4-1988(Temp), f. & cert. ef. 11-7-88; LB 3-1989, f. & cert. ef. 5-18-89

141-088-0020

Closure of State-Owned McKenzie River Bar Property to Overnight Camping

All property owned by the State of Oregon between the ordinary high water and ordinary low waterlines along the north bank of the McKenzie River across from Armitage State Park, between River Mile 6.5 and River Mile 7.2, located in Sections 9 and 10, Township 17 South, Range 3 West, Willamette Meridian, in Lane County, Oregon, is closed to overnight camping and motor vehicles (except watercraft) between 10 p.m. and 5 a.m., effective February 1, 1992.

Stat. Auth.: ORS 274.025 & Or. Const. Art. VIII, Sec. 5

Stats. Implemented: ORS 274.025

Hist.: LB 9-1991(Temp), f. 9-13-91, cert. ef. 11-1-91; LB 1-1992, f. & cert. ef. 3-9-92

141-088-0030

Wilsonville Tract Use Regulations

- (1) Within the area designated by the Division as Wilsonville Tract (a 250-acre area just west of the Wilsonville City Limits and roughly bounded by Wilsonville Road on the South; Bell Road and Grahams Ferry Road on the west; Dammasch State Hospital on the north; and the park at Merryfield, Wood Middle School on the east) in Clackamas County, the following activities ar prohibited:
- (a) Discharge of firearms, fireworks or any article containing any explosive or inflammable substance or compound, which would be defined as fireworks.
 - (b) Use of archery equipment or similar devices such as, but not limited to, cross-bows;
 - (c) Use of campfires, open fires or outdoor cooking devices fueled by wood, wood products, charcoal, compressed gas or petroleum products;
 - (d) Overnight camping;
 - (e) Unauthorized use of the property between 10 p.m. and 5 a.m.;
 - (f) Unauthorized use of motor vehicles.
- (2) Persons violating these rules may be subject to prosecution under criminal trespass or other applicable statutes.
- (3) This rule does not affect the actions of any lessee taken in connection with use of the Wilsonville Tract pursuant to the terms and conditions of an approved lease.

Stat. Auth.: ORS 273.031, 273.045 & 273.171

Stats. Implemented: ORS 274.025

Hist.: LB 8-1994, f. 12-15-94, cert. ef. 1-30-95

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DIVISION OF STATE LANDS

DIVISION 89

FISH HABITAT ENHANCEMENT

141-089-0005

General Authorization for Fish Habitat Enhancement

- (1) This rule sets forth conditions under which a person may, without a permit from the Director, place or remove material within waters of this state for the purposes of fish habitat enhancement.
- (2) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that fish habitat enhancement projects would not result in long term harm to water resources of the State, would cause only minimal individual and cumulative environmental impacts, and are substantially similar in nature.
- (3) To be eligible for the general authorization provided by this rule, a project must conform to the following specifications and Division of State Lands guidelines for fish habitat enhancement projects:
 - (a) Randomly placed rock. Boulders may be placed individually or in groupings according to Oregon Department of Fish and Wildlife guidelines;
 - (b) Deflectors. All material shall be placed using the lowest impact method of construction (i.e., from the bank or instream). Large woody material shall be cabled or otherwise secured to the bed or banks of the waterway unless the material is of adequate length and diameter to create a reasonably stable structure for the stream conditions at the placement site, according to Oregon Department of Fish and Wildlife guidelines for placing large wood in streams. The bed and the bank may be stabilized with bioengineered methods or riprap consistent with section (4)(h) of this rule not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site;
 - (c) Check dams. Rock and log check dams and full-spanning boulder weirs may be placed within the bed and banks of the waters of the State of Oregon if they do not require annual reconstruction. Large woody material shall be stabilized as specified under section (3)(b). If necessary, the stream bank may be stabilized with bioengineered methods or riprap not more than 15 feet upstream and downstream of the structures. Any fill shall allow fish passage at all flows. Fills shall be of a size appropriate to the stream, as determined by the Oregon Department of Fish and Wildlife, but in no case shall they exceed 150 cubic yards per site;
 - (d) Gravel placement. Clean, river-run gravel suitable for spawning may be placed within the bed and banks of the waters of the State of Oregon either in conjunction with other structures or in isolated sites. Total amount of river-run

gravel placed shall not exceed 100 cubic yards per site;

(e) Pool and pond construction. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds. No more than 350 cubic yards may be removed for any one pool or pond creation site;

(f) Back/side channel construction. Gravel materials may be removed to create or clear side or back channels. The total removal shall not exceed 350 cubic yards per site;

(g) Barrier removal and placement of fishways. Artificial barriers to fish passage may be removed and fish passage structures may be placed within the bed and banks of waters of the state. This includes culvert replacement to allow fish passage. Each barrier removal or placement of fish passage material shall not exceed 100 cubic yards of material. All culverts shall conform to Oregon Department of Fish and Wildlife fish passage criteria; and

(h) Woody material. Large woody material, including root wads and trees may be placed within the bed and banks of the waters of the state according to the standards set in section (3)(b) of this subsection.

(4) This general authorization is valid only if the proposed activity complies with the following operating conditions:

(a) Fill or removal activity shall not adversely affect existing wetlands;

(b) Fill or removal activities shall not block channels or tributaries from existing or historical fish passage nor individually or cumulatively cause significant increase in floodwater height in a stream reach;

(c) Notwithstanding this general authorization, fill and removal activities within State Scenic Waterways must have prior Land Board authorization as provided in ORS 390.835(2);

(d) The activity shall not adversely affect state or federal endangered species or their critical habitat, as advised by the applicable state or federal agency;

(e) The activity shall be conducted during the time period specified by the Oregon Department of Fish and Wildlife District Biologist;

(f) Waste materials and spoils shall be placed above the bank line and not in any wetland area, in a Federal Emergency Management Agency designated floodway or in any area historically subject to landslides;

(g) Care shall be taken to prevent any petroleum products, wet cement, chemicals or deleterious materials from entering the water;

(h) Bioengineered approaches such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, and other techniques that minimize erosion are preferred to riprap. Revetments and other structural techniques should be used in combination with bioengineered approaches to erosion control. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters to provide habitat. Only clean, durable rock shall be used for riprap. No asphalt shall be used. No concrete shall be placed unless specifically to anchor a structure and then, only when done in the dry or within a bermed, dewatered area;

(i) Work in the waterway shall be done so as to minimize turbidity increases in the water;

(j) Vegetation removal shall be limited to the minimum amount practicable for entrance and exit of equipment and keying in of structures. Large woody debris shall either be placed instream in accordance with Oregon Department of Fish and Wildlife guidelines or donated for use in habitat restoration projects when practicable;

(k) All disturbed areas shall be revegetated. Localized native plant species (i.e., grasses, shrubs and/or trees) are preferred when available. Streams listed as water quality limited for temperature shall be revegetated with native trees;

(l) Fills and structures shall not substantially interfere with or create a hazard to recreational navigation on those streams

capable of use for that purpose. All structures shall be placed in a manner that does not appreciably increase the upland surface area. All reasonable attempts shall be made to construct the structures from land-based equipment;

- (m) The stream shall not be diverted from the natural bed; and
- (n) The applicant shall obtain all other necessary federal, state and local approvals before proceeding under this General Authorization.

(5) An application for general authorization under this rule shall be submitted on an application form available from the Division of State Lands and shall include the following information:

- (a) Name, address, phone number and project location;
- (b) Description of the project sufficient to demonstrate compliance with the requirements of sections (3) and (4) of this rule;
- (c) Oregon Department of Fish and Wildlife District Biologist signature and allowed work period;
- (d) A vicinity map or aerial photograph indicating the location of the proposed work;
- (e) A plan view of the proposed work, including the location of spoil disposal; and
- (f) For projects that require spoil disposal or alcove or off-channel pond construction, a grading plan or cross-section showing the slope of the proposed work.

(6) The Division shall send copies of the application to the local planning department and the local Soil and Water Conservation District.

(7) If, within 15 working days of receipt by the Division of an application for a General Authorization, the Division does not receive an objection from any federal, state or local entity, the Division shall notify the applicant whether the proposed project qualifies for the general authorization under this rule. If the Division determines that the proposed project does not qualify for the general authorization under this rule, and so notifies the applicant, the applicant may submit an application for a removal or fill permit, as provided in ORS 196.800 through 196.990.

(8) The Division may require an individual permit for projects which would otherwise be authorized by this general authorization if the project would have more than minimal individual or cumulative environmental impacts.

(9) This general authorization shall be reviewed by the Division on or before July 1, 2001, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

[ED. NOTE: The Figure(s) referenced in this rule are not printed in the OAR Compilation. Copies are available from the Division of State Lands.]

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1996, f. 6-13-96, cert. ef. 7-1-96

141-089-0010

General Authorization for Erosion Control

(1) This rule sets forth conditions under which a person may, without a removal-fill permit, place or remove material within waters of the state, except estuarine areas and the Pacific Ocean, where necessary to prevent active streambank erosion. Preference shall be given to non-structural erosion repair methods using bioengineering methods, as described

in subsection (3)(c) of this rule.

(2) This general authorization is made pursuant to ORS 196.805 and is based upon the determination that authorized activities would cause minimal individual and cumulative environmental impacts, and would not result in long term harm to water resources of the state.

(3) To be eligible for this general authorization, an erosion control project must conform to the following:

(a) No more than 500 cubic yards of material may be placed in waters of the state for a single project or 1,000 cubic yards for multiple related projects within a watershed;

(b) Fill material shall consist of clean, durable, angular rock. No concrete or asphalt shall be used;

(c) Bioengineered approaches such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, and other techniques that minimize erosion are preferred to riprap. Revetments and other structural techniques should be used in combination with bioengineered approaches to erosion control. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters to provide habitat. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used. Projects such as channel relocation and gravel bar alteration are not authorized;

(d) No material shall be removed in excess of the amount required to construct a toe trench, key material to the bank, or slope the bank. In no case shall removal of material exceed 500 cubic yards;

(e) Streambed gravels from toe trench excavation may be used to prepare a filter blanket;

(f) No material shall be placed in excess of the minimum needed for erosion protection or in a manner that appreciably increases the upland surface area;

(g) The activity shall be conducted during the time period specified by the Oregon Department of Fish and Wildlife;

(h) No material shall be placed which affects normal water flow into or circulation within any wetlands;

(i) All reasonable attempts shall be made to construct the project using land based equipment;

(j) Fill and removal activities shall not prevent or interfere with existing or historical fish passage;

(k) Notwithstanding this general authorization, fill and removal activities within State Scenic Waterways must have prior Land Board authorization as provided by ORS 390.835(2);

(l) The activity shall not adversely affect state or federal threatened or endangered species or their critical habitat, as advised by the applicable state or federal agency;

(m) Waste materials and spoils, including construction debris, shall be placed above the bank line and not in any wetland area, in a Federal Emergency Management Agency designated floodway or in any area that may be subject to landslides;

(n) Care shall be taken to prevent any petroleum products, chemicals or other deleterious materials from entering the water;

(o) The activity shall not violate applicable state water quality standards;

(p) Removal of existing woody vegetation shall be minimized. Large woody debris shall be either placed instream in accordance with Oregon Department of Fish and Wildlife guidelines for fish habitat or donated for use in habitat restoration projects when practicable;

(q) All disturbed areas shall be revegetated. Localized native plant species (i.e., grasses, legumes, shrubs and/or trees)

are preferred. Streams listed as water quality limited for temperature shall be revegetated with native trees;

(r) Projects shall not substantially interfere with or create a hazard to recreational navigation.

(s) Projects shall not deflect water in a manner that causes erosion;

(t) The applicant shall obtain local approval if the project is located in a Federal Emergency Management Agency designated floodway;

(u) The applicant shall obtain all other necessary federal, state and local approvals before proceeding under this General Authorization and

(v) The project shall not adversely affect stream flow in streams listed as water quality limited for flow modification.

(4) An application for general authorization under this rule shall be submitted on the Joint Application form provided by the Division of State Lands in accordance with the requirements of ORS 196.815(1) and OAR 141-085-0025. The Division shall send copies of the application to adjacent property owners, Oregon Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, and local Soil and Water Conservation District.

(5) The Division of State Lands guidelines for erosion control projects include drawings that are typical of projects that would be authorized by this general authorization.

(6) Within 15 working days of receipt of a completed application, the Division shall notify the applicant whether the proposed project qualifies for the general authorization under this rule. The written notification may contain additional conditions deemed appropriate by the Director. If the Division determines that the proposed project does not qualify for the general authorization, the project may be reviewed as an individual removal-fill permit as provided in ORS 196.800 to 196.990.

(7) The Division may require an individual permit for projects which would otherwise be authorized by this general authorization upon a showing by the Division, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, or the Soil and Water Conservation District that the project may have more than minimal individual or cumulative environmental impacts.

(8) This general authorization shall be reviewed by the Division on or before July 1, 2001, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

[ED. NOTE: The Figure(s) referenced in this rule are not printed in the OAR Compilation. Copies are available from the Division of State Lands.]

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1996, f. 6-13-96, cert. ef. 7-1-96

141-089-0015

General Authorization for Certain Road Construction Projects

(1) This rule sets forth conditions under which a federal or state agency or state, county or city road department may, without obtaining a removal-fill permit, place or remove material within non-estuarine waters of the state for the purpose of repairing, widening, replacing, realigning or removing existing roads and bridges, or replacing culverts under roads.

(2) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the activities are substantially similar in nature, would cause minimal individual and cumulative environmental impacts and would not result in long-term harm to water resources of the state.

(3) To be eligible for this general authorization, a road construction project must conform to the following:

(a) No more than a total of 5000 cubic yards of material shall be filled, removed, or altered in waters of the state for a single and complete project;

(b) No material shall be placed in excess of the minimum needed for project construction;

(c) Fill in wetlands shall not exceed 0.5 acres;

(d) Mitigation shall be required pursuant to ORS 196.825(5) and 196.800(10) to mitigate for adverse impacts to waters of the state, including impacts to fish and wildlife habitat and fills in wetlands affecting less than 0.5 acres pursuant to OAR 141-085-0145;

(e) The activity shall be conducted during the time period specified by the Oregon Department of Fish and Wildlife;

(f) Except for designed structures, no concrete or asphalt shall come into contact with the active flowing stream;

(g) All reasonable attempts shall be made to construct the project using land based equipment;

(h) Bioengineered approaches such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, and log and boulder deflectors, and other techniques that minimize erosion are preferred to riprap. Revetments and other structural techniques should be used in combination with bioengineered approaches to erosion control. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters to provide habitat. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used;

(i) The project shall be the least environmentally damaging practicable alternative. In particular, a bridge is preferred to a culvert for stream crossing. Where a culvert is proposed instead of or to replace a bridge, the applicant must show in terms of cost, technology and logistics why a bridge is not practicable;

(j) Fill and removal activities shall not prevent or interfere with existing or historical fish passage;

(k) Notwithstanding this general authorization, fill and removal activities within State Scenic Waterways must have prior Land Board authorization as provided in ORS 390.835(2);

(l) The activity shall not adversely affect state or federal threatened or endangered species or their critical habitat, as advised by the applicable state or federal agency;

(m) Care shall be taken to prevent any petroleum products, chemicals or other deleterious materials from entering the water;

(n) The activity shall not result in violation of applicable state water quality standards;

(o) Removal of existing woody vegetation shall be minimized and limited to construction corridors and access areas. Large woody debris shall either be placed instream in accordance with Oregon Department of Fish and Wildlife guidelines or donated for use in habitat restoration projects when practicable;

(p) All disturbed areas shall be revegetated. Localized native plant species (i.e., grasses, shrubs and/or trees) are preferred when available. Streams listed as water quality limited for temperature shall be revegetated with native trees;

(q) Waste materials and spoils shall be placed above the bank line and not in any wetland area, in a Federal Emergency Management Agency designated floodway or in any area historically subject to landslides;

- (r) Fills and structures shall not substantially interfere with or create a hazard to recreational navigation;
 - (s) The applicant shall obtain approval of the local authority having jurisdiction if the project is located in a Federal Emergency Management Agency designated floodway;
 - (t) Projects shall not deflect water in a manner that causes erosion;
 - (u) In the case of road removal, all affected stream and bank areas shall be restored to their approximate original contour;
 - (v) All culverts shall conform to Oregon Department of Fish and Wildlife fish passage criteria;
 - (w) No project shall involve stream channel relocation; and
 - (x) The applicant shall obtain all other necessary federal, state and local approvals before proceeding under this General Authorization.
- (4) An application for general authorization under this rule shall be submitted on the Joint Application Form provided by the Division in accordance with the requirements of ORS 196.815 (1) and OAR 141-085-0025. The applicant shall send copies of the application to the Oregon Division of State Lands, the local planning department, the local Soil and Water Conservation District, Department of Land Conservation and Development, Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality. If the project is on a federally designated Wild and Scenic River, the applicant shall send a copy to the appropriate U.S. Forest Service or Bureau of Land Management office.
- (5) Within 15 working days of receipt of a completed application, the Division shall notify the applicant whether the proposed project qualifies for the general authorization under this rule. The written notification may contain additional conditions deemed appropriate by the Director. If the Division determines that the proposed project does not qualify for the general authorization, the project may be reviewed as an individual permit under OAR 141-085-0035.
- (6) The Division may require an individual permit for projects which would otherwise be authorized by this general authorization, upon a showing by the Division or the reviewing agencies listed above that the project would have more than minimal individual or cumulative environmental impacts.
- (7) This general authorization shall be reviewed by the Division on or before July 1, 2001, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1996, f. 6-13-96, cert. ef. 7-1-96

141-089-0020

General Authorization for Wetland Restoration and Enhancement

- (1) This rule sets forth conditions under which a person may, without a permit from the Director, place or remove material within waters of this state for the purposes of wetland creation, restoration or enhancement.
- (2) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that environmental impacts caused by wetland creation, restoration and enhancement activities would not result in long term harm to water resources of the state, and would cause only minimal individual and cumulative environmental impacts.

(3) To be eligible for this general authorization, a wetland creation, restoration or enhancement project must conform to the following:

(a) The projects shall enhance natural wetland values such as wildlife and fishery habitats, hydrology, water quality, flood storage, recreation and aesthetics; and

(b) The project shall restore historically altered or lost wetland resources for the ecoregion; or

(c) The project is for purposes of wetland or waterfowl management within a state or federally designated management area and conducted under a management plan that identifies existing conditions, goals for the area and proposed implementation projects; or

(d) The project is for purposes of wetland research by a state or federal agency or university.

(4) The following projects shall not be eligible under this authorization:

(a) Projects proposed primarily for the purpose of storm or waste water management, stock ponds, aquaculture or other single purpose uses; or

(b) Projects that are proposed for the purpose of complying with the requirements of compensatory mitigation for permits under ORS 196.825(5), unless the project is included in a Wetland Conservation Plan approved by the Division of State Lands under ORS 196.678; or

(c) Restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory mitigation for permits under ORS 196.825(5); or

(d) Projects that are proposed within a wetland conservation plan area and are not in conformance with the approved plan; or

(e) Projects that include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands.

(5) To be eligible for this general authorization, a project must conform to the Division of State Lands descriptions, specifications and guidelines:

(a) Water diversion structures. This applies only to those diversions needed to direct flow into planned wetland restoration or enhancement sites (note reference to possible need for water right in operating condition in subsection (6)(n) of this rule);

(b) Water impoundment structures. Gated or stop log water control structures shall be designed so that water levels can be manipulated, including complete draw-down when needed. In most instances the average water depth should be 18 to 24 inches depending on site conditions and amount of edge for shallow marsh habitats (note reference to possible need for water right in operating condition in subsection (6)(n) of of this rule);

(c) Dikes and ditches. This applies to construction of water control dikes and ditches that expand (not reduce) the areal extent and/or duration of water to wetland restoration or enhancement sites. Levees, embankments and islands shall not be sloped steeper than 4:1, with slopes between 6:1 and 20:1 being preferred. Level ditches, installed at approximate right angles to natural channels to improve water distribution, should be designed to avoid intercepting natural channels except when desired for circulating systems. The purposes of level ditches are to improve water distribution, increase diversity and provide open water for furbearers and waterfowl. Spoil material shall be removed from the site, contoured into the project as planned islands or stacked a minimum of 10 feet from the ditch edge in nonlinear piles alternating on either side of the ditch. Minimum dimensions recommended for level ditches are 4 feet deep with a 12 foot top width;

(d) Potholes. This applies to pothole development by excavation or blasting with the intent of creating wetland diversity or waterfowl use areas (permits may be required from Oregon Department of Fish and Wildlife);

(e) Filling of drainage ditches and/or drainage tile. This filling can restore ponding, flooding and/or saturation, prevent the fluctuation of water levels in existing water areas, increase the water impoundment area of a site or other purposes that facilitate the wetland creation, restoration or enhancement;

(f) Bank excavation. This applies to excavation of streambank sites to a level where the hydrology is sufficient to establish wetland habitat;

(g) Surface excavation. This applies to excavation and grading of surface topography to create and/or restore water impoundment in a manner that creates new wetlands or restores wetland hydrology to effectively or partially drained hydric soils. Material removed from a wetland area as part of an approved enhancement project shall be placed on uplands such that the material does not reenter the waterway or wetland. This is not intended to preclude use of excavated material to create island habitats, provide a seed source for wetland revegetation, or as structures to impound water for marsh inundation, provided the use is part of the approved project; or

(h) Dike removal or breaching. This applies to removal of dikes or portions of dikes, to return the enclosed area to tidal action or water intrusion.

(6) This general authorization is valid only if the proposed activity complies with the following operating conditions:

(a) Fill activity shall not adversely affect existing wetlands;

(b) Fill activities shall not prevent or interfere with existing or historical fish passage;

(c) Notwithstanding this general authorization, fill and removal activities within State Scenic Waterways must have prior Land Board authorization as provided in ORS 390.835(2);

(d) The activity shall be conducted during the time period specified by the Oregon Department of Fish and Wildlife;

(e) Waste materials and spoils shall be placed above the bank line and not in any existing wetland area, in a Federal Emergency Management Agency designated floodway or in any area that may be subject to landslides;

(f) The activity shall not adversely affect state or federal endangered species or their critical habitat, as advised by the applicable state or federal agency;

(g) Care shall be taken to prevent any petroleum products, wet cement, chemicals or deleterious materials from entering the water;

(h) Bioengineered approaches such as slope pull-back, willow mats, rock barbs, revegetation with localized native plant species, log and boulder deflectors, and other techniques that minimize erosion are preferred to riprap. Revetments and other structural techniques should be used in combination with bioengineered approaches to erosion control. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters to provide habitat. Only clean, durable rock shall be used for riprap. No concrete shall be placed unless specifically to anchor a structure and then, only when done in the dry or within a bermed, dewatered area. No asphalt shall be used;

(h) The activity shall not violate applicable state water quality standards;

(i) Vegetation removal shall be limited to the minimum amount practicable. Large woody debris shall be either placed in a stream in accordance with Oregon Department of Fish and Wildlife guidelines or donated for use in habitat restoration projects when practicable;

(j) All areas disturbed by construction activity shall be revegetated. Localized native plant species (i.e., grasses, legumes, shrubs or trees) are preferred when available. Streams listed as water quality limited for temperature shall be revegetated with native trees;

(k) Fills and structures shall not unreasonably interfere with or create a hazard to recreational navigation on those

streams capable of use for that purpose. All structures shall be placed in a manner that does not appreciably increase the upland surface area. All reasonable attempts shall be made to construct the project using the lowest impact method of construction;

(l) A vegetated buffer of at least 50 feet should be maintained on uplands adjacent to the wetland enhancement or restoration area, unless physically impractical;

(m) Local approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway;

(n) Construction of water diversions or impoundments shall have a valid state water right or reservoir permit if required by the State Water Resources Department; and

(o) The applicant shall obtain all other necessary federal, state and local approvals before proceeding under this General Authorization.

(7) An application for general authorization under this rule shall be submitted on an application form available from the Division of State Lands and shall include the following information:

(a) Name, address, phone number, and location;

(b) Description of the project sufficient to demonstrate compliance with the requirements of sections (3) through (6) of this rule;

(c) Oregon Department of Fish and Wildlife District Biologist signature and allowed work period;

(d) A vicinity map or aerial photograph indicating the location of the proposed work;

(e) A plan view of the proposed work, including the location of spoil disposal and the water source; and

(f) A grading plan or cross-section showing the slope of the proposed work, including spoil disposal.

(8) The Division shall send copies of the completed application to the local planning department, the local Soil and Water Conservation District, the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality, the Oregon Department of Land Conservation and Development, the State Historic Preservation Officer, and the Oregon Water Resources Department.

(9) Within 15 working days of receipt by the Division of an application for general authorization, the Division shall notify the applicant whether the proposed project qualifies for the general authorization under this rule. If the Division determines that the proposed project does not qualify for the general authorization under this rule, and so notifies the applicant, the applicant may submit an application for a removal or fill permit, as provided in ORS 196.800 through 196.990.

(10) This general authorization shall be reviewed by the Division on or before July 1, 2001, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

(11) The Division may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Division determines that the activity might cause more than minimal individual or cumulative environmental impacts or might result in long-term harm to the water resources of the state. The Division may also require an individual permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the local planning department.

[ED. NOTE: The Figure(s) referenced in this rule are not printed in the OAR Compilation. Copies are available from the Division of State Lands.]

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 3-1991, f. 6-14-91, cert. ef. 7-1-91; LB 3-1992, f. & cert. ef. 6-15-92; LB 3-1996, f. 6-13-96, cert. ef. 7-1-96

141-089-0030

Purpose

- (1) These rules set forth conditions under which a person may, without a Removal-Fill Permit, place or remove material in waters of the state within areas designated as Essential Indigenous Anadromous Salmonid Habitat for the purposes of conducting recreational and small scale placer mining.
- (2) This General Authorization is made pursuant to ORS 196.850 and is based upon the determination that authorized activities would cause minimal individual and cumulative environmental impacts, are similar in nature, and would not result in long-term harm to water resources of the state.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.810 & 196.850

Hist.: LB 3-1997, f. & cert. ef. 2-19-97

141-089-0040

Definitions

- (1) "Division" means the Oregon Division of State Lands.
- (2) "Gold Panning" means the washing of earth or crushed rock with a non-motorized pan, by agitation with water, for the purpose of obtaining gold or other precious metals.
- (3) "Recreational And Small Scale Placer Mining" includes, but is not limited to, gold panning and the use of a motorized surface dredge having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards.
- (4) "Wet Perimeter" means that area of the stream bed which is under water, or is exposed as a gravel bar surrounded on all sides by actively moving water at the time placer mining occurs.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.810 & 196.850

Hist.: LB 3-1997, f. & cert. ef. 2-19-97

141-089-0050

Eligibility Requirements

- (1) To be eligible for this General Authorization, recreational and small scale placer mining operations must conform to the following:
- (a) The activity shall not remove, fill, or alter more than twenty-five (25) cubic yards of material annually from the bed

of a stream designated as essential indigenous salmonid habitat;

(b) The activity shall not involve the construction of permanent dams. An operator may construct a temporary low rise dam if the structure:

(A) Does not extend across the entire width of the waterway, and allows the free passage of water in an amount sufficient to enable fish to travel unimpeded up and down the stream;

(B) Creates only the minimal area of impounded water necessary to operate the dredge; and

(C) Is removed upon completion of the mining activity unless otherwise instructed by the Division.

(c) Nozzling, sluicing, or digging shall not occur outside the wet perimeter, nor extend the wet perimeter;

(d) The activity shall not involve disturbance of rooted woody plants including trees and shrubs, regardless of their location (for example, on gravel bars);

(e) The activity shall not include excavation from the streambank;

(f) The activity shall not include movement of boulders, logs, stumps, or other woody material from the wet perimeter other than movement by hand and non-motorized equipment;

(g) Upon activity completion, to the greatest extent possible, all piles created by the activity shall be leveled. In addition, all furrows, potholes, or other depressions created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls;

(h) The recreational or small scale placer miner shall obtain landowner permission before operating on public or private property;

(i) Use of a motorized suction dredge must have a suction dredge waste discharge permit from the Department of Environmental Quality, as applicable;

(j) The activity shall occur only during the recommended in-water work period identified in the Oregon Department of Fish and Wildlife's "Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources;"

(k) The activity must comply with other applicable local, state, and federal laws and regulations, including the federal Endangered Species Act; and

(l) In addition to OAR 141-089-0030(a)-(k) of these rules, within Oregon Scenic Waterways:

(A) The activity shall not impede recreational boating;

(B) Use of motorized suction dredges shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a designated campground or a residence;

(C) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area;

(D) No dredge may be used having a motor exceeding ten (10) horsepower, or as otherwise established by statute;

(E) All pits, piles, furrows and potholes must be leveled upon completion of the mining activity;

(F) The activity shall not dam or divert a waterway or obstruct fish passage; and

(G) The activity shall not include excavation from the streambank or movement of boulders, logs, stumps, or other woody material other than movement by hand.

(2) To qualify for a General Authorization under these rules, the operator shall, before beginning operation, submit to the Division an application on a form provided by the Division, or in a letter that includes the following information:

(a) The stream(s) and the location(s) the operator will be working;

(b) The type of equipment to be used (including nozzle size, and horsepower rating of the engine); and

(c) The approximate amount of material to be moved by the activity and the anticipated number of days per year the activity will occur at each location.

(3) Within fifteen (15) working days of receipt of a completed application, the Division will review the application for compliance with the conditions in OAR 141-089-0030(1)(a)-(l) of these rules and notify the applicant of approval, denial, or modification. Where it determines that a proposed recreational and small scale placer mining activity qualifies for this General Authorization, the Division will approve the application by letter. Where it determines that a proposed recreational and small scale placer mining activity would have more than minimal individual or cumulative environmental impacts, the Division reserves the right to:

(a) Add any other conditions that the Division determines are necessary to ensure that environmental impacts are minimal either individually or cumulatively; or

(b) Deny qualification for this General Authorization and inform the applicant that a Removal-Fill Permit is required; or

(c) Request that the applicant modify the activity to conform with the General Authorization conditions in OAR 141-089-0030(1)(a)-(l) of these rules.

(4) The Division may, at any time, by notice to affected operators revoke or modify any project approval granted under this General Authorization if it determines the conditions of the General Authorization are insufficient to minimize individual or cumulative environmental impacts.

(5) Recreational and small scale placer mining activities which qualify for this General Authorization are exempt from Removal-Fill Permit application fees.

(6) No letter of authorization will be issued with an expiration date beyond December 31, 2001, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5).

(7) The General Authorization applies only to the permit requirements of the Removal-Fill Law. Except for gold panning, any recreational and small scale placer mining activity on designated Oregon Scenic Waterways must still obtain prior approval from the State Land Board as required by the Oregon Scenic Waterway law and scenic waterway Removal-Fill Rules (OAR 141-100).

(8) Every person receiving a General Authorization under these rules shall report the estimated amount of material they removed, placed, or altered in each waterway they operated in during the preceding calendar year on a form provided by the Division. This report must be received by the Division no later than January 31st of each year that the General Authorization is valid.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 196.810 & 196.850

Hist.: LB 3-1997, f. & cert. ef. 2-19-97

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 91

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141-091-0005

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(2) Map -- Major Public Lands -- \$1.25;

(3) Transcripts, reports, specialized maps, photos, etc. available through the Division: a charge approximating the cost of reproduction and handling.

(4) Certified copies of Division records, per certificate -- \$5.

The charge includes the first four pages of document copied. Additional amount for each page in accordance with section (1).

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS

Hist.: LB 11-1982, f. & ef. 12-20-82

141-091-0010

Additional Fees

An additional charge shall be added for actual cost of staff time required for research.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS Ch. 192 & 273

Hist.: LB 11-1982, f. & ef. 12-20-82

141-091-0015

Billing

Charges shall be paid in cash at the time of request for copies except that at the discretion of the Director, Deputy Director, or Assistant Director for Finance and Administration, billing may accompany mailed copies. State agencies or other governmental bodies may be billed for copies.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS Ch. 192 & 273

Hist.: LB 11-1982, f. & ef. 12-20-82; LB 5-1985, f. & ef. 7-24-85

141-091-0020

Fees Waived

Charges may be waived in the following instances:

- (1) Routine requests from state, local, and federal agencies;
- (2) When charges would total \$.50 or less;
- (3) Copies of current leases, permits, etc., requested by lessee, permittee, mortgagor, their insurance company, financial institution, etc.;
- (4) Documents needed by applicants for leases and permits, etc., such as administrative rules, lease forms, application forms.

Stat. Auth.: ORS Ch. 192 & 273

Stats. Implemented: ORS Ch. 192 & 273

Hist.: LB 11-1982, f. & ef. 12-20-82

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**Oregon Administrative Rules
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DIVISION OF STATE LANDS

DIVISION 92

**SCREENING AND SELECTION PROCEDURES FOR PERSONAL SERVICES CONTRACTS ENTERED
INTO BY THE DIVISION OF STATE LANDS**

141-092-0020

Introduction

The following procedures for screening and selecting a contractor for a personal services contract are adopted as the procedures of the Division of State Lands, including the South Slough Estuarine Sanctuary and the Natural Heritage Advisory Council.

Stat. Auth.: ORS Ch. 273 & 279

Stats. Implemented: ORS Ch. 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82

141-092-0021

Policy

- (1) The Division of State Lands will contract for consultant services when the specialized skills, knowledge, and resources are not available within the Division; when the work cannot be done in a reasonable time with the Division's own work force; when an independent and impartial evaluation of a situation is required by a consultant with recognized professional expertise and stature in a field; or when it will be less expensive to contract for the work. Contracts will be let only after approval by the Director, Deputy Director, or Assistant Director for Finance and Administration.
- (2) Agreements for services of a consultant who is a member of the Public Employees' Retirement System and who is employed in another department will normally be in the form of an interagency agreement. Exceptions may be granted by the Director, Deputy Director, or Assistant Director when it is shown that such an agreement is impractical and that the work will be done strictly on the consultant's own time. Such exceptions will be processed as a regular personal services contract.

(3) This procedure will be used in all cases except when the Director, Deputy Director, or Assistant Director determines that an emergency will be subject to later confirmation.

Stat. Auth.: ORS Ch. 273 & 279

Stats. Implemented: ORS Ch. 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82; LB 6-1985, f. & ef. 7-24-85

141-092-0025

Definitions

- (1) "Agency" means the Division of State Lands.
- (2) "Assistant Director" means any of the Assistant Directors for programs within the Division of State Lands.
- (3) "Consultant" or "Contractor" means an individual or firm that has been found qualified to do specified types of work for the Division of State Lands and with whom the Division may contract.
- (4) "Deputy Director" means the Deputy Director of the Division of State Lands.
- (5) "Director" means the Director of the Division of State Lands.
- (6) "Program Manager" means the Manager for the South Slough National Estuarine Sanctuary or the Manager for the Natural Heritage Advisory Council.

Stat. Auth.: ORS Ch. 273 & 279

Stats. Implemented: ORS Ch. 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82; LB 6-1985, f. & ef. 7-24-85

141-092-0030

General

- (1) A contract file will be maintained by the Finance and Administration Section. The file will contain a complete record of the actions involved in developing and administering the contract including the following:
- (a) Statement of agency jurisdiction for the contract;
 - (b) A copy of the request for proposal;
 - (c) List of prospective contractors who were requested to submit proposals;
 - (d) Method used to advertise/notify other possible prospective contractors;
 - (e) A copy of each proposal;
 - (f) Method of evaluating proposals;
 - (g) Record of negotiations and results;

- (h) Basis for awarding contract;
 - (i) Resulting contract, if awarded.
- (2) All contracts of \$2,500 per agreement or less should include:
- (a) The names of firms or individuals and cost estimates/ quotations considered;
 - (b) The basis for selection of the contractor;
 - (c) How reasonableness of price was determined.

Stat. Auth.: ORS Ch. 273 & 279

Stats. Implemented: ORS Ch. 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82

141-092-0035

Procedure and Responsibility

- (1) Director, Deputy Director, or Assistant Director or Program Manager determines the agency requires the services of a consultant:
- (a) Prepares agency justification for contract;
 - (b) Prepares a cost estimate for contract;
 - (c) Determines type of selection and screening process to be used in selecting a contractor;
 - (d) Completes screening and selection procedure and selects a contractor.
- (2) Assistant Director for Finance and Administration completes the following:
- (a) Forwards draft of proposed contracts that total \$25,000 or more to Attorney General for review of legal sufficiency unless contract form has previously been approved by Attorney General;
 - (b) Receives Attorney General's approval of contract's legal sufficiency;
 - (c) Obtains contractor's signature on contract;
 - (d) Signs contract, or obtains signature of the Director;
 - (e) If contract is under \$1,000, reviews and sends one copy to Executive Department Budget and Management Division for filing; retains copy for accounting purposes; copy for contract file; forwards one copy to contractor;
 - (f) If contract is for over \$1,000, reviews and sends four copies to Department of Administrative Services for approvals;
 - (g) Receives approved contract, three copies from Executive Department, forwards one copy to accounting for payment purposes; forwards one copy of contract to contractor; and retains one copy of contract with original signatures for agency contract file.

Stat. Auth.: ORS Ch. 273 & 279

Stats. Implemented: ORS Ch. 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82; LB 6-1985, f. & ef. 7-24-85

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DIVISION OF STATE LANDS

DIVISION 95

STATE AGENCY COORDINATION PROGRAM

141-095-0000

State Agency Coordination Program

(1) The following sections of the State Agency Coordination Program entitled "**Division of State Lands State Agency Coordination Program**" and adopted by the State Land Board on October 23, 1990, pursuant to ORS 197.180 are hereby adopted by reference:

(a) **Section III -- Procedures to Assure Compatibility with Local Comprehensive Plans and Compliance with the Statewide Goals;**

(b) **Section IV -- Dispute Resolution Procedures.**

(2) Copies of these sections are available for review at the following locations:

(a) Division of State Lands, 775 Summer Street, N.E., Salem, OR 97310;

(b) Department of Land Conservation and Development, 1175 Court Street, N.E., Salem, OR 97310.

(3) This rule becomes effective upon certification of the Division's State Agency Coordination Program by the Land Conservation and Development Commission.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS Ch. 196, 197, 273 & 274

Stats. Implemented: ORS Ch. 196, 197.180, 273 & 274

Hist.: LB 1-1991, f. & cert. ef. 2-1-91

This online version of the OARs is provided for convenience of reference and enhanced access. The official, record copy of these publications is the printed copy. Discrepancies, if any, between the two versions are satisfied in favor of the printed version. In particular, tables, graphs, special characters, and other special formatting may not translate properly. Copyright 1998 Oregon Secretary of State: [Terms and Conditions of Use](#)

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DIVISION OF STATE LANDS

DIVISION 100

OREGON SCENIC WATERWAY REMOVAL/FILL PERMITS

141-100-0000

Definitions

For purposes of these rules, the definitions contained in ORS 390.805 apply. In addition, the following definitions apply:

(1) "Activity" means any action(s) or project(s) involving the filling, removal or alteration of the bed or banks of the waters of a Scenic Waterway, regardless of the amount of material involved or area disturbed. Types of Activities¹ include:

- (a) Riverbank Erosion Control/Wetland Restoration;
- (b) Bridge;
- (c) Pipeline;
- (d) Sand and Gravel Removal;
- (e) Irrigation Diversion Work (permanent and temporary);
- (f) Fishery Enhancement Structure²;
- (g) Temporary Construction Works (e.g., cofferdams);
- (h) Dredge Material Disposal;
- (i) Stream Gauging Station³;
- (j) Oil and Gas Exploration and Development
- (k) Bulkhead;

- (l) Utility Crossing;
- (m) Boat Ramp;
- (n) Water Intake;
- (o) Channel Access Dredging;
- (p) Boat Dock;
- (q) Road Fill;
- (r) Fills for Structures;
- (s) Underwater Blasting;
- (t) Riverbank Excavation (e.g., bank sloping/reshaping);
- (u) Stormwater, Waste Water;
- (v) Sewer Outfall.

NOTES:

-1-This is not an exhaustive list of activities that could result in fill, removal, or alteration of the bed and banks of a Scenic Waterway.

-2- ORS 390.835(4) allows the Oregon Department of Fish and Wildlife to undertake these projects without Scenic Waterway review. However, a removal/fill permit, lease, easement, or license may be needed.

-3- ORS 390.835(5) allows the Water Resources Commission to undertake these projects without Scenic Waterway review. However, a removal/fill permit, and/or lease, easement, or license may be needed.

(2) "Bankfull Stage" is the stage or elevation at which water overflows the natural banks of the Scenic Waterway and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval flood elevation may be used to approximate the bankfull stage. (OAR 141-085-0010(2))

(3) "Bed and/or Banks" means the land lying beneath the waters of a Scenic Waterway and extending to the bankfull stage.

(4) "Demonstrated Need" means the proposed activity is clearly and convincingly required.

(5) "Director" is the Director of the Division of State Lands (ORS 196.800(2)) or designate.

(6) "Division" means the Oregon Division of State Lands and/or its Director or designate.

(7) "Easement" is a property right granted by the Division to use state-owned land for a specific purpose and time period.

(8) "Emergency Circumstances" are unforeseen, immediate natural or human caused events such as, but not limited to, fire, flood, or hazardous substance spills, the effects of which may be abated through Scenic Waterway emergency removal/fill permits as defined in section (21) of this rule.

(9) "Filling" is the act of depositing material onto the bed and/or banks of a Scenic Waterway.

(10) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition which cannot be corrected.

- (11) "Lease" is an agreement between a person and the Division allowing a specific use of state-owned land for a specific period of time, subject to specified terms and conditions.
- (12) "License" is a temporary, short-term (usually less than one year) authorization from the Division for a particular use or activity on state-owned land.
- (13) "Material" is rock, gravel, sand, silt and other substances, organic or inorganic, removed from or used to fill waters of this state.
- (14) "Navigable Waterway" is any waterbody within the State of Oregon that has been declared navigable for purposes of state ownership by a federal court, or meets the following criteria generally established by federal courts to determine title navigability:
 - (a) The waterbody must be capable of, or susceptible to, use as a highway for the transportation of people or goods;
 - (b) Transportation must be conducted in customary modes of trade and travel on water;
 - (c) Waters must be navigable in their natural and ordinary condition;
 - (d) Title navigability is determined as of the date of statehood (February 14, 1859).
- (15) "Ordinary High Water" is the line on the bank or shore of a waterway to which the water ordinarily rises annually. Ordinary high water is established by the Division by reference to historical data, vegetation, field observations, survey, or other generally accepted methods under ORS 274.015.
- (16) "Person" is an individual, political subdivision, or government agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.
- (17) "Related Adjacent Land" is all land within 1/4 of one mile of the bank of Waldo Lake, or any river or segment of river within a Scenic Waterway, except land that, in the Oregon Parks and Recreation Department's (OPRD) judgment, does not affect the view from the waters within a Scenic Waterway.
- (18) "Removal" is the taking or movement of material from the bed and/or banks of a Scenic Waterway.
- (19) "Repair" means to restore or reconstruct to a safe, sound, or original condition in order to protect persons or property from loss as a result of an unforeseeable event, such as, but not limited to, fire, flood, or hazardous substance spills.
- (20) "Scenic Waterway" as described in ORS 390.805(2) includes Waldo Lake, or any river or segment of river that has been designated under ORS 390.805 to 390.925 or any subsequent act, and includes related adjacent lands.
- (21) "Scenic Waterway Emergency Removal/Fill Permit" is an authorization issued by the Director for a temporary, emergency-specific removal/fill activity in a Scenic Waterway upon a finding of emergency circumstances.
- (22) "Scenic Waterway Removal/Fill Permit" is an authorization issued by the Division with approval of the State Land Board for any removal, filling or alteration of the bed and banks of a Scenic Waterway.
- (23) "Special Attribute" means an aesthetic, scenic, environmental, scientific, recreational or similar feature(s) identified by OPRD in a Scenic Waterway Management Plan as the value that caused a particular waterway to be included in the Oregon Scenic Waterway Program. (ORS 390.845)
- (24) "State Land Board" is the policy-making body of the Division, consisting of the Governor, the Secretary of State, and the State Treasurer.
- (25) "Waters of a Scenic Waterway" are any waters within a designated Scenic Waterway, including its related adjacent lands, that are subject to the jurisdiction of the Division.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0010

Purpose

Pursuant to ORS 390.835(2) and (3), these rules establish procedures for the consideration of permit applications for fill, removal, and other alterations of the beds and banks of Scenic Waterways.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0020

Policy

The Division shall:

- (1) Preserve and protect the natural setting, water quality, and free-flowing condition of Scenic Waterways. ORS 390.815
- (2) Recognize recreation, fish and wildlife uses as the highest and best uses of the waters of a Scenic Waterway. ORS 390. 835(1)
- (3) Protect and enhance scenic, aesthetic, natural, historic, archaeologic, recreation, scientific, and fish and wildlife values along Scenic Waterways by protecting the special attributes (as listed in each Scenic Waterway Management Plan prepared by OPRD) that caused the waterway to be included in the Scenic Waterway system.
- (4) Not authorize activities prohibited by the Scenic Waterway Act (dams, reservoirs, impoundments, and placer mining).
- (5) Require applicants to employ streambank stabilization and rehabilitation techniques utilizing native riparian vegetation and other nonstructural alternatives, unless it can be demonstrated such approaches are unlikely to be effective for the given situation under consideration by the Division or State Land Board.
- (6) Prohibit filling, removal, or alteration of the beds and banks of Scenic Waterways except as permitted by the Director and approved by the State Land Board as provided in these rules.
- (7) Recognize the interrelated nature of regulatory activities affecting Scenic Waterways and the need to achieve coordinated management and protection of Scenic Waterway values. The Division shall work in close cooperation with state, local, and federal agencies, particularly OPRD, Water Resources Department (WRD), Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (COE), affected Tribes, and local government land use planning agencies.
- (8) Recognize the high level of public interest in Oregon Scenic Waterway management by providing opportunities for

comment on proposed policies or rules and individual applications.

(9) Adhere to the Division's State Agency Coordination Program (OAR 141-095-0000), to assure compliance with the statewide planning goals and compatibility with acknowledged city and county comprehensive land use plans.

(10) Review and evaluate the effectiveness of this rule on a biennial basis. The review shall include a report of actions taken, identification and definition of issues/problems raised over the biennium, and recommendations, if any, for changes to make the program more effective.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0030

Coordination with Key Agencies Involved in Scenic Waterway Management

(1) Managing the Scenic Waterway Program is a cooperative effort of the OPRD, WRD and the Division. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the Division shall:

- (a) Coordinate the review and issuance of all Scenic Waterway removal/fill permits with the affected state agencies;
- (b) Coordinate the investigation of alleged Scenic Waterway removal/fill violations with affected agencies;
- (c) Advise applicants of the need to obtain concurrence from OPRD for projects on related adjacent lands; and
- (d) Seek to utilize the expertise of other agency staff.

(2) Because many Scenic Waterways are also included in the federal Wild and Scenic River system or similar designations on tribal lands, the Division will work closely with the appropriate federal agencies (U.S. Forest Service (USFS), Bureau of Land Management (BLM), and COE) and affected Tribes as follows:

- (a) Fully coordinate the review and issuance of all Scenic Waterway removal/fill permits with the analysis outlined in the Review Procedures for Scenic Waterway Removal/Fill Permits (OAR 141-100-0050(2)), and participate in National Environmental Protection Act review or any similar evaluations conducted by federal agencies; and
- (b) Immediately notify the appropriate federal agency or affected Tribe of alleged Scenic Waterway removal/fill violations.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0040

Permit Types

One of the following types of permits is required prior to undertaking any removal/fill activity within waters of a Scenic

Waterway:

- (1) Scenic Waterway Removal/Fill Permit; or
- (2) Scenic Waterway Emergency Removal/Fill Permit.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0050

Scenic Waterway Removal/Fill Permits

(1) Application Procedures. Applications for approval of removal/fill activities in Scenic Waterways shall be submitted to the Division in writing, in advance of the proposed activity, and shall include all information needed to evaluate the request. The applications shall be submitted on the Joint Permit Application Form of the COE and the Division and must meet the standards for completed applications in OAR 141-085-0025.

(2) Review Standards. The Division shall issue Scenic Waterway removal/fill permits only upon written findings that:

(a) The proposed activity is consistent with:

(A) The Scenic Waterway Act (ORS 390.805 to 390.925) (i.e., maintenance of free-flowing character, and highest and best uses of the water for fish, wildlife, and recreation), and these rules;

(B) Any applicable OPRD Scenic Waterway Management Plan or interim classification. The Division shall coordinate with OPRD and WRD prior to making this determination.

(b) The proposed activity is consistent with ORS 196.800 to 196.825 and 196.840 to 196.870, as well as associated rules related to removal of materials from the beds and/or banks and filling of any waters of this state, for projects greater than or equal to 50 cubic yards in volume;

(c) The proposed activity meets a demonstrated need and minimizes adverse impacts to special attributes of designated Scenic Waterways;

(d) The proposed activity, individually or collectively, would not degrade fish, wildlife or recreation values; and

(e) For activities within navigable waterways, any required lease, license, easement, or right of entry has been or shall be obtained from the Division.

(3) Review Procedures:

(a) Applications shall be reviewed and processed in a manner consistent with OAR 141-085-0005 to 141-085-0090, the Division's rules for removal and fill permits;

(b) In reviewing an application, the Division shall conduct the necessary investigations to develop a rational basis for a decision consistent with the requirements of the Review Standards and policies of this rule;

(c) The Division may consult with any person, group, or agency interested in or affected by a permit decision. Recommendations and comments regarding the project shall generally be required to be submitted in writing to the Director within 21 calendar days from the date the application notice is mailed by the Division;

(d) The Division shall provide application notice for comment to the Department of Fish and Wildlife, Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, Water Resources Department, Economic Development Department, State Parks and Recreation Department, State Historic Preservation Office, Department of Geology and Mineral Industries, Department of Transportation, Department of Forestry, and any other affected state or federal agency and Tribe. The Division shall also provide application notice to adjacent property owners listed on the application and interested persons who request notice;

(e) In accordance with the procedures in the Division's State Agency Coordination Program, the Division shall provide application notice to the appropriate local government planning department(s) for a determination of the proposed activity's compatibility or non-compatibility with the affected city and county comprehensive plan(s) and land use regulations. If it is necessary to adopt findings of compliance with the statewide planning goals, the Division will act in accordance with Coordination Procedure III.A.2. of its State Agency Coordination Program;

(f) The Division shall give reasonable consideration to permit conditions or comments offered by any person;

(g) The Division shall endeavor to render permit decisions within 45 days of receiving a completed application for removal and 90 days for fill.

(4) Permit Decisions:

(a) The Director shall deny any permit application, based upon written findings, if the proposed activity does not comply with one or more of the Review Standards in this rule;

(b) For those permits not denied by the Director, the State Land Board shall, based upon written findings addressing the applicable Review Standards, approve, modify or deny a Scenic Waterway removal/fill permit application.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0060

Scenic Waterway Emergency Removal/Fill Permits

(1) Application Procedures. Applications for a Scenic Waterway emergency removal/fill permit may be made verbally (e.g., by phone), or by written application, including facsimile, by the following procedures:

(a) Applicants shall provide the Division the following information:

(A) Location of emergency;

(B) A description of the emergency;

(C) The proposed action to be taken; and

(D) The potential consequences of taking no action.

(b) Within 72 hours of receiving a verbal confirmation of an emergency permit for removal/ fill activities, the applicant shall submit to the Division a written emergency permit application, in accord with the procedures herein.

(2) Review Standards. The Director shall issue Scenic Waterway emergency removal/fill permits only after determination that:

- (a) Unforeseen natural or human-caused situation(s) exist which cause the emergency circumstance(s), such as, but not limited to, flooding, landslides, wildfire, and hazardous substance spills;
- (b) It is necessary to make repairs or take action to prevent irreparable harm, injury, or damage to persons or property;
- (c) It is not practical to obtain prior State Land Board review and approval through normal procedures (ORS 390.835(2)); and
- (d) The proposed activity is temporary (i.e., removable or fully restorable), or is a legitimate repair of an existing structure.

(3) Review Procedures. The Director shall conduct the review of Scenic Waterway emergency removal/fill permit applications by:

- (a) Consulting with ODFW and OPRD prior to issuance of a temporary permit as provided by ORS 390.835(3)(a) and DEQ, and WRD (if applicable). Consultation may be achieved by Memorandum of Agreement with the applicable agencies and/or case-by-case permit review;
- (b) Completing an investigation sufficient to develop a rational basis for a decision consistent with the requirements of the Review Standards;
- (c) Consulting with others -- such as Tribes, federal land managers and regulators (e.g., if the proposed activity is within a Wild and Scenic River) -- depending upon circumstances and time constraints, and by reasonable consideration to recommendations for temporary permit conditions; and
- (d) Assuring compatibility of the project, to the extent practical, with the affected local government(s) comprehensive plan and land use regulations.

(4) Permit Decisions:

- (a) The Director may issue an emergency permit, only if all the Review Standards for emergency permits are met. Emergency permit issuance by the Director may be made by written confirmation to the applicant, verbally (to be followed by written confirmation), or through procedures established in Memoranda of Agreement with other agencies (e.g., through the Oregon Emergency Response System);
- (b) The Division shall visit the site of the emergency permitted activity as soon as practical following permit issuance;
- (c) Following the Director's issuance of an emergency permit, the State Land Board shall review the emergency permit at its next regularly scheduled meeting. Upon its review, the State Land Board may, based upon written findings addressing the applicable Review Standards, approve, modify or revoke the permit (ORS 390.835(3)), and require any action necessary by the applicant to comply with the Scenic Waterway Act and these rules.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0070

Appeals

- (1) Any applicant whose application to the Division for a permit has been denied, or who objects to any of the permit conditions imposed by the Director, may, within ten days of the denial of the permit or the imposition of any condition,

request a hearing from the Director. The hearing shall be conducted as a contested case hearing in accordance with ORS 196.825(6).

(2) Any person, excluding permit permit applicants, aggrieved or adversely affected by issuance or denial of permits by the Director or the State Land Board may request a contested case hearing within 60 days after the date of the permit decision in the manner provided by ORS 196.835.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0080

Enforcement

The Director is authorized to take civil, criminal or administrative action to enforce the Removal/Fill Law as provided by ORS 196.860 to 196.875:

(1) In the event of unauthorized removal/fill activities greater than or equal to 50 cubic yards in volume, all the policies and procedures of the Removal/Fill Law concerning enforcement of removal/fill violations apply in Scenic Waterways. However, for Scenic Waterway violations, restoration of the affected area to predisturbance conditions, to the maximum extent practicable, shall be required.

(2) In the event of removal/fill activities less than 50 cubic yards in volume and without State Land Board approval:

- (a) A Cease and Desist Order may be issued to halt the activity as provided in ORS 196.860(2), if the Division determines the removal/fill activity threatens to exceed 50 cubic yards in volume;
- (b) The Division may coordinate with and assist other state agencies with explicit enforcement authority for Scenic Waterway violations by executing an Interagency Memoranda of Agreement for enforcement.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

141-100-0090

Appeals of Enforcement Orders

Any person aggrieved by a proposed enforcement order of the Director for a removal/fill violation in a Scenic Waterway may request a contested case hearing within 20 days of the date of personal service or mailing of the notice of order. However, requesting a contested case hearing on a Cease and Desist Order must be made within ten days of the date of personal service or mailing of the notice of order. Hearing procedures are the same as for other Removal/Fill Law violations as provided in OAR 141-085-0075.

Stat. Auth.: ORS 196.800 - 196.990, 274.040 & 390.835(2) & (3)

Stats. Implemented: ORS 196.800 - 196.990, 274, 390.805 & 390.835

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94

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DIVISION OF STATE LANDS

DIVISION 102

OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT

141-102-0000

Definitions

- (1) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.
- (2) "Essential habitat" means the essential indigenous anadromous salmonid habitat as designated by these rules.
- (3) "Indigenous anadromous salmonid" means Chum, Sockeye, Chinook and Coho Salmon, and Steelhead and Cutthroat Trout that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.
- (4) "Activities customarily associated with agriculture" means fill or removal to maintain a legal structure or use that is part of an ongoing agricultural operation. These activities include maintenance of an existing legal diversion but do not include activities such as filling a slough to expand a field, constructing a road, or constructing a new diversion.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0010

Purpose

- (1) Pursuant to ORS 196.810(b), these rules:
 - (a) Designate essential habitat;
 - (b) Establish the process to amend the designation; and

- (c) Define the standards for making permit decisions in areas designated as essential habitat.
- (2) The rules shall be effective on January 1, 1996.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0020

Policy

- (1) It is the policy of the State of Oregon to protect the essential habitat of listed indigenous anadromous salmonid species.
- (2) To achieve this policy, the Division shall:
 - (a) Consult with the Department of Fish and Wildlife concerning the status of Oregon's indigenous anadromous salmonid species;
 - (b) Identify essential habitat in consultation with the Department of Fish and Wildlife and the public;
 - (c) Ensure that activities authorized under the Removal-Fill Law in waters designated as essential habitat will not result in unacceptable adverse impacts to indigenous anadromous salmonids.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0030

Designation of Essential Habitat

- (1) Areas designated as essential habitat shall include the streambed and streambanks to the top of bank as well as adjacent off-channel wetland habitat to the extent those wetlands are hydrologically connected to the stream and their protection is necessary to prevent the depletion of indigenous anadromous salmonid species during their spawning or rearing.
- (2) The streams and stream segments designated as essential habitat are shown on maps which are made part of this rule (maps 1 through 31).
- (3) The Director shall make available detailed maps of essential habitat at cost as provided by OAR 141-091-0005.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0040

Revisions to Essential Habitat

Revisions, additions to or deletions from the list and maps of essential habitat shall be made by amendment to this administrative rule according to the following procedure:

- (1) By December 31 of each year, the Division shall request from the public and the Department of Fish and Wildlife all changes in the status of indigenous salmonid species under the state or federal **Endangered Species Act** or applicable rules.
- (2) By April 1 of each year, the Division shall initiate rulemaking if necessary to revise, add or delete essential habitat designations to protect the listed species from adverse effects of habitat alteration.
- (3) The net effect of such changes shall not result in more than 20% of any waterway designated as essential habitat.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0050

Standards for Permitting

- (1) Filling or removal in essential habitat is presumed detrimental to indigenous anadromous salmonids that occur in the designated habitat.
- (2) The Director shall authorize fill or removal within essential habitat only upon a showing that the proposed activity will:
 - (a) Have only acceptable adverse impact on the indigenous anadromous salmonids or their essential habitat; or
 - (b) Benefit the populations of indigenous anadromous salmonids that occur within the essential habitat.
- (3) Activities customarily associated with agriculture are not subject to the permit requirements of these rules.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0060

Application of Standards

(1) An applicant for a permit to remove or fill within essential habitat may provide a written description of the potential effects of the proposed project on essential indigenous anadromous salmonid species and habitat. The documentation should include the potential adverse impacts to listed species or essential habitat that could occur as a result of the project, including the duration and significance of such impacts.

(2) The Division will consider the written position of the Department of Fish and Wildlife to establish the technical basis of physical or biological impacts to the essential indigenous salmonid species and their habitat for a permit decision.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0070

Alternative Permitting Procedure

The Division may adopt a general authorization for fill or removal subject to this rule if such activity is addressed in a plan for a basin or stream that includes stream reaches designated as essential habitat that specifically addresses the proposed alteration and the long term protection of essential indigenous anadromous salmonids. In addition to the requirements of ORS 196.850, the Director shall not grant such a general authorization unless it finds that the plan will not adversely affect to an unacceptable degree or will benefit essential indigenous anadromous salmonids or their habitat.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0080

General Authorization for Minimal Removal in Essential Habitat

(1) A general authorization is issued for removal of 5 cubic yards or less in areas designated as essential habitat. This rule sets forth conditions under which a person may, without an individual permit from the Director, remove material from streams designated as essential habitat.

(2) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that essential indigenous anadromous salmon habitat will not be harmed if the activity meets the criteria for eligibility, that such removals would not result in long term harm to water resources of the state, would cause only minimal individual and cumulative environmental impacts, and are substantially similar in nature.

(3) To be eligible for the general authorization provided by this rule, a project must conform to the following specifications:

- (a) The removal must be a one time project or for the maintenance of an existing structure;
- (b) The removal will occur at a time when there is limited conflict with aquatic resources as determined by the Oregon Department of Fish and Wildlife;

- (c) The removal avoids spawning areas used by essential indigenous anadromous salmon;
- (d) All construction debris shall be disposed of on uplands;
- (e) All areas of bank disturbance shall be seeded and revegetated with native species.
- (f) Removal shall not result in long term alteration of the hydraulic character of the stream channel.

(4) An application for general authorization under this rule shall be submitted on an application form available from the Division of State Lands. Copies of the application shall be sent, by the applicant, to the Oregon State Division of Lands, the local planning department, the local Soil and Water Conservation District, Department of Land Conservation and Development, Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality. If the project is on a federally designated Wild and Scenic River, the applicant shall send a copy to the appropriate U.S. Forest Service or Bureau of Land Management office.

(5) Within 15 working days of receipt of a completed application, the applicant shall be notified by the Division whether the proposed project qualifies for the general authorization under this rule. The written notification may contain additional conditions deemed appropriate by the Director. If the Division determines that the proposed project does not qualify for the general authorization, the project may be reviewed as an individual permit under these rules.

(6) The Division may require an individual permit for projects which would otherwise be authorized by this general authorization, upon a showing by reviewing agencies listed above, that the project would have more than minimal individual or cumulative environmental impacts.

(7) This general authorization shall be reviewed by the Division on or before July 1, 1998, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the Division of State Lands.]

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0090

Removal-Fill Law Requirements

(1) The standards at ORS 196.825 and the rules adopted to implement them shall apply to the permits issued under these rules.

(2) The standards at ORS 390.835(2) and ORS 390.835(3) (a)-(b) and the rules adopted to implement them shall apply to removal/fill activities proposed for areas within designated Oregon State Scenic Waterways.

(3) Procedures to appeal a permit at ORS 196.835 and the rules adopted to implement them shall apply to the permits issued under these rules.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

141-102-0100

Unpermitted Alterations

Removal or fill in essential habitat without a permit from the Division or removal or filling in a manner contrary to the conditions of an issued permit shall be treated as a violation of the Removal-Fill Law and is subject to the remedies in ORS 196.845 through 196.880 and 196.890 through 196.900, and 196.990.

Stat. Auth.: ORS 196.800-196.990

Stats. Implemented: ORS 196.800-196.990

Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96

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DIVISION OF STATE LANDS

DIVISION 110

MANAGEMENT OF RANGELAND

141-110-0000

Applicability

These rules shall be used by the Division to guide the management of state land designated as rangeland, and shall apply to:

- (1) All rangeland leases issued after rule adoption, and
- (2) All grazing leases in force at the time of rule adoption to the extent that the rules do not conflict with valid existing lease terms and conditions.

Stat. Auth.: ORS 274.045, 273.051, 273.805 - 273.825

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94

141-110-0010

Policies

The following policies shall guide the Division in managing rangeland:

- (1)(a) All Trust Land shall be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.
- (b) All Non-Trust Land shall be managed with the objective of obtaining the greatest benefit for the people of this state consistent with the conservation of this resource under sound techniques of land management.
- (2) To the extent required by law, the Division shall honor the terms and conditions of any existing valid lease including any that entitle the lessee to compensation or renewal. Such circumstances may occur where there were prior federal

grazing permits on lands acquired by the Division through exchange.

(3) The Division shall manage rangeland to prevent human-induced loss of rangeland health. Toward this end, the Division:

(a) Shall continue or implement rangeland practices (as defined) that maintain, achieve or restore healthy, properly functioning ecosystems and maintain, restore, or enhance water quality; and

(b) May assist in rangeland developments and practices that will maintain or improve rangeland health.

(4) The Division shall develop an assessment of rangeland health. The Division shall use rangeland health inventories and routine monitoring to identify rangeland vulnerable to an adverse transitional change (for example, healthy, at risk, or unhealthy), and to serve as the basis for rangeland management decisions.

(5) The Division may authorize alternative uses (as defined) for a leasehold, even if the leasehold is already subject to a rangeland lease for grazing or an alternative use, if such uses are:

(a) Not specifically prohibited by valid existing leases for the leasehold, and

(b) Compatible, or do not unreasonably interfere, with uses authorized by the Division on the same leasehold.

(6) The leasing of rangeland for alternative uses shall be governed by other applicable rules and statutes, and not these rules.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0020

Definitions

(1) "Alternative Use" is any use of state land other than livestock grazing or conservation use (as defined). Alternative uses include, but are not limited to agriculture, forestry, mineral and geothermal exploration and development, and commercial projects.

(2) "Animal Gain" is the number of pounds gained by an animal over a specific period while grazing on rangeland.

(3) "Animal Unit" is the number of animals that are roughly equivalent in the amount of forage they consume. An animal unit typically consists of one cow, or one cow and calf (of less than six months of age), or 1.4 yearlings, or one horse, or five sheep.

(4) "Animal Unit Month" or "AUM" is the amount of forage (approximately 800 pounds of air dried material) necessary to feed one animal unit for one month.

(5) "Applicant" is any person applying for a rangeland lease.

(6) "Area Management Plans" or "AMPs" are land use planning documents approved by the Division which apply to specific areas of state land. These plans designate land use classifications and present systematic guidelines for making resource management decisions. AMPs are developed by interdisciplinary planning teams with public participation.

(7) "Best Management Practices" or "BMPs" are site-specific, state-of-the-art techniques and methods for managing

land and resources to maximize public benefits while minimizing the adverse effects of that use on the environment. To determine BMPs, the Division may consider, among other factors, past experience and scientific study.

(8) "Common School Fund" is a trust fund created by Article VIII of the Oregon Constitution. Revenue obtained from the leasing of rangeland, as well as from other activities, is deposited into the Common School Fund. The Oregon State Treasury and the Oregon Investment Council manage the fund with policy direction from the State Land Board, to maximize income derived from it over the long-term. As provided by the constitution and statute, this income is apportioned among all Oregon counties to help support the common public school districts.

(9) "Condition" is a rating of overall plant vigor, diversity, and production; the physical appearance and character of soils; riparian and watershed health; the intensity of erosion; and amount of surface litter on a specific parcel of land at a particular point in time. The condition of a parcel of land is necessarily subjective, and must account for the impacts of weather conditions, grazing, fire, insects, and other factors.

(10) "Conservation Use" is the complete resting of rangeland for the duration of a lease, typically for ecological reasons.

(11) "Cropshare" is a method of determining the annual base leasehold rental fee charged a lessee for the use of rangeland.

(12) "Development" is any structure (for example, fencing, building, pond, pipeline, etc.) or nonstructural activity or program (for example, seeding) authorized by the Division on a leasehold.

(13) "Director" means the Director of the Oregon Division of State Lands or the Directors designee.

(14) "Division" means the Oregon Division of State Lands.

(15) "Grazing Capacity" is the average number of AUMs the Division determines can be obtained from a specific pasture or leasehold for a specific period of time without compromising the long-term sustainability of the forage resource or watershed, or adversely affecting rangeland health or grazing animal response.

(16) "Grazing Schedule" is a planned sequence of grazing and/or resting designed for a particular leasehold or portion thereof (for example, a pasture) which will allow vegetation affected by grazing to have an opportunity to sustain its growth requirements.

(17) "Isolated Parcel" is a leasehold which is:

(a) Largely surrounded by land not owned by the Division, or otherwise not contiguous to other larger tracts of state land; or

(b) Determined by the Division to be difficult or uneconomical to manage due to access, location, isolation, low production value, or other factors.

(c) Typically, isolated parcels are unfenced and have few, if any, developments.

(18) "Lease" is a legal contract issued by the Division allowing the use of a specific leasehold for rangeland purposes under specified terms and conditions.

(19) "Leasehold" is a particular area of rangeland subject to lease.

(20) "Lessee" refers to any person having a valid rangeland lease issued by the Division.

(21) "Livestock" are domestic animals such as beef and dairy cattle, horses, sheep, and goats kept or produced primarily for farm, ranch or market purposes. "Livestock" also may include bison, llamas, emus, ostriches, and other species approved for use on a leasehold by the Division.

(22) "Marketable Calf Crop" means the estimated number of marketable beef calves available for sale over a one (1)

year period expressed as a percent of stock cow herd. For the purpose of calculating the livestock grazing or conservation use leasehold fee, the marketable calf crop shall be fixed at eighty percent (80%).

(23) "Material" means items that may pose a danger to the public, wildlife or its habitat, or which do not enhance the usefulness or value of a leasehold including, but not limited to, waste or scrap items used in construction, hazardous wastes or toxic substances (as defined in **42 USC 9601-9657**), chemicals and insecticides, garbage or other debris, and non-working motor vehicles and other mechanical equipment.

(24) "Mitigate" means to reduce the significant adverse effects of an action by considering and/or taking action, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating, or restoring the affected environment;

(d) Reducing or eliminating the effect by preservation and maintenance operations during the life of the action, including monitoring and appropriate corrective measures;

(e) Compensating for the effect by replacing or providing a comparable substitute, if feasible.

(25) "Non-Trust Land" is state land managed by the Division other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable waterways.

(26) "Pasture" is a specific area of rangeland, usually enclosed and separated from other areas by a fence, or isolated by some physical feature, which is managed for rangeland purposes. A leasehold may contain numerous pastures.

(27) "Pasture Agreement" is an arrangement in which a lessee contracts with another person to graze livestock on the lessee's leasehold. Under a pasture agreement, the lessee typically retains full management and control of the leasehold.

(28) "Person" is an individual, a political subdivision or government agency or, any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(29) "Rangeland" is state land designated and managed by the Division for rangeland purposes (as defined).

(30) "Rangeland Health" is the degree to which the integrity of the soil and the ecological processes of rangeland ecosystems are sustained.

(31) "Rangeland Management Plan" or "RMP" is a written document prepared and approved by the Division, in consultation with the lessee and other affected agencies and interests, indicating how a particular leasehold shall be managed during a specified term of a rangeland lease.

(32) "Rangeland Practices" are activities that improve or maintain rangeland health (as defined). Rangeland practices typically consist of watershed and/or other treatments (for example, planting, seeding, burning, rest, vegetation manipulation, or grazing management) that are undertaken to attempt to establish desired vegetation species or communities.

(33) "Rangeland Purpose" is the use of rangeland for livestock grazing and/or conservation use, determined by the Division to be appropriate to the subject leasehold(s) and consistent with applicable local, state and federal laws.

(34) "Riparian Area" means a zone of transition from an aquatic to a terrestrial system, dependent upon surface or subsurface water, that reveals through the zones existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog,

wet meadow, muskeg, slough, or ephemeral, intermittent or perennial stream.

(35) "State Land" is land owned and/or managed by the Division and includes Trust Land and Non-Trust Land.

(36) "State Share" is the percent of net livestock weight gain designated to the Division for the use of rangeland.

(37) "Sublease" means a leasing by lessee of all or part of the leasehold for any portion of the unexpired lease term.

(38) "Trust Land" is state land granted to the state upon its admission into the Union, or obtained by the state as a result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

Stat. Auth. ORS 273.045 & 273.051

Stats. Implemented ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0030

Rangeland Designation

(1) The Division shall designate state land available for rangeland purposes prior to conducting the leasing process pursuant to these rules.

(2) Rangeland designations shall initially be identified on an interim basis until such time as the Division has approved an Area Management Plan (AMP) which includes land use classifications or designations applicable to these areas. Once approved, AMPs shall govern rangeland designations.

(3) State land designated as rangeland shall be identified on maps maintained by the Division. These maps shall be at a scale adequate to identify individual leaseholds.

Stat. Auth. 273.045 & 273.051

Stats. Implemented 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95; LB 8-1996, f. & cert. ef. 12-13-96

141-110-0040

The Leasing Process

(1) The leasing process for rangeland consists of the following steps:

(a) The Division shall determine if rangeland is available for rangeland leasing, and if so, how each leasehold shall be made available for lease.

(b) Whenever a leasehold is available for lease, the Division shall issue a Notice of Leasehold Availability to solicit applications from interested persons.

(2) Persons interested in obtaining a lease for a leasehold, including the existing lessee, must submit a timely and complete written application to the Division.

(3) The Division shall review and evaluate the applications received in response to the Notice of Leasehold Availability. This evaluation will determine which applicants, if any, are qualified to obtain a lease.

(4) If an applicant submits an application for an alternative use the Division will evaluate the proposed use to determine whether it:

(a) Is governed by other rules,

(b) Is consistent with applicable state, local, and federal laws, and/or management plans, and

(c) Meets the fiduciary or other applicable responsibilities of the Division relative to the site.

(5) When no applications have been received by the Division, the Division reserves the right to:

(a) Readvertise the availability of leaseholds.

(b) Redesignate the leasehold for alternative use(s).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0050

Notice of Leasehold Availability

(1) If the Division determines that a leasehold is available for rangeland lease, it shall give public notice of leasehold availability and provide an opportunity for applications to be submitted.

(2) The Notice of Leasehold Availability shall be:

(a) Published not less than once each week for two (2) successive weeks in a newspaper of general circulation in the area in which the leasehold is located.

(b) Sent to persons who request such notices and pay any associated charges.

(3) The notice shall solicit applications to obtain a rangeland lease and state:

(a) The location and size of the subject leasehold.

(b) The estimated annual grazing capacity, season(s) of use, and base rental rate.

(c) Whether additional developments (such as fencing) shall be required (and the extent thereof) if the successful applicant is not the immediate former lessee of the leasehold.

(d) Whether the Division will accept the value of developments or other forms of compensation proposed by an applicant or required by the Division as a part of an offer.

(e) What developments, if any, on the leasehold the applicant must purchase from the existing lessee, and an estimate of the present value of said developments as determined by the Division.

(f) The method by which the leasehold will be offered for lease.

(g) The deadline and location for submitting completed applications to the Division.

(h) That applications to lease the leasehold for an alternative use may be submitted to the Division for consideration.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0060

Application Requirements

(1) All persons applying to lease rangeland, or renew an expiring lease having a renewal provision shall:

(a) Apply to the Division using a form provided by the Division. One (1) application form shall be submitted for each leasehold, and

(b) Submit a non-refundable application fee as provided in OAR 141-110-0090(5).

(2) The Division shall review and evaluate all applications received in response to a Notice of Leasehold Availability.

(3) Each applicant for a leasehold shall meet the following minimum qualification requirements:

(a) Be a "person" (as defined), and if an individual, be at least eighteen (18) years old.

(b) Not owe back rental or other fines or fees payable to the Division.

(c) Not have had any state or federal grazing or rangeland lease or permit cancelled for violation within thirty-six (36) months immediately preceding the date of the application.

(d) Have the financial resources, experience, intent and ability to:

(A) Use the subject leasehold for rangeland purpose(s).

(B) Undertake and complete the developments required by the Division to effectively use the subject leasehold.

(C) Compensate the prior lessee for the value of applicable developments should the lease not be awarded to the prior lessee (pursuant to OAR 141-110-0130).

(D) Fully meet all terms and conditions of the lease, including all provisions of an approved RMP.

(E) Meet on a timely basis all lease payments as required by the terms and conditions of the lease, and any other applicable fees stipulated under these rules.

(4) The Division reserves the right to require an applicant for a leasehold to provide whatever background data, financial reports, income tax filings, or other information that may be needed by the Division to determine if the applicant meets the minimum qualification requirements listed in OAR 141-110-0060(3).

(5) The Division reserves the right to deny an application if the Division determines that approval of a lease is contrary to local, state, or federal law, or to these rules, or is inconsistent with the fiduciary responsibilities of the Division, or will not result in the greatest public benefit.

Stat. Auth. 273.045 & 273.051

Stats. Implemented 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95; LB 8-1996, f. & cert. ef. 12-13-96

141-110-0070

General Lease Terms and Conditions

(1) The Division shall:

(a) Determine leaseholds; and

(b) Establish the terms and conditions of a proposed lease.

(2) A lease shall grant a lessee the right to use a leasehold for rangeland purposes in accordance with an approved RMP, applicable lease terms and conditions, applicable local, state and federal laws, and these rules.

(3) The Division may require a lessee to install fencing or other developments necessary to avoid conflicts with the Open Range Law or other applicable local, state, and federal laws. Such requirements shall be disclosed in the Notice of Leasehold Availability.

(4) Each lease shall incorporate the applicable RMP as a part of its terms and conditions. Failure of a lessee to adhere to the provisions of a RMP shall be cause for the Division to modify or terminate the lease.

(5) A lease may be issued for a term of up to ten (10) consecutive years.

(6) The Director may terminate a lease if the Division decides to dispose of all or part of the subject leasehold.

(7) The Director may modify or terminate a lease if the Division determines that another use, including alternative uses, of all or part of the leasehold would better meet the trust obligations of the Division, or result in the greatest public benefit. To the extent possible, the Division shall not make such changes until a normal seasonal or annual break occurs in a use cycle (for example, the end of a grazing season) to allow the lessee time to make other arrangements.

(8) The Division may require an applicant for lease or a lessee to obtain insurance and/or bond pursuant to OAR 141-110-0150.

(9) The Division or its authorized representative(s) shall have the right to enter upon any leasehold at any reasonable time to make any necessary examinations or investigations, or to conduct noxious weed or pest abatement, or for wildfire control.

(10) Leaseholds shall remain available and open to public use (including camping, hunting, fishing, and hiking), provided such public use does not interfere with the Division-authorized rangeland purposes or operations. The Division may close all or portions of leaseholds to public use upon a prior determination that such closure results in the greatest public benefit. Such closures shall be:

(a) For as short of duration as possible, commensurate with the need for the closure, and

(b) Responsive to a need for wildlife protection, public safety, protection of archaeological sites and objects, or for other reasons determined necessary by the Division. To the extent possible, the Division will notify lessees in writing of a proposed public use closure, and place a public notice in a newspaper of general circulation in the area in which the subject closure is located to request public input prior to taking an action.

(11) A lessee may not interfere with lawful public use of a leasehold, or obstruct free transit across state land or

intimidate or otherwise threaten or harm public users of state land.

(12) Each lessee shall maintain and make available to the Division upon request all records and accounts related to the leasehold. These records shall accurately reflect the period of time each leasehold was used, for what purposes, and if used for grazing, by how many animal units.

(13) A lessee shall obtain prior written approval from the Division before:

(a) Placing developments exceeding one thousand dollars (\$1,000) per year on a leasehold.

(b) Restricting the public from entering all or a portion of a leasehold to protect livestock or developments.

(c) Removing developments, markers or signs on the leasehold which have been placed or approved by the Division.

(d) Using, placing, or storing material (as defined) on the leasehold.

(14) A lessee shall use a leasehold only for the rangeland purpose(s) authorized by the lease. The Division shall notify the lessee by certified mail of any unauthorized use(s). Such notice shall designate the required time frame and conditions to cure the violation.

(15) A lessee shall cooperate with appropriate county agencies and Oregon Department of Agriculture in the detection, prevention, and control of noxious weeds. The Division will rely on the Oregon Department of Agriculture for information and advice concerning which noxious weeds present on a leasehold require corrective action by the lessee, or the Oregon Department of Agriculture or its agents.

(16) A lessee shall cooperate with the Oregon Department of Agriculture and the Division in the management of plant pests and diseases.

(17) Under conservation use, no livestock grazing or uses that consume or remove forage, or that adversely impact rangeland health, fish and wildlife habitat or the physical, historical and cultural resources of a leasehold shall occur.

(18) A lessee shall cooperate with the Division and other agencies in the detection, prevention and control of wildfires on a leasehold.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0080

Leasing Determination

Prior to issuing a rangeland lease, the Division shall prepare a written determination that shall:

(1) Address how the proposed lease would:

(a) Satisfy the trust responsibilities of the Division concerning the level of financial return from use of the leasehold over the long term;

(b) Be consistent with applicable local government zoning regulations and/or land use management plans; and

(c) Be compatible with any cooperative resource management plans affecting the area.

- (2) Be sent to, pursuant to the requirements of the Divisions State Agency Coordination Plan:
 - (a) Persons indicating an interest in the specific leasehold;
 - (b) Affected state and federal agencies and tribal interests; and
 - (c) Local governments.

Stat. Auth.: ORS 274.045, 273.051, 273.805 - 273.825

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94

141-110-0090

Rangeland Use Base Rental and Fees

- (1) The annual base rental for the use of a leasehold for rangeland purposes (livestock grazing and conservation use) shall be determined on an AUM basis using the following formula:

For each leasehold, the Division shall:

 - (a) Establish an annual grazing capacity (which will be indicated in the RMP and may be reviewed annually),
 - (b) Determine the base AUM rental rate using the cropshare approach:

AUM Rental Rate = G x CC x S x P

G = Animal gain per month

CC = Marketable calf crop

S = State share

P = Average weighted calf price

- (2) For the purpose of determining the base AUM rental rate, the following formula factors shall be used.
 - (a) Pounds of gain per animal unit per month (G) shall be fixed at thirty (30) pounds.
 - (b) Marketable calf crop (CC) shall be fixed at eighty percent (80.0%).
 - (c) State share of calf gain (S) shall be fixed at twenty percent (20.0%) for calendar year 1997 and beyond.
 - (d) Average weighted calf price (P) shall be based on USDA Oregon agricultural price data indicating the average statewide sales price of calves for the preceding one year period based on an October through September year.
- (3) The formula factors in section (2) of this rule shall be reviewed by the Division at least once every three (3) years to ensure they reflect at least a fair market rental rate.
- (4) The minimum annual rental for all leaseholds subject to these rules shall be \$100.

(5) Each application for a rangeland lease (including renewals), shall be accompanied by a non-refundable fee payable to the Division in the amount of \$250 except for isolated parcels. Applications for isolated parcels shall be accompanied by a non-refundable fee of \$100.

(6) The annual rental due to the Division for use of rangeland shall be determined by multiplying the AUM rate as derived from the formula (OAR 141-110-0090(1) and (2), as applicable) by the annual grazing capacity of the leasehold. As a result, the rental rate may be revised annually based upon the grazing capacity of the leasehold.

(7) The lease will indicate the amount of the initial annual rental payment as well as the method for computing annual changes to the rental fee; and the date payment is due to the Division.

(8) An application for a sublease, assignment, or pasture agreement shall be accompanied by a non-refundable application fee of \$250 payable to the Division.

(9) Each lessee using rangeland for livestock grazing must maintain and submit to the Division annual grazing use records as required in his/her lease. Failure to submit such use reports as required shall give the Division cause to terminate or modify the lease.

(10) In addition to any other remedies available, the Division shall impose the legal rate of interest on unpaid balances owed the Division pursuant to ORS 82.010

(11) The Director may allow a lessee credit toward annual rental for developments. To qualify for a credit, such development work must be:

(a) Determined by the Division to be necessary to accomplish the specific objectives listed in the RMP for the subject leasehold,

(b) Authorized by the Division in advance of initiation, and

(c) Completed within the time specified by the Division.

Stat. Auth. ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805 & 273.815, 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95; LB 8-1996, f. & cert. ef. 12-13-96

141-110-0100

Rangeland Management Plan (RMP)

(1) The Division shall prepare a written RMP for each leasehold unless the parcel is determined to be isolated.

(2) The Division may prepare an RMP for an isolated parcel if special conditions (for example, threatened, endangered, or sensitive species, or critical wildlife habitat are identified on the leasehold) warrant such an action.

(3) An RMP considers the authorized use as it relates to other uses of rangeland and in relation to renewable resources (for example, watershed, vegetation, and wildlife). When grazing is the authorized use, an RMP shall establish the season(s) of use, the number of livestock permitted, and the developments needed.

(4) The RMP shall be developed by the Division in consultation with the lessee, other affected landowners, and applicable local, state, and federal agencies, tribal interests, and any interested persons.

(5) The Division shall send a notice of the availability of a draft RMP to all:

- (a) Persons indicating an interest in the leasehold;
 - (b) Affected state or federal agencies, and tribal interests, and
 - (c) Local governments pursuant to the requirements of the Divisions State Agency Coordination Plan.
- (6) Recipients of the notice of availability of the draft RMP shall have thirty (30) calendar days from the date of the notice to submit comments to the Division.
- (7) Upon receipt of comments the Division shall:
- (a) Reassess the draft RMP;
 - (b) Make any changes to the draft RMP determined to be necessary by the Division;
 - (c) Inform interested persons of significant changes to the draft RMP;
 - (d) Issue the RMP for the leasehold.
- (8) The Division may use an applicable Allotment Management Plan or Integrated Activity Plan approved by the Bureau of Land Management or U.S. Forest Service in lieu of an RMP, provided that the plan substantially conforms with the other provisions of OAR 141-110-0100.
- (9) An RMP shall, as appropriate to the purpose(s) of the leasehold:
- (a) Set the specific management objective(s) for the leasehold based on the need to maintain rangeland health, taking into account the vegetative components, condition, and resource values present consistent with applicable policies set forth in these rules (OAR 141-110-0010);
 - (b) Set livestock grazing schedules by pasture or leasehold to meet stated objectives;
 - (c) Establish the annual grazing capacity (in AUMs) of the leasehold;
 - (d) Identify riparian areas, wildlife habitat, special natural or cultural features, known sensitive, threatened, and endangered species in the leasehold, and describe any special provisions necessary to protect or enhance these features and species;
 - (e) List existing Division-approved developments and any new treatments or developments needed and/or desired, which would facilitate achievement of the listed objectives for the leasehold;
 - (f) Describe any lessee flexibility during annual plan operation (including minimum and maximum annual stocking limits) given factors such as weather, fire, insect infestation, and other variables;
 - (g) Identify the rangeland health inventory standards to be used by the Division over time to monitor the rangeland health of the leasehold;
 - (h) Contain a schedule for monitoring the leasehold adequate to indicate whether rangeland health and other leasehold objectives are being met;
 - (i) Present a plan for response to wildfires that may occur on the leasehold.
- (10) The Division shall annually review each RMP to:
- (a) Determine the lessees compliance with the plans terms and conditions;
 - (b) Assess the effectiveness of the plan;

- (c) Decide if the plan needs to be revised to reflect changes in use, range condition, or other factors.
- (11) The Division reserves the right to modify the RMP as necessary after prior consultation with the lessee.
- (12) The Division may, after consultation with the lessee, make periodic changes in the grazing capacity of a leasehold due to seasonal climatic or adverse conditions without public notification as required in OAR 141-110-0100.
- (13) The RMP shall be consistent with local, state and federal laws and rules, and approved state or federal coordinated resource plans or watershed management plans/strategies.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0110

Subleasing, Assignment of Leases, Pasture Agreements

- (1) Any lessee wanting to sublease or assign a lease to, or enter into a pasture agreement with another person must:
 - (a) Apply to the Division for prior written authorization on a form provided by the Division, and
 - (b) Submit a non-refundable application fee as provided for in OAR 141-110-0090(8).
- (2) All such requests must be received by the Division at least thirty (30) calendar days prior:
 - (a) For a sublease or assignment, to the requested date of transfer, or
 - (b) For a pasture agreement, the date that it would take effect.
- (3) No subleases, assignments, or pasture agreements shall occur without the prior written approval of the Division.
- (4) If the Division authorizes a sublease, assignment, or pasture agreement, the lessee shall, in addition to the lease rental, pay the Division the difference between what s/he pays the Division for the lease, and what s/he collects from the sublessee, assignee, or person entering the pasturing agreement.
- (5) The Division shall terminate the lease of any lessee who subleases or assigns, or enters into a pasture agreement for any part or all of his/her leasehold to another person without the prior written approval of the Division.
- (6) A lessee entering into a pasture agreement approved by the Division shall continue to be bound by all terms and conditions of his/her lease, including the requirements of the RMP.
- (7) Assignments, if approved by the Division, shall be no longer than the remaining term of the lease. An assignee of a rangeland lease shall be bound by the existing RMP.
- (8) Assignees must meet all applicable requirements as set forth in OAR 141-110-0060.

Stat. Auth. 273.045 & 273.051

Stats. Implemented 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95; LB 8-1996, f. & cert. ef. 12-13-96

141-110-0120

Development Authorization

- (1) Title to all developments that occur after adoption of these rules shall be in the name of the State of Oregon.
- (2) The Division shall authorize proposed developments specifically listed in an approved RMP.
- (3) The Division shall consider the following factors before deciding whether to authorize a proposed development on a leasehold without an approved RMP:
 - (a) Need for the intended development;
 - (b) Benefits of the intended development;
 - (c) Impacts of the development on rangeland health, and fish and wildlife habitat and historical and cultural resources, and
 - (d) Whether the development is permitted by the county's acknowledged comprehensive plan and land use regulations.
- (4) The Division reserves the right to provide financial assistance to a lessee for a portion or all of a development to/on a leasehold upon application to the Division using a form provided by the Division.
- (5) Division financing of any part or all of a proposed development authorized in the RMP or OAR 141-110-0120(3) is contingent on the availability of funds and the need for the proposed action as determined by the Division in the RMP.
- (6) The Division may only assist a lessee in the financing of any developments to/on state land if the Division determines that the proposed action:
 - (a) Will result in increased revenue over the short-term to the Common School Fund at least equal to or greater than what could be obtained by investing the same funding in other financial instruments over the same period of time;
 - (b) Increases or prevents a decline in the value of the subject parcel for future exchange or sale, or as a site for other uses;
 - (c) Improves the Division's ability to more efficiently manage the subject leasehold;
 - (d) Is determined necessary under a Division approved RMP; or
 - (e) Improves the rangeland health of the leasehold.
- (7) Regardless of the source of financing:
 - (a) All developments to/on a leasehold shall be maintained by the lessee in good working order (as appropriate to the type of development);
 - (b) If a lessee fails after receipt of written notification from the Division to maintain developments within the time period set by the Division, the Division may perform the required maintenance and assess the costs incurred to the lessee;
 - (c) The lessee shall take whatever steps are necessary to ensure that a development does not pose a danger to public safety.
- (8) If the Division decides to loan funds to a lessee to finance a development, the lessee shall pay interest on the amount

loaned over the term of the loan at a rate determined by the Division after consultation with the Oregon State Treasurer.

(9) The following provisions apply to water resource developments.

(a) Except as provided for in ORS 537.545, any development authorized by the Division including, but not limited to the diversion, pumping, and storage of water must also be reviewed and approved in advance of its development by the Oregon Water Resources Department and other appropriate agencies;

(b) If water permits or rights are required for the proposed project, such permits or rights shall be applied for and issued in the name of the Division;

(c) Except when the Division initiates water resource developments on state land, the lessee will be responsible for paying all fees required to obtain the required Water Resources Department approval (for example, a water right);

(d) Water resource developments shall be designed to:

(A) Utilize water beneficially for grazing livestock, conservation use, or other lease-authorized practices without waste by taking into account the best available technology applicable to site conditions;

(B) Enhance native fish and wildlife populations; and

(C) Maintain or enhance rangeland health.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825.

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0130

Compensation for Developments

(1) If a lease is awarded to a person other than the prior lessee, the new lessee must compensate the prior lessee for the remaining undepreciated value of any Division-approved developments within the leasehold owned by the prior lessee not subject to OAR 141-110-0140(1).

(2) The value of Division-approved developments shall be established on a negotiated basis between the new lessee and the prior lessee.

(3) If the former lessee and the new lessee are unable to agree on the reasonable value of the subject developments, such value shall be fixed by an independent appraiser appointed by the Division.

(4) The costs of all appraisals conducted under OAR 141-110-0130(3) shall be paid in equal shares by the applicant and the prior lessee, or by other such arrangement as is mutually acceptable to them.

(5) If a development, such as a fence, is jointly constructed or financed by adjacent landowners and/or lessees, or by the State of Oregon, only that share of the development belonging to the prior lessee shall be assigned a prorated value for compensation purposes.

(6) The Division may purchase some or all developments on state land from a prior lessee.

(7) Any leasehold development debt(s) of a former lessee owed the Division shall become the responsibility of the new lessee pursuant to the same terms and conditions governing those debts.

(8) If a lease is terminated by the Division for reasons not relating to a default by the lessee, the Division may, at its option:

- (a) Allow the lessee to remove the non-permanent development(s); or
- (b) Compensate the lessee for the undepreciated value of both Division approved permanent and non-permanent development(s).

(9) If the Division and the lessee are unable to agree on the value of said developments, the value will be determined in the same manner as described in OAR 141-110-0130(3).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0140

Removal of Developments and Material

- (1) Upon the expiration or termination of a lease, the Division shall notify the lessee in writing to advise him/her of what, if any, developments or material s/he must remove.
- (2) Unless otherwise agreed to:
- (a) The prior lessee shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the lease unless they are subject to appraisal and purchase as described in OAR 141-110-0130;
 - (b) Any developments remaining on the leasehold after the sixty (60) day period shall become the property of the Division.
- (3) Removal of such developments or material shall be at the lessees expense.
- (4) If the lessee refuses to remove the subject developments or material, the Division may remove the developments and charge the lessee for doing so.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0150

Insurance and Bonds

- (1) The Division may require a lessee to obtain insurance in a specified amount for a planned development which, in the opinion of the Division, constitutes a risk to public safety, or to the State of Oregon.
- (2) The Division may request that the applicant or lessee provide information concerning the development to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Division in determining the appropriate amount of insurance coverage based on the nature of the development.

(3) The Division may, at its discretion, require that a lessee obtain a surety or bid bond in an amount specified by the Division (or a cash deposit or certificate of deposit which has an equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) to secure performance of all terms and conditions of a lease.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0160

Termination of a Lease For Default

(1) If a lessee fails to comply with these rules, the RMP or other lease terms and conditions, or otherwise violates laws covering the use of his/her leasehold, the Division shall notify the lessee in writing of the default and demand correction within a specified time frame.

(2) If the lessee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease; and/or

(b) Request the Attorney General to take appropriate legal action against the lessee.

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0170

Appeals

(1) An applicant, lessee or any other person adversely affected by a rangeland lease decision of the Division may appeal the decision to the Director.

(a) Such an appeal shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.

(b) The Director shall decide the appeal within sixty (60) calendar days after the date of delivery of the appeal.

(c) The Director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

(d) The Director shall not stay a decision made by the Division pursuant to these rules for which an appeal has been received.

(2) Where an applicant, lessee, or other person is entitled by law to a contested case hearing, they may request such a hearing only after exhausting the informal appeal provided for in OAR 141-110-0170(1).

Stat. Auth.: ORS 273.045 & 273.051

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94; LB 3-1995, f. & cert. ef. 10-13-95

141-110-0180

Appeals

- (1) An applicant, lessee or any other person adversely affected by a rangeland lease decision of the Division may appeal the decision to the Director. Such an appeal shall be an informal process and not a contested case hearing.
- (2) An appeal shall be received by the Director no later than thirty (30) calendar days after the date of delivery of the decision.
- (3) The Director shall decide the appeal within sixty (60) calendar days after the date of delivery of the appeal.
- (4) The Director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.
- (5) The decision on an appeal by the Director shall be the final administrative decision of the Division.
- (6) The Director shall not stay a decision made by the Division pursuant to these rules for which an appeal has been received.

Stat. Auth.: ORS 274.045, 273.051, 273.805 - 273.825

Stats. Implemented: ORS 273.805, 273.815 & 273.825

Hist.: LB 4-1994, f. & cert. ef. 8-2-94

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 120

**WETLAND CONSERVATION PLAN WETLAND RESOURCE DESIGNATIONS AND ANALYSIS OF
ALTERNATIVES**

141-120-0000

Application

(1) This rule applies to decisions concerning wetland resource designations and analysis of alternatives made after the local government sponsoring the Wetland Conservation Plan (WCP) has:

- (a) Defined the WCP area;
- (b) Completed the required WCP inventory according to the criteria of OAR 141-086-0110 to 141-086-0170;
- (c) Completed the required wetland function and value assessments using an assessment methodology acceptable to the Division; and
- (d) Developed WCP Goals for the planning area that consider the legislative findings in ORS 196.668.

(2) Consistent with ORS 527.722 of the Forest Practices Act, this rule does not apply to forest practices as defined in ORS 527.620 in areas regulated by the Forest Practices Act (ORS 527.610 to 527.770, 527.990(1) and 527.992).

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0010

Purpose

- (1) This rule:

- (a) Identifies the procedures for local governments and the Director to use when analyzing alternatives to adversely impacting wetland systems;
- (b) Provides criteria for local governments to use when designating wetlands or portions of wetlands within the WCP into Protection, Conservation or Development Categories; and
- (c) Defines the minimum information required of local governments to allow the Director to develop findings of fact to determine whether practicable alternatives to adversely impacting wetlands or portions of wetlands designated into the Development Category are available. This information includes the determination of whether:
 - (A) A public need for the proposed use is, set forth in the acknowledged local comprehensive plan;
 - (B) Adverse impacts to wetland systems are avoided to the extent practicable; and
 - (C) The anticipated impacts of fill or removal on wetland systems are minimal.

(2) This rule is not meant to establish the definitive analysis for every aspect of wetland conservation planning. In addition to meeting the requirements of this rule, each jurisdiction must also comply with all parts of ORS 196.668 to 196.692 and with its own and other relevant ordinances and state and federal laws, including Section 404 of the Clean Water Act.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0020

Applicable Policies

The Division shall adhere to the following policies when providing technical assistance to local governments developing a WCP and when reviewing a WCP proposed for the Director's approval:

- (1) Wetland systems are important ecological components of the landscape and provide numerous functions and values;
- (2) The Division shall ensure that full replacement of wetland functions and values, lost under the authority of OAR 141-120-0000 to 141-120-0230, occurs and that a stable resource base is maintained;
- (3) Local governments have the authority to establish and, as necessary, adjust the Urban Growth Boundary (UGB) and the Division shall accept decisions, acknowledged by the Land Conservation and Development Commission or by operation of law, that relate to setting or adjusting the UGB or the boundaries of an Urban Service Area or Exception Area;
- (4) The state shall promote the protection, conservation and best use of wetland resources and their functions and values through the integration and close coordination of state-wide planning goals, local comprehensive plans and state and federal regulatory programs (ORS 196.672(1));
- (5) Because WCPs are meant to resolve conflicts between the protection and conservation of wetlands and the use of wetlands for development, the WCP area shall include undeveloped land with development conflicts involving wetlands;
- (6) The Division shall not approve a WCP that merely attempts to obtain state authorization for individual development projects including those that cover large areas, are multi-phased or are controlled by a single ownership or management

entity;

- (7) Wetlands designated in the Protection Category and those used for compensatory mitigation under a WCP shall be protected in perpetuity. A protection designation may only change as a result of a plan amendment (ORS 196.684), if, after opportunity for public comment, the Director finds that a substantial change in circumstance has occurred; and
- (8) For the purpose of this rule, the determination of whether a wetland provides a function or value, has potential to provide a function or value, does not provide a function or has enhancement potential will be made according to the **Oregon Freshwater Wetland Assessment Methodology** unless the local jurisdiction has obtained written approval from the Division to use a different assessment methodology. If a different assessment methodology is approved then equivalent terminology will be set out in the Division's letter of approval.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0030

Definitions

For purpose of this rule, all definitions in OAR 141-120-0005 are also applicable.

- (1) "Buildable Lands Inventory" means the inventory of housing needs as defined in OAR 660-007-0005(3) and OAR 660-008-0005(2) and inventory of industrial and commercial lands as defined in OAR 660-009-0015(3).
- (2) "Committed Infrastructure" means utilities and transportation facilities that have been approved, within three years prior to submittal of the WCP, under the Oregon Removal-Fill Law and have funding available for construction.
- (3) "Conservation Category" means a wetland resource designation that allows for actions that conserve, restore or enhance the functions and values of the wetland resource.
- (4) "Development Category" means a wetland resource designation that allows for actions that will convert the wetland resource to other uses.
- (5) "Director" means the Director of the Oregon Division of State Lands or the Director's designate.
- (6) "Division" means the Oregon Division of State Lands.
- (7) "Exception Area" means rural lands for which an exception to the Statewide Planning Goals has been acknowledged.
- (8) "Full Replacement of Wetland Functions and Values" means no net loss of wetland functions or values in the WCP area.
- (9) "Functions and Values" means the ecological and biological processes and social benefits that the wetland or wetland system provides.
- (10) "Inhabited by" means that a species uses the area for rearing, feeding, or breeding or as a migration or dispersal corridor.
- (11) "Isolated wetland" means a wetland without a permanent or seasonal surface connection to another wetland or water of the state.

(12) "Legally Protected" means development is prevented by operation of state, federal or local law. Examples of legally protected wetlands include those protected under the federal Endangered Species Act, Statewide Planning Goal 17, or by plat restrictions. Protection under the WCP is in addition to, not in place of, the original legal protection applicable to these wetlands.

(13) "Local Government" means any city, county or metropolitan service district formed under ORS Chapter 268 or an association of local governments performing land use planning functions under ORS 197.190.

(14) "Ongoing Use" means an allowed use occurring when the WCP is approved. A use is not ongoing if it has not occurred within the last five years.

(15) "Planned Infrastructure" means utilities and transportation facilities not built but specifically identified in the acknowledged local comprehensive plan.

(16) "Protection Category" means a wetland resource designation that ensures long-term maintenance of the existing functions of the wetland resource.

(17) "Public Need" for the purpose of this rule, means the need for the land uses designated in the local comprehensive plan for those areas placed into the development category in the WCP.

(18) "Stable Resource Base" means no net loss of wetland area within the WCP area.

(19) "Urban Growth Boundary" means an Urban Growth Boundary included or referenced in an acknowledged local comprehensive plan.

(20) "Urban Service Area" means an area identified within the acknowledged local comprehensive plan that is developed, or capable of being developed, at urban densities.

(21) "Wetland Conservation Plan Goals" (WCP Goals), for the purpose of this rule, means the objectives that the WCP is intended to achieve. WCP Goals may be divided into natural resource, economic and other applicable goals.

(22) "Wetland Resource Designation" means placing wetlands or portions of wetlands into "protection", "conservation", or "development" management category under ORS 196.678 (2)(d).

(23) "Wetland System" means a wetland complex that is hydrologically or biologically connected in the landscape.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0040

Wetland Resource Designations

(1) ORS 196.678(2)(d) and 196.681(3)(c) require that wetlands or portions of wetlands within a WCP area be placed into a protection, conservation or development category.

(2) The wetland resource designation(s) must take into consideration the capability of the wetland system to withstand alterations while maintaining important wetland functions.

(3) Local governments shall identify wetlands that meet the criteria for the Protection Category (OAR 141-120-0070) and designate these wetland resources into the Protection Category prior to designating wetland resources into the

Conservation or Development Categories.

(4) Wetlands designated into the Protection Category shall not be redesignated into the Development or Conservation Categories except as allowed under OAR 141-120-0020(7).

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0050

The Purpose of the Protection Category

The purpose of placing wetlands or portions of wetlands into the Protection Category is to protect important wetland resources in perpetuity except as specified in OAR 141-120-0020(7), and preserve them for the functions and values they provide for the people of Oregon.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0060

Management Directive for the Protection Category

Local governments shall ensure that areas in the Protection Category are managed to:

- (1) Allow each site's natural ecological processes to occur; or
- (2) Maintain or enhance the existing wetland type, functions or values.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0070

Designation Criteria for the Protection Category

- (1) Local governments at a minimum shall place into the Protection Category wetlands or portions of wetlands that:
 - (a) Contain uncommon wetland plant communities including those listed in the Oregon Natural Heritage Program's **Classification and Catalog of Native Wetland Plant Communities in Oregon** as G3 or S3 or lower;
 - (b) Are legally protected;

- (c) Are inhabited by or support any species listed by the federal or state government as a sensitive, threatened or endangered species in Oregon unless consultation with the appropriate state or federal agency indicates that the wetland is not important for the species; or
- (d) Are listed as "Wetlands of Special Interest for Protection" in the **Oregon Freshwater Wetland Assessment Methodology**; or
- (e) Are located in designated floodways; or
- (f) Are identified as habitat for spawning or rearing anadromous salmonid fish by the Oregon Department of Fish and Wildlife or the National Marine Fisheries Service.

(2) In addition to areas protected under OAR 141-120-0070(1), local governments should place into the protection category wetlands or portions of wetlands that meet protection criteria established as part of the WCP to achieve WCP Goals.

(3) For the purposes of this section, the term "floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the 100 year flood without cumulatively increasing the water surface elevation more than a designated height.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0080

Uses Allowed in the Protection Category

- (1) A local government may prohibit all human use in areas placed in the Protection Category.
- (2) A local government may allow only the following uses in areas placed in the Protection Category without additional review:
 - (a) Passive recreation activities that require no structures, such as bird watching, canoeing or nature walks;
 - (b) Restoration of native plant species by manual means;
 - (c) Sensitive, threatened and endangered species recovery programs that do not involve physical or hydrological alteration of the area; and
 - (d) Educational uses or research that does not involve physical or hydrological alterations that will adversely affect wetland functions.
- (3) A local government may allow the uses listed below if they meet the management directives of OAR 141-120-0060 after reviewing the use against and determining that the proposed use meets criteria and standards set out in the WCP implementing ordinances:
 - (a) Walkways, trails, viewing structures and signs;
 - (b) Maintenance of existing structures and trails;
 - (c) Physical or hydrological alterations for educational purposes or research;

- (d) Management activities to protect, maintain or enhance existing wetland types or functions or values;
- (e) Sensitive, threatened and endangered species recovery programs that require physical or hydrological alterations;
- (f) Limited harvest of plants or non-game animals that is consistent with state, local and federal law;
- (g) Restoration and other enforcement actions needed to repair damage caused by unauthorized activities;
- (h) Fishing or hunting consistent with state, local and federal law; and
- (i) Construction of committed infrastructure.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0090

The Purpose of the Conservation Category

The purpose of placing wetlands or portions of wetlands into the Conservation Category is:

- (1) To conserve, restore or enhance the functions and values of the wetland resources for the long-term benefits provided; and
- (2) To authorize those uses allowed under OAR 141-120-0130.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0100

Management Directive for the Conservation Category

Local governments shall ensure that areas in the Conservation Category are managed to conserve or enhance the functions and values of the wetland resource except as impacted by uses allowed under OAR 141-120-0130.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0110

Compensatory Mitigation Requirement for the Conservation Category

Compensatory mitigation is required for all uses allowed in the Conservation Category that cause permanent loss of wetland functions, values or wetland area.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0120

Designation Criteria for the Conservation Category

Local governments may place wetlands or portions of wetlands into the Conservation Category that do not meet the designation criteria for the Protection Category. The Conservation Category should include wetlands that:

- (1) Are located within a designated 100 year flood plain;
- (2) Provide a function or value listed as a WCP goal;
- (3) Provide enhancement potential as defined in the **Oregon Freshwater Assessment Methodology** or an assessment methodology acceptable to the Division;
- (4) Are suitable for the uses set out in OAR 141-120-0130; or
- (5) Maintain continuity of a:
 - (a) Wildlife corridor;
 - (b) Stream corridor; or
 - (c) Greenway or recreational corridor.
- (6) For the purposes of this section, the term "100 year flood plain" means the area susceptible to being inundated by water during a flood having a one percent chance of occurring in a given year.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0130

Uses Allowed in the Conservation Category

- (1) A local government may allow the following uses in areas placed in the Conservation Category without additional review:
 - (a) All uses allowed under OAR 141-120-0080(2);
 - (b) Actions to control vegetation required by the local Fire Marshall or ordinances to prevent fire hazards; and

- (c) Ongoing normal farming and ranching activities conducted in accordance with federal, state and local laws.
- (2) A local government may allow other uses that meet the management directives in OAR 141-120-0100 after reviewing the use against and determining that the proposed use meets criteria and standards set out in the WCP implementing ordinance, including
 - (a) Planned infrastructure as authorized in OAR 141-120-0180, and
 - (b) Construction of committed infrastructure.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0140

The Purpose of the Development Category

The purpose of placing wetlands or portions of wetlands into the Development Category is to help balance the public's need for development with the need to protect and conserve important wetland resources.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0150

Management Directive for the Development Category

- (1) To offset the adverse impacts of allowing wetlands to be used for development, the associated mitigation plan for the WCP shall ensure full replacement of wetland functions and values and shall maintain a stable resource base.
- (2) Until development projects are reviewed and authorized in accordance with the WCP or the Director's order approving the WCP, local governments shall ensure that areas in the Development Category are managed according to OAR 141-120-0100.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0160

Designation Criteria for the Development Category

- (1) A local government may designate isolated wetlands one acre or less in area into the Development Category if:

(a) The local government determines that there is no less damaging practicable alternative within the WCP area with the same zoning; and

(b) The function and value assessment indicates that the wetland:

(A) Provides no functions or values and has little enhancement potential; or

(B) Provides or has potential to provide only functions or values that are not listed as WCP Goals; or

(C) The local government demonstrates with findings of fact and supporting reasons that the wetland can reasonably be expected to be adversely impacted by committed infrastructure; and

(2) A local government may designate wetlands or portions of wetlands notwithstanding the wetland's size or connectivity into the Development Category if:

(a) The local government determines that there is no less damaging practicable alternative with the same comprehensive plan land use designation within the WCP area; and

(b) The functions and values assessment for the wetland indicates that the wetland:

(A) Provides no function and has little enhancement potential; or

(B) Provides or has potential to provide only functions or values that are not listed as WCP Goals and has little enhancement potential.

(3) A local government may designate wetlands or portions of wetlands notwithstanding the wetland's size or connectivity into the Development Category if:

(a) The functions and values assessment for the wetland indicates that the wetland provides or has potential to provide a function or value that is listed as a WCP Goal or has enhancement potential; and

(b) The local government:

(A) Determines that there is no less damaging practicable alternative with the same comprehensive plan land use designation within the UGB, the Urban Service area or the Rural Service area; and

(B) Provides an explanation, in the form of a finding of fact with supporting reasons, as to why the comprehensive plan's land use designation cannot be changed to avoid impacting the wetland.

(4) For the purposes of OAR 141-120-0160, the term "less damaging practicable alternative" means "less environmentally damaging practicable alternative".

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0170

Uses Allowed in Development Category Wetlands

A local government may allow the following uses after reviewing the proposed use against criteria and standards set out in the WCP implementing ordinances, that ensure that the uses meet the management directives in OAR 141-120-0150

and are intended to achieve WCP Goals:

- (1) All uses allowed in the WCP and implementing zoning ordinances;
- (2) Construction of committed infrastructure; and
- (3) Biofiltration or other wetland water treatment systems provided the proposed project meets all applicable water quality standards.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0180

Planned Infrastructure

Planned infrastructure may be authorized in a wetland designated in the Conservation Category in the following manner:

- (1) The party sponsoring the planned infrastructure may receive authorization directly from the Division under ORS 196.682; or
- (2) The Director may find that the project avoids wetlands in the WCP area to the degree practicable. If so, the Director's order approving the WCP may identify the approximate location of the planned infrastructure if the local government:
 - (a) Determines that the need for the planned infrastructure exists by showing that:
 - (A) Existing development is dependent on the planned infrastructure; or
 - (B) The planned infrastructure is required to allow access to buildable uplands;
 - (b) Provides a showing of actions considered and taken to avoid and minimize impacts to the wetland system in the planning area; and
 - (c) Provides the general area for the location of the planned infrastructure.
 - (d) To obtain authorization from the Division to construct planned infrastructure with its approximate location identified in the Director's order:
 - (A) The local government shall provide:
 - (i) The final alignment and right of way for the planned infrastructure; and
 - (ii) The steps considered and taken to avoid and minimize impacts to the wetland including bridging, culverting and placing the infrastructure at other locations within the wetland.
 - (B) The Director shall evaluate the information provided under paragraph (2)(d)(A) of this rule in the expedited fashion authorized under ORS 196.682.
- (3) The Director's order approving the WCP may authorize construction of planned infrastructure if the local government

- (a) Determines that the need for the planned infrastructure exists by showing that:
 - (A) Existing development is dependent on the planned infrastructure; or
 - (B) The planned infrastructure is required to allow access to buildable uplands;
 - (b) Provides a showing of actions considered and taken to avoid and minimize impacts to the wetland system in the planning area;
 - (c) Provides the final alignment and right of way for the planned infrastructure; and
 - (d) Provides the steps considered and taken to avoid and minimize impacts to the wetland including bridging, culverting and placing the infrastructure at other locations within the wetland.
- (4) "Showing" in this rule means findings of fact with supporting reasons.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0190

Implementing Ordinances

To meet the requirements of this rule, the local government's implementing ordinances shall include standards and criteria that regulate:

- (1) Alteration or removal of vegetation including trees;
- (2) Uses allowed in wetlands placed into the Protection and Conservation Categories after review by the local government; and
- (3) How protection in perpetuity for wetlands designated protection is provided.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0200

Information Requirements

- (1) Local governments shall provide:
 - (a) The implementing ordinances that set out the standards and criteria necessary to ensure that allowed uses comply with the management directives for protection, conservation and development and an explanation of how the ordinance ensures compliance with the management directives;
 - (b) All determinations, showings and findings with supporting documents and maps developed or used to fulfill

- requirements of OAR 141-120-0000 to 141-120-0230;
- (c) Maps of the land use designations used in the local comprehensive plan;
 - (d) Maps if available, and explanatory narrative of the local buildable lands inventory;
 - (e) Where applicable, consideration of plans and projects of adjacent jurisdictions;
 - (f) The list of sites placed into each Wetland Resource Designation and supporting information; and
 - (g) Information required by OAR 141-120-0180 to determine the method to be used for planned infrastructure in the Director's order.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0210

Director's Determinations

When reviewing the local govern-ment's wetland resource designations and analysis of alternatives, the Director shall:

- (1) Consult with the local government and, as necessary, the Department of Land Conservation and Development on the information provided under OAR 141-120-0200.
- (2) Determine whether the local government has:
 - (a) Applied the wetland resource designation criteria as intended;
 - (b) Developed standards and criteria for reviewing allowed uses that ensure the uses meet the management directives for the appropriate wetland resource designation;
 - (c) Avoided adverse impacts to wetland systems to the extent practicable;
 - (d) Minimized the impacts of fill or removal to the wetland system in the WCP area; and
 - (e) Demonstrated that the WCP provides protection in perpetuity for areas placed into the Protection Category.
- (3) Determine whether planned infrastructure will be authorized in the Director's order approving the WCP or identified for locating in any approximate area of the WCP area.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0220

Jurisdictions Not Governed by this Rule

A jurisdiction that submits a WCP to the Division within six months from the date this rule is adopted may be exempt from the requirements of OAR 141-120-0000 to 141-120-0230 if, within 90 days from adoption of this rule, the jurisdiction demonstrates to the Director's satisfaction that the jurisdiction has made substantial progress toward designating wetland resources for protection, conservation or development and analysing alternatives to adversely impacting wetlands by other means.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

141-120-0230

Citation of Statutory Authority

ORS 196.692 authorizes the Division of State Lands to adopt rules to carry out the provisions of ORS 196.668 through 196.692, Wetland Inventory and Wetland Conservation Plans.

Stat. Auth.: ORS 196.692

Stats. Implemented: ORS 196.678 - 196.692, 215 & 227.350

Hist.: LB 6-1994, f. & cert. ef. 10-20-94

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**Oregon Administrative Rules
1998 Compilation**

DIVISION OF STATE LANDS

DIVISION 121

NAVIGABILITY DETERMINATIONS

141-121-0000

Applicability

- (1) These rules, authorized by ORS 274.400 through 274. 412, prescribe the procedure which the Land Board and the Division will follow to assert title to land underlying Oregon's waterways from the date of rule adoption.
- (2) These rules do not apply to:
 - (a) Those parts of waterways which have had their ownership determined through adjudication by a court having jurisdiction to determine title to real property in Oregon; and
 - (b) All tidally influenced waters.

Stat. Auth.: ORS 273.041 - 273.185 & 274.400 - 274.412

Stats. Implemented: ORS 274.400 - 274.412

Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0010

Definitions

- (1) "Affected Property Owners" refers to those people listed in the records of the county assessor as owners of property fronting, abutting or underlying, or having a recorded easement allowing access to a waterway segment at the time that the Division undertakes a navigability study of the subject waterway.
- (2) "Broad And Substantial Public Interest" exists when the Land Board, after considering the public's right to the use of a waterway segment and the authority of the state and local governments, determines that an administrative determination of navigability is required to:

- (a) Help resolve conflicts between property owners, between users (including recreational users), or between users and affected property owners of a waterway segment;
 - (b) Facilitate management or protection of a waterway segment (for example, its environmental components or scenic, historic and cultural values); and/or
 - (c) Facilitate and promote commerce.
- (3) "Declaration" is a final decision of the Land Board concerning the nature and extent of the state's claim to the bed and banks underlying the waterway segment under consideration.
- (4) "Division" means the Oregon Division of State Lands.
- (5) "Land Board" means the Oregon State Land Board.
- (6) "Navigable" and "Navigability" are defined by the criteria established by federal courts having jurisdiction to determine the extent of state ownership of land underlying a waterway segment.
- (7) "Navigability Study" is the process of collecting, evaluating, and preparing a report relating to the use and characteristics of a waterway segment in order to determine if it is navigable.
- (8) "Person" is an individual, special interest group, political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation.
- (9) "Requester" is any person requesting that the Land Board direct the Division to conduct a navigability study.
- (10) "Sufficient Economic Justification" exists when the Land Board decides that a determination of navigability will result in revenue accruing to the Common School Fund from a leasable use (as defined by Division administrative rules) of the waterway segment or underlying land (for example, the placement of marinas or log rafts, or the extraction of aggregate).
- (11) "Title" is fee simple ownership to property, in this case, the bed and banks underlying a waterway segment.
- (12) "Waterway" refers for the purposes of these rules to any discrete, identifiable body of water and its bed and banks in Oregon including, but not limited to, rivers, streams, and lakes.

Stat. Auth.: ORS 273.041 - 273.185 & 274.400 - 274.412

Stats. Implemented: ORS 274.400 - 274.412

Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0020

Request For A Navigability Study

- (1) Only the Land Board can direct the Division to undertake a navigability study.
- (2) All requests to undertake a navigability study shall be submitted to the Division in writing and shall, at a minimum, include the following information:
 - (a) The name and specific segment (identified through the use of river miles or other clearly locatable geographic place names or features) of the waterway segment for which a navigability study is requested;

- (b) Discussion and evaluation of the substantial economic justification for, and/or broad and substantial public interest in support of a navigability study;
 - (c) Description of any use conflicts, contact with local, state and federal authorities, and efforts to resolve problems; and
 - (d) Available evidence that the subject waterway segment is or is not likely to be navigable.
- (3) Navigability study requests which are incomplete will be returned to the requester by the Division with the deficiencies noted in writing. The Division shall not act on requests until all information required in OAR 141-121-0020(2) is provided.
- (4) The Division shall give public notice of receipt of a complete request to undertake a navigability study of a particular waterway segment. This notice shall be published in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located. The notice shall be sent to persons requesting such notices and other interested persons (for example, local government, watershed councils, etc.).
- (5) The Division shall refer all complete navigability study requests to the Land Board. The Division shall fully describe the request and give the Division's recommendation(s) based on its evaluation of the following considerations:
- (a) Whether sufficient economic justification and/or broad and substantial public interest exists to justify such a study;
 - (b) If other alternative means exist to resolve the use conflicts identified in the study request;
 - (c) The relative importance of the issue(s) as compared with other study requests;
 - (d) The cost of conducting the required study; and
 - (e) The Division's workload and the availability of funding.
- (6) The Division shall ask the Land Board to direct it to undertake a navigability study, postpone undertaking the study, reject the request, or provide it with other instructions.

Stat. Auth.: ORS 273.041 - 273.185 & 274.400 - 274.412

Stats. Implemented: ORS 274.400 - 274.412

Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0030

Process For Conducting A Navigability Study

A navigability study shall consist of the following actions in the order presented:

- (1) If the Land Board directs the Division to conduct a study, the Division shall give public notice that it will undertake the study. This notice shall be called a "Notice Of Initiation Of Navigability Study" and shall:
 - (a) Describe the purpose of the study and the location of the waterway segment under consideration;
 - (b) Request that any persons having information relevant to the study contact the Division;
 - (c) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located; and
 - (d) Be sent to affected property owners, persons who request such notices, and other interested persons (for example,

local government, watershed councils, etc.).

(2) If the Land Board decides to reject a request to undertake a study, the Division shall provide written notice of the Land Board's decision to the requester.

(3) A draft navigability study of the waterway segment shall be prepared by the Division for public review and comment. This report shall contain the Division's proposed draft findings and conclusions as to whether or not the waterway segment is navigable.

(4) The Division shall give public notice of the completion of the Draft Navigability Report. This notice shall be called "Notice Of Availability Of Draft Navigability Study Report" and shall:

- (a) Present the Division's proposed draft findings and conclusions as to whether the subject waterway is navigable;
- (b) Describe how the public may obtain a copy of the Draft Navigability Report, comment on, and/or present additional evidence concerning the study;
- (c) Give the date(s), time(s), and location(s) of public hearings concerning the study, and the public comment period;
- (d) Give the date and time of the Land Board meeting at which additional public testimony will be heard;
- (e) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the land underlying the subject waterway segment is located; and
- (f) Be sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.). The Division shall also send a copy of the Draft Navigability Study to county public libraries in the area of the subject waterway segment.

(5) The Division shall hold at least one hearing in the area of the waterway segment to obtain public input.

(6) After the public hearings have been held, the Division shall analyze the input received and shall submit the following information to the Land Board:

- (a) The Draft Navigability Report;
- (b) A summary of all input received by the Division in response to the Draft Navigability Report; and
- (c) The Division's draft findings and conclusions as to whether the subject waterway segment is navigable, citing information in the hearing record to support and/or refute the conclusion(s) made. This information shall be presented to the Land Board at a scheduled meeting. The Division's recommendations shall be made available to the public at least seven (7) calendar days prior to the Land Board meeting. The public shall be given an opportunity at this meeting to submit additional testimony to the Land Board. The comment period shall close seven (7) calendar days after this Land Board meeting, unless extended by an action of the Land Board.

(7) The Division shall consider and summarize all the input and testimony received and shall prepare a Final Navigability Report.

Stat. Auth.: ORS 273.041 - 273.185 & 274.400 - 274.412

Stats. Implemented: ORS 274.400 - 274.412

Hist.: LB 4-1996, f. & cert. ef. 6-14-96

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Adoption Of Navigability Report

- (1) The Division shall select a date and time when it will present the Final Navigability Report to the Land Board, and shall prepare a meeting notice. The notice shall:
- (a) Briefly describe the findings and conclusions of the Final Navigability Report and advise people how to obtain a copy;
 - (b) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located; and
 - (c) Be sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.). The Division shall also send a copy of the Draft Navigability Study to county public libraries in the area of the subject waterway segment.
- (2) The Land Board shall consider the evidence in the record and the Division's findings and conclusions as contained in the Final Navigability Report, and shall make a decision concerning the nature and extent of the state's claim to the land underlying the waterway segment. Based on the information provided, the Land Board may adopt the findings and conclusions contained in the Final Navigability Report if substantial evidence in the record supports the report's findings and conclusions.
- (3) If the Land Board adopts the findings and conclusions contained in the Final Navigability Report, it shall issue a written declaration which:
- (a) States the nature and extent of the state's claim to the land underlying the subject waterway segment;
 - (b) Clearly describes the location of the land claimed by the state using common descriptions or maps designed to identify the land or waterway segment in a manner intelligible to the lay person and useful in establishing the exact location of the state claim in relation to existing legal descriptions;
 - (c) Advises that any person aggrieved may seek judicial review of the declaration subject to the provisions of ORS 183.310 to 183.550;
 - (d) Is published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area the waterway segment is located; and
 - (e) Is sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.).

Stat. Auth.: ORS 273.041 - 273.185 & 274.400 - 274.412

Stats. Implemented: ORS 274.400 - 274.412

Hist.: LB 4-1996, f. & cert. ef. 6-14-96

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