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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 Department of State Lands. Prior to the adoption, amendment, or repeal of any rule, the State Land Board and/or the Department 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 Department 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 183

Stats. Implemented: ORS 183.341 & 273.045

Hist.: LB 32, f. & ef. 11-18-75; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

141-001-0005**Model Rules of Procedure**

Pursuant to ORS 183.341, the Department of State Lands and the State Land Board adopt the Attorney General's Model Rules of Procedure under the Administrative Procedures Act as amended October 3, 2001.

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

Stat. Auth.: ORS 183.413 - 183.470

Stats. Implemented: ORS 273

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; DSL 7-1998, f. & cert. ef. 7-15-98; DSL 3-2002, f. & cert. ef. 4-24-02; DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

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 advice 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

141-001-0020**Confidentiality and Inadmissibility of Mediation Communications**

(1) The words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in ORS 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) **Mediations Excluded.** Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential; or

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation.

(6) **Disclosures by Mediator.** A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule.

(7) **Confidentiality and Inadmissibility of Mediation Communications.** Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) **Written Agreement.** Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondisclosable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate."

Agreement to Participate in a Confidential Mediation

The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential and/or nondisclosable and inadmissible to the extent authorized by OAR 141-001-0020(7) and this agreement. This agreement relates to the following mediation:

- a) _____
(Identify the mediation to which this agreement applies)
b) To the extent authorized by OAR 141-001-0020(7), mediation communications in this mediation are: (check one or more)

____ confidential and may not be disclosed to any other person

____ not admissible in any subsequent administrative proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative proceeding

____ not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent administrative, judicial or arbitration proceeding, or introduced as evidence by the parties or the mediator in any subsequent administrative, judicial or arbitration proceeding

c) _____
Name of Agency

Signature of Agency's authorized representative _____ Date _____
(when agency is a party) or Agency employee acting as the mediator (when Agency is mediating the dispute)

d) _____
Name of party to the mediation

Signature of party's authorized representative _____ Date _____

e) _____
Name of party to the mediation

Signature of party's authorized representative _____ Date _____

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS Chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communications and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Agency director determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

Stat. Auth.: ORS 36.224
Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232
Hist.: DSL 3-2005(Temp), f. 5-18-05, cert. ef. 5-19-05 thru 11-15-05; DSL 4-2005, f. 11-3-05, cert. ef. 11-15-05

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 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 141-010-0100; LB 1-1990, f. & cert. ef. 3-19-90, Renumbered from 141-005-0000

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 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 141-010-0105

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 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 141-010-0110

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 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 141-010-0115

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 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 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 141-010-0120; 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 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 141-010-0125

DIVISION 10**GENERAL****141-010-0005****Definitions**

“Board” means the State Land Board.

Stat. Auth.: ORS 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 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 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 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 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 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 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 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 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 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 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 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 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 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 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 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 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 ORS 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 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 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 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 274
Stats. Implemented: ORS 274.735
Hist.: LB 7-1986, f. & ef. 7-18-86

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 governing 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); 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

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 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 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 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 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 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 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

DIVISION 16

CONTROL OVER THE EXPORT OF UNPROCESSED TIMBER FROM COMMON SCHOOL FOREST LAND AND OTHER BOARD-MANAGED LANDS

141-016-0000

Purpose and Applicability

These rules apply to the sale of timber and logs from common school forest lands and to other Board-managed lands. The State Forester shall have the responsibility to apply these rules on common school forest lands and the Director of the Division of State Lands shall apply them to other Board-managed land as described in these rules.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0010

Criteria for Eligibility to Purchase State Timber or Logs

(1) In addition to all other requirements of law, a person may bid for state timber or logs originating from state lands if the person certifies in a form and manner specified by the State Forester or Director that:

(a) The person will not directly or indirectly export unprocessed state timber or logs; and

(b) Unless exempted by section (2) of this rule, the person has not directly or indirectly exported unprocessed timber from private lands in Oregon for a period of not less than 24 months prior to the date of submission of the bid; and

(c) The person will not sell, transfer, exchange or otherwise convey unprocessed state timber or logs to any other person without obtaining a certification from the person that meets the requirements of OAR 141-016-0030.

(d) The person shall not engage in export of unprocessed timber originating from private lands in Oregon until such time as all interests in contracts for state timber held by that person have terminated.

(2) Purchases of hardwood logs originating from state timber sales for domestic processing only may be made by persons otherwise ineligible to bid under (1)(b) above, provided they certify that:

(a) They have not directly or indirectly exported unprocessed hardwood timber from private lands in Oregon for at least 24 months.

(b) The hardwood logs shall be domestically processed.

(c) They will obtain a certification from any person to whom they sell, transfer, exchange or otherwise convey state hardwood logs that meets the requirements of OAR 141-016-0030.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0015

Prohibition Against Indirect Substitution

In addition to all other requirements of law, no person who is prohibited from purchasing timber directly from the State Forester or Director may purchase state timber from any other person. Acquisitions of Western red cedar which are domestically processed into finished products to be sold into domestic or international markets are exempt from the prohibition contained in this rule.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0020

Applicable State Timber

All unprocessed timber, as defined in OAR 141-016-0005(16), which originates from state lands is prohibited from export.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0025

Surplus Timber

The prohibitions against export contained in OAR 141-016-0000 to 141-016-0045 shall not apply to specific quantities of grades and species of unprocessed timber originating from state land which the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0030

Reporting Requirements

(1) Before the State Forester or Director will issue final acceptance of timber sale contract requirements, a purchaser of state timber or logs must:

(a) Notify the appropriate agency of the delivery destination of all timber or logs purchased under that contract. Notification will be made in a form and manner prescribed by the State Forester or Director;

(b) Prior to selling, trading, exchanging or otherwise conveying unprocessed state timber or logs to any other person, the purchaser of state timber shall obtain a certification of the person's eligibility to purchase state timber or logs and their intent to comply with the terms and conditions contained in this section. Certification will be made in a form and manner as prescribed by the agency and shall be forwarded to the State Forester or Director upon completion of the transaction. Obtaining a certification shall not relieve the purchaser's responsibility to provide the State Forester or Director with an accounting of the delivery destination of that timber or logs.

(2) Any performance bond required by a state timber sale contract may be retained by the State Forester or Director until satisfactory notification of the state timber or logs delivery destination has been received by the State Forester or Director.

(3) Failure to provide the State Forester or Director with a final accounting of the delivery destination of state timber or logs will be considered a violation of these export regulations. Violators will be subject to the penalties contained in OAR 141-016-0035.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0035

Purchaser Disqualification and Termination of Contracts

(1) The State Forester or Director shall keep a record of any person who violates the requirements of OAR 141-016-0000 to 141-016-0040.

(2) A person whose name appears on the record for violations as stated in section (1) of this rule, and who again violates the requirements of OAR 141-016-0000 to 141-016-0040 shall be disqualified from bidding on or purchasing state timber for a period of five years following the date of the violation. Any appeals of disqualification shall be handled as provided in ORS 279.045.

(3) The State Forester or Director may cease operations on and/or terminate any state timber sale contract entered into with a person who has violated the requirements of OAR 141-016-0000 to 141-016-0040, and assess damages according to the following formula: $D = (OSV + AC) - (PR + RSV)$, where:

(a) D = Damages and Expenses;

(b) OSV = Original Sale Value (timber only — does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales;

(c) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law;

(d) PR = Payments Received;

(e) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the State Forester's or Director's estimate of remaining volume, multiplied by the dollar values stated in the contract.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0040

Log Branding and Marking Requirements

All unprocessed state timber or logs originating from state timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood one end of all logs originating from state timber sales shall be hammer branded and one end shall be painted with a paint type and color determined by the State Forester or Director.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

141-016-0045

Enforcement

Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the State Forester or Director, or contracted by the State Forester or the Director to other state or federal agencies. Any alleged violations of the export prohibition provisions of this section will be referred by the State Forester or Director to the appropriate federal or state agency for prosecution or other legal action.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.521

Hist.: DSL 4-2000, f. & cert. ef. 4-24-00

DIVISION 30

RULES OF PROCEDURE FOR THE RECOVERY OF ESCHEAT 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, 114.555, 116.193,

116.203, 708A.430, 722.262, 723.466, any form of non-probate administration of an escheat estate, and property received by the Division pursuant to ORS 179.540–179.550 prior to October 4, 1997.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0015

Definitions

As used in this division and division 35 of these rules:

(1) “Administration” means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.

(2) “Affiant” means the person or persons signing an affidavit for a small estate filed under ORS 114.515.

(3) “Agent” means a person who is filing a petition to recover escheat property on behalf of a claimant.

(4) “Assets” includes real, personal and intangible property.

(5) “Claim” includes liabilities of a decedent, whether arising in contract, in tort or otherwise.

(6) “Claimant” means a person or entity claiming to be the rightful owner and legally entitled to escheat property held by the Department.

(7) “Claiming Successor” means:

(a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, the Director of the Department of State Lands;

(b) If the decedent died testate, the devisee or devisees of the decedent; and

(c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545(1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent’s death.

(8) “Court” or “probate court” means the court in which jurisdiction of probate matters, causes and proceeding is vested as provided in ORS 111.075.

(9) “Decedent” means a person who has died.

(10) “Department” means the Department of State Lands.

(11) “Devisee” includes “legatee” and “beneficiary.”

(12) “Director” means the Director of the Department of State Lands or the designee of the director.

(13) “Distributee” means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.

(14) “Escheat property” means:

(a) Property paid or delivered to the Department because the devisee or heir could not be found, or refused to accept the property;

(b) Funds paid or delivered to the State of Oregon prior to October 4, 1997 according to ORS 179.540 from a state institution where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.

(15) “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 therefore or diminished by any decreases and distributions therefrom.

(16) “Estate Administrator” means an employee of the Department appointed by the Director to protect the assets of a decedent, and administer the estate on behalf of the Department.

(17) “Finder” means any person who independently searches for and finds the owners of escheat property for a fee paid by the owner.

(18) “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.

(19) “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.

(20) “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.

(21) “Intestate” means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.

(22) “Intestate succession” means succession to property of a decedent who dies intestate or partially intestate.

(23) “Issue” includes 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.

(24) “Known heir” means an heir who has been identified and found.

(25) “Personal property” includes all property other than real property.

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

(27) “Property” means both real and personal property.

(28) “Probate” means the court procedure that encompasses all matters and proceedings pertaining to administration of estates as described in ORS 111.085, including but not limited to appointment and qualification of personal representatives, determination of heirships, construction of wills, and the administration, settlement and distribution of estates of decedents. As to the estate of a decedent, “settlement” includes, the full process of administration, distribution and closing.

(29) “Real property” means all legal and equitable interests in land, in fee and for life.

(30) “Testate” means the circumstances of dying with a legal, valid will that effectively disposes of all the estate.

(31) “Will” means the legal, valid, written document that disposes of the estate. “Will” includes a codicil or a testamentary instrument that merely appoints an executor or that merely revokes or revives another will.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & cert. ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0025

Petitions to Recover Estate Property

(1) Pursuant to ORS 116.253, a claimant or agent may initiate a claim to recover escheat estate property by filing a petition with the Department within the later of 10 years after the death of a decedent from whose estate the Department received the property, or eight years after the entry of a decree or order escheating the property to the state.

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

(3) The petition shall provide all information required under subsections (4) and (5) of this rule. The petition shall be verified and state the following:

(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 state, the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement.

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

(A) (For escheat of an estate) An heir or as the personal representative of the estate of an heir.

(B) (For escheat of a distributive share of an estate) The person who was entitled to receive the distributive share or that person’s personal representative.

(e) That 10 years have not elapsed since the death of the decedent from whose estate the Department received the property, or that eight years have not elapsed since the entry of the decree or order escheating the property to the state.

(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 satisfactory proof of identity.

(b) An acknowledged indemnification agreement signed by the claimant(s) and acceptable to the Department.

(c) If the petition is being filed by an agent for a claimant, a Power of Attorney or written, acknowledged authorization given by each claimant to the agent to act on behalf of the claimant. The original Power of Attorney or authorization shall be filed with the petition. A finder who is acting as an agent for a claimant shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall forward a copy of the finder's current license issued by the Oregon Board of Investigators with the initial Power of Attorney. Subsequent claims filed by a finder shall include the current license number on the Power of Attorney.

(d) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, 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. If persons in a line have not been identified or found, the statement shall include information on the efforts made to identify and find the persons in that line and all known information on that line.

(e) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, 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 subsection (4) of this rule, 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) Published obituaries and 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 the entitlement of the claimant to the escheat funds.

(6) Copies of documents submitted to support a petition shall be certified by the custodian of the original document or shall include an appropriate reference to the source at which they may be verified.

(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.

(8) In order to assist the Department in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(9) For the purposes of this rule, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0034

Recovery of Costs

The Department shall recover its actual costs of reviewing a petition, including those of the Attorney General. The actual costs and any tax on the property shall be deducted from the proceeds before payment is made to the claimant. As used in this section, "actual costs" shall include but need not be limited to the actual staff time incurred in reviewing the petition and any overhead costs to the Department in handling the petition, calculated in the manner described in 141-035-0068(2).

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0035

Contested Case Procedures

(1) If the Department is unable to determine legal entitlement from information provided in the petition, and any supporting docu-

mentation received or provided by supplemental filings, the Department shall give written notice of denial.

(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 after the date the Department provides 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 shall include a summary of the evidence of ownership on which the claim was originally submitted.

(b) Within 30 days after the Department receives a written request, the Department shall contact the claimant to schedule a hearing date by mutual agreement. The Department shall confirm the hearing date by providing written notice to the claimant.

(c) The Director or a hearings officer appointed by the Director shall conduct the hearing.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & ef. 10-3-75; LB 37, f. & ef. 9-1-76; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0036

Petitions to Recover Institutional Escheat Property

(1) A claimant or an agent shall initiate a claim to recover institutional escheat property received prior to October 4, 1997 pursuant to ORS 179.540 by submitting a claim to the Department within 10 years after the date the Department receives the property.

(2) A claim shall be considered filed upon its receipt by the Department. The claim shall be supported by the following documents:

(a) A verified claim form furnished by or acceptable to the Department, signed by the owner, or the owner's heir, personal representative or claiming successor;

(b) Current photo identification of the claimant, or other satisfactory proof of identity;

(c) In order to substantiate information when sufficient supporting documentation is not available to prove entitlement, the Department may require an affidavit by the claimant.

(3) In order to assist the Department in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(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 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0037

Review by the Division

(1) The Department shall review the petition and the sufficiency of the supporting documents. If a preponderance of the evidence indicates that the claimant is legally entitled to the property, the Department shall satisfy charges due, if any, to the Department of Human Resources, and prepare the necessary administrative deeds and assignment of contracts for property that is part of the estate. The Department may require the Department of Justice to review the petition or claim and supporting documents for accounts with a value of \$1,000 or more.

(2) Upon completion of the requirements of subsection (1) of this section, the Department shall request a warrant from the State Treasurer and make payment to the claimant, agent, or attorney for the claimant.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0045

Standards for Determining Escheat Share of the Estate

(1) In determining the escheat share of the estate of a decedent whose estate is wholly or partially subject to probate in this state:

(a) The Department shall not give preference to any person over escheat; and

(b) After diligent search and inquiry appropriate to the circumstances, the Department shall apply the following presumptions in a proceeding to determine whether a missing person has died:

(A) A missing person whose death cannot be proved by other means lives to 100 years of age.

(B) A missing person who was exposed to a specific peril at the time the person became missing has died if it is reasonable to expect from the nature of the peril that proof of death would be impractical.

(C) A missing person whose absence is unexplained has died if the character and habits of the person are inconsistent with a voluntary absence for the time that the person has been missing.

(D) A missing person known to have been alive who has not been seen or heard from for seven years has died if the person has been absent from the person's usual residence, the absence is unexplained, there are other persons who would have been likely to have heard from the missing person during that period were the missing person alive, and those other persons have not heard from the missing person.

(2) In any proceeding to determine the escheat share of an estate, a missing person who is presumed to be dead is also presumed to have had two children in addition to any known issue of the person unless the presumption of death arises by reason of the application of subsection (1)(b)(B) or (C) of this rule.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0050

Expiration of Recovery Period

If a petition to recover escheat property is not received by the Department within 10 years after the death of the decedent from whose estate the Department received the property, or within eight years after the entry of a decree or order escheating the property to the state, and upon resolution of any petitions filed during that period, the Department shall summarily close the file and permanently transfer the remainder of the estate to the Common School Fund.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; Renumbered from 141-030-0039, DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-030-0055

Interest Derived From Escheated Property

(1) All interest derived from escheated property before the date a claimant's right to the property is established belongs to the State of Oregon.

(2) A claimant's right to the property is established at the time the claimant negotiates the warrant.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; Renumbered from 141-030-0040, DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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 decedents who die intestate without known heirs or with some missing heirs and to testate estates with missing heirs or missing devisees in accordance with Oregon Revised Statutes 111 through 119. These rules shall be liberally construed to secure just, speedy determination of the assets, liabilities, net worth and disposition of the decedents' estates.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0011

Rights of Department of State Lands in Escheated Estates

(1) Any portion of a net estate that is not effectively disposed of by will or by intestate succession under ORS 112.025 to 112.045 escheats to the State of Oregon. Such property vests in the State of

Oregon at the time the court enters its decree or order and is subject to a condition subsequent of divestment if a qualified claimant successfully asserts a claim for recovery under ORS 116.253 and OAR 141-030-0025. The Department of State Lands shall administer the estate or represent the interests of the State of Oregon with regard to the estate.

(2) If a devisee or a person entitled to take under intestate succession is not identified or found:

(a) The share of that person escheats to the State of Oregon;

(b) The Department has the same preference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;

(c) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the Department; and

(d) The Department has all of the rights of the missing devisee or person for the purposes of ORS Chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:

(A) The right to contest any will of the decedent under ORS 113.075; and

(B) The right to information under ORS 113.145.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0012

Authority of Department of State Lands in Administration of Estates

(1) In any estate administered by the Department pursuant to 141-035-0011, the Department may:

(a) Administer the estate under the probate laws of Oregon in accordance with ORS Chapters 113 to 116;

(b) Administer the estate under the provisions for small estates in ORS 114.505 to 114.560;

(c) Submit an affidavit and receive funds from a financial institution under ORS 708A.430;

(d) Submit an affidavit to examine the contents of a safe deposit box under ORS 708A.655, 722.660 or 723.844;

(e) Submit an affidavit and receive the withdrawal of value of property in accordance with ORS 722.262;

(f) Submit an affidavit and receive the moneys of the decedent on deposit with a credit union in accordance with ORS 723.466; or

(g) Deposit to the Common School Fund without formal proceedings assets of a decedent which are voluntarily delivered to the Department or secured by the Department in accordance with Section 9, Chapter 395, Oregon Laws 2003. In such cases, the Department shall take reasonable steps under the circumstances to identify and notify heirs and to identify and pay from the assets received creditors of the estate.

(2) Except for expenses disallowed by the court with authority over the probate, any expenses of the Department in carrying out the authority set forth in subsection (1) of this rule shall be paid from the proceeds of the estate. Such expenses shall be calculated in the manner described in OAR 141-035-0068. The Department encourages personal representatives sending notices and documents required by statute to the Department to include a letter explaining the practical circumstances of the estate and such additional information as will assist the estate administrator in protecting the interest of the State of Oregon in the estate.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0013

Delivery of Information to Division

(1) Upon appointment, a personal representative shall deliver or mail to an estate administrator a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator a notice indicating that an heir or devisee cannot be identified and found. The personal representative

shall file an affidavit in the probate proceeding proving the delivery or mailing.

(3) A personal representative who files a report under ORS 116.203 that shows that payment or delivery of property cannot be made to a distributee entitled to the property shall provide to the Department of State Lands:

- (a) A copy of the order of escheat;
- (b) The property;
- (c) The name of the person entitled to the property; and
- (d) The relationship of the devisee or heir to the decedent.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0015

Master Index

The Department shall maintain in its office an index of the names of persons who die intestate without heirs. The index shall contain the number assigned to the file, name of the decedent, county of probate, and estimated estate value. Upon notification of a new probate case, the Department shall add the decedent's name and file number to the index. When the Director has been appointed as personal representative or when the Department files a Small Estates Affidavit, the Department shall include the county of probate and estimated value of the estate.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0016

Notice to Department of Decedent Who Died Without Known Heirs

(1) Any person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Department of State Lands.

(2) Except as provided by ORS 708A.430, 722.262 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Department of State Lands. The prohibition of this subsection:

- (a) Applies to a guardian or conservator for the decedent; and
- (b) Does not apply to a personal representative appointed under ORS 113.085(3) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

(3) For purposes of this rule, "person" includes, but is not limited to friends, neighbors, care centers, nursing homes, hospitals, banking institutions, attorneys, guardians and conservators, and nursing homes.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0018

Taking Custody of Property; Payment of Expenses of Estate

(1) An estate administrator of the Department of State Lands may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the estate administrator receiving notice that:

- (a) The decedent died wholly intestate and without a known heir; or
- (b) The decedent left a valid will, but no devisee has been identified and found.

(2) For any estate described in subsection (1) of this section, an estate administrator of the Department of State Lands may:

- (a) Incur expenses for the funeral, burial or other disposition of the remains of the decedent in a manner suitable to the condition in life of the decedent;
- (b) Incur expenses for the protection of the property of the estate;
- (c) Incur expenses searching for a will or for heirs or devisees of the decedent;
- (d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;

(e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and

(f) Sell perishable property of the estate.

(3) The reasonable funeral and administrative expenses of the Department of State Lands incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125.

(4) When the Department receives notice of a person who has died and for whom it appears there are no known heirs to inherit and no known will, the Estate Administrator shall immediately take steps to ensure the protection of assets of the decedent. The Estate Administrator shall complete a discovery form, which shall include, but need not be limited to, the following information:

- (a) Name of decedent, 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 decedent, 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; and
- (f) The names and any available information concerning relatives of the decedent, whether or not they may be heirs, and all records supporting the relationships or providing information concerning the relatives or which would assist in locating them.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0020

Initial Proceedings

(1) Pursuant to ORS 113.085, if it appears that the decedent died wholly intestate and without known heirs, the Court shall appoint the Department of State Lands personal representative or small estates affiant. The Department of Justice shall represent the Department of State Lands in the administration of the estate.

(2) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator approving the filing of the petition by the person. Except as provided in subsection (3) of this rule, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

(3) Any person who wishes to petition the court for appointment as a personal representative for the estate of a decedent who died wholly intestate and without known heirs shall submit a written request to the Department. The estate administrator may authorize the appointment of another person to act as personal representative if:

- (a) After investigation, the estate administrator determines the estate is insolvent; or
- (b) The estate administrator determines that the appointment is the most cost-effective method to administer the estate and protect the assets of the estate.

(4) A creditor of an estate shall give written notice to the Department informing the Director that the creditor intends to file a Small Estates Affidavit. The Department shall investigate the assets and liabilities of the estate, and within 30 days after receipt of the notice, either:

- (a) Give written authorization to the creditor to file the Small Estates Affidavit; or
- (b) Inform the creditor that the Department will file a Small Estates Affidavit, and include the creditor as an interested person.

Stat. Auth.: ORS 273.045 & 111 - 119
Stats. Implemented: ORS 111 - 119
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0025**Funeral Arrangements**

(1) If the body is delivered to a funeral home and it appears the decedent has died intestate and without known heirs, the funeral director shall contact the Estate Administrator within two working days after receipt of the body. The Department must approve all funeral arrangements.

(2) Either the funeral director or the Estate Administrator after consultation with the funeral director shall complete applications for Social Security, Veterans Administration, and other available death benefits.

(3) The Estate Administrator 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 within the reasonable limits of the financial condition of the estate and in consideration of other available death benefits.

(b) The Estate Administrator may authorize cremation if all of the following conditions are met:

(A) It is apparent that there are no heirs or a properly executed disclaimer of heirs is on file pursuant to OAR 141-035-0046;

(B) The estate has no assets to cover burial; and

(C) The decedent's apparent religion permits cremation.

(4) The nature and cost of funeral services may be limited to those of a "plain and decent funeral," which may include:

(a) Professional services;

(b) First call reception of the remains;

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

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

(e) Delivery of the remains to a local cemetery;

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

(g) Additional essential items, which may include:

(A) Newspaper notices;

(B) Minister's honorarium;

(C) Cemetery costs.

(h) Incidental items available as appropriate, which may include:

(A) Music;

(B) Flowers;

(C) Clothing;

(D) Extra transportation;

(E) Other requested items.

(5) In determining the nature and amount of services to be rendered for a "plain and decent funeral," the Estate Administrator shall consider 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.

(6) Burial and 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 Estate Administrator of the proposed cemetery and the cost estimate for burial expenses. Expenses are limited to the available resources in the estate.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0030**Protection of Assets**

(1) As soon as possible but not more than five working days after the Department receives notification under OAR 141-035-0016(1) or 141-035-0025, the Estate Administrator shall travel to the decedent's residence to:

(a) Inventory and, if possible, take custody of and secure all tangible and intangible assets.

(b) Gather and secure all papers and records of the decedent to provide a source of information that may be reviewed to determine whether a will exists, and whether there are existing heirs as defined in ORS Chapter 111, and ORS 112.015 to 112.055, 112.065, 112.075, 112.095, 112.105 and 112.115.

(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 and to 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 Department and to arrange for the termination of services if in the best interest of the estate to protect the property.

(2) The Estate Administrator may request assistance from available law enforcement personnel to provide for the security of real property, personal property, and household goods.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0035**Inventory**

(1) Within five working days after verifying that the decedent apparently has no legal will nor known heirs, the Estate Administrator shall compile a full and complete inventory of the assets of the decedent.

(2) The Estate Administrator shall assign an estimated value to each item of inventory. The value of investment-type assets shall be recorded at the value of the asset as of the date of death.

(3) The Estate Administrator may box miscellaneous household items or other incidental property in unit categories and inventory as a box.

(4) The Estate Administrator shall note individually on the inventory all items with commercial value including major household appliances, antiques, jewelry, vehicles, trailers, recreational vehicles, shop equipment, and real property.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0040**Administration of the Estate**

(1) If the value of the estate does not exceed the amounts stated in ORS 114.515 for a Small Estates Affidavit, the Department as a claiming successor of the decedent, may file an affidavit for a proceeding with the appropriate court as described in ORS 114.505 to 114.560. If the value of the estate exceeds the limits authorized under the procedure for a Small Estate, the Estate Administrator shall file a petition with the appropriate court to be appointed personal representative and administer the estate according to ORS 111.005 through 117.095.

(2) The Estate Administrator may pay funeral and cemetery costs as soon as the Estate Administrator determines that enough funds will remain to pay administrative costs.

(3) 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 Estate Administrator shall follow the order of payment of expenses and claims as set forth in ORS 115.125.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

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; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0045**Search for Heirs**

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

(a) Papers, records, albums, newspaper clippings, letters, personal telephone books, etc., included in the personal effects of the decedent;

(b) Friends and neighbors;

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

(d) Banks, credit unions and other financial institutions, savings and loan associations, mortgage and investment funds with which the decedent may have conducted financial affairs;

- (e) Public agencies; and
- (f) Paid genealogists or other heir searchers.

(2) If the Estate Administrator finds a valid will before filing a full probate or Small Estates Affidavit, the Estate Administrator shall immediately contact the personal representative named in the will. If the Estate Administrator cannot locate the personal representative, the Estate Administrator shall notify the primary beneficiary. The Department shall then make arrangements to turn over all assets, less the Department's personal representative expenses of administration, to the appropriate individual upon proof of identity.

(3) The probate file is a public record under Oregon's public meetings and records laws. Researching firms or heir finders must make an appointment with the Estate Administrator to view the Department files after the Department has filed the records with the probate court.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0047

When Heirs Are Discovered

(1) If a person claims to be an heir of the decedent during the administration of a full probate or Small Estates Affidavit, the person must submit acceptable proof to substantiate kinship to the Estate Administrator. Acceptable proof includes, but is not limited to, certified copies of death and birth certificates, genealogical search records, obituaries, funeral notices, Baptism records, and family Bibles. The Department may continue to administer the estate until the Estate Administrator determines that evidence submitted is sufficient to prove that the person is legally entitled to the decedent's assets. If other heirs are identified but not located, the Department may continue to administer the estate in order to protect the interest of the missing heirs and the Common School Fund, or if administration of the probate is substantially complete and the Estate Administrator and the known heirs agree that it is in the best interests of the estate for the Department to complete administration of the estate.

(2) If the Department has filed a probate, and all heirs are subsequently identified and found, the heir shall file a substitution of personal representative with the probate court, and a court certified copy of the order of substitution with the Department.

(3) If the administration is by a Small Estates Affidavit, the heir shall file an amended Small Estates Affidavit with the court, which shows that the heir is taking over control and responsibility of the estate from the Department, and submit a court certified copy to the Department.

(4) Upon receipt of the court certified copy of the amended Small Estates Affidavit, the Estate Administrator shall turn over the assets, less the Department's administrative costs, to the claiming successor, including all bills and claims against the estate.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0048

Disclaimer Of Interest In Estate

(1) In accordance with ORS 105.623 to 105.649, any heir or devisee to an estate may disclaim all interest in an estate by delivering the disclaimer to the Department as personal representative of the estate, or if the Department is not serving at the time the disclaimer is made, by delivering the disclaimer:

(a) If a personal representative other than the Department is presently serving, to that personal representative; or

(b) If a personal representative is not serving at the time the disclaimer is made the disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

(2) Upon notification to the Department of any heir or devisee who refuses to act as personal representative of the estate of a decedent, and who refuses an interest in the estate, the Department may forward a disclaimer to the disclaimant.

(3) The disclaimer shall:

(a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form;

(b) Declare that the person disclaims the interest in the property or in the power of appointment;

(c) Describe the interest in property or power over property that is disclaimed;

(d) Be signed by the person making the disclaimer; and

(e) Be delivered in the manner provided in ORS 105.642.

(4) Upon receipt of the properly executed disclaimer by the Department, the decedent shall be treated as though he or she died wholly intestate and without heirs with respect to the disclaimant, and the Estate Administrator shall petition the court to be appointed as personal representative or Small Estates Affiant to administer the estate in the usual manner.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0050

Sale of Real Property and Personal Effects

(1) When serving as affiant or personal representative for an estate, the Department shall obtain the greatest cash value for all property and personal effects belonging to the decedent at the time of death.

(2) In order to obtain the greatest value for all property and personal effects belonging to the decedent at the time of death, the Estate Administrator shall dispose of such property in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0055

Accounting for Funds

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

(2) All funds received by the Department in the Department's capacity of personal representative shall be deposited daily into the trust account, and credited to the appropriate subsidiary account established for each separate estate.

(3) The Estate Administrator may pay just, proper, and approved claims from an estate subsidiary account established pursuant to subsection (2) of this rule within the limits of the estate's resources in accordance with ORS 115.125 and OAR 141-035-0040(2)(c).

(4) At the end of each fiscal year, the Estate Administrator shall file a report setting forth the value of non-cash assets of each estate.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0060

Income and Inheritance Taxes

The personal representative shall file and pay all taxes due on the estate. The Estate Administrator may obtain the services of a tax consultant when necessary to prepare appropriate and necessary tax returns.

Stat. Auth.: ORS 273.045 & 111 - 119
 Stats. Implemented: ORS 111 - 119
 Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0065

Closing the Estate and Escheat of Assets

(1) The Department shall make every effort to close full estates admitted to probate within one year after the court appointment date. If the full probate cannot be closed within one year the Estate Administrator shall file an annual accounting with the appropriate probate court.

(2) Prior to closing, the Estate Administrator shall compute the administrative and Department of Justice expenses. If the estate was admitted to full probate, fees shall be computed in accordance with ORS 116.173. The Estate Administrator shall compute administrative

expenses of the Department in the manner described in OAR 141-0350-0068. In addition, extraordinary expenses such as special trips by the Estate Administrator, additional manpower required to inventory, transport or dispose of personal property shall be computed and included as administrative expenses in the final account submitted to the court.

(3) If the estate was filed under the Small Estates procedure, the Estate Administrator shall:

(a) Complete administration and processing of claims and expenses immediately after the end of the four month period after the affidavit is filed with the probate court; and

(b) Compute administrative and legal expenses as actual costs incurred in accordance with ORS 116.183. The Estate Administrator shall compute administrative expenses of the Department in the manner described in OAR 141-0350-0068.

(4) The amount remaining after payment of expenses shall be placed in a trust fund of the Department and held on behalf of heirs for ten years from the distribution date. If heirs claim the estate during that period, Department shall apply the procedures of OAR 141-030-0025 and ORS 116.253. If an heir does not present a claim within ten years after the final distribution date, the Department shall deposit the total amount credited to the estate subsidiary account in the Common School Fund.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0068

Computation of Department Expenses

(1) The Department shall recover its actual expenses incurred in administering an estate probated under ORS Chapter 113 and 114, a small estate proceeding under ORS 114.505 to 114.560, actions to recover the escheated portion of an estate under ORS 116.203, investigation or recovery of assets under ORS 708A.430, 708A.655, 722.262, 722.660, 723.466 or 723.844 and for any expenses incurred in securing an estate and identifying heirs when it is unknown as to whether the decedent died intestate and without known heirs.

(2) The calculation of the expenses of the Department under subsection (1) of this rule shall consist of the amount of the basic hourly rate of the employee in addition to the overhead for the time spent. As used in this subsection:

(a) "Basic hourly rate" means the actual salary and other personnel expenses of the employee, divided by the annual number of hours of employment.

(b) "Overhead" includes all other expenses of the agency proportionately attributable to the activities of the employee that are not separately itemized and billable as expenses.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-035-0070

Appeal

Any person aggrieved by a decision of the Department as personal representative or the designated Estate Administrator may request a hearing before the Director of the Department of State Lands in accordance with the applicable provisions of ORS 183.310 to 183.550 or file an objection or petition with the probate court.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

Small Estates

141-035-0075

Requirements for Small Estate

(1) If it appears that a decedent died wholly intestate and without known heirs, and the value of the estate does not exceed the values established in ORS 114.515, the Department may administer the estate by filing an affidavit with the clerk of the probate court under ORS 114.515.

(2) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS

114.515 unless the Department gives written authorization. An estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.

(3) A creditor of an estate who is subject to subsection (2) of this section shall submit a written notice to an estate administrator informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor to file an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department will file an affidavit as claiming successor under ORS 114.515.

(4) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency.

Stat. Auth.: ORS 273.045 & 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

DIVISION 40

UNCLAIMED PROPERTY CLAIMS/FINDERS RULES

Establishment of Administrative Fee Charge

141-040-0005

Administrative Fees

The Department may deduct a maximum charge of ten percent of the proceeds of each unclaimed property claim with a value of \$100 or more that the Department approves and for which the Department expended efforts to locate the owner under ORS 98.356(4).

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 16, f. 4-4-74, ef. 4-25-74; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

Procedures for Publication of Reports About Unclaimed and Escheat Property

141-040-0010

Purpose

The purpose of these rules is to establish a uniform procedure for responding to requests for information about unclaimed and escheat property reported or remitted to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0020

Definitions

As used in OAR 141-040-0010 to 141-040-0220:

(1) "Agent" means a person who is filing a claim to recover unclaimed property on behalf of a claimant.

(2) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to unclaimed property held by the Department.

(3) "Department" means the Department of State Lands.

(4) "Escheat property" means:

(a) Property paid or delivered to the Department 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 prior to October 4, 1997 according to ORS 179.540 from state a state institution where an inmate or patient has been released, paroled, escaped, or

died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.

(5) "Finder" means any person who independently searches for and finds the owners of unclaimed or escheat property for a fee paid by the owner.

(6) "Finder's Report of Unclaimed and Escheat Property" means a report that lists the names of owners of unclaimed and escheat property in the custody of the Department, and may include additional information that would assist in finding the owners.

(7) "Holder" means a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee or indebted to another on an obligation.

(8) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(9) "Subscription Report of Claimed Property" means a report that details unclaimed or escheat property that has been refunded to owners or their heirs by the Department.

(10) "Unclaimed Property" means any asset that is paid or delivered to the Department 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 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0030

Finder's Report

(1) The Department may compile information and produce a Finder's Report of Unclaimed and Escheat Property in a format chosen by the Department.

(2) To obtain a Finder's Report, a person shall submit a written request to the Department along with the appropriate fee. The Department may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

(3) The fee for the Finder's Report shall be a minimum of \$100 per release.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0035

In-House Review of Owner Records

(1) The Department shall allow a member of the public a reasonable opportunity to inspect records in the Department's custody that are not exempt from public review under ORS 98.352(4).

(2) A person wishing to review records under subsection (1) of this rule shall make an appointment with the Department and specify which records will be reviewed. To review records, the person shall make the appointment at least two working days in advance.

(3) The Department shall not schedule more than two people to review records at any single time.

(4) Copies of records shall be secured in the manner and at the cost determined by the Department in accordance with OAR chapter 141, division 91.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0040

Subscription Report of Claimed Property

(1) In addition to the Finder's Report described in OAR 141-040-0030, the Department may prepare a Subscription Report of unclaimed and escheat property that is claimed from the Department during the current reporting year.

(2) Each report shall be prepared monthly, reflecting cumulative claims paid from July 1 through June 30. Subscribers 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. Fees shall not be pro-rated.

(5) To subscribe, a person shall submit a written request to the Department along with the annual fee set forth in subsection (4) of this rule. The Department may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

Rules for Recovery of Unclaimed Property

141-040-0200

Purpose

The purpose of OAR 141-040-0200 to 141-040-0220 is to establish a uniform procedure for making claims to recover unclaimed money and property reported or remitted to the Department pursuant to ORS 98.352.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0211

Claim Format

(1) Pursuant to ORS 98.392, a person claiming interest in unclaimed property reported or remitted to the Department may file a claim for the property or proceeds from the sale of the property at any time.

(2) A person shall file a claim with the Department on forms provided by the Department, or in a format acceptable by the Department.

(3) A complete claim shall be considered filed upon its receipt by the Department.

(4) In order to be complete, each claim shall include:

(a) The name and current photo identification or other satisfactory proof of identity of the claimant, such as a driver's license or passport;

(b) Current mailing address of the claimant and satisfactory documentation to prove current residence;

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

(d) Evidence of the claimant's Business Tax ID, or Federal Tax ID number for business entity claims;

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

(f) An acknowledged indemnification agreement signed by the claimant that is provided by, or acceptable to the Department.

(5) In addition to the information required under subsection (4) of this section, if the claimant is the original owner, a description of the nature of the property.

(6) In addition to the information required under subsection (4) of this section, 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 property. If the original owner of the unclaimed property is deceased and the claimant is an heir, then the claimant must describe the claimant's relationship to the deceased owner and include documentation to support that heirship to the decedent. If the owner is a minor or is incapacitated, then the claimant must provide proof of guardianship or conservatorship. Proof of guardianship or conservatorship must be no more than 60 days old at the time the claim is submitted.

(7) In addition to the information required under subsection (4) of this section, 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.

(b) The finder shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall include a copy of this license issued by the Oregon Board of Investigators with the initial Power of Attorney.

(c) An affidavit signed by the claimant for specified types of property as determined by the Department.

(8) In addition to the information required under subsections (4) to (7) of this section, in order to expedite the determination of the rightful owner, a claimant may include the claimant's Social Security number on the claim form.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 12-1999, f. & cert. ef. 4-5-99, Renumbered from 141-040-0215; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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 is not sufficient to prove entitlement to unclaimed property.

(3) Documents submitted to establish ownership may include, but are not limited to:

(a) Copies of any documents showing addresses, including but not limited to utility bills, tax records, or original correspondence addressed to the owner at the address shown on the Department's records;

(b) Passbooks, statements of accounts, canceled 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 Department may consider sufficient to satisfy a reasonable and prudent person under the circumstances of the particular claim.

(4) When a claimant submits a claim on behalf of the original owner of unclaimed property, the claimant shall provide evidence to link the claimant with the property.

(5) When a claimant submits a claim on behalf of a successor to the original owner of the property, the claimant shall provide:

(a) Evidence to link the original owner with the property; 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 affidavit, Final Decree of Distribution, wills, death certificates, Letters Testamentary or Guardianship or Conservatorship, or other appropriate heirship documentation.

(6) If the claim is on behalf of a business entity, the claimant shall provide 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 considered 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, claimants are entitled to receive either the securities that the holder delivered to the Department if they still remain with the Department, or the proceeds received from the sale, less any amounts deducted pursuant to ORS 98.386.

(9) If the claim is for securities or negotiable instruments, the claimant shall surrender to the Department with the claim the certificate or the original instrument, if the claimant possesses it. If the claimant does not surrender the original certificate, the Department may require the claimant to provide a lost instrument bond.

(10) If a claim is made on behalf of a creditor through a garnishment, the creditor shall provide evidence linking the original owner

to the property. The Department shall review the claim in the order received with other claims.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0214

Review Criteria/Time

(1) The administrator shall approve or deny a claim to recover unclaimed property within 120 days after the claimant files a completed claim form under ORS 98.392.

(2) The Department 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 Department will make a determination whether to advance the claim ahead of others.

(3) In determining if there is sufficient evidence to support a claim, the Department 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 property; and

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

(4) The Department shall determine whether a preponderance of the evidence proves the claimant is legally entitled to the unclaimed property.

(5) If the Department approves a claim, the Department shall request a warrant from the Oregon State Treasury. If the claim is allowed for funds deposited in the General Fund, the Department shall pay the claim and file a request for reimbursement from the State Treasurer, who shall reimburse the Department within five working days from the fund against which the warrant represented in the claim was issued.

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

(7) If the property is being recovered by a finder who has submitted a Power of Attorney that authorizes disbursement to the finder, the Department shall issue a warrant payable to both the claimant and Finder and mail the warrant to the finder.

(8) When a claim is for the benefit of the heirs of a deceased owner:

(a) If the amount of the claim is less than \$500, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)).

(b) If the amount of the claim is \$500 or more, but less than \$1000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)) and require the claimant to complete an Affidavit in Lieu of Probate.

(c) If the amount of the claim is more than \$1000, the Department shall require the estate of the decedent to be probated prior to payment.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-040-0220

Claim Denial/Closure

(1) If the Department requests additional information from the claimant to substantiate a claim, and there is no response from the claimant within 90 days of the request, the Department shall close the file.

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

(a) The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity for a contested case hearing.

(b) Within 60 days after the date of written notice of denial provided under paragraph (a) of this subsection, the claimant may resubmit the claim with additional information or request a contested case hearing on the matter.

(c) A request for a contested case 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 Department receives a request for a contested case hearing submitted under paragraph (c) of this section, the Department shall contact the claimant to schedule a hearing date by mutual agreement. The Department shall confirm the hearing date by written notice to the claimant.

(e) The contested case hearing shall be conducted by a hearings 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 & 273.045

Stats. Implemented: ORS 98

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; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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, Oregon Revised Statutes (ORS) 98.302 to 98.436, 98.991 and 98.992, and to ensure that all unclaimed money and property held in safekeeping are reported and paid over to the Department of State Lands in an accurate and timely manner.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0010

Definitions

(1) "Capital Gain" means gain or profit realized on the sale or exchange of a capital asset, or the excess of proceeds over cost, or other basis, from the sale of a capital asset.

(2) "Credit Memorandum" or "Credit Memo" means a transaction posted to a customer account which reduced the account balance and is related to a previously posted invoice or charge, correcting and reducing the amount originally charged.

(3) "Department" means the Department of State Lands.

(4) "Dividend" means cash which accrues by the earnings of a company and which is paid to the owner of securities issued by that company.

(5) "Dividend Reinvestment Plan" means additional securities of the same company which are credited to an owner's account in lieu of cash.

(6) "Dormant" means without activity or owner contact for a prescribed time.

(7) "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.

(8) "Financial Institution" means a financial institution, or a trust company, as those terms are defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association, a building and loan association or an investment company.

(9) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(10) "Inactive" means a lack of activity or owner contact for a prescribed time.

(11) "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.

(12) "Intangible Property" includes but is not limited to:

(a) Credit balances, customer overpayments, security deposits, refunds, 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.

(13) "Last-known Address" means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.

(14) "Negative Report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

(15) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(16) "Person" means an individual, business association, state or other governmental or political subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(17) "Positive Owner Contact" means documented contact by an owner to the holder either generated or initiated by the owner or in response to the holder.

(18) "Property" includes tangible and intangible property.

(19) "Reportable" means the appropriate dormancy period as set forth in OAR 141-045-0026 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.

(20) "Safekeeping Depository" means any leased or rented depository used as a deposit for safekeeping of tangible or intangible property.

(21) "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 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 other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority (for instance unclaimed court exhibits).

(22) "Third Party Administrator" is a person contracted by the holder to manage and process account records.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0015

Who Must File Reports

(1) Every holder shall annually review all accounts that appear to be dormant or unclaimed according to ORS 98.302 to 98.436 and report to the Department of State Lands in accordance with the schedule established in OAR 141-045-0021. Any person that manages

account records or serves as a registrar, paying agent or third party administrator for a holder shall notify the holder annually of any unclaimed amounts reportable according to ORS 98.302 to 98.436. Such entities include but are not limited to persons that provide payroll record-keeping services.

(2) The holder is responsible for the accuracy of the reports and retention of all records associated with the reports as defined in ORS 98.354 whether the report is filed by the holder or another person on behalf of the holder.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0021

Dormancy Periods

(1) Except as provided in this rule, the dormancy period for all tangible and intangible property is three years. After the expiration of the dormancy period, the property is presumed abandoned and subject to the provisions of these rules pertaining to unclaimed property.

(2) The dormancy period for the following deposits or refunds held by a utility is one year if unclaimed by the apparent owner after the date of termination of services or when the funds otherwise become payable or distributable:

(a) A deposit to secure payment, or a sum paid in advance for utility services, less lawful deductions; and

(b) A sum received for utility services, which the utility has been ordered to refund, including interest on the sum, less lawful deductions.

(3) The dormancy period is one year for all intangible personal property distributable in the course of dissolution of a business association or financial institution.

(4) The dormancy period for the following property is two years:

(a) Tangible and intangible property held in a safe deposit box or other safekeeping repository;

(b) Assets of dissolved cooperatives;

(c) Stale dated government checks or warrants including unrepresented payroll checks;

(d) Tangible and intangible property held by a court, state, or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority;

(e) Life or endowment insurance policies where the insured would have attained the limiting age under the mortality table of an existing policy; and

(f) All intangible personal property and any income or increment on such property held in a fiduciary capacity including funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated.

(5) The dormancy period for the following property is five years:

(a) Any demand, savings or matured time deposit with a financial institution and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution;

(b) Stock, certificates of ownership or other intangible equity ownership interests in a business association, except as provided in ORS 98.322(4); and

(c) Any dividend, profit distribution, interest, payment on principal or other sum held or owing by a business association.

(6) The dormancy period for money orders is seven years.

(7) The dormancy period for traveler's checks is 15 years.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0031

Examples of Unclaimed Property

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

(a) Any account deposited in a financial institution and any accrued interest and dividends;

(b) Any account including shares, dividends, deposit accounts, and interest held by credit unions 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) Any sums payable for which a financial institution is directly liable, including checks, drafts, cashier's checks, certified checks, or similar instruments;

(d) 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 the actual instrument or book entry shares which shows ownership or interest in stocks, bonds, or mutual funds;

(e) Any certificate of deposit. If the account is in the form of a dividend reinvestment plan, the dormancy period shall begin at the first maturity date after the holder determines that the owner cannot be located;

(f) 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) The following types of property are considered unclaimed and payable to the Department after three years without positive owner contact:

(a) Credit memos issued in the ordinary course of the holder's business;

(b) Except as provided in OAR 141-045-0031(3)(c), unpaid wages, including commissions and wages represented by uncashed payroll checks owing in the ordinary course of the holder's business;

(c) Any other disbursements generated during the ordinary course of the holder's business; and

(d) All intangible personal property not otherwise 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.

(3) The following types of property are considered unclaimed and payable to the Department after two 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 a safe deposit box or any other safekeeping depository in the ordinary course of the holder's business after the lease or rental period has expired. This category of property does not include personal 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, state or other government, governmental subdivision or agency, county fiscal officer, public corporation, public authority, quasi-governmental agency, 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;

(G) Unclaimed municipal bonds and the interest thereon.

(d) All intangible personal property and any accrued interest held in a fiduciary capacity, including but not limited to property management security deposits, attorney trust accounts, escrow accounts, trust accounts and funds in an individual retirement account or a retirement plan or a similar account or plan established under the Internal Revenue laws of the United States if under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(e) Tangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation or public authority; law enforcement agency, other than property seized by a law enforcement agency as defined by ORS 98.245(1)(b);

(f) Property held by a dissolved cooperative.

(4) Funds in an individual retirement account or a retirement plan or a similar account or plan established according to the Internal Revenue laws of the United States of America are not payable or distributable within the meaning of OAR 141-045-0021(4)(f) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

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

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

(b) Sums received for utility services which a utility has been ordered to refund;

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

(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 years after its issuance is considered unclaimed and reportable to the Department.

(7) Any sum payable on a traveler's check that has been outstanding for more than 15 years is considered unclaimed and reportable to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0041

Report Forms

(1) A holder may request a report form from the Department.

(2) A holder may submit a report electronically or may download a report form from the Department's website.

(3) The Department shall provide printed report forms or post the same on the Department's website and instructions no later than August 31st of each year to all holders.

(4) The Department may provide a separate reporting form to holders of any safekeeping repository, for a detailed listing of all contents and owners.

(5) The Department may, at its discretion, require holders to file negative reports. As used in this rule, "negative report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0061

Actions Required of Holders Before Reporting

(1) As soon as it appears that an account with a value of \$100 or more is inactive, but not later than August 31 of the report year, each holder shall exercise due diligence in making a reasonable, good faith effort to:

(a) Confirm that an account is in fact inactive;

(b) Notify the owner that the holder will report the account to the Department as unclaimed property; and

(c) Locate the owner.

(2) In exercising due diligence under subsection (1) of this section, a holder may:

(a) Verify that the owner has not communicated in writing with the holder concerning the asset;

(b) Verify 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) Verify 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 could contact other departments of that institution); or

(d) Where the account is that of a credit union member, verify that the member has participated in voting during a regularly scheduled credit union meeting.

(3) If a holder is unable to locate an owner, the holder may exercise due diligence under subsection (1) of this section by:

(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); or

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

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

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0100

Report and Delivery of Unclaimed Property to Division

(1) Every person holding funds or other tangible or intangible property, presumed abandoned according to ORS 98.302 to 98.352 shall report and pay or deliver all such property to the Department, except that funds transferred to the General Fund by governmental agencies pursuant to ORS 293.455(1)(a) shall only be reported to the Department.

(2) Each holder shall be responsible for the content, accuracy, and timeliness of the holder's 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) For accounts dormant as of June 30, the holder shall file the report after October 1, but not later than November 1.

(4) The Department 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) A holder shall report property having a value of \$50 or more per account or owner of record, individually, and shall 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; and

(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) A holder may report all property having a value of \$49.99 or less per account or owner of record, as a lump sum representing various accounts without breaking the amount down by account or by owner. However, the holder shall report separately the total amount held for any one owner who has several small accounts that individually total \$49.99 or less, but collectively equal or exceed \$50 dollars. In order to assist the Department in locating owners of record, the holder may report the information required under subsection (5) of this rule for property having a value of \$49.99 or less per account or owner of record.

(7) In addition to the information required above, a life insurance company 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) A holder of safekeeping depositories shall comply with the following additional requirements:

(a) The holder shall complete the specific report form for safekeeping contents or include the required information in the holder's computer-generated format and file the report, separate from the contents, no later than November 1.

(b) In addition to the information required in subsection (5) of this section, list each item left in a safekeeping depository, and the identity of the owner. The holder shall include information about the original box if the holder moved items to a safekeeping area.

(c) In accordance with directions from the Department, the holder shall deliver the package of safekeeping depository contents marked "to be delivered unopened," to the Department by certified mail, return receipt requested or hand carried by a courier. The Department shall sign a receipt for the unopened package upon delivery to the Department, and forward the receipt to the holder within five working days.

(d) The holder shall clearly identify on the package the holder's complete name and return address.

(e) The holder shall forward the complete contents of safekeeping depositories to the Department intact. The holder may not convert, substitute or exchange any coins and currency found in the box.

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

(9) Any holder, business association, transfer agent, registrar or other person 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 OAR 141-045-0100(5) above:

(a) Where the original certificate is being held by the holder for the owner (i.e., stock or other certificate of ownership of a business association which has been returned to the holder, who cannot find the owner), cancel that certificate and issue a replacement certificate of ownership to the Department; or

(b) When the holder does not hold the original certificate, issue a replacement certificate i.e., a duplicate certificate of ownership or other distribution or stock or other certificates of ownership of a business association issued in the name of the Department of State Lands as custodian of unclaimed property. The original certificate of ownership is presumed to be in the possession of the missing owner to the Department.

(c) In either case, the holder shall report and forward to the Department all outstanding accrued dividends, along with the certificate.

(d) When stock is reported and transferred to the Department's assigned stock broker or transfer agent in book entry form, the holder shall immediately forward a confirmation of stock transfer to the Department at the time of transfer.

(10) In addition to the information a holder reporting mutual funds in book entry form shall:

(a) Forward a confirmation of account transfer to the Department along with the report; and

(b) Forward future income in the form of cash (for example, dividends, capital gains, etc.) payable to the Department from mutual fund accounts with dividend reinvestment plans.

(11) If the holder is a dissolved agricultural cooperative, the holder shall forward the original reports detailing unclaimed dissolved agricultural cooperative accounts to the Department along with the funds, and file a copy of the report with the State Board of Higher Education. The Department 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 after receiving 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) Before October 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 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 agency shall forward the report to the Department before November 1.

(14) After October 1, the State Treasurer may refuse payment of the unrepresented checks or orders included in the report, and upon instructions by the issuing agency shall:

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

(b) Except for federal funds governed by federal laws and rules as provided in ORS 291.003 and 409.040(2), transfer all other funds to the Department; and

(c) Report information about any payment made to an owner subsequent to filing the report, but before transferring the funds to the Department.

(15) 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.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

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; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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 Department.

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

(c) All lists of uncashed warrants or stale dated checks issued by a government or public authority pursuant to ORS 98.336 shall be exempt from public review from the issued date until 24 months after the property is remitted to the Department.

(2) The Department may not disclose to any other state or any person any confidential information provided by the Department of Revenue from taxpayer returns.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0115

Requirements of the Division of State Lands to Locate Owners

(1) Within one year after receipt of reports, payment, and delivery of accounts as required by OAR 141-045-0100, the Department shall provide public notice that the names of owners of unclaimed property have been added to the Department's unclaimed property Website by publishing notice at least twice in a newspaper or other generally circulated periodical published in this state.

(2) The Department also shall make reasonable efforts to locate the owners of unclaimed property reported and received by the Department. The Department's efforts shall include, but need 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 the internet, reverse directories, telephone books, or other such publications.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0120

Examination of Holder Accounts

(1) In accordance with ORS 98.412, the Department may examine the records and other accounts of any holder to determine whether the holder has complied with the provisions of ORS 98.302 to 98.436.

(2) The Department may conduct an examination whether or not the holder believes it is in possession of reportable property.

(3) The examination may be performed by personnel employed by the Department of State Lands, employees of the Department of Consumer and Business Services, Division of Audits of the Office of the Secretary of State, or any other designated person under contract with the Department of State Lands.

(4) To the extent possible, the Department shall enter into agreements with other state or federal entities who regularly examine the records of financial institutions. Under the agreements, the state and federal agencies shall examine the records of the financial institutions to determine compliance with ORS 98.352. If the state or federal agency does not enter into an agreement with the Department, the Department shall conduct the examination.

(5) 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 141-045-0030;

(d) Bank reconciliations, outstanding checklists and bank statements;

(e) Aged accounts receivable reports;

(f) Reports from transfer agents showing last date of positive contact with stockholders;

(g) Uncashed checks that have been returned by the United States Post Office as undeliverable;

(h) Uncashed payroll checks that have been returned by a company plant or office;

(i) Journal entries that specifically write off stale dated checks;

(j) Third party administrators' contracts, records and reconciliations; and

(k) Holder trial balance of accounts.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94, Renumbered from 141-045-0120(5) & (6) to 141-045-0125(1) & (2); DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0121

Procedure for Examination of Holder

(1) The Department shall give written notice to the holder at least ten days prior to an examination of all records and accounts subject to the Unclaimed Property Act.

(2) The Department may conduct an examination opening conference with a holder before beginning an examination. At the opening conference, the Department shall identify the examination period, describe the general examination methods that will be used, and provide the initial request for records.

(3) The Department shall issue a report of preliminary findings reflecting the potential liability for unclaimed property. The Department shall allow not less than 30 days for the holder to respond to the preliminary findings report.

(4) Upon completion of an examination, the Department shall provide a written report reflecting the total unclaimed property reporting liability and any interest due on amounts due and owing for failure to report and deliver property due and payable for prior years. The Department may hold a conference with the holder to provide the written report. The written report shall include information to the holder that includes:

(a) Recommendations for maintaining ongoing compliance; and

(b) Explaining the availability of an appeal of the findings as described in OAR 141-045-0126.

(5) Within 30 days after the Department delivers a final report of examination findings, the holder shall deliver to the Department any unclaimed property and interest due to the Department based on the examination findings. Upon request of the holder, the Department may establish a payment schedule or extend the payment period.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0122

Entering into Contract with Contract Auditor

The Department may enter into a contract with a person for the sole purpose of examining the records of holders to determine compliance with ORS 98.302 to 98.436. The Department may consider any factors the Department deems relevant when entering into a contract for services requested in the performance of an unclaimed property examination.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0123

General Conditions and Requirements of Contract with Contract Auditor

(1) A contract auditor shall comply with all terms and conditions specified in the contract with the Department.

(2) A contract auditor may not subcontract any work without the prior written authorization from the Department. The contract auditor

is responsible for ensuring that any subcontractors used during an examination possess sufficient training and experience to adequately perform the unclaimed property examination and agree to comply with all terms and conditions of the contract auditor's contract with the Department.

(3) A contract auditor shall possess an ability to examine the records of entities holding various types of unclaimed property.

(4) A contract auditor shall have security procedures in place to ensure that all unclaimed property examination reports and working papers are secure.

(5) A contract auditor shall have the ability to evaluate and comment on the holder's procedures and accounting systems related to capturing unclaimed property for present and future reporting period.

(6) A contract auditor shall maintain independence in mental attitude in all matters relating to an examination assignment.

(7) A contract auditor may not engage or present itself as representing the Department in any examination without the prior written consent from the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0124

Contract Auditor Guidelines

A contract auditor shall adhere to the following guidelines:

(1) A contract auditor shall not participate in examinations in which the contract auditor's participation could be construed or perceived as a conflict of interest. If either the Department or the contract auditor believes that the auditor cannot conduct an assigned examination due to a conflict of interest or for any other reason, the Department shall determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a holder, the Department may authorize another contract auditor to complete the examination.

(2) A contract auditor shall maintain strict confidentiality of any nonpublic records or documents gathered during the course of an examination in accordance with the contract between the Department and the contract auditor.

(3) A contract auditor shall properly document the review and make the auditor's working papers gathered during examinations available on demand for review by the Department and the Department of Justice.

(4) Upon request of the Department or the holder, the contract auditor shall provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the Department.

(5) A contract auditor shall maintain working papers for a minimum of five years following the completion of an examination assignment, the delivery of unclaimed property, the resolution of any appeal or the finality of judgment in any litigation, whichever is later.

(6) A contract auditor shall conduct examinations consistent with ORS 98.302 to 98.436, OAR 141-045-0121 (Procedures For Examination Of Holder) and other applicable statutes and rules, policies of the State Land Board and the Department of State Lands, generally accepted accounting principles, generally accepted auditing standards and any relevant rules related by examinations adopted pursuant to ORS 98.302 to 98.436 as such rules relate to the reporting and delivery of unclaimed property from holders.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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 three years after the holder has remitted the property to the Department.

(2) Any holder that sells traveler's checks, 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 three years after the date the holder has remitted the property to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94, Renumbered from 141-045-0120(5) & (6); LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0126

Appeal of Examination Findings

(1) Alternative Dispute Resolution Process. Any holder who disputes the findings set forth in a final written report delivered, as required under OAR 141-045-0121(4), may request the Department enter into an alternative dispute resolution process. The Department and the holder shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The holder may retain the right of formal appeal as described in these rules.

(2) Any holder who disputes the findings set forth in a final written report delivered as required under OAR 141-045-0121(4), may request a hearing in accordance with the provisions of ORS 183.413 to 183.470 related to contested case proceedings.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0130

Service Charges and Payments of Interest on Deposit Accounts

(1) With respect to any demand, savings or matured time deposit with a financial institution, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution, a holder may not impose any charge or cease payment of interest due to dormancy or inactivity unless:

(a) There is a written contractual agreement between the holder and the owner of the account clearly and prominently setting forth the conditions under which a service charge may be imposed or the payment of interest terminated;

(b) The establishment of a service charge, the change of an existing service charge or the change of a policy pertaining to the payment of interest is uniformly applied to all dormant or inactive accounts;

(c) The holder shall give written notice to the owner at the owner's last-known address whenever an account becomes dormant or inactive; and

(d) Three months written notice is given by certified mail to the last-known address of the owner of a dormant or inactive account before the holder may apply a service charge to the account or stop paying interest on that account.

(2) A signature card is not a written contractual agreement for the purposes of subsection (1)(a) of this section, however, the signature card and the written contractual agreement may be contained in one instrument.

(3) A holder may not deduct from the amount of any instrument subject to ORS 98.308(5) or (6) 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) Notwithstanding the provisions in subsections (1) to (3) of this section, a holder may not deduct a service charge or fee or otherwise reduce an owner's unclaimed account unless:

(a) There is a valid written contract between the holder and the owner that allows the holder to impose a charge;

(b) The service charge or fee is imposed uniformly on all accounts; and

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

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0150

Disposition of Unclaimed Property

The Department shall dispose of all tangible property presumed abandoned and delivered to the Department in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0155

Relief From Liability

(1) Upon delivery or payment of reportable unclaimed property to the Department in compliance with ORS 98.302 to 98.436, 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 Department shall indemnify the holder of securities presumed abandoned according to ORS 98.322 to the extent allowed under the Oregon Constitution.

(3) 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 Department, or after sale of the property by the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0160

Deposit of Funds

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

(2) Before making a deposit, the Department 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 Department 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 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0170

Claims for Recovery of Unclaimed Property

(1) Any person may submit a claim for recovery of unclaimed property reported to the Department in accordance with ORS 98.302 to 98.436 and OAR 141-040-0200 through 141-040-0220.

(2) If the claim allowed is for property deposited in the Common School Fund Account, the Department 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 Department shall pay the claim and file a request for reimbursement with the State Treasurer. The State Treasurer shall reimburse the Department 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 Department may make payment to the apparent owner, and file a claim with the Department. The Department shall reimburse the holder within 60 days after receiving proof from the holder that the owner was paid. The Department shall not assess any fee or other service charge. Upon receiving the funds from the Department, the holder shall assume liability for the claimed asset, and hold the Department 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 Department by the holder, if they still remain with the Department, or the proceeds received from sale, less any amounts deducted pursuant to ORS 98.386. The Department may require claimants to provide a lost instrument bond if the original certificate is not surrendered to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0180

Penalties

Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436. A person who willfully fails to render any report, to pay or deliver property or to perform other duties required by ORS 98.302 to 98.436 and 98.992 may be required to forfeit and pay to the State Treasurer to be deposited in the Common School Fund Account, an amount determined by the Department of State Lands pursuant to ORS 183.090 of not more than \$1,000 for individuals and \$50,000 for corporations. This penalty shall be assessed only after at least one reporting cycle, and only after the Department has provided the person with written instructions, including copies of applicable laws and policies. The Department may waive any penalty due under this section with appropriate justification.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

141-045-0185

Disposition of Unclaimed Property, Real Property and Personal Effects

(1) Except as otherwise provided in subsections (2), (3), (7) and (8) of this rule, the Department shall sell the contents of safe deposit boxes received from banks or credit unions or other safekeeping repository, all property and personal effects belonging to a deceased person and all other property presumed abandoned and delivered to the Department at such time and place, and in such manner as the Department determines will bring the highest return.

(a) In choosing the most favorable method for sale of property under this subsection, the Department may consider:

- (A) A public oral auction;
- (B) An electronic commerce forum;
- (C) Any other method of sale that ensures the highest returns and provides for open, public participation.

(b) In choosing the most favorable location for the sale of property under this subsection, the Department may consider:

- (A) The population of the location;
- (B) The cost of conducting the sale in the location;
- (C) The type of property being sold;
- (D) The public access to the proposed sale location, including parking; and

(E) Any other indicator of market potential of the location.

(2) Contents of safe deposit boxes received from banks or credit unions or other safekeeping repository may be sold after one year unless the Department considers it in the best interest of the state to do otherwise.

(3) Securities shall be sold on the exchange at prices prevailing at the time of the sale or by any other method the Department considers advisable.

(4) In disposing of unclaimed property or property received as part of an escheated estate, the Department of State Lands may:

- (a) Obtain the services of a qualified appraiser to assist with the determination of values;
 - (b) Employ a qualified investment advisor to assist with the custody and sale of securities;
 - (c) Employ an auctioneer to conduct a public, oral auction or estate sale to dispose of property;
 - (d) Offer the property through electronic commerce; or
 - (e) Contract with a real estate broker to sell real property.
- (5) Sales shall be conducted by a contractor hired through a process conducted in accordance with the requirements of ORS 279.310

to 279.323. The contractor may not be an employee or relative of an employee of the Department.

(6) For a sale by public oral auction held under subsection (1) of this section, the Department shall publish at least a single notice of the sale at least 10 days in advance of the sale in a newspaper of general circulation in the county where the property is to be sold. For a sale by a method other than public oral auction, the Department shall publish at least a single notice in a newspaper of general circulation in Marion County.

(7) If the Department determines after investigation that any item delivered as unclaimed property or received as part of an escheated estate has insubstantial commercial value, the Department may:

(a) Destroy or otherwise dispose of the property at any time, pursuant to ORS 98.384 including personal papers obtained by escheat under ORS 112.055.

(b) Donate items with little or no commercial value including used clothing, worn-out or broken furniture, and common houseplants to charitable service organizations or other persons such as friends or neighbors of the decedent.

(8) The Department may donate, sell or dispose of food that is part of an escheated estate on site.

(9) If the cost of a public auction would exceed the value of a particular item, the Department need not offer the property for sale. The Department 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 that would require special handling.

(10) No donations, sales, or other disposition of any unclaimed property or property belonging to estates may be made to employees of the Department or the State Land Board or members of their immediate household, parents, or children not living at home.

(11) The Department may decline the highest bid and re-offer the property for sale if the Department considers the bid price insufficient.

(12) The purchaser of property at any sale conducted by the Department takes the property free of all claims of the owner or previous holder, and of all persons claiming through or under them. The Department shall execute any documents necessary to complete the transfer of ownership.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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 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 141-050-0895 and 141-050-0950

Schedule of Fees and Charges

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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

141-050-0964

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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

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 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 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 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 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 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 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 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 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 566

Stats. Implemented: ORS 566.310 - 566.360

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

DIVISION 67

RULES GOVERNING THE SALE, EXCHANGE AND PURCHASE OF LAND

141-067-0130

Purpose and Applicability

These rules:

- (1) Establish procedures for the sale, exchange, and purchase of all types and classifications of land and interests in land managed by the State Land Board and the Division of State Lands in order to comply with all Constitutional and statutory requirements including, but not limited to: Oregon Constitution Article VIII, Section 5(2), and ORS 270, 271, 272, 273, and 274.
- (2) Do not pertain to the leasing of lands nor the granting of easements across lands managed by the State Land Board and the Division of State Lands.

Stat. Auth.: OAR 141-167-0005 - 141-067-0120, 125-045, 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: OAR 141-167-0005 - 141-067-0120, 125-045, 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0140

Policies

- (1) The State Land Board through the Division 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 VIII, Section 5(2) of the Oregon Constitution.

(2) In order to achieve the Constitutional mandate described above and to maximize the financial return to the Common School Fund from Trust Lands, the Division will seek to obtain the full fair market value for any land or interests in land sold or exchanged.

(3) Trust Lands will be sold or exchanged in a manner that complies with state law while ensuring absolute adherence to both Constitutional and Admission Act trust responsibilities as determined by the State Land Board and subject to review by the courts.

(4) The State Land Board may at any time direct the Division of State Lands as to the purchase, sale or exchange of Trust and/or Non-Trust Lands in accordance with these rules and/or the Asset Management Plan.

(5) Any Trust Land or interest in Trust Land may be exchanged for other land or interest in land, of equal or superior value. The newly acquired land or interest in land shall be regarded as Trust Land.

(6) The State Land Board may purchase, sell or exchange lands in any such parcel size or configuration or class (e.g. forest, agriculture, commercial).

(7) The State Forester may initiate and process land exchanges involving Common School Forest Lands under its management as allowed in the management agreement between State Land Board, the Division of State Lands and the State Forester. Such land exchanges require the approval of the State Land Board.

(8) The State Land Board and the Division will thoroughly evaluate opportunities to sell or exchange state land, particularly non-performing Trust Land and, in some cases, Non-Trust Lands. Purchases, sales and exchanges may be pursued on a case-by-case basis to:

(a) Meet a management prescription as identified in the Division’s Asset Management Plan;

(b) Increase the net operating income from a parcel or class of land;

(c) Increase the financial contributions to the Common School Fund;

(d) Reduce land management costs associated with a particular parcel; or

(e) Increase the efficiency of management of a particular parcel or group of parcels.

(9) Public review and State Land Board approval of proposed land sales and acquisitions (either by purchase or exchange) will be sought at key decision points as determined by the Director. The criteria for evaluating any land sale or acquisition will include the following:

(a) Current and future estimate of value and income potential;

(b) Location, accessibility and manageability;

(c) The potential for alternative income-generating uses;

(d) The level and intensity of expressed interest in a sale, exchange or purchase; and

(e) Whether the land is classified as Trust or Non-Trust land.

(10) The Division shall recover all appraisal, survey and advertising costs of sales and exchanges from the buyer or exchange applicant unless agreed to otherwise in advance, or prohibited by law or these rules.

(11) Qualified persons and agencies may apply to purchase or exchange state land or interests in state land at any time. An application fee, as required by these rules, shall be included with each application. The Division reserves the right to prioritize land sale and exchange projects according to available agency funds and income potential.

(12) The State Land Board will not sell or exchange state-owned submerged lands except to facilitate the legal disposal of hazardous materials as part of a plan approved by the appropriate state and/or federal environmental agencies. In instances when the State Land Board may sell or exchange submerged lands under circumstances as stated in these rules, such sale or exchange shall occur:

(a) Only upon a finding that the transaction will accrue a net gain in public trust values to the people of Oregon; and

(b) Only when the public trust uses are not significantly impaired as a result of the transaction. The State Land Board may sell or exchange historically filled land and new lands in the manner provided by law.

(13) The State Land Board may exchange submersible lands upon a finding by the Board that the transaction will accrue a net gain of public trust values to the people of Oregon.

(14) The State Land Board authorizes the Director or his/her designee to issue such certificates of sale, deeds or conveyances as are necessary to carry out the land transactions approved by the Board in conformance with these rules. Such instruments shall include, but not be limited to bargain and sale deeds with limited warranty and quit-claims, and be drawn in a manner to fully transfer all rights and interests to the buyer/exchange partner that the Division has full confidence in conveying.

(15) Land or interest in land sold to another state agency or political subdivision under the provisions of ORS 270.100 or a federal agency shall be used for public purpose or benefit, and not be for resale to a private purchaser. Such restrictions shall be included in the deed and be enforceable through such terms as, but not limited to, reversion clauses.

(16) The State Land Board shall recognize and adhere to all terms and conditions of valid existing leases and easements as they affect proposed land sales or exchanges.

(17) The State Land Board shall retain all mineral interest ownership unless:

(a) A mineral and geologic evaluation (including an appraisal of values as required by the Director) reveals no or extremely limited mineral potential in any lands being considered for sale or exchange;

(b) The State Land Board deems that the disposal of mineral interests is in the long term best interests of the Trust; and

(c) The State Land Board approves of the disposal. Minerals may be exchanged based on a showing that all parcels have roughly equivalent mineral potential. All mineral interests included in any sale shall be accorded a monetary value and the Division shall be compensated for their sale.

(18) These rules shall apply to all land transactions (for example, sales, exchanges, and purchases) for the South Slough National Estuarine Research Reserve as established in ORS 273.553.

(19) The Division will seek certification of these rules by Department of Administrative Service (DAS) as permitted under OAR 125-045-0195. It is the intent of these rules to carry out the Division’s land transactions in a manner consistent with DAS rules for the Disposition and Acquisition of Real Property Interests (OAR 125-045). According to ORS 270.100(4), the Division of State Lands is exempt from having to secure DAS approval for land sales unless the land and/or interests in land are to be sold at less than the appraised value.

(20) Land sale and exchange applications pending with the Division on the effective date of these rules (July 1, 2002) shall be processed in accordance with these rules. Every effort shall be made to give due consideration to the processing work already accomplished for any applications pending on the effective date of these rules.

Stat. Auth.: ORS 270.005 - 190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0150

Definitions

(1) “Abutting” means immediately adjacent to and facing.

(2) “Agricultural Lands” are Trust or Non-Trust Lands classified for active commercial farming, nursery or agricultural production of all types.

(3) “Apparent Successful Purchaser” is the person who is the highest acceptable bidder and who has agreed to the terms and conditions of a land sale prior to the final approval of the sale by the State Land Board.

(4) “Applicant” is any person who requests to purchase or exchange state land or interests in land.

(5) “Appraisal” or “Appraisal Report” means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(6) “Asset Management Plan” means the plan required by ORS 273.245 and adopted by the Land Board.

(7) “Bargain” is a process by which the Division and parties attempt to agree to a final sale price of state land or interests in state land.

(8) “Bargain and Sale Deed” is a form of a deed that conveys real property from a seller to a buyer but does not guarantee clear title.

(9) “Bid” means a written or oral monetary commitment to purchase land or interest in land offered at the specified time and place by a person eligible to participate in an auction process as specified by the Division in accordance with OAR 141-067-0220 of these rules.

(10) “Deed” means a written, legal instrument that conveys an estate or interest in real property when it is properly executed and delivered.

(11) “Director” means the Director of the Division of State Lands or the Director’s designee.

(12) “Division” means the Division of State Lands.

(13) “Division Estimate of Value” is the monetary value of a land parcel established by the Division and approved by the State Land Board based on a critical review of the appraisal report, any review appraisal information, and supporting data. The value may, in the discretion of the Director, include the cost of appraisal, advertising and related pre-sale costs as identified by the Division.

(14) “Easement” is an authorization granted by the Division that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. The Division offers three (3) types of easements: temporary, term, and permanent. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(15) “Economic Analysis” means a review of the revenue, expenditures and valuation trend for a specific parcel or parcels.

(16) “Environmental Review” means an investigation of the past uses and physical character of a property to determine the extent, if at all, that hazardous materials may be present.

(17) “Forestlands” are Trust or Non-Trust Lands classified for management for the production of commercial forest products.

(18) “Hazardous Materials” means any substance or material that is governed or regulated by any statute, regulation or rule, order, finding or directive promulgated, issued or enacted by a federal, state or local government entity and that relates to industrial hygiene or environmental protection, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C.A. Sections 6901-9675 (West 1983) and any successor provisions, and the Resources Conservation and Recovery Act (RCRA), 42 U.S.C.A. Sections 6901-6992 (West 1983) and any successor provisions.

(19) “High Bid” means the highest monetary commitment to pay to purchase land offered by a person eligible to participate in a land sale auction.

(20) “Highest and Best Use” means an appraiser’s supported opinion of the most probable and legal use of property, based on market evidence, as of the date of valuation.

(21) “Historically Filled Lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible lands by artificial fill or deposit and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible lands by other than artificial fill or deposit.

(22) “Individual person” means, for the purposes of OAR 141-067-0230, a single human being and does not include such entities as a corporation, public agency, political subdivision or association.

(23) “Industrial/Commercial/Residential Lands” are a wide variety of Trust and Non-Trust Lands classified for management for a broad range of commercially viable uses including, but not limited to: manufacturing, restaurants, and multi-family housing.

(24) “Land Exchange” means a simultaneous conveyance of land or interest in state land for land or interest in land of another entity of equal value (either appraised or Division-estimate of value).

(25) “Lease” means a valid enforceable contract between the Division and another party for the use of a specific area of state land for a specific use under specific terms and conditions.

(26) “Market Value” or “Fair Market Value” means the most probable price in cash, or terms equivalent to cash, which land or inter-

ests in land should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(27) “Mineral Lands” are Trust and Non-Trust Lands classified for management for commercial mineral extraction and production due to the existence of valuable, commercially extractable minerals including, but not limited to: metallic, non-metallic and industrial minerals, natural gas or sand and gravel.

(28) “Mineral Potential Analysis” is an analysis of the subsurface mineral interests of a parcel to determine if any minerals exist in commercially valuable and extractable abundance.

(29) “Minimum Bid” is the lowest monetary commitment to pay to purchase land offered from a person eligible to participate at a land sale auction that the Division will accept.

(30) “Natural, Recreational and Cultural Resources Review” or “Resources Review” means a written report, compiled by the Division or its agent, of the water, fish, wildlife, plant, soil, geologic, scenic, recreational, historic, cultural and tribal resources present on a particular land parcel or group of parcels. The review includes consultation with various agency, private and tribal interests with knowledge and expertise of the specific resources and resource values.

(31) “New Lands” means the same as in ORS 274.905(1); those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created (before, on or after May 28, 1963) upon state-owned submersible or submerged lands by artificial fill or deposit and not including bridges, wharves and similar structures constructed upon state-owned submersible or submerged lands by other than artificial fill or deposit.

(32) “Non-Performing Asset” means a parcel or class of land for which the net operating income during a specific period is negative or where the rate of return is significantly less than expected from similarly classed land.

(33) “Non-Trust Lands” or “Statutory Lands” are both classifications of lands listed in ORS 273.251(5), (6) and (7).

(34) “Outstanding Interests/Encumbrances” are rights or interests in land held by an entity other than the Division.

(35) “Person” is an individual at least eighteen (18) years old, a political subdivision or public agency, or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the state of Oregon.

(36) “Pre-Exchange Agreement” is a non-binding agreement between the Division and an exchange applicant that sets out the terms of the exchange proposal and the responsibilities of each party to complete the exchange. The agreement, at a minimum, describes the lands to be exchanged; assigns responsibility for completion and payment of appraisals, advertising, closing and any special studies including environmental audits; and establishes a reasonable time schedule for completion.

(37) “Public Body” means the same as in ORS 274.905(2); a state agency or any port organized under the laws of Oregon or dock commission of any city of this state.

(38) “Quitclaim Deed” is a form of deed in which any interest the grantor possesses in the property described in the deed is conveyed to the grantee without warranty of title.

(39) “Rangelands” means Trust and Non-Trust Lands that are classified for management primarily for livestock grazing largely on uncultivated forage with limited improvements or development.

(40) “Reserved Price” means an amount of money stipulated by the Division as the amount to be paid for a parcel in the event there are no bidders.

(41) “Reserved Interest” means an interest in the land that is retained by the Division from a conveyance of the title to the state land.

(42) “Resource Values” means any of the various commodity values or non-commodity values, such as, but not limited to fish and wildlife habitat, historical features, recreational attraction, that are contained within the state land interests, surface and subsurface.

(43) “South Slough National Estuarine Research Reserve” is a component of the National Estuary Reserve System situated at South Slough (Coos County) established under ORS 273.553.

(44) “South Slough Management Commission” is the public body established in ORS 273.554 for the purpose of directing the management of the South Slough National Estuarine Research Reserve.

(45) "Special Interest Lands" are Trust and Non-Trust Lands classified for special management due to unique, special, or significant natural, recreational, scenic, historic, cultural or other resource value or economic value.

(46) "State Forester" is as described in ORS 526.005(3).

(47) "State Land" or "Land" means real property, including improvements, or any interest in real property (for example, timber or minerals) managed by the State Land Board and the Division of State Lands as Trust or Non-Trust Land.

(48) "State Land Board" or "Board" means the constitutionally created body consisting of the Governor, Secretary of State and the State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law. The Division of State Lands is the administrative arm to the State Land Board.

(49) "Subsurface Mineral Interests" are mineral interests that exist below the surface of the land such as, but not limited to oil; gas; energy, metallic, non-metallic and industrial minerals; and geothermal resources. Subsurface mineral interests do not include such materials as sand and gravel, common rock, topsoil, and other such materials found at or near the surface of the ground.

(50) "Trust Lands" or "Constitutional Lands" are all classifications of state lands listed in ORS 273.251(1), (2), (3), (4)(a), (b) and (c), and (8).

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

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0160

Eligibility to Apply to Purchase or Exchange Land

Unless otherwise indicated in these rules, any person who is at least 18 years of age and who is a citizen of the United States or who has declared an intention to become a citizen, may apply to purchase or exchange state land.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0170

Land Exchanges

(1) The Division may exchange any lands or interests in lands for any other lands for the purpose of accumulating larger and contiguous tracts of land and to meet objectives of the Asset Management Plan or the South Slough National Estuarine Research Reserve Management Plan. Exchanges may be made on the basis of value or acreage and the Division may accept a monetary payment as part of the consideration to the extent required for a fair transaction.

(2) Any person, as defined in these rules and who is eligible to do so, may submit an application to the Division to initiate a land exchange. The application shall be submitted on a form provided by the Division and shall clearly state the location of the state land to be acquired and the location of the applicant's land offered for exchange to the Division. The following additional information shall also be submitted:

(a) The total acres of land of each party within the exchange proposal;

(b) A listing of the adjacent landowners along with their current mailing address;

(c) Estimate of value of the applicant's land;

(d) A preliminary title report of the applicant's land;

(e) A listing of any leases in force on the applicant's land;

(f) A complete listing of any improvements on the applicant's land; and

(g) A waiver of permission allowing the Division or its authorized agent to enter upon the applicant's land for inspection and appraisal. The application shall be accompanied by the appropriate non-refundable application fee as required by OAR 141-067-0280 of these rules.

(3) The Division shall notify the applicant (by registered or certified mail) of receipt of the exchange application. Within not more than sixty (60) calendar days of receipt of the exchange application,

the Director may either reject the application, accept the application for further processing or request more information and later determine the merit of the application based on the information submitted. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. An additional non-refundable application fee shall not be required for an application that is resubmitted within one-hundred twenty (120) calendar days of its rejection.

(4) Following initial acceptance of the exchange proposal, the Division shall:

(a) Report the exchange proposal to the State Land Board;

(b) Enter into a pre-exchange agreement with the applicant;

(c) Complete a natural, recreational and cultural resource report (as described in OAR 141-067-0150(29) of these rules) and economic analysis (as described in OAR 141-067-0150(14) of these rules) of the lands involved in the exchange (these reports may be completed by the applicant, its agent or an agent of the Division as agreed to in the pre-exchange agreement);

(d) Complete an environmental review, as described in OAR 141-067-0150(16) of the lands to be acquired from the applicant;

(e) Complete the applicable elements of the public interest review process as described in OAR 141-067-0180 of these rules.

(5) The Division reserves the right to prioritize the processing of land exchange proposals according to the availability of funds, staffing, public benefit and income potential (for Trust Lands). The Division may group together similar land exchange applications for more efficient processing. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, public notices or other expenses may be a factor in the Division's prioritization of land exchange proposals.

(6) The Director shall, based on the results of the resources review, economic analysis, environmental review and public interest review (OAR 141-067-0180) determine whether or not to proceed with the land exchange proposal as presented; modify the land exchange in a mutually agreeable manner; or drop the proposal from further consideration.

(7) The Director shall present the final land exchange proposal to the State Land Board for approval prior to completing the transaction.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0180

Public Interest Review Process; Public Meetings and Hearings

To fully carry out the policies of this rule relating to public review of land sales and exchanges, the Division will do the following:

(1) Notify, in writing, all affected lessees (by registered or certified mail) and adjacent lessees and landowners (from a list provided by the applicant). Give such notice as soon as possible following the acceptance of an application. Lessees of lands considered for exchange shall be notified by certified or registered mail and be given notice that if a written protest is submitted to the Division within twenty (20) calendar days of the mailing a public hearing will be held on the exchange proposal. Such a hearing will be held in the manner described in OAR 141-067-0180(6) and (7) of these rules.

(2) Notify, in writing, as early as possible following acceptance of an application, all affected school districts, city and county governments, particularly the county governing body. The notice will specifically request each affected county's comment and concurrence with the application.

(3) Notify, in writing, as early as possible following acceptance of an application, those individuals and public interests groups that have indicated an interest in such proposals.

(4) Notify the Department of Administrative Services as described in OAR 141-067-0190 of these rules.

(5) Within thirty (30) calendar days of completing a pre-exchange agreement as defined in OAR 141-067-0150(33), advertise the proposed land exchange as a public notice in a newspaper of general circulation within the county within which the exchange lands are located and on the agency website. The notice shall be published at least once per week for a period of three (3) consecutive weeks and include a description of the exchange proposal as depicted in the pre-exchange

agreement; request public comment on the merits of the proposal; and identify the agency contact person.

(6) The Division may hold a public meeting at any time prior to final approval of the transaction by the State Land Board to present for public comment any land sale or exchange proposal. The Division shall give adequate notice of any such meeting(s) including invitations to interested parties, agencies and local governments and press releases and/or public notices in newspapers of general circulation within the county in which the proposal is located.

(7) When a lessee's written protest to a land exchange proposal has been received in accordance with OAR 141-067-0180(1) of these rules, the Division will hold a public hearing on the proposal. The hearing will be held at least forty-five (45) calendar days after the written protest has been received by the Division and all lessees of land considered for exchange will be notified by certified or registered mail. All comments by the lessees or their representatives and all other interested parties will be recorded and compiled in the hearing record.

(8) The State Land Board shall review and approve final land sale and exchange transactions at a Land Board meeting open to the public. The public shall be given an opportunity to testify to the Land Board.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0190

Compliance with the Department of Administrative Service (DAS) Rules for the Disposition and Acquisition of Real Property

(1) Before acquiring any land by purchase or exchange or offering for sale any land or interests in land, except as listed in OAR 141-067-0190 (3) of these rules, the Division will notify the Department of Administrative Services (DAS) as required by OAR 125-045. DAS will then notify other state agencies and political subdivisions.

(2) Prior approval from DAS is necessary for the sale of land when the sale is for less than the appraised value of the land or interest in land.

(3) The Division will seek certification of these rules (OAR 141-067) as permitted by OAR 125-045-0195.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0200

Sale of Submerged and Submersible New Lands

(1) New lands will be sold only on a case-by-case basis upon a thorough review of each application and only after the State Land Board determines that the public interest or public trust values of the new lands need not be preserved. These rules do not apply to submerged, submersible or new lands fronting upon the Pacific Ocean.

(2) Any public body or person, as defined in these rules and who is eligible to do so, with rights (as described in OAR 141-067-0200(9) and (11) of these rules) to purchase new lands shall submit an application on a form provided by the Division. An applicant applying to purchase submersible land will be required to acknowledge the character of the land being applied for and the title of the Division in the land; and to waive all claims against the Division for the return of the purchase price in the event that all or any part of the land are determined to not belong to the Division. A non-refundable application fee in the amount shown in OAR 141-067-0280 shall be included with the application. Incomplete applications or those from ineligible applicants shall be returned.

(3) Following receipt of a complete and eligible application, the Division shall:

- (a) Notify the applicant of the status of the application;
- (b) Complete a resources review including an analysis of the public trust values of the new land parcel and immediate proximity;
- (c) Complete the applicable elements of the public interest review including notifying DAS in accordance with OAR 141-067-0190; and
- (d) Complete the market value analysis and establish a preliminary estimate of the purchase price.

(4) Following notice of the commencement of processing of the application by the Division, the applicant shall have prepared, at the

applicant's expense, a survey of the land area included in the application. A registered land surveyor must complete the survey. The Division must give written approval of the surveyor prior to the start of the survey work. The survey must connect and conform to adjacent surveys acceptable to the Division, so far as practicable. The survey and map submitted by the applicant's surveyor to the Division must be notarized.

(5) The Division shall report to the State Land Board the results of the analysis of OAR 141-067-0200(3) and make a recommendation on whether or not to sell, lease or otherwise retain the new lands. The Division shall not proceed to dispose of the new land without the approval of the State Land Board. The Division shall notify the applicant and all interested parties of the Land Board meeting.

(6) Whenever an agency of the United States, while engaged in the promotion of navigation, creates new land and the adjoining or opposite upland or riparian land on the same side of the body of water is owned by a public body, the public body has the right to purchase the new lands as provided in OAR 141-067-0200 of these rules.

(7) The public body shall pay compensation to the Division for the new lands. The compensation shall be a sum equal to the difference between the market value of the subject parcel, consisting of the new lands and adjoining or opposite upland on the same side of the body of water, and the market value of the adjoining or opposite upland before the creation of the new land plus the administrative fee as required in OAR 141-067-0280 of these rules. The payment shall be made within one calendar year after notice by the Division of the creation of the new land. If the public body fails to make payment following the notice, the Division may dispose of the new land in accordance with these rules.

(8) If the public body and the Division fail to agree on the market value of the new land as determined in OAR 141-067-0200(7), the market value shall be determined by three (3) appraisers, one appointed by the public body, one by the Division, and the third by the first two appraisers. The determination of the three appraisers shall be final. The cost of the third appraiser shall be borne equally by the Division and the public body.

(9) In cases as in OAR 141-067-0200(2) where the new land and the adjoining or opposite upland or riparian land on the same side of the water body is owned by a person other than a public body, as defined in these rules, the person has the right to purchase the new lands in same manner as OAR 141-067-0200(7) and (8), except the person shall have six (6) calendar months to make payment after which the Division may dispose of the new land in accordance with these rules.

(10) In the event that a public body creates new land, the public body shall pay the Division the market value of the submerged and submersible land within one (1) calendar year of the notice by the Division of the creation of the new land. If the public body fails to make the payment within the time allowed the Division may dispose of the new land in accordance with these rules. Any disputes over the market value between the Division and the public body shall be resolved in the same manner as described in OAR 141-067-0200(8).

(11) When the new land is created by a person other than a public body or federal agency engaged in promoting navigation, such person has the right to purchase the new land. The purchase price shall be the market value of the pre-filled submerged and submersible land and a reasonable portion of the private benefit realized from the creation of the new land as an addition to the adjoining or opposite upland in front of the new land that has been created. The person shall pay the appropriate administrative fee as required in OAR 141-067-0280. If the person in this subsection fails to make payment within six (6) calendar months of the Division's notice, the Division may dispose of the new land in accordance with OAR 141-067-0220 of these rules.

(12) The Division will not convey any rights to minerals, oil, gas or sulfur on new lands.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0210

Sale of Historically Filled Lands

(1) Historically Filled lands will be sold only on a case-by-case basis upon a thorough review of each application and only after the

State Land Board determines that the public interest or public trust values of these lands need not be preserved. These rules do not apply to submerged, submersible or historically filled lands fronting upon the Pacific Ocean.

(2) In the event that the Division decides to sell historically filled lands, it may negotiate a sale price based upon the fair market value of the land discounted, when necessary and appropriate, to reflect the relative strength of the state's claim. The State Land Board must approve any sale made under OAR 141-067-0210.

(3) Any public body or person, as defined in these rules and who is eligible to do so, to purchase historically filled lands shall submit an application on a form provided by the Division. An applicant applying to purchase historically filled land will be required to acknowledge the character of the land being applied for and the title of the Division in the land; and to waive all claims against the Division for the return of the purchase price in the event that all or any part of the land are determined to not belong to the Division. A non-refundable application fee in the amount shown in OAR 141-067-0280 shall be included with the application. Incomplete applications or those from ineligible applicants shall be returned.

(4) Following receipt of a complete and eligible application, the Division shall:

- (a) Notify the applicant of the status of the application;
- (b) Complete a resources review including an analysis of the public trust values of the parcel and immediate proximity;
- (c) Complete the applicable elements of the public interest review including notifying DAS in accordance with OAR 141-067-0190; and
- (d) Complete the market value analysis and establish a preliminary estimate of the purchase price.

(5) Following notice of the commencement of processing of the application by the Division, the applicant shall have prepared, at the applicant's expense, a survey of the land area included in the application. A registered land surveyor must complete the survey. The Division must give written approval of the surveyor prior to the start of the survey work. The survey must connect and conform to adjacent surveys acceptable to the Division, so far as practicable. The survey and map submitted by the applicant's surveyor to the Division must be notarized.

(6) The Division shall report to the State Land Board the results of the analysis of OAR 141-067-0210(4) and make a recommendation on whether or not to sell, lease or otherwise retain the new lands. The Division shall not proceed to dispose of the historically filled land without the approval of the State Land Board. The Division shall notify the applicant and all interested parties of the Land Board meeting where the transaction is to be discussed.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
 Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
 Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0220

General Procedures for Land Sales (Except OAR 141-067-0200 and 0210)

(1) The Division may sell any lands or interests in lands, in order to meet objectives of the Asset Management Plan and the policies of these rules (OAR 141-067-0140). The general procedures described in OAR 141-067-0220 of these rules apply to the sale of all Trust and Non-Trust lands classified as rangelands, agricultural lands, forestlands, industrial/commercial/residential lands, mineral lands or special interest lands except as described in OAR 141-067-0200 and 0210. Refer to OAR 141-067-0230 for additional requirements for the sale of rangelands.

(2) Any person, as defined in these rules and who is eligible to do so as described in OAR 141-067-0160, may submit an application to purchase state land. All applications to purchase state land must be submitted on a form prescribed by the Division and contain a correct and precise description of the parcel(s) included in the land sale proposal. A boundary survey of the parcel(s) to be acquired may be required. The appropriate non-refundable application fee (as required in OAR 141-067-0280) must be submitted with the application in order to be considered a complete application. Incomplete applications or those received from ineligible applicants will be returned and the application fee refunded.

(3) Upon receipt of the application, and in order to determine the disposition of the land sale proposal, the Division shall initiate a preliminary review of the land sale application, including but not limited to:

(a) A determination if the parcel(s)/lot(s) described in the land sale application are legal lots as described in ORS 92;

(b) A determination, based on a preliminary title report conducted by the Division or its agent, of the Division's rights and interests in the land or interests in land described in the land sale application; and

(c) A determination that the proposal is consistent with the policies set forth in OAR 141-067-0140 of these rules.

(4) The Division shall notify, by registered or certified mail, the applicant and the lessee if applicable, of receipt of the land sale application. Within not more than sixty (60) calendar days of receipt of the sale application, the Director shall, based on the determinations as described in OAR 141-067-0220(3) of these rules:

- (a) Reject the application;
- (b) Accept the application for further processing, including but not limited to, the public interest review; or
- (c) Request more information and later determine the merit of the application based on the information submitted. A rejected application shall be returned to the applicant with the reasons for its rejection clearly stated. An additional non-refundable application fee shall not be required for an application that is resubmitted within one hundred twenty (120) calendar days of its rejection.

(5) The Division reserves the right to prioritize the processing of land sales proposals according to the availability of funds, staffing and income potential. The Division may group together similar land sale applications for more efficient processing and to attract more buyer interest. The willingness of applicants or other interested parties to pay for or share in the cost of appraisals, surveys, advertising or other expenses may be a factor in the Division's prioritization of land sales proposals.

(6) Following initial acceptance of the land sale proposal, as described above in OAR 141-067-0220(4) of these rules, the Division shall determine if the land or interests in land should be classified as "available for sale," based upon but not limited to, the results of the following:

(a) A natural, recreational and cultural resource review (as described in OAR 141-067-0150(30) of these rules) and/or economic analysis (as described in OAR 141-067-0150(15) of these rules) of the lands involved in the land sale proposal;

(b) The DAS notice process as described in OAR 141-067-0190 of these rules; and

(c) The applicable elements of the public interest review process as described in OAR 141-067-0180 of these rules.

(7) The Director shall determine, based on the results of the resources review, economic analysis, DAS notice process, public interest review and county government comment to:

(a) Classify as "available for sale" the land parcel(s) under consideration; or

(b) Not classify the lands as "available for sale." In the event the decision is to not classify the lands as "available for sale" the Division will terminate further processing of the land sale proposal. As soon as possible after the Director's determination, the Division shall notify the applicant and, if applicable, the lessee (by registered or certified mail) of the decision of the Director.

(8) Once the lands are classified as "available for sale":

(a) The Director shall determine the method of sale as described in OAR 141-067-0270 of these rules and notify the State Land Board;

(b) The Division or its agent shall take such action as is necessary to prepare a legal lot/parcel as described in ORS 92 or to otherwise prepare the land for sale by notifying the lessee or exercising the Division's authorities under any applicable lease contract provisions;

(c) The Division or its agent shall complete a land appraisal in accordance with the provisions of OAR 141-067-0310 of these rules; and

(d) The Division shall determine its estimate of land value (called the Division Estimate of Value) and submit it to the State Land Board for final approval as the minimum bid, reserve price or final purchase price, as applicable, depending on the approved method of sale. Any additional costs or sale terms and conditions, if known, shall also be reported to the State Land Board.

(9) The Division shall conduct the sale in accordance with the method of sale established by the Director in OAR 141-067-0270 of these rules and approved by the State Land Board.

(10) The Division shall give public notice of the proposed land sale by publication in a local newspaper of general circulation within the county where the proposed land sale is located and on the Division's website for at least one (1) day per week for at least three (3) consecutive weeks. The Division shall notify all landowners and lessees of land adjacent to the land being offered for sale of the sales procedure and all pertinent information concerning the proposed land sale.

(11) In the event the land sale is conducted by oral auction or sealed bid, the Division will accept the deposit of the apparent successful purchaser and return the deposits of all other auction participants. The Division will issue an earnest money agreement with the apparent successful purchaser to validate receipt of the deposit.

(12) All sales of land or interests in land are subject to final approval of the State Land Board. The Division may, at any time prior to the State Land Board's final approval, withdraw from the sale process any or all of the lands subject to the land sale. If lands are withdrawn from sale under these rules, any monetary deposit on the land is to be refunded to the owner.

(13) The successful purchaser shall enter into a sales agreement with the Division within thirty (30) calendar days of the State Land Board's final approval of the sale transaction.

(14) The Division shall issue a deed to the purchaser, as allowed in OAR 141-067-0250, as soon as all the terms and conditions of the sales agreement have been met. The failure of the purchaser to fulfill the sales agreement will void the sales.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0230

Sale Procedures for Rangelands/Common School Grazing Lands

(1) Once rangeland is classified by the Director as "available for sale" as described in OAR 141-067-0220, if a lessee has not already done so, a lessee may apply, on a form prescribed by the Division, to purchase the lands as described in OAR 141-067-0220 of these rules.

(2) A lessee is qualified to purchase rangeland under the provisions of OAR 141-067-0220 of these rules if the lessee meets all of the following requirements:

(a) The lessee is an individual person;

(b) The lessee is a resident of Oregon;

(c) The lessee owns, in fee simple, land immediately adjacent to the land classified as "available for sale" (lands are considered to be adjacent if their boundaries are common or intersect at a common point); and

(A) The lessee is in "good standing" with all lease terms and conditions; or

(B) The lease affords the lessee an opportunity to purchase the leasehold.

(3) Based on the lessee's representation of eligibility as shown on the application form, the Director shall certify that the lessee is qualified to purchase rangeland under OAR 141-067-0230(2) of these rules. The Division shall promptly notify the lessee of the Director's decision by registered or certified mail. The Director shall advise the lessee of deficiencies in the event the lessee is not certified as eligible in the land sale process as described in OAR 141-067-0230(2) of these rules.

(4) If a qualified eligible lessee does not respond to the Division's notice as described in OAR 141-067-0220(4) within ninety (90) calendar days of the sending date of the registered or certified mail notice, then the lessee shall be ineligible to participate in the land sale process described in OAR 141-067-0270(2)(d).

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0240

Final Land Sale Terms and Conditions; Closing

(1) The Director, subject to the approval of the State Land Board, shall determine the final terms and conditions of all sales or exchange

of land or interest in land. The Oregon Department of Justice, if required by law, shall review and approve the final terms and conditions of the sale or exchange.

(2) At the discretion of the Division, and after consultation with the purchaser/land exchange partner, the final closing of the transaction in accordance with the sale agreement or pre-exchange agreement, as applicable, may be conducted by a title and escrow firm licensed to do business in Oregon. The Division shall issue the closing instructions to the closing agent. Payment of closing costs and fees is discretionary for the Division and subject to negotiation between the interested parties.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0250

Type of Deed; Issuance of Deed; Certificates of Sale; Assignments; Recording

(1) Depending on the type of transaction, the Division shall offer the type of deed (for example: quitclaim deed or bargain and sale deed) that is the most legally defensible and best represents the known rights and interests held by the State Land Board in the land or interest in land being conveyed in the transaction.

(2) When the land sale process has been completed, including the payment of the purchase price or terms of the sale agreement have been fulfilled, the Director shall execute and deliver to the purchaser a deed in a manner and form prescribed by these rules and conveying all rights, title and interests in the land that the State Land Board has represented.

(3) All acts and decisions of the Division as to the legal title and the right of any person to a land sale agreement or deed from the Division are final.

(4) When a purchaser of land (other than rangeland) desires to make payments in installments as described in OAR 141-067-0290 of these rules, the Division shall, upon receipt of one-fifth or twenty percent (20%) of the purchase price of the land, deliver to the purchaser a certificate that the purchaser has contracted to purchase the land. Upon performance under the contract or payment of three-fifths or sixty percent (60%) of the purchase price and the receipt and documentation of a note or loan, and upon surrender of the certificate of sale, the purchaser, or their heirs or assigns of the purchaser, shall be issued a deed for the property by the Division.

(5) When a purchaser of Rangeland desires to make payments in installments as described in OAR 141-067-0290 of these rules, the Division shall upon receipt of all installments payments and any other fees, deliver to the purchaser or the heirs or assigns of the purchaser a bargain and sale deed for the purchased lands.

(6) All assignments of certificates of sale shall be executed and acknowledged in the same manner as a deed to land or real property. All requests for assignment of certificates shall be in writing. Written consent of the Division is required. The Division shall issue the deed to the assignee upon full payment of the purchase price or the remaining balance of the land sale contract, and receipt of the certificate of sale.

(7) The Division will record, in the appropriate county office, any and all deeds it receives as a result of a land exchange. The land purchaser or the land exchange partner shall be responsible for recording with the appropriate county records office any and all deeds it receives from the Division.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0260

Disposition of Funds Received for Trust Land Sales and Funds from Trust Land Exchanges

The proceeds of any Trust land sale or from land exchange equalization payments for Trust lands shall be deposited in the land revolving fund of the Common School Fund as established in ORS 273.413, unless directed otherwise by the Director.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0270

Methods for Conducting Land Sales

(1) The Director shall establish the appropriate method for conducting a land sale based upon the policies described in OAR 141-067-0140 and as set forth in these rules.

(2) The following methods shall be used:

(a) Direct sale at Division-estimated value. This method is generally reserved for the sale of: new lands, as directed in OAR 141-067-0200 of these rules and ORS 274.925, 274.929, 274.932, 274.937; historically filled lands as described in OAR 141-067-0210 of these rules; and certain Trust and Non-Trust land transactions involving agencies of the federal government with powers of eminent domain.

(b) Direct sale at Division-estimated value with reversionary rights, existing leases or other reserved interests, limitations and encumbrances. This method is reserved principally for land sales to state agencies and political subdivisions and is aimed at assuring that the land, once transferred, will continue to be used for public purposes.

(c) Direct sale, as provided by ORS 270.010(2), to: a qualified lessee, or if not applicable, to an adjacent landowner at a sale price based on a Division-estimated value. This method is reserved for Non-Trust lands.

(d) Sale to the highest bidder via oral or sealed bid auction or combination thereof; minimum bid or reserve price approved by the State Land Board based on Division-estimate of value. This method is reserved for all classes of Trust and Non-Trust land except as otherwise described in these rules.

(e) Sale to the highest bidder via oral or sealed bid auction with an eligible lessee having the right to bid last to exceed the final high bid; minimum bid or reserve price approved by the State Land Board based on Division-estimate of value. This method is reserved for qualified rangeland lessees as described in OAR 141-067-0230 or for those lessees with lease contract terms and conditions that clearly and explicitly provide this opportunity.

(f) Negotiated sale. This method allows for the Division to negotiate or bargain for the highest sale price possible from among interested parties. This method is reserved for rare circumstances when other sale methods have failed to elicit sufficient buyer interest to stimulate a sale (for example: a land parcel totally enclosed within the ownership of a single private party and no public access is available to the property) and a sale of the land is deemed to be in accordance with the policies set forth in OAR 141-067-0140 of these rules.

(3) The Division reserves the right, but not the obligation, to offer all property to lessees, followed by adjacent landowners and others as required by ORS 270.010(2) when the Director determines that doing so will provide the greatest benefit for the people of the state and not conflict with the Division's constitutional and statutory obligations.

(4) Prior to commencing the land sale process, the Director shall report to the State Land Board the land sale method chosen for each sale and the reasons supporting the choice of sale method. The State Land Board shall approve the land sale method.

(5) In the event the sale method selected involves an auction, the Division shall establish the sale procedures to be followed including, but not limited to: the form and schedule for sealed bid submittals; the amount of deposit required; the time and location of the bid openings and/or oral auction; the minimum bid or reserve price; preliminary terms and conditions of sale; payment options and any additional costs to be borne by the successful purchaser. The Division shall fully disclose these procedures and all other pertinent information to the public as well as give ample advance public notice of the auction.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0280

Application Fees

(1) The application fee for all land sales or land exchanges, except new lands, historically filled lands and formerly submerged and submersible land, is two hundred and fifty dollars (\$250) per application. A single application may include multiple land parcels; however, the Director may determine if additional application fees are necessary.

(2) The application fee for land sales involving new lands, historically filled lands and formerly submerged and submersible lands is five hundred dollars (\$500) per application.

(3) All application fees are non-refundable except as noted in these rules.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0290

Payments for Land Purchases; Payments for Land Exchanges; Contracts; Default

(1) The purchaser of land sales approved by the State Land Board shall pay, in full, the purchase price of the land or interest in land sold to the purchaser in accordance with the terms and conditions of the sale agreement.

(2) A land exchange partner shall pay, in full, any payment required as a part of a State Land Board-approved land exchange in accordance with the terms and conditions of the deed or binding land exchange agreement.

(3) Any purchaser may enter into a land sale contract with the Division for a period not exceeding five (5) calendar years beginning from the date of issuance of the certificate of sale. The payment schedule and the interest rate to be charged on the deferred payments shall be established by the Division and shall be based on the prime rate plus two percent (2%).

(4) Any purchaser of rangeland deemed eligible under OAR 141-067-0230 may pay at least ten percent (10%) of the purchase price at the time of purchase, and may then enter into a ten (10) year land sale contract with the Division to pay the remainder in ten (10) equal annual installments with the interest rate fixed by the Division in accord with ORS 327.425.

(5) If any installment payment, including principal or interest, remains unpaid for one (1) year after the payment is due, the sale contract shall be canceled by the Division; all payments forfeited; and the land considered available for sale or lease as if it had not been previously contracted to be sold.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0300

Procedures for Resolving Claims to Formerly Submerged or Submersible Land (does not apply to lands described in OAR 141-067-0200 or 0210)

(1) The State Land Board authorizes the Division to issue quitclaim deeds to resolve a cloud of ownership over formerly submerged and submersible land. Such lands may be disposed of only after the Division has completed a thorough and complete review of the facts and determined the extent, if any, of the state's ownership interest in the disputed land parcel. Such disputed lands may be, but are not limited to, parcels that once were submerged and/or submersible land but due to accretion or avulsion are no longer connected to or a part of a state-owned navigable waterway. In some cases, the Division may have relinquished its ownership interest long ago but the local government continues to carry it on the tax rolls as state-owned.

(2) In exchange for a quitclaim deed to disputed parcels of formerly submerged and submersible lands, the Division shall, where feasible and in the best interests of the public to do so, require the quitclaim grantee to issue a similar quitclaim to the Division for the existing submerged and submersible land fronting and abutting the grantee's land on the waterway as it exists at the time of the transaction.

(3) The Division shall notify the Department of Administrative Services prior to completing any transaction authorized by OAR 141-067-0300.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985
Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0310**General Requirements for Appraisals**

Appraisals conducted either for land sales, purchases or exchanges shall comply with the requirements set forth as follows:

(1) Be conducted in accordance with the most current Uniform Appraisal Standards for Federal Land Acquisitions if required;

(2) Be conducted by a State of Oregon-licensed appraiser who is deemed by the Division and all involved parties to be competent, reputable, and impartial and has the training and experience in appraising property similar to the property involved in the appraisal assignment.

(3) Unless directed otherwise by the Division and involved parties, the appraisal shall estimate the fair market value of the property subject to appraisal based on its highest and best use, taking into account the contributory value of any and all interest in lands such as water rights, minerals, or timber to the extent that such interests are consistent with the highest and best use of the property.

(4) The appraisal report shall include sufficient description of the property, highest and best use analysis, valuation methodology and support materials to fully document and justify the estimate of fair market value.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0320**Procedures for Evaluating Mineral Potential**

(1) When subsurface mineral interests are to be included in a proposed land sale or land exchange the Division or its agent shall conduct a thorough investigation of the mineral potential of the parcels in order to determine if any mineral potential exists.

(2) The Department of Geology and Mineral Industries may conduct the mineral potential analysis for the Division.

(3) For proposed land exchanges, the mineral potential of both the land exchange partner's land and the Division's land are to be evaluated.

(4) When the Division deems it necessary an actual mineral appraisal may be required for a land exchange or land sale.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0330**Procedures for Land Purchases including Donations**

(1) Except for the purchase of Trust lands, the Division shall adhere to the requirements and procedures described in the Department of Administrative Service's rules for the Disposition and Acquisition of Real Property Interests (OAR 125-045).

(2) Lands to be acquired for addition to the South Slough National Estuarine Research Reserve shall be approved by the South Slough Commission and the State Land Board.

(3) Lands to be acquired by the Division through either purchase or donation shall be approved in advance by the State Land Board and shall be consistent with the policies set forth in the Asset Management Plan and OAR 141-067-0140 of these rules.

(4) In acquiring land by purchase, the Division shall pay an amount equal to the price a prudent purchaser would pay under similar circumstances.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

141-067-0340**Appeals**

A land exchange or land sale applicant or any other person directly affected by a decision of the Division or the Land Board may request reconsideration of the decision.

(1) The request shall be received by the Director no later than thirty (30) calendar days after the delivery of the decision.

(2) The Director shall review the request within sixty (60) calendar days after the date of delivery of the request.

(3) The Director may recommend to the Land Board either that the decision be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(4) There is no opportunity to request reconsideration of a land sale or land exchange once the transaction has occurred and title has passed from the State of Oregon to the purchaser or land exchange partner.

(5) If the Director recommends that the Land Board initiate a contested case proceeding, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Stats. Implemented: ORS 270.005-190, 273.045, 273.245-247, 273.251-311, 273.316-321, 273.413-456, 274.040, 274.905-940 & 274.960-985

Hist.: DSL 2-2002, f. 4-12-02, cert. ef. 7-1-02

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 quit-claim of the leased premises if the original lease was recorded.

Stat. Auth.: ORS 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 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 3-1988, f. & cert. ef. 9-19-88

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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 subdivision 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 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 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 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 273

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 44, f. & ef. 8-16-77

DIVISION 73

**RULES GOVERNING THE RELEASE, SALE
OR EXCHANGE OF MINERAL RIGHTS HELD BY
AGENCIES OF THE STATE OF OREGON OTHER
THAN THE DEPARTMENT OF STATE LANDS
AND STATE LAND BOARD**

141-073-0100**Purpose and Applicability**

(1) These rules govern the release, sale or exchange of mineral rights held by agencies of the State of Oregon other than the State Land Board and the Department of State Lands.

(2) The procedures contained in these rules shall be used by the State Land Board and the Department to review proposed releases, sales or exchanges of properties by state agencies to determine if the state should release, sell or exchange the mineral rights that may be a part of these properties.

(3) These rules do not apply to the release, sale or exchange of mineral rights held by the State Land Board and administered by the Department. These activities are governed by the Rules Governing the Sale, Exchange and Purchase of Land (OAR 141-067).

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; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0105**Definitions**

(1) "Agency" or "State Agency" as defined in ORS 291.002(9) means every state officer, board, commission, department, institution, branch or agency of the state government whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Public Defense Services Commission; and

(c) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) "Department" means the Department of State Lands.

(3) "Director" means the Director of the Department of State Lands or designee.

(4) "Geothermal Resource" as defined in ORS 522.005(11) means 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 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) "In-Depth Evaluation" is a comprehensive review conducted by a mineral resource consultant of the economic geology of the area where a mineral right occurs. The purpose of this evaluation is to determine if significant mineral and/or geothermal resources exist in or proximate to the mineral right, and to establish a value for the mineral right. This evaluation involves a comprehensive review of geologic reports and maps as well as any publicly available exploration data. It may also involve a field visit to examine the geology of the area where the mineral right occurs; the taking and analysis of samples; and the performance of other mineral exploration field techniques. The mineral resource consultant will present the results of an in-depth evaluation to the Department in writing.

(6) "Mineral Reservation" is a clause in a deed that specifically retains all, or a portion of a mineral right.

(7) "Mineral Resource" refers to a concentration of naturally occurring solid, liquid, or gaseous material in or on the Earth's crust in such form and amount that economic extraction of a mineral commodity is currently or potentially feasible at some time in the future.

(8) "Mineral Resource Consultant" refers to the Oregon Department of Geology and Mineral Industries; a registered geologist with expertise in mineral resource appraisal or economic geology; or a state certified appraiser with expertise in mineral appraisal.

(9) "Mineral Right" is an ownership interest in the mineral and/or geothermal resources of a parcel of land. The owner of a mineral right may or may not be the owner of the surface of the parcel. A mineral right may include all metallic, non-metallic, and energy minerals (including oil and gas) as well as geothermal resources, or may specify/exclude some particular types of minerals (for example, limit mineral ownership to just the metallic and non-metallic minerals, or exclude ownership to the sand and gravel).

(10) "Non-Geothermal" refers to a parcel of land that is not known to contain geothermal resources based on geothermal exploration and other geologic information or is not located in a geologic setting that appears to be favorable for the occurrence of geothermal resources.

(11) "Non-Mineral" refers to a parcel of land that is not known to contain mineral resources based on mineral exploration and other geologic information, or is not located in a geologic setting that appears to be favorable for the occurrence of mineral resources.

(12) "Person" is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

(13) "Preliminary Evaluation" is an initial, cursory review conducted by a mineral resource consultant of the economic geology/mineral potential of the area where a mineral right occurs. This evaluation involves a brief review of geologic reports and maps as well as what exploration data may be available. The purpose of this evaluation is to determine if potentially significant mineral and/or geothermal resources may exist in or proximate to the mineral right, and if an in-depth evaluation is warranted. The mineral resource consultant will present the results of a preliminary evaluation to the Department in writing.

(14) "Relative Value" is an estimate of the non-monetary value of a mineral and/or geothermal resource relative to another mineral or geothermal resource. A relative value may be expressed in terms of how closely the geologic characteristics of the mineral and geothermal resources of one mineral right compare to another.

(15) "Release" means the transfer of ownership of a mineral right to another person.

(16) "Significant Mineral or Geothermal Resources" means that the Department determines, based on a preliminary or in-depth evaluation, that mineral and/or geothermal resources could be economically developed in the future.

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; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0110**Policies**

(1) ORS 273.780 requires that:

(a) The mineral rights in property owned by any agency of the State of Oregon, or retained by a state agency after the sale or exchange of such property, are the property of the State of Oregon.

(b) Except as provided in ORS 273.785:

(A) Proceeds from the mineral rights held by the state shall accrue to the Common School Fund, and

(B) The State Land Board shall act for the state in any transaction involving the exploration for, or development, sale or exchange of mineral rights belonging to the State of Oregon.

(C) All mineral rights owned by the State of Oregon shall be retained by the state unless the State Land Board determines that the sale or exchange of the rights is for the purpose of "...obtaining the greatest benefit for the people of this state consistent with the conservation of lands under its jurisdiction under sound techniques of land management..." as provided by Article 8, Section 5(2) of the Oregon State Constitution.

(2) The Department shall administer these rules to ensure to the greatest extent possible that agencies applying for a release of state-owned mineral rights receive timely, consistent, predictable and fair treatment.

(3) The Land Board will not authorize a release, sale or exchange of a mineral right without first making a finding that the release, sale

or exchange is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the conservation of lands under its jurisdiction under sound techniques of land management.

(4) No mineral right shall be released, sold or exchanged without Land Board review and approval.

(5) The evaluation of mineral and geothermal resources is often difficult and costly. The accuracy of an evaluation or determination of the value of a mineral right is highly contingent on how much geologic and exploration data are available for review. Unless the Department determines that:

(a) There is a good possibility based on a preliminary evaluation by a mineral resource consultant that significant mineral and/or geothermal resources could occur in the land bounded by a mineral right; and

(b) Significant revenue would be received by the Common School Fund from the sale of the mineral right, the Department will not spend its financial resources to retain the services of a mineral resource consultant to conduct a more in-depth evaluation of the value of the mineral right.

(6) The Department will proceed with the processing of applications for the release, sale, or exchange of mineral rights only to the extent that staff availability and budget permit.

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; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0115

Mineral Right Release, Sale and Exchange Application Process

(1) State agencies that want to release, sell or exchange mineral rights shall notify the Department in writing of the details of the proposed release, sale or exchange at least sixty days prior the date of the proposed transaction. This notification shall include:

(a) The legal description of the subject mineral rights to be conveyed as contained in the deed;

(b) A legal description of the property limits on which the subject mineral rights occur;

(c) A tax lot map on which the boundaries of the subject property and mineral rights are identified;

(d) A map showing the location of the subject property and mineral rights relative to urban growth boundaries;

(e) The zoning of the land on which the mineral right is located;

(f) Any appraisals that have been conducted of the property, particularly those that address the value of the subject mineral rights;

(g) Any geologic reports, mineral and geothermal resource evaluations, appraisals, and other relevant information concerning the subject mineral rights held by the agency requesting the release, sale or exchange of the mineral rights;

(h) The reason(s) the agency wants to release, sell or exchange the mineral rights;

(i) The name, address, and telephone number of the person who wants to acquire the subject state-owned mineral rights;

(j) The consideration being offered by the person requesting the release, sale or exchange of the state-owned mineral rights; and

(k) Documentation that the agency requesting the release, sale or exchange has completed the Department of Administrative Services' surplus property process (OAR 125-045).

(2) Upon receipt of the written notification, the Department will review it for completeness. If the notification is determined by the Department to be incomplete, the Department will contact the agency to advise it of what additional information is required.

(3) If the notification is determined by the Department to be complete, the Department shall process it in accordance with the procedures provided in OAR 141-073-0118 and 141-073-0119.

(4) The Department may, at its discretion, use any geologic reports or mineral and geothermal resource evaluations and appraisals provided by an agency requesting the release, sale or exchange of mineral rights instead of retaining a mineral resource consultant as provided in OAR 141-073-0118 through 141-073-0119.

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; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0118

Mineral Right Release or Sale Process

(1) If the subject mineral right proposed for release or sale is owned by an agency other than the Department:

(a) The Department shall request a mineral resource consultant to conduct a preliminary evaluation of the mineral right. This evaluation will be the opinion of the mineral resource consultant regarding the actual or possible presence, extent and grade of, and demand for the mineral resources within the mineral right, and will be presented in writing to the Department.

(b) If no significant mineral or geothermal resources are believed by the mineral resource consultant to exist, the Department will submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them.

(2) If the mineral resource consultant's preliminary evaluation to the Department indicates that significant mineral and/or geothermal resources exist within the limits of the mineral right, and any revenue derived from the mineral right would:

(a) Not accrue to the Common School Fund, the agency submitting the request for release or sale of the mineral right shall, at their own cost, retain a mineral resource consultant to conduct an in-depth evaluation to determine a value for the mineral and geothermal resources.

(b) Accrue to the Common School Fund, the Department may either retain a mineral resource consultant to conduct an in-depth evaluation to determine a value for the mineral and geothermal resources, or advise the agency that it will not release the mineral right for sale or exchange.

(3) If the mineral resource consultant's in-depth evaluation indicates the presence of significant mineral and/or geothermal resources within the limits of the mineral right, the Department may either:

(a) Advise the agency that it will reserve the mineral right, or

(b) After receipt of Land Board approval, sell the mineral right at a value based on either the mineral resource consultant's in-depth evaluation plus any cost incurred by the Department to retain the consultant, or for a price negotiated by the Department.

(4) If the mineral consultant's in-depth evaluation determines that no significant mineral and/or geothermal resources exist within the limits of the mineral right, the Department shall submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them.

(5) As provided in OAR 141-073-0115(4), the Department may, at its discretion, use information provided by the agency requesting the release or sale of mineral rights instead of using/requiring a mineral resource consultant for some or all of the reports and evaluations required.

Stat. Auth.: ORS 273.045, 273.775 - 273.79 & OR Const., Art. VIII, Sec. 5

Stats. Implemented: ORS 273.775 - 273.79

Hist.: DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0119

Mineral Right Exchange Process

(1) If the subject mineral right proposed for exchange is owned by an agency other than the Department:

(a) The Department shall request a mineral resource consultant to conduct a preliminary evaluation of the state-owned mineral right(s) as well as the right(s) being offered for exchange. This preliminary evaluation will be the opinion of the mineral resource consultant regarding the actual or possible presence of mineral resources within the mineral rights, and will be presented in writing to the Department.

(b) If the mineral consultant's preliminary evaluation to the Department indicates that no significant mineral or geothermal resources exist within the mineral rights held by the state or those being offered for exchange, the Department will submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them in exchange for their mineral rights.

(c) If the mineral resource consultant's preliminary evaluation to the Department indicates that significant mineral and/or geothermal resources may occur within the limits of any of the mineral rights proposed for exchange, the Department may either:

(A) Advise the agency proposing the exchange that it will reserve the state-owned mineral right; or

(B) Request that the agency retain at its own cost a mineral resource consultant to conduct an in-depth evaluation of each of the mineral rights proposed for exchange. The purpose of this evaluation will be for the mineral resource consultant to develop a relative value

for each mineral right. To establish this relative value, the following factors, at a minimum, are to be considered:

- (i) Types of minerals reserved;
- (ii) Geologic setting and the likelihood that mineral or geothermal resources could occur in that setting;
- (iii) The location of the mineral right relative to the infrastructure required to develop it; and
- (iv) Possible markets for any mineral or geothermal resources. This in-depth evaluation will not be an appraisal of the monetary value of each mineral right, but rather the opinion of the mineral resource consultant regarding the actual or possible presence, extent and grade of, and demand for the mineral resources within each mineral right, and a comparison of one mineral right to another.

(d) If the mineral resource consultant's preliminary or in-depth evaluation indicates that the mineral rights of the parcels to be exchanged are of approximately equivalent relative value, the Department may either advise the agency that it will not exchange the mineral rights, or submit the request to the Land Board for its consideration. If the Land Board approves an exchange, the Department will authorize the exchange to proceed and release the state-owned mineral rights to the agency/person applying for them in exchange for their mineral rights.

(e) If the mineral resource consultant's preliminary or in-depth evaluation to the Department indicates that the value of one mineral right is substantially greater than the other, the Department will advise the agency proposing the exchange of this inequality and the possible need to make adjustments to the trade.

(f) The Department will not release state-owned mineral rights having a value that is greater than those being offered in exchange unless it finds that the greatest benefit for the people of this state is obtained through the exchange.

(2) As provided in OAR 141-073-0115(4), the Department may, at its discretion, use information provided by the agency requesting the release or sale of mineral rights instead of using/requiring a mineral resource consultant for some or all of the reports and evaluations required.

Stat. Auth.: ORS 273.045, 273.775 - 273.79 & OR Const., Art. VIII, Sec. 5
Stats. Implemented: ORS 273.775 - 273.79
Hist.: DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0125

Form of Reservation

Whenever mineral or geothermal resources rights are retained in 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.

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; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

Minerals Registry

141-073-0215

Minerals Registry

(1) Pursuant to the provisions of ORS 273.790, the Department shall establish and maintain a registry of mineral and geothermal resource rights placed under the jurisdiction of the State Land Board.

(2) This registry shall be used by the Department, all state agencies, and the public to know:

(a) The location of mineral rights owned by the State of Oregon; and

(b) The availability of these rights for exploration and mineral leasing.

(3) The registry shall identify the surface owner wherever possible.

(4) State-owned mineral and geothermal resource rights in parcels of less than 40 acres shall not be listed in the registry.

(5) All state agencies owning mineral and geothermal resource rights shall report changes in the ownership status of those rights in writing to the Department within 30 days of such changes. Changes include, but are not limited to the purchase, sale or exchange of mineral rights or parcels containing mineral rights. The Department shall add data concerning such purchases, sales or exchanges of mineral rights or parcels containing mineral rights to the registry upon receipt of written notification.

(6) The Department shall maintain a record of the issuance, expiration, or cancellation of each mineral or geothermal resource lease.

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; Renumbered from 141-073-0225, 141-073-0230, 141-073-0240, 141-073-0250, DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

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 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 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 archaeological 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) "Commingleing." 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 or 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 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 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 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 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 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 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 sought to be leased.

Stat. Auth.: ORS 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 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 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 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 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 21-1974(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 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 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 and 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 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 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 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 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 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 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 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 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 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 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 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 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. & cert. 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 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 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 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 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 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 141-075-0230 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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 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

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: Publications referenced are available from the agency.]

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

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 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 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 274

Stats. Implemented: ORS 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

DIVISION 82

RULES GOVERNING THE MANAGEMENT OF, AND ISSUING OF LEASES, LICENSES, TEMPORARY USE PERMITS AND REGISTRATIONS FOR STRUCTURES ON, AND USES OF STATE-OWNED SUBMERGED AND SUBMERSIBLE LAND

141-082-0000

Purpose and Applicability

These rules:

(1) Govern the management of state-owned submerged and/or submersible land for a wide variety of commercial and non-commercial uses and structures such as, but not limited to:

- (a) Aquaculture facilities;
- (b) Marine industrial facilities;
- (c) Marine service facilities;
- (d) Floating homes and floating home moorages;
- (e) Fish processing facilities;
- (f) Log raft and log storage booming areas;
- (g) Log salvage;
- (h) Wharves;
- (i) Navigation aids;
- (j) Combination structures;
- (k) Marinas, including owner-oriented facilities; boat ramps; docks; floats; boat houses; and

(1) Non-marine uses (for example, restaurants, warehouses, offices, motels, and dwellings).

(2) Establish procedures for authorizing structures on, and uses of state-owned submerged and/or submersible land by lease, registration, temporary use permit or public facility license.

(3) Do not pertain to the management of state-owned submerged and/or submersible land for the removal of sand and gravel, mineral exploration, granting of easements, or leasing of upland created from state-owned submerged and/or submersible land. These uses/activities are covered under separate Division rules.

Stat. Auth.: ORS 196.800 - 196.990, 273.045 & 274.005 - 274.994

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0010

Policies

(1) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and/or submersible land) have been placed by the Legislature under the jurisdiction of the State Land Board and the Division, as the administrative arm of the State Land Board.

(2) The State Land Board, through the Division, 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 Constitution.

(3) State-owned submerged and/or submersible land is managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values.

(4) No person shall place a structure on, or make use of state-owned submerged and/or submersible land without the required authorization described in these rules unless the structure or use is exempt from such authorization by law or these rules. Ownership of state-owned submerged and/or submersible land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.

(5) All uses of state-owned submerged and/or submersible land shall conform to local (including local comprehensive land use planning and zoning ordinance requirements), state, or federal laws.

(6) An applicant shall be ineligible for an authorization under the provisions of these rules if the proposed use:

- (a) Is inconsistent with local, state, or federal laws;
- (b) Is not in compliance with these rules;
- (c) Would result in an unreasonable interference with the public trust values of commerce, navigation, fishing and recreation;
- (d) Would have unacceptable impacts on public health, safety or welfare, or natural resource values; and
- (e) Is prohibited by a State Land Board or Division adopted area closure, use restriction, or waterway management plan.

(f) Is inconsistent with any endangered species management plan adopted by the Division under the Oregon Endangered Species Act (ORS 496.171-496.192).

(7) The Division shall administer these rules to ensure to the extent possible that:

(a) The people of Oregon receive fair compensation for the use of state-owned submerged and/or submersible land reflective of local market conditions;

(b) Persons applying for, and holding an authorization to use state-owned submerged and/or submersible land receive consistent, predictable, and fair treatment; and

(c) Public trust values (commerce, navigation, fishing, and recreation) are supported, protected, and enhanced.

(8) The Division may, at its discretion, deny a lease application or lease renewal to use state-owned submerged and/or submersible land if the applicant's financial status and/or past business/management practices indicate that s/he may not:

(a) Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the Division; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-082-0010(2) and (3).

(9) No person or lessee shall request from any government agency a change in the zoning or approved uses of a parcel of state-owned submerged and/or submersible land without first applying to, and receiving written approval from the Division to request such a change.

Stat. Auth.: ORS 196.800 - 196.990, 273.045 & 274.005 - 274.994

Stats. Implemented: ORS 274

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; DSL 1-1998, f. & cert. ef. 1-6-98; DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0020

Definitions

(1) "Actual Annual Slip" or "Boat Rental Income" means the gross revenue received by a lessee during the prior year from the rental or subleasing of slips, boat rental, or similar activities within the authorized area.

(2) "Adjacent Riparian Owner" or "Riparian Owner" means a person holding recorded title to property that fronts or abuts state-owned submerged and/or submersible land.

(3) "Adjacent Riparian Tax Lot" means the non-Division-owned portion of a tax lot that fronts or abuts state-owned submerged and/or submersible land.

(4) "Annual Lease Rental Payment" means the amount of money a lessee pays each year to the Division of State Lands for the use of a specific area of state-owned submerged and/or submersible land for an authorized use under specific terms and conditions.

(5) "Applicant" is any person applying for authorization to use state-owned submerged and/or submersible land.

(6) "Appraised Value" means an estimate of current fair market value of property (expressed in dollars per square foot) derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(7) “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 the hatching, seeding or planting, cultivating, feeding, raising, and/or harvesting of planted or natural crops so as to maintain an optimum yield, and the processing of aquatic plants or animals.

(8) “Assessed Value” means the current value in dollars per square foot assigned to the land within the adjacent riparian tax lot or comparable tax lot by the county tax assessor.

(9) “Assignment” means a transfer by the lessee of the rights of use and occupancy of the leasehold to another legal entity, including for benefit of creditors (for example, mortgages).

(10) “Authorization” means a lease, registration, temporary use permit, or public facility license issued to an applicant by the Division conveying a right to limited use of state-owned submerged and/or submersible land for a specific and defined purpose for a fixed period of time. All uses of state-owned land other than transient uses must be authorized by the Division through a written authorization.

(11) “Authorized Area” is the area of state-owned submerged and/or submersible land which the Division allows a structure to occupy or person to use through a lease, registration, temporary permit or public use facility license. The authorized area shall encompass, at a minimum, all structures and directly associated uses of the water surface area.

(12) “Boat House” means a covered or enclosed structure used exclusively to store, shelter, or protect a boat or boats and boating equipment. A structure used in part, or only occasionally for any purpose other than to shelter or protect a boat or boats and boating equipment shall be considered a combination structure.

(13) “Combination Structure or “Combo” means a structure which is used for more than one (1) exclusive use, for example, the combination of a boathouse with a floating home, shelter, dwelling, recreation room, or any other structure or use.

(14) “Commercial Use” means an activity conducted on, within, or over state-owned submerged and/or submersible land for business purposes, including but not limited to: offices, stores, hotels, banks, marinas, restaurants, or retail service outlets.

(15) “Comparable Annual Slip Rental” means the estimated annual slip rental income from a non-commercial marina or moorage based upon the market value of the slips and taking into account location and condition of the facility and the actual or estimated occupancy.

(16) “Director” means the Director of the Division of State Lands or designee.

(17) “Division” means the Division of State Lands.

(18) “Dock/Float” means an individual secured and stationary or floating structure (other than a mooring buoy) used exclusively for mooring boats and for similar uses.

(19) “Dolphin” is a cluster of piles or piling which is bound together.

(20) “Dwelling” means a structure designed or occupied as the permanent or temporary living quarters of one or more households which is usually equipped with cooking, bathing, toilet and heating facilities.

(21) “Fish Processing Facility” means a stationary structure where the cleaning, freezing, canning, preserving and/or storing of aquatic animal life are conducted.

(22) “Flat Rate Method” means a manner of calculating annual lease rental payment based on a fixed dollar amount per square foot of leasehold area that varies by use classification.

(23) “Floating Home” means a moored floating structure that is secured and stationary and is used primarily as a dwelling and not as a boat or floating recreational cabin.

(24) “Floating Recreational Cabin” is a moored floating structure, accessible only by boat, used wholly or in part as a dwelling, not physically connected to any upland utility services (for example, water, sewer, or electricity), and used only periodically or seasonally.

(25) “Gangway” means a walkway or access ramp which connects, and is used exclusively for the purpose of traversing from the upland to a dock/float, marina, floating home, boat house, or other structure.

(26) “Goods and Merchandise” means products and raw materials transported in pursuit of trade, business, and/or economic gain. Goods and merchandise does not include materials used by a vessel for its maintenance, alteration, or operation.

(27) “Government Functions” are activities federal, state or local government agencies are assigned to perform to protect the health and safety of the public they serve. A ship, boat or vessel exclusively engaged in helping to maintain public health and safety is said to be performing a government function. Examples of ships, boats or vessels exclusively engaged in the performance of a government function on Oregon’s waterways are those of the United States Navy, United States Coast Guard, United States Army Corps of Engineers, and various fire, police and sheriffs departments.

(28) “Historical Vessel” means a vessel listed or eligible for listing on the National Register of Historic Places.

(29) “Industrial Use” means an activity conducted on, within, or over state-owned submerged and/or submersible land for business purposes that involves the assembly, processing, or manufacture of products from raw materials or fabricated parts, or that renders services such as, but not limited to: storage warehouses, factories, or shipyards.

(30) “Lease” for the purposes of these rules, is a valid, enforceable contract executed by the Division and signed by the lessee allowing the use of a specific area of state-owned submerged and/or submersible land for a specific use under the terms and conditions of the lease and these rules.

(31) “Lease Anniversary Date” means the month and date the lease was initially entered into and on which, in subsequent years, the annual lease rental payment is due.

(32) “Leasehold” means the same as “Authorized Area.”

(33) “Line of Ordinary High Water” means the line on the bank or shore to which the high water ordinarily rises annually in season.

(34) “Limited Service Restaurant” means a restaurant serving only pre-wrapped sandwiches, or a single dish or food product, and nonperishable beverages as defined in ORS 624.010(4).

(35) “Line of Ordinary Low Water” means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(36) “Log Boom Area” means a water surface area bounded by floating, connected logs or other devices, used for confining loose logs, grading and sorting logs, making log rafts, or to feed whole or partially processed wood products to a mill.

(37) “Log Raft” means a group of loose or bundled logs which can be stored or moved on water.

(38) “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.

(39) “Marina” means a small harbor, boat basin, or moorage facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial and/or charter fishing, or tour boats. Incidental services include, but are not limited to the following: restrooms, showers, minor boat and motor repair; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; small office for marina management; club house and/or meeting room; vending machines; small retail area for marine, fishing and other outdoor supplies and equipment; ice, packaged beverages and foods; limited service restaurants; and temporary restaurants.

(40) “Marine Industrial/Marine Service” means structures or uses which are commercial or industrial in nature and which need to be located in or adjacent to water areas because the use requires water access. Such uses include, but are not limited to: ship, tug barge and workboat moorage and storage; vessel repair facilities; aquaculture facilities; and fish processing facilities.

(41) “Mooring Buoy” means a floating device anchored to the bed of a waterway to which a boat is fastened through the use of lines or ropes for the purpose of maintaining the boat in a stationary position in the water.

(42) “Multi-Family Dock” means a non-commercial dock, maintained and owned in common by several families, and situated nearby their residences, and where no dues or fees are required to be paid to use the dock. A multi-family dock is not an ownership oriented facility.

(43) “Navigation Aids” are structures or devices such as buoys, channel markers, beacons, approach and landing lights, and radio navigation and landing aids, etc., placed in or along a waterway, by or with the consent of appropriate public agencies, to aid persons engaged in navigation of a waterway or aviation.

(44) “Non-Marine Uses” means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to water areas. Such structures and uses include, but are not limited

to: apartments, hotels, motels, residences, restaurants, offices, retail stores, manufacturing plants, and warehouses.

(45) “Non-Commercial” means a use which does not result in and/or is not associated with any monetary consideration or gain. For example, a use which includes the renting, leasing, or sale of space would not qualify as “non-commercial.”

(46) “Ownership-Oriented Facility” means non-commercial facilities where the access and privilege to use is limited to a membership group of persons who pay dues or fees of some type to maintain membership and to operate the facility.

(47) “Person” is an individual at least eighteen (18) years old, a political subdivision or public agency, or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(48) “Pile” or “Piling” is a wood, steel, or concrete beam driven or jetted into the bed or bank of a waterway to secure a floating structure, log raft, or boat.

(49) “Preference Right” means a riparian property owner’s statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and/or submersible land that fronts and abuts the riparian owner’s property. The Division will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, shall have a preference right to the requested lease area.

(50) “Preference Right Holder” means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).

(51) “Protective Boom” or “Shear Boom” refers to logs or similar floating devices attached to each other to protect a structure or bank from floating debris, erosion or wave action.

(52) “Public Agency” means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.

(53) “Public Facility License” is a form of authorization issued by the Division to public agency owned, operated, and maintained transient use docks/floats, boat ramps, boat landings and/or viewing structures where no or minimal entry or use fees are charged; and navigation aids.

(54) “Public Trust Use(s)” means activities that support, protect, and enhance public trust values (commerce, navigation, fishing and recreation) including but not limited to short term moorage, camping, bank fishing, picnicking, and boating.

(55) “Redetermination” or “Redetermine” means, for the purposes of this rule, a revision, conducted in accordance with the administrative rulemaking process (ORS 183), of lease rental methods, formulas, classification or other factors as specified in OAR 141-082-0100.

(56) “Registration” is a form of authorization issued by the Division allowing a qualifying structure or use to occupy state-owned submerged and/or submersible land.

(57) “Residential Use” means an activity conducted on, within, or over state-owned submerged and/or submersible land devoted to, or available for single or multiple dwelling units, single-family homes, floating homes, apartments or condominiums.

(58) “Restaurant” means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants as defined in ORS 624.010(5).

(59) “Riparian Land Owner” or “Riparian Owner” is a person who owns riparian property.

(60) “Riparian Land Value Method” means a manner of calculating the annual lease rental payment by multiplying the assessed value times five (5) percent times the area of the leasehold for each use classification.

(61) “Riparian Property” means a parcel of land that fronts or abuts on state-owned submerged and/or submersible land.

(62) “State Land Board” means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund

as well as for additional functions placed under its jurisdiction by law. The Division of State Lands (Division) is the administrative arm to the State Land Board.

(63) “Structure” means anything placed, constructed, or erected over state-owned submerged and/or submersible land that is associated with a use that requires a lease, registration, temporary use permit, or public facility license.

(64) “Sublease” means a subordinate lease between the lessee and a third party of all or part of the leasehold, where the lessee remains contractually and primarily liable under the lease with the Division. A subordinate lease of part of the entire premises for a term less than one (1) year for the use authorized under the lease shall not require prior approval of the Division.

(65) “Submerged Land” means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(66) “Submersible Land” means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(67) “Temporary Use Permit” is an authorization issued by the Division to a person allowing the short term use, usually less than one (1) year, of a specific area of state-owned submerged and/or submersible land for a specific use under specific terms and conditions.

(68) “Temporary Restaurant” means the same as ORS 624.010(6), that is, any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. A temporary restaurant does not include:

(a) An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests.

(b) An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and services are under the direction of the school lunchroom supervisor.

(c) A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product. For the purposes of this paragraph, a sample shall not include a meal, an individual hot dish or a whole sandwich.

(d) A private residence, or part thereof, including the grounds, areas and facilities held out for the use of the occupants generally, for which a special retail beer or special retail wine license is issued under ORS 471.311 for a period not exceeding one day.

(69) “Transient Use” means any public trust use of state-owned submerged and/or submersible land which is of a short or intermittent duration, and not more than fourteen (14) consecutive days in any one (1) location or area.

(70) “Use” means an activity with or without associated structures on state-owned submerged and/or submersible land that requires a lease, temporary use permit, public facility license or registration under these rules.

(71) “Use Classification” means the specific category of similar uses and structures subject to authorization described in OAR 141-082-0100.

(72) “Water Sport Structures” means water ski buoys, jumps and ramps, kayak race gates, and other such devices used in association with a water recreational sport. Such devices are typically temporary in nature, and not permanently attached to a piling, dolphin, or other fixed object.

(73) “Wharf” or “Wharves” as used in ORS 780.040 and these rules mean a structure placed on state-owned submerged and/or submersible land that is actively and exclusively used to accommodate ships, boats, or vessels engaged exclusively in the receipt and discharge of goods or merchandise, or in the performance of active government functions on the waterway.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

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; DSL 1-1998, f. & cert. ef. 1-6-98; DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0030**Types of Uses and Required Authorizations**

(1) All uses of, and structures occupying state-owned submerged and/or submersible land require prior written approval of the Division by a lease, temporary use permit, public facility license, or registration pursuant to these rules. Uses and structures requiring leases or temporary use permits include, but are not limited to:

- (a) Aquaculture facilities;
- (b) Marine industrial/marine service uses;
- (c) Floating homes and floating home moorages;
- (d) Fish processing facilities;
- (e) Log raft, log storage or log booming areas;
- (f) Historical vessel moorages;
- (g) Combination structures;
- (h) Commercial and non-commercial marinas including owner-oriented facilities;
- (i) Multi-family docks not qualifying for registration;
- (j) Non-marine uses (for example, restaurants, warehouses, offices, motels, etc.);
- (k) Individual non-commercial docks/floats, boathouses, and floating recreational cabins not qualifying for registration or public use facility license;
- (l) Wharfs (when outside of cities or port districts);
- (m) Log salvage;
- (n) Commercial, industrial or residential uses; and
- (o) Other similar non-transient uses and structures not exempted by statute or these administrative rules, and determined by the Director to be subject to lease or temporary use permit.

(2) Uses and structures that are eligible for registration are:

- (a) Non-commercial structures including docks/floats, multi-family docks, and/or boat houses of two-thousand five hundred (2,500) square feet or less excluding associated gangways, pilings, dolphins, mooring buoys, and protective booms;
- (b) Floating recreational cabins of one-thousand five hundred (1,500) square feet or less excluding associated, pilings, dolphins, mooring buoys, and protective booms;
- (c) Water sport structures (pursuant to OAR 141-082-0140 through 141-082-0200);
- (d) Wharfs used to accommodate any ships, boats or vessels engaged exclusively in the receipt and discharge of goods or merchandise or in the performance of governmental functions upon the waterway (pursuant to the exemption provided in ORS 780.040); and
- (e) Other similar structures determined by the Director to be eligible for registration.

(3) Uses and structures that are eligible for public facility licenses are:

- (a) Boat ramps/landings;
 - (b) Viewing structures;
 - (c) Fishing piers;
 - (d) Recreational boating "short-term stay" docks/floats;
 - (e) Structures, piers, docks/floats owned, operated by, or under contract to a government agency as long as they are in active service and used exclusively by the government agency to perform the function of that agency; and
 - (f) Navigation aids placed by public agencies including approach and landing lights, and radio navigation and landing aids for aviation.
- (4) Uses and structures that are exempt from lease are:
- (a) Wharves (except as noted in OAR 141-082-0030(1) and (2));
 - (b) Transient uses;
 - (c) Uses/structures eligible for registration or public facility license.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

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; DSL 1-1998, f. & cert. ef. 1-6-98; DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0040**Lease, Public Facility License or Temporary Use Permit Application Requirements**

(1) If a use of, or structure upon state-owned submerged and/or submersible land requires a lease, public facility license, or temporary use permit, no person may begin to use such land, or erect such struc-

ture(s) without first having applied for, and been granted either a lease, public facility license, or temporary use permit pursuant to these rules.

(2) Persons needing to obtain a lease, public facility license, or temporary use permit for a structure on, or use of state-owned submerged and/or submersible land must apply to the Division on a form provided by the Division.

(3) All applications for a lease or public facility license must be fully completed and accompanied by a non-refundable fee payable to the Division in the amount of seven hundred and fifty dollars (\$750) for a lease, and two hundred and fifty dollars (\$250) for a public facility license. There is no application fee for a temporary use permit. The Division shall review applications in a timely manner.

(4) To be accepted by the Division for consideration, an application for a lease, public facility license, or temporary use permit shall be:

- (a) Fully completed; and
- (b) For an area initially determined by the Division to be available for use. Applications which fail to meet these requirements shall be returned to the applicant with an explanation of the reason(s) for rejection.

(5) If a rejected application is resubmitted within one hundred and twenty (120) calendar days from the date the Division returned the application, no additional application fee will be assessed.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0046**Lease Application**

(1) Any person engaged in an other than transient use of state-owned submerged and/or submersible land subject to these rules must obtain a lease, public facility license, temporary use permit, or registration from the Division.

(2) Each complete application for lease shall be submitted on a form provided by the Division and 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, and Tax Lot number(s) of lease area and adjacent uplands; and
- (e) A description of the purpose for which the lease area will be used.

(3) Each complete application shall include:

- (a) A location map showing the proposed lease area relative to its surroundings.

NOTE: Aerial photographs, U.S.G.S. Quadrangle maps, and Coast Survey Charts are all suitable for this purpose.

- (b) A map from the County Assessor that shows the location of the proposed lease area.

(c) 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.

(d) 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.

(e) A non-refundable seven hundred and fifty dollar (\$750) application fee payable by check to the Division of State Lands.

(f) Evidence satisfactory to the Division that the proposed use is in conformance with the local comprehensive land use plan and zoning ordinance.

(4) The Division may request additional information regarding the applicant's financial status and business/management practices prior to authorizing a lease.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0049**Lease, Public Facility License and Temporary Use Permit Application Review Process**

(1) The appropriate city or county planning department, pertinent state and federal agencies, and all lessees and riparian property owners

(as available from the local county assessor's office records) within two hundred (200) feet of the proposed or existing use shall be notified by the Division of the opportunity to review and comment on the accepted applications.

(2) Based on the evaluation of the application and the comments received, the Division shall:

(a) Approve the application and continue to process the lease, public facility license, or temporary use permit;

(b) Require that the applicant modify and resubmit the application; or

(c) Deny the application.

(3) If the Division determines that the proposed or existing use meets the policies set forth in these rules in OAR 141-082-0010, the Division shall determine the area needed to fully encompass the perimeter of the use as well as any additional water surface area needed to support the use. The Division shall also determine the method to describe the boundary of the authorized area.

(4) In the event the Division cannot readily determine the authorized area description from the applicant's information or, if in the judgment of the Division, a dispute may arise concerning the description, the Division may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The Division shall provide survey instructions as well as specify the information required in the survey and accompanying notes. Generally the applicant will be responsible for any costs of the survey.

(5) If more than one (1) application for a specific area is received by the Division, the Division shall determine which proposed use best fulfills the policies specified in OAR 141-082-0010, and accept and proceed with that application and deny the others.

(6) The Division shall offer a preference right to lease to the eligible party as defined in OAR 141-082-0020(49) and (50), hereafter referred to as the preference right holder. When a lease application has been approved, the Division shall:

(a) If the proposed lease area consists of parcels having different owners, subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.

(b) If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Division will extend the boundaries of the single parcel or combined group of single-ownership parcels perpendicular to the thread of the stream as in OAR 141-082-0049(6)(a) above.

(c) In accordance with the proposed use(s), calculate in a manner consistent with OAR 141-082-0100 a minimum annual lease rental payment for each lease parcel; and

(d) Notify each preference right holder in writing that a lease application has been approved by the Division, and provide thirty (30) calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual lease rental payment.

(7) The Division shall consider that the preference right holder has accepted the offer of a preference right to lease by executing the lease form and all other documents and remitting the required minimum annual lease rental payment within the required thirty (30) calendar day period.

(8) If the preference right holder 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 pursuant to the requirements of ORS 274.040. The highest qualified bidder shall be awarded the lease. The minimum bid amount shall be set by the Division.

(9) The fee for structures and uses authorized under a temporary use permit shall be determined by the Director, utilizing these rules as guidance, on a case-by-case basis, and shall not be less than one hundred dollars (\$100).

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0060

General Lease Conditions and Form

(1) The lease form contained in Exhibit A shall be the principal lease form used by the Division to authorize the use of state-owned submerged and/or submersible land. However, the Division in its good

faith discretion may determine that the size and/or nature of a proposed use, or the risks associated therewith, make it advisable to require a lease with terms other than those contained in Exhibit A. In such event, the Division may condition acceptance of the proposed use upon acceptance of a lease form proposed by the Division and, if requested by the Division or otherwise required by law, approved by the Department of Justice.

(2) The maximum lease term for state-owned submerged and/or submersible land shall be fifteen (15) years. Renewal provisions shall allow for additional periods of up to the maximum of fifteen (15) years after the original and each renewal lease term as specified in OAR 141-082-0070. The length of a lease offered by the Division shall depend on:

(a) Whether the proposed use is reasonably expected to exist for the time period requested by the applicant; and

(b) The policies contained in these rules.

(3) State-owned submerged and/or submersible land, regardless of whether or not it is included in authorized areas, shall remain available and open to the public for commerce, navigation, fishing, and recreation unless restricted or closed to public entry by the State Land Board or Division. The lessee may request the Division to close the authorized area to public entry or restrict recreational use by the public on all or portions of the authorized area to protect persons or property from harm arising from, or in connection with the authorized use or activity, or for any other purpose consistent with the policies of OAR 141-082-0010.

(4) The lessee may restrict public use of lessee-owned property or structures authorized under the lease.

(5) The Division or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management.

(6) The lessee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into the waterway. A lessee's failure to comply with this provision shall be considered a material default since a violation of this obligation may harm the public trust values in the waterway. As such, the Division shall have both the right to terminate the lease upon a substantial or repeated violation of this obligation, as well as the right to remove the debris and collect the cost of such removal from the lessee.

(7) The lessee shall not cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation (except for noxious weeds) that may be upon the authorized area except with the written permission of the Division. The lessee shall promptly report to the Division the cutting or removal of vegetation by other persons.

(8) The lessee shall conduct all operations within the authorized area in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds.

(9) The lessee shall maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the authorized area in a good state of repair as determined by the Division in consultation with other government agencies such as the local building inspection authority or fire service agency.

(10) The Division may require the lessee to obtain a surety bond to ensure that the lessee will perform in accordance with all terms and conditions of the lease. The surety bond amount shall be determined by the Division and shall be reasonable and within generally accepted business practices. A cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond and which names the State of Oregon as co-owner may be substituted in lieu of a bond.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0070

Lease Renewal

(1) A lessee shall have an option to renew a lease entered into after the effective date of this rule for additional terms but not more than fifteen (15) years, provided that the lessee has submitted a completed lease renewal application form to the Division not less than one hundred eighty (180) calendar days prior to the lease expiration date.

Upon receipt of such application, the lease shall be renewed by the Division unless:

(a) The Division determines, in its sole discretion, that the lessee has not complied with the terms of this lease, the applicable statutes, or Oregon Administrative Rules; or

(b) The lessee is no longer the preference right holder; or

(c) The Division determines that the renewal of this lease for all or portions of the authorized area would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010. In the event that the Division determines that the lessee is not entitled to renew the lease pursuant to the standards described above, the Division shall give the lessee two (2) years written notice that the lease will be allowed to expire. If less than two (2) years remain in the lease term at the time the written notice is given, the Division shall allow the lessee time beyond the lease expiration date to complete the two (2) year notice period to allow the lessee sufficient time to vacate the authorized area and relocate any sublessees in an orderly fashion. Temporary use permits may also be issued in the event that a final decision with regard to a lease renewal has not occurred by the expiration of the lease term. The Division shall report to the State Land Board for review all leases that the Division proposes not to renew pursuant to this subsection (OAR 141-082-0070(1)).

(2) All lease renewal applications shall be on a form provided by the Division. Completed applications must be received by the Division not less than one hundred eighty (180) calendar days prior to the expiration of the lease term.

(3) If an application to renew a lease is not timely received by the Division, the Division at its option may elect to either let the lease expire without renewal, or assess a late fee of two hundred and fifty dollars (\$250) payable to the Division.

(4) An application for renewal shall be accompanied by a non-refundable fee in the amount of seven hundred and fifty dollars (\$750) payable to the Division. Any late fees, as required under OAR 141-082-0070(3) shall also be included with the application fee for lease renewal.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 2-1998, f. & cert. ef. 4-22-98; DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0080

Lease Modifications for Size and Use

(1) Lessees shall notify the Division in writing using a form provided by the Division prior to expanding or reducing the size, use, or internal arrangement of use within their authorized area. No such changes or modifications shall be made without prior written authorization from the Division.

(2) The Division may amend a lease to reduce the authorized area as requested if the portion of the lease area is not in use, and does not contain any leasable structures.

(3) Requests to change an authorized use, or increase an authorized area shall be processed and reviewed in the same manner as a new lease application as specified in OAR 141-082-0040 and 141-082-0049 of these rules.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0090

Subleasing and Assignment of Leases

(1) Any lessee desiring to sublease in a manner not permitted outright by the lease or these rules, or assign a lease shall:

(a) Apply to the Division on a form provided by the Division; and

(b) Submit a non-refundable application fee of seven hundred and fifty dollars (\$750) payable to the Division.

(2) The Division shall make a good faith effort to complete its review of such applications within thirty (30) calendar days of receipt. If the application is incomplete, or if the Division requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended.

(3) Except as authorized in the lease or these rules, in no event shall the lessee assign or sublease any portion of the authorized area prior to receipt of written approval from the Division. Violation of this provision may be grounds for termination of the lease.

(4) Sublessees and assignees shall meet all applicable requirements set forth in these rules and the lease.

(5) Subleases permitted outright, that is, without prior approval of the Division, include only the following:

(a) Subleases of less than the entire leasehold area entered into (for example, rental of boat slips) in the ordinary course of business as authorized by the lease; or

(b) Subleases of the entire leasehold area for a term that is less than one (1) year and for a use authorized in the lease.

(6) Upon the sale of the lessee's interest in the lease, the lessee (seller) shall submit an application to the Division requesting an assignment of the lease to the purchaser.

(7) The transfer of ownership of the lease caused by the death of the lessee shall be considered an assignment requiring the Division's approval. A transfer of ownership to a spouse or immediate family member is an assignment that does not require the Division's prior approval.

(8) The lessee shall not grant a mortgage or security interest in the lease without prior written consent of the Division which shall not be unreasonably withheld. Any subsequent assignment by the creditor shall require the prior written approval of the Division.

(9) The Division may request additional information on the assignee's financial status and/or past business/management practices. The Division may, at its discretion, deny the assignment request if the assignee's financial status and/or past business/management practices indicate that s/he may not:

(a) Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the Division; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-082-0010(2) and (3).

(10) The Division shall require that the assignee, if approved by the Division, complete and submit to the Division a new lease application at the time of the assignment.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0100

Lease Rental Formulas, Methods and Annual Lease Rental Payment Adjustments

(1) The base minimum annual lease rental payment for any lease shall be the greater of:

(a) \$0.0056 per square foot times the lease area or two hundred and seventy five dollars (\$275);

(b) Subject to the base minimum annual lease rental payment established in OAR 141-082-0100(1), lease applicants (including lease renewal applicants) may select the method of annual lease rental payment calculation for their authorized use classification as described in OAR 141-082-0100(4)(a) through (h) below that results in the lowest annual lease rental payment, except for leases awarded through competitive bidding for which the annual lease rental payment shall be based on the bid award. The lessee or lease applicant shall provide all pertinent information to the Division to assist in calculating the annual lease rental payment. The method of annual lease rental payment calculation shall remain in effect for the term of the lease, unless changed pursuant to a redetermination made through the administrative rule-making process (ORS 183) and approved by the State Land Board.

(2) In the event the lessee and the Division cannot agree on the method of calculating the annual lease rental payment or any aspect of the method, the annual lease rental payment shall be determined by the Division using the flat rate method until such time as the dispute is resolved and implemented at the next lease anniversary date.

(3) The annual lease rental payment for individual non-commercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages shall be calculated based on the area encompassed by the perimeter of the structures, and shall exclude gangways, protective booms, pilings, and dolphins from the annual lease rent payment calculation.

(4) The following eight (8) use classifications and related lease rental formulas (OAR 141-082-0100(4)(a) through (h)) shall be used to establish annual lease rental payments or minimum bid, whichever is applicable, subject to the base minimum annual lease rental payment established in OAR 141-082-0100(1). For the riparian land value method described below, utility, railroad or publicly-owned land shall not be used for establishing the AV unless the assessed value is readily available and reflective of comparable similarly situated tax lots. If not, the AV of privately owned comparable tax lots shall be substituted. In

cases where the adjacent riparian tax lot is less than one hundred (100) feet deep, the Division will assume the adjacent riparian tax lot has a depth of one hundred (100) feet and apportion the AV based on this derived area.

NOTE: Formula Explanation

AV= Assessed value or appraised value (as defined in OAR 141-082-0020(6) and (8) of these rules) whichever is less except as stated in OAR 141-082-0100(11) and (12).

LA= Authorized lease area in square feet of state-owned submerged and submersible land.

AR= Annual lease rental payment.

(a) Commercial marinas and docks, and commercial floating home moorages. The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.0191 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) 3 percent of actual annual slip or boat rental income; or

(C) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(b) Non-commercial marinas and docks, including all types of ownership oriented marinas and docks and excluding those structures qualified for registration and exempt from lease (e.g., docks and boat houses less than 2,500 square feet). The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.0191 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) 3 percent of the comparable annual slip rentals; or

(C) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(c) Non-commercial floating home moorages including those operated by ownership-oriented organizations. The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.0191 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) 3 percent of comparable annual slip rentals; or

(C) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(d) Individual floating homes and similar structures and uses such as, but not limited to, a combination structure/floating home or any structures connected to utilities and associated with residential use not eligible for registration. The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.0191 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(e) Historical vessels, moorages, docks or similar structures not eligible for registration and owned by charitable organizations (limited to youth-oriented, historical, educational, or scientific organizations). The annual lease rental payment is two hundred and seventy five dollars (\$275) per year per structure or combination of structures at a single location or facility (e.g., youth camp). OAR 141-082-0100 (5) and (9) shall not apply.

(f) Log boom areas, log raft storage areas. The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$.00956 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(g) Marine industrial and marine service commercial uses/structures including fish processing facilities. The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.328 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(h) Non-Marine Uses (except as identified in these rules, for example, floating homes). The annual lease rental payment calculation is the lesser of the:

(A) Flat rate method of \$0.383 per square foot (which shall be increased each year on June 1st by three (3) percent) x LA; or

(B) Riparian land value method of $AV \times LA \times 5 \text{ percent} = AR$.

(5) The above described flat rate method factors (OAR 141-082-0100 (a) through (h)) shall be increased by three (3) percent every year on June 1st. The AV factor for the above-described riparian land value method shall have the meaning defined in OAR 141-082-0020(8). Annual lease rental payments shall be billed on the basis of the adjustments described in OAR 141-082-0100(4).

(6) Rates for uses within each authorized area shall be calculated by the Division on a square foot basis of state-owned submerged and/or submersible land as applicable for each use classification (for

example, non-commercial marina), and based on the lessee's choice of rate calculation methods except as noted in OAR 141-082-0100(2) above. More than one use (known as a mixed use) may be permitted by the Division within an authorized lease area. Rates will be calculated for each use area based on the most applicable use classification, as specified in OAR 141-082-0100(4)(a) through (h), and summed to derive the total annual lease rental payment or minimum bid for the entire leasehold.

(7) Annual lease rental payments based on three (3) percent of actual or comparable annual slip or boat rental shall be supported by documentation provided by the lessee or lease applicant. The Division, based on consultation with the lessee, shall establish and identify in the lease the reporting schedule and the form of documentation required for the Division and lessee to perform the due diligence necessary to verify the actual or comparable income. Lessees using this method shall make their records available for periodic audit by the Division.

(8) Wharf areas or areas occupied by uses or structures exempt from authorization by law or these rules from payment of annual lease rental may be included within the authorized area, but are not included in the calculation of the annual lease rent payment.

(9) The annual lease rental payment for executed leases shall be adjusted annually on each lease anniversary date by increasing the annual lease rental payment by three (3) percent rounded to the nearest dollar. This annual lease rental payment adjustment for executed leases shall not apply to those calculated based on actual or comparable annual slip or boat rental income.

(10) The Division shall notify lessees in writing of the new annual lease rental payment not less than sixty (60) calendar days in advance of the lessee's lease anniversary date.

(11) In calculating the initial annual lease rental payment using the riparian land value method, lessees or lease applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Division, a comparable tax lot in place of the assessed value. The Division reserves the right to evaluate, review, and challenge the appraisal. The appraisal shall be conducted at the lessee or lease applicant's expense. If the appraisal is used by the Division to calculate the initial annual lease rental payment, the Division will credit one-half of the cost of the appraisal to the lessee's annual lease rental payment. In the event of a dispute between the Division and the lessee or lease applicant, the value shall be determined through the three-appraiser method specified in ORS 274.929(3).

(12) If in the process of using the riparian land value method for calculating the initial annual lease rental payment, the AV is found to be artificially depressed due to the presence of hazardous materials or some other extenuating circumstance(s) as determined by the Division, another comparable upland tax lot shall be selected by the Division as the basis for calculating the initial annual lease rental payment. The lease applicant may suggest a comparable tax lot or may appeal the Division's selection as allowed in OAR 141-082-0200.

(13) For all other structures/uses not listed in OAR 141-082-0100(4)(a) through (h) and determined by the Director pursuant to OAR 141-082-0030(1) to be eligible for lease, the annual lease rental payments shall be determined on a case-by-case basis and be not less than the base minimum annual lease rental payment as defined by OAR 141-082-0100(1).

(14) The State Land Board shall periodically review and decide whether to maintain or redetermine the lease rental formulas, methods, annual lease rental payment adjustments, classifications or other factors as specified in these rules. Any redetermination, change or amendment to OAR 141-082-0100 must be done according to the administrative rulemaking process (ORS 183).

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0101

Suspended Use Lease Rental Rate

(1) A lessee may request that the Director grant a suspended use lease rental rate of not less than the base minimum annual lease rental payment if all or a portion of the lease premises are severely damaged or destroyed by natural disaster or other means such that the use(s) authorized by the lease must cease or be significantly interrupted.

(2) The lessee shall make a request for a suspended use lease rental rate to the Director in writing stating the reasons for the request

and including sufficient documentation to demonstrate that the request meets the requirements of OAR 141-082-0101(1). No application fee will be required.

(3) The Director, within thirty (30) calendar days of receiving a completed request, shall either: deny the request; ask for additional information; or approve the request and initiate a lease amendment. The Director shall have sole discretion as to the terms and conditions of the lease amendment under this section (OAR 141-082-0101) subject to the appeal provisions of OAR 141-082-0200.

(4) Any suspended use lease rental rate granted by the Director shall not exceed one (1) year and shall not be in effect until a lease amendment has been executed by the Division and the lessee, or otherwise authorized in writing by the Director. The suspended use lease rental rate shall supersede the annual lease rental payment identified in the lease contract agreement for the period the reduced rental rate is in effect.

(5) A suspended use lease rental rate is renewable annually for up to three (3) consecutive years based on the lessee's resubmittal of a request; verification by the Division of the circumstances; and Director's approval. Renewal requests must be submitted in writing not less than sixty (60) calendar days prior to the expiration of suspended use lease rental rate.

(6) The lessee shall immediately notify the Division upon any resumption of any of the uses authorized in the lease that are subject to the suspended use lease rental rate lease amendment. The lessee shall fully comply with any notification requirements and conditions of use resumption as stipulated in the Director's authorization and lease amendment.

(7) Failure to notify the Director of resumption of any use authorized in the lease may result in immediate cancellation of the suspended use lease rental rate and reinstatement of the original rate effective on the date the allowed use resumed.

(8) Changes in the leasehold area and/or authorized uses shall be processed in accordance with OAR 141-082-0080.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0105

Public Facility Licenses

(1) Public agencies shall apply for on a form provided by the Division, and renew a public facility license for all eligible facilities in the same manner as described in OAR 141-082-0040 and 141-082-0070(1) to (5).

(2) All applications for a public facility license shall be accompanied by a non-refundable fee in the amount of two hundred and fifty dollars (\$250) payable to the Division.

(3) The maximum term for a public facility license shall be fifteen (15) years and shall be renewable for additional terms of fifteen (15) years upon application.

(4) Existing public facility licenses shall remain in effect until expiration, at which time they shall be reviewed for renewal in accord with these rules.

(5) Modifications for size and use of a public facility license shall be processed and reviewed in the same manner as a new application as specified in OAR 141-082-0040 and 141-082-0049 of these rules.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0110

Removal of Unauthorized Structures

(1) The Division may require the owner of an unauthorized structure on state-owned submerged and/or submersible land to remove it at his/her own expense.

(2) If the owner refuses to remove the unauthorized structure, or if no owner can be located, the Division may, at its own expense, remove the structure from state-owned submerged and/or submersible land.

(3) The Division shall pursue whatever legal options are available to recover such removal costs from the owner, including placing a lien on the assets of that owner.

(4) If the owner does not pay the costs incurred in the removal of the unauthorized structure by the Division, the Division may impose a civil penalty pursuant to OAR 141-082-0130.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0120

Submerged and Submersible Land Closures and Use Restrictions

(1) The Land Board may, based upon a request from any person, including a public agency, declare that certain state-owned submerged and/or submersible lands shall not be available for lease, registration, temporary use permit, public facility license, or that any such lease, registration, temporary use permit, or public facility license shall be limited to certain designated uses, or that any such authorizations must meet certain specific conditions designed to protect public trust values in a specific area.

(2) The Land Board may approve all or a portion of such a request upon a finding that the requested limitation is necessary to prevent unreasonable interference with the public's right to use the waterway for commerce, navigation, fishing and recreation or to carry out the policies set out in these rules at OAR 141-082-0010.

(3) Any such limitation of use shall be adopted by administrative rule by the State Land Board in accordance with ORS 183. There shall be at least one (1) public hearing in the subject area. Prior notice of public hearings shall be given to riparian property owners within the immediately affected area as provided by the local county tax assessor's office, other affected public agencies (for example, Oregon State Marine Board, U.S. Coast Guard, U.S. Army Corps of Engineers, and local government), and other public interests.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0130

Civil Penalties

(1) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not more than one thousand dollars (\$1,000) per day of violation for the following:

(a) Violations of any administrative rule adopted under ORS 274.040; or

(b) Violations of any term or condition of a written authorization granted by the Division under ORS 274.040.

(2) The Director shall give written notice of a civil penalty 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, or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within twenty (20) calendar days of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(3) The person incurring the penalty may request a hearing within twenty (20) calendar days of the date of service of the notice provided in OAR 141-082-0130(2). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(4) The amount of a civil penalty shall be not less than fifty dollars (\$50) per day, or more than one thousand dollars (\$1,000) per day for violation of an authorization issued under ORS 274.040 or violation of any administrative rule adopted under ORS 274.040.

(5) In imposing a penalty under OAR 141-082-0130 of these rules, the Director shall consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible lands;

(c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and

(d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.

(6) Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-082-0130 shall become due and payable ten (10) calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(7) If a civil penalty is not paid as required by OAR 141-082-0130, interest shall accrue at the maximum rate allowed by law.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0140

Registration Of Structures

(1) Qualifying structures subject to registration under this section include non-commercial:

(a) Docks/floats and/or boat houses and associated or individual pilings, dolphins, mooring buoys, and protective booms;

(b) Floating recreational cabins; and

(c) Water sport structures unless authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application For Special Use Device Permits).

(2) The Director may determine that other structures similar to those specified in OAR 141-082-0140(1) are also subject to registration and the rules governing registrable structures. If the Director determines that a structure is registrable, s/he shall assign an appropriate fee.

(3) Public non-commercial docks/floats, boathouses, and similar structures are not subject to registration. A public facility license or other form of authorization is required.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0150

Registration Requirements and Provisions

(1) All persons:

(a) Owning structures subject to registration which were in existence on April 14, 1998 shall register the structure with the Division.

(b) Owning a wharf subject to the exemption from lease provided by ORS 780.040 shall register the structure with the Division.

(c) Placing a new structure subject to these rules, or changing the location of a registered structure after the effective date of these rules shall notify the Division in writing ninety (90) calendar days prior to such placement, or change in location.

(d) Making modifications to a registered structure which changes the fee category or eligibility of the structure for registration shall notify the Division ninety (90) calendar days prior to making such a modification.

(2) Registration shall be made on a form provided by the Division.

(3) A separate registration form and accompanying payment shall be submitted for each individual dock/float, boat house, or other registrable structure.

(4) Each registration, except for those for wharfs and government function facilities, shall be accompanied by a fee payment in the amount indicated in OAR 141-082-0170 of these rules. All registrations, including those for a wharf, shall also be accompanied by:

(a) A location map showing the location of the registrable structure relative to its surroundings.

NOTE: Aerial photographs, U.S.G.S. Quadrangle maps, and Coast Survey Charts are all suitable for this purpose.

(b) A map from the County Assessor that shows the location of the requested registrable structure.

(c) A plot plan (suggested scale 1" = 100') showing the location of the registrable structure, 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.

(5) For structures constructed, placed, or modified (pursuant to OAR 141-082-0150(1)(d) after April 14, 1998 the applicant shall provide on the registration form the name(s), address(es), and telephone number(s) of the owner(s) of any adjacent riparian upland within two hundred (200) feet of the structure for which registration is requested.

(6) The applicant shall contact each adjacent upland riparian owner indicated on the registration form to determine if there are any concerns associated with the placement or modification of the structure, or if it would unreasonably interfere with the rights of the public to use the waterway for fishing, navigation, commerce, and recreation.

The Division shall consider any information provided by the adjacent riparian upland owner(s) in deciding whether to register or condition the registration of the structure.

(7) In the event an applicant's proposed structure will not be situated adjacent to riparian property owned by the applicant, that riparian property owner shall have an option to register a structure at the same site. The Division shall send a copy of the application to the riparian property owner identified in the application. The riparian property owner shall have thirty (30) calendar days from the date the application is postmarked to object to the issuance of the registration or to submit a registration application for a structure at the same site as the original application. Any such registration application shall be submitted by the riparian property owner and processed by the Division in a manner consistent with these rules. The written objection must state the reasons why the original application does not meet the qualifications for registration as stated in OAR 141-082-0150(8). If no riparian property owner registration application or written objection is received by the Division within the required thirty (30) calendar day period, the Division may issue the registration to the original applicant. The original applicant as well as the involved riparian property owner shall have all rights of appeal as stated in OAR 141-082-0200.

(8) To qualify for registration, each structure shall:

(a) Not unreasonably interfere with the public's right to use the waterway and state-owned submerged and submersible land for fishing, navigation, commerce, and recreation;

(b) Comply with all applicable local, state, and federal laws including the local comprehensive plan and zoning requirements; and

(c) Comply with the size limitations specified in OAR 141-082-0030(2).

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0160

Registration Terms and Conditions

(1) A registration issued by the Division shall be valid for a term of five (5) years for all structures except government function facilities which shall be ten (10) years.

(2) A structure, when properly registered with the Division is not subject to lease as long as it continues to fully meet all the requirements to be registrable as provided in these rules.

(3) Unless otherwise prohibited by law, any registered structure in compliance with these rules may be repaired or replaced in a manner consistent with the requirements of OAR 141-082-0150, and remain authorized under the original registration issued by the Division.

(4) The Division shall be notified in writing of any:

(a) Change in the location of a registered structure ninety (90) calendar days prior to such change;

(b) Change in ownership of a registered structure within ninety (90) calendar days of the transfer of ownership. If the transfer is part of a legal transaction but not a sale (for example, bankruptcy, foreclosure, estate settlement), the Division shall be notified within thirty (30) calendar days of the final settlement or decision.

(5) Registrations must be renewed every five (5) years. The Division shall notify all registrants by mail, and provide a form to renew their registration ninety (90) calendar days prior to the expiration date of each registration(s).

(6) The Division may place conditions on a registration to address concerns of adjacent riparian upland owners and/or ensure that the continuance or placement of the use does not unreasonably interfere with the rights of the public to use the waterway for fishing, navigation, commerce, and recreation.

(7) The Division shall provide a copy of the registration to the appropriate county official (for example, county recorder) in the county where the registered structure is located.

(8) The Division may reject a registration application, modify the conditions of a registration, or cancel a registration if the subject structure does not conform with applicable local, state, and federal laws or these rules.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0170**Fees**

Except for wharfs and government function facilities (which are exempt from payment of a registration fee), the five (5) year fee for each registration or renewal for shall be as follows:

(1) One hundred and twenty five dollars (\$125) for a dock/float or boat house one thousand (1,000) square feet or less in size (excluding associated gangways, dolphins, pilings and protective booms).

(2) Two hundred and fifty dollars (\$250) for a dock/float or boat house from one thousand and one (1,001) square feet to two thousand (2,000) square feet in size (excluding associated gangways, dolphins, pilings and protective booms).

(3) Three hundred dollars (\$300) for a dock/float or boat house from two thousand and one (2,001) square feet to two thousand five hundred (2,500) square feet in size.

(4) Three hundred and fifty dollars (\$350) for a floating recreational cabin.

(5) One hundred and twenty-five dollars \$125 for a water sport structure.

(6) The fee for structures determined to be registrable by the Director pursuant to OAR 141-082-0030(2) shall be determined on a case by case basis and be not less than one hundred twenty-five dollars (\$125).

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0190**Penalties**

In addition to any other penalties provided by law, the placement or use of any structure subject to authorization on state-owned submerged and/or submersible land without authorization or otherwise not in compliance with these rules shall constitute a trespass.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0200**Appeals**

(1) An applicant for an authorization, or any other person adversely affected by a decision by the Division concerning an authorization, closure or restriction to the use of state-owned submerged and/or submersible land 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 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.

(2) If following the completion of the Director's review in OAR 141-082-0200(1) above an applicant wants to informally continue an appeal, s/he may request that the Director enter into an alternative dispute resolution process. The Director and the appellant shall select a trained facilitator/mediator from a list of pre-qualified individuals. The Division shall pay the costs of the facilitator/mediator. The appellant shall retain the right of formal appeal as described in OAR 141-082-0200(3).

(3) When an applicant for an authorization to use state-owned submerged and submersible land or any other person adversely affected by a decision of the Division concerning an authorization has exhausted the informal appeal process before the Director, s/he may submit an appeal to a contested case hearing. If the person is legally entitled to a contested case hearing, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470. Otherwise, the appeal before the Land Board shall proceed informally.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

141-082-0210**Waterway Management Program, Redetermination and Rule Review**

The Division shall provide an annual report to the Land Board discussing the status of the waterway management program and the implementation of these rules.

Stat. Auth.: ORS 273.045 & 274.005 - 274.043

Stats. Implemented: ORS 274

Hist.: DSL 18-1999, f. & cert. ef. 7-2-99; DSL 4-2002, f. 6-14-02, cert. ef. 7-1-02

DIVISION 83

**RULES FOR GRANTING EASEMENTS FOR
FIBER OPTIC AND OTHER CABLES ON
STATE-OWNED SUBMERGED AND SUBMERSIBLE
LAND WITHIN THE TERRITORIAL SEA**

141-083-0800**Purpose and Applicability**

These rules:

(1) Govern the granting and renewal of easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea.

(2) Establish a process for authorizing easements for such cables.

(3) Supersede any provisions contained in OAR 141-083-0010 through 141-083-0700 relating to fiber optic and other cables within the Territorial Sea.

(4) Do not apply to landing structures or other equipment related or connected to the cable placed on state-owned upland. Such uses are governed by, and require forms of authorization stipulated in other agency rules.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0810**Policies**

(1) The placement of fiber optic and other cables on state-owned land within the Territorial Sea is recognized by the Division as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of applicable international treaties (for example, the Convention for the Protection of Submarine Cables of 1884; the Convention of the High Seas of April 1958; the Convention on the Continental Shelf of April 1958; and the Submarine Cable Act) and other applicable federal, state, and local laws.

(2) The State Land Board, through the Division, 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 VIII, Section 5(2) of the Oregon Constitution.

(3) The Division shall manage state-owned submerged and submersible land, including that within the Territorial Sea, to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws.

(4) Easements for cables shall be located so as to:

(a) Protect the public trust values of commerce (including fiber optic and other cable transmissions), navigation, fishing, and recreation;

(b) Conserve living marine and other seabed resources; and

(c) Avoid or reduce conflicts with other ocean users and industries.

(d) Comply with all applicable local, state, and federal laws including Statewide Planning Goal 19.

(5) The Division shall administer these rules to ensure to the greatest extent possible that:

(a) Persons applying for, and holding a cable easement receive timely, consistent, predictable, and fair treatment; and

(b) Public trust values (commerce, navigation, fishing, and recreation) are supported, protected and enhanced.

(6) The Division may require the placement of cables along a route that has been determined by the agency, after consultation with the easement applicant, affected state and federal agencies, and other interested persons, to best meet the policies and goals of these rules.

(7) The Division shall require that all cables be buried using the best available proven technology whenever Territorial Sea bottom conditions permit to a sufficient depth to minimize conflicts with other ocean users and industries, and recognizing the potential need to retrieve the cable for repair or removal.

(8) The Division shall not recommend approval of a cable easement to the Land Board unless the Division finds that the applicant has met the provisions of these rules and the requirements of Statewide Planning Goal 19.

(9) An approval of an easement by the State Land Board shall be conditional and not valid until the applicant has received all other authorizations required by the Division and other applicable local, state, and federal governing bodies for the placement of the cable in the Territorial Sea.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0820

Definitions

(1) "Cable" means a conductor of electricity or light with insulation or a combination of conductors insulated from one another.

(2) "Cable Easement" is an authorization issued by the Division designating the route where a cable is to be laid on state-owned submerged and submersible land within the Territorial Sea. A cable easement does not grant any other proprietary or other rights of use to the holder.

(3) "Director" means the Director of the Division of State Lands.

(4) "Division" means the Division of State Lands.

(5) "Fiber Optic Cable" means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(6) "Goal 19" is the Statewide Planning Goal to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the Continental Shelf.

(7) "Landing" means the site on shore where a fiber optic or other cable is attached to land-based cable(s). A landing may consist of a beach manhole, receiving building, and associated equipment. If the landing is located on state-owned upland, additional authorization(s) shall be obtained from the Division or other land-owning agency (for example, Oregon State Parks) as well as other required approvals from state and local government agencies.

(8) "Ocean Policy Advisory Council" or "OPAC" has the same meaning as provided in ORS 196.438.

(9) "Ocean Users" include, but are not limited to persons using the Territorial Sea for commerce, navigation, fishing and recreation.

(10) "Person" is an individual at least eighteen (18) years old, a political subdivision or public agency, or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(11) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water seaward to the extent of state jurisdiction.

(12) "Territorial Sea Management Plan" has the same meaning as provided in ORS 196.405(7). It is the plan for managing Oregon's Territorial Sea and ocean shore as required under ORS 196.405 through 196.580.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0830

Cable Easement Application Requirements

(1) Any person wanting to place a cable in the Territorial Sea shall obtain an easement from the Division, and approval by the Land Board.

(2) Unless otherwise allowed by the Director, a fully completed application for an easement shall be submitted to the Division at least one-hundred and eighty (180) days prior to placement of any part of the cable or construction of any associated landing-related facility or equipment on state-owned submerged and submersible land within the Territorial Sea. Each application for a cable easement shall be accompanied by a non-refundable application processing fee payable to the Division in the amount indicated in OAR 141-083-0830(3) of these rules.

(3) Each application for a cable easement crossing the Territorial Sea shall be accompanied by a non-refundable deposit payable to the Division in the amount of five thousand dollars (\$5,000).

(4) Should the Division, in consultation with the applicant and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19 and the Territorial Sea Management Plan, the applicant shall be directly responsible for retaining and paying for the requisite studies.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0840

Pre-Application and Application Review Process

(1) Prior to submitting an application to the Division, the person wanting to place a cable on state-owned submerged and submersible land within the Territorial Sea shall meet with Division staff to discuss the proposed project, alternative routes, factors affecting cable installation, and desired schedule. The person is also encouraged to meet with affected ocean users and industries prior to meeting with the Division to discuss possible use conflicts and other issues attendant with the proposed cable route(s).

(2) Upon receipt of an application, the Division will determine if it is complete. Applications which are determined by the Division to be incomplete shall be returned to the applicant with an explanation of the reason(s) for rejection.

(3) If a rejected application is resubmitted within one hundred and twenty (120) calendar days from the date the Division returned it to the applicant, no additional application fee will be assessed.

(4) Applications determined by the Division to be complete will be circulated to various local, state, and federal agencies and other interested persons for review and comment. The Division will circulate the application according to the requirements of its State Agency Coordination Program.

(5) To obtain public comment and identify possible issues concerning the proposed cable, the Division may hold public information meetings in the vicinity of each cable landing prior to, or after receipt of an application. The person proposing the cable or easement applicant shall attend any public meetings scheduled by the Division and be prepared to discuss the project.

(6) An easement applicant may amend their application at any time in order to address issues, concerns, or information shortfalls identified by the Division or other commentors.

(7) After receipt of agency and public comment concerning the proposed project resulting from the State Agency Coordination application circulation, the Division shall determine whether additional information is needed and/or modifications required to the proposed project. The easement applicant shall then be notified in writing of the Division's requirements.

(8) An easement applicant shall be given the opportunity to revise their proposed project or demonstrate why suggested changes are not feasible prior to the Division's development of its recommendation to the State Land Board regarding the subject easement and related requirements for the location, construction, operation and maintenance of the cable.

(9) The Land Board may approve or deny the easement based on the recommendation of the Division and the findings required by OAR 141-083-0810(8).

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0850

Cable Easement Terms and Conditions

(1) All cable easements issued under these rules shall require approval by the State Land Board.

(2) Easement applicants may be required to obtain a surety bond to ensure that they will perform in accordance with all terms and conditions of the easement. The surety bond amount shall be determined by the Division. A cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond and which names the State of Oregon as co-owner may be substituted in lieu of a bond.

(3) A cable easement issued by the Division shall be valid for an initial term of twenty (20) years, and may be renewed at the holder's option for an additional twenty (20) year term upon application to the Division.

(4) All cables are to be buried using the best available proven technology whenever Territorial Sea bottom conditions permit to a sufficient depth to minimize conflicts with other ocean users and industries and recognizing the potential need to retrieve the cable for repair or removal.

(5) The Division shall be notified in writing by the easement holder at least ninety (90) days:

- (a) Prior to any pre-planned change in the location of the cable.
- (b) Prior to any change in ownership of the cable.

(c) After the discovery of any change in the location of the cable resulting from accidental contact or geologic or other natural causes.

- (d) Prior to any abandonment or termination of use of the cable.

(6) If determined necessary by the Division in consultation with the easement holder and other interested parties, and if permitted by the applicable federal agency(ies) regulating the cable, the easement holder shall remove the cable from the state-owned submerged and submersible land within one (1) year following the termination of use of the cable or expiration of the easement.

(7) Easements issued pursuant to these rules may be subject to a term based payment or annual rental payments subsequently established by the Land Board pursuant to governing law for use of state-owned submerged and submersible land.

(8) Easement holders shall inspect cables to ensure that they remain both within the area authorized by the easement and buried. These inspections are to be done on a frequency to be determined by the Division in consultation with the easement holder and other interested parties.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0860

Penalties

In addition to any other penalties provided or permitted by law, the placement of any cable or related structure on state-owned land without an easement or otherwise not in compliance with these rules shall constitute a trespass, and be prosecuted pursuant to governing law.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0870

Reconsideration of Decision

(1) An easement applicant or any other person adversely affected by the issuance or denial of a fiber optic cable or other cable easement on state-owned submerged and submersible land within the Territorial Sea may request that the Land Board reconsider the decision.

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the delivery of the decision.

(b) The Director shall review the request within sixty (60) calendar days after the date of delivery of the request.

(c) The Director may recommend to the Land Board either that the easement issuance or denial be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(2) If the Director recommends that the Land Board initiate a contested case proceeding, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 21-1999, f. & cert. ef. 11-1-99

DIVISION 85

ADMINISTRATIVE RULES GOVERNING THE ISSUANCE AND ENFORCEMENT OF REMOVAL-FILL AUTHORIZATIONS WITHIN WATERS OF OREGON INCLUDING WETLANDS

141-085-0005

Purpose/Applicability

These rules:

(1) Apply to removal, fill and/or alteration of material within the waters of this state as expressed in ORS 196.668 to 196.692, 196.800 to 196.990, and 390.835.

(2) Establish procedures for applying for an individual removal-fill permit, a general authorization or an emergency authorization (referred to in these rules as either "permits" or "authorizations") and the Department's process for reviewing applications for any of these permits and authorizations.

(3) Establish standards and criteria that an applicant must meet to obtain a permit or an authorization.

(4) Establish general conditions and mitigation requirements to be applied to each approved authorization.

(5) Establish the procedures for enforcing ORS 196.800 to 196.990, 390.825 and 390.835.

(6) Define the "waters of the state" of Oregon that are subject to removal-fill permit requirements.

(7) Define the activities that are subject to (refer to OAR 141-085-0015) or exempt from (refer to OAR 141-085-0020) these rules. Generally, the following activities are subject to removal-fill authorization requirements if conducted in waters of the state. However, this is not an inclusive list and it does not address exemptions from permit requirements. Consult the rules to determine whether a particular activity is subject to authorization requirements. This list is solely for the purpose of giving general examples:

(a) Streambank stabilization;

(b) Wetland restoration;

(c) Road, bridge or transportation structure construction (including culverts, road fills);

(d) Utility line construction including pipelines and overhead lines;

(e) Sand and gravel removal (commercial and non-commercial);

(f) Water diversion works/structures (permanent and temporary) including water intakes, weirs and push-up dams;

(g) Fish habitat enhancement (e.g. large rock placement; pool and pond construction; gravel placement; side channel construction; barrier removal; placement of large wood material; and streambank rehabilitation).

(h) Temporary construction works (e.g., cofferdams);

(i) Dredge material disposal;

(j) Stream gauging station construction;

(k) Waterfront structure construction (e.g. bulkheads, sheet piling, backfilling, filling);

(l) Boat ramp construction and improvement;

(m) Fill placement for the purpose of land development for institutional, public facilities, residential, commercial or industrial uses;

(n) Piling, dolphins;

(o) Access channel dredging including maintenance dredging;

(p) Underwater blasting;

(q) Streambank excavation (e.g., bank sloping, reshaping);

(r) Stormwater, wastewater, or sewer outfall construction;

(s) Channel or streambed relocation;

(t) Tidegate or other water control structure (e.g. levees, dikes, canals or irrigation ditches or drainage ditches) construction;

(u) Mining (e.g. placer mining); and

(v) Water storage improvement construction (e.g. ponds, reservoirs).

(8) Govern the basics of the removal-fill program. They must be used in conjunction with other Department rules, which address specific subjects relating to removal and fill, including but not limited to:

(a) Wetland Delineation Report Requirements and Jurisdictional Determinations for the Purpose of Regulating Fill and Removal within Waters of the State (OAR 141-090-0005 to 141-090-0055).

(b) Wetland Conservation Plans (OAR 141-086-0005 to 141-086-0100 and 141-120-0000 to 141-120-0230).

(c) The 1992 Lower Willamette River Management Plan as promulgated by the State Land Board and the Department and adopted by reference (OAR 141-080-0105).

(d) Essential Indigenous Anadromous Salmonid Habitat (OAR 141-102-0000 to 141-102-0045).

(e) Oregon Scenic Waterways (OAR 141-100-0000 to 141-100-0090).

(f) General Authorizations (OAR 141-089).

Stat. Auth.: ORS 196.600 - 196.692, 196.800 - 196.990 & 390.805 - 390.925

Stats. Implemented: ORS 196.600 - 196.692, 196.800 - 196.990 & 390.805 - 390.925

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0103; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0006

Policy

(1) No authorization to place fill or remove material from the waters of the state shall:

(a) Interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing, and public recreation uses; or

(b) Be inconsistent with the protection, conservation and best use of the water resources of this state.

(2) To the extent possible, the Department shall administer these rules to ensure persons receive timely, fair, consistent and predictable treatment including timely communication and consistent application and interpretation of these rules and the removal-fill law.

(3) The Department shall actively and continually pursue improvements to the authorization process in order to reduce paperwork, eliminate duplication, increase certainty and timeliness and enhance protection of water resources.

(4) The Department shall recognize the interests of adjacent landowners, Tribal governments, public interest groups, watershed councils, state and federal agencies, and local government land use planning agencies, and shall provide notice to such interests prior to issuance of an individual removal-fill permit or adoption of a general authorization.

(5) In regard to the regulation of wetlands, the Department shall administer these rules to ensure that:

(a) The protection, conservation and best use of the state's wetland resources, including their functional attributes, are promoted through the integration and coordination of the local comprehensive land use plans and the Department permitting process.

(b) A stable wetland resource base is maintained through impact avoidance and compensation for unavoidable wetland losses.

(6) The restoration of wetlands and other waters through voluntary restoration and conservation programs is encouraged and facilitated.

(7) The Department shall administer the removal-fill program in a manner consistent with and in support of:

(a) The Oregon Plan as described in ORS 541.405;

(b) The applicable Oregon Wetlands Benchmark; and

(c) The Oregon Coastal Management Program.

(8) The Department shall carry out its responsibilities under these rules in compliance with the coordination procedures established in its State Agency Coordination Program (OAR 141-095-0000).

(9) The Department shall coordinate administration of the Scenic Waterway Act (ORS 390.805) under OAR 141-0100 with these rules.

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

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

(1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(1)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris.

(2) "Adverse Effect" means the same as "reasonably expected adverse impacts".

(3) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization as evidenced by their signature on the application.

(4) "Department" means the Oregon Department of State Lands and the Director or designee.

(5) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(6) "Artificially Created" means constructed by artificial means.

(7) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(8) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.

(9) "Authorization Holder" or "permittee" means the person holding a valid authorization from the Department.

(10) "Bank" means: (a) for perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and (b) for intermittent streams, the bank extends to the ordinary high water line; the line between the bed and bank may be indistinguishable during dry months.

(11) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(12) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(13) "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.

(14) "Beds" means: (a) for the purpose of OAR 141-089-0245 to OAR 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(15) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(16) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(17) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(18) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(19) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(20) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(21) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(22) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(23) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(24) "Channelized or Relocated Stream" means a natural stream that has been diverted, dredged, straightened or diked. Channelized or relocated streams can be characterized by the following:

(a) Have headwaters and may transport water from a spring or natural drainage;

(b) Is an integral part of a natural drainage;

(c) Have straight channels which may show signs of natural channel processes (e.g. meandering, pool and riffle development) if left undisturbed for a number of years;

(d) Typically flow along property or field boundaries; and

(e) May be perennial or intermittent.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation" means activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905 or these rules.

(34) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail proposed compensatory wetland mitigation.

(35) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(36) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(37) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(38) "Consent Agreement" means an informal legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(39) "Consent Order" means a formal, legally binding agreement between the Department and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation. A Consent Order may not be contested by the violator.

(40) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(41) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(42) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(43) "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.

(45) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(47) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(48) "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, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(49) "Deep Ripping, Tiling and Moling" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(50) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(51) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(52) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(53) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(54) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters. Drainage ditches can be characterized by the following:

(a) Typically have no headwaters;

(b) Carry water from local surface areas or subsurface drains;

(c) May be permanently or intermittently wet;

(d) Primarily constructed to remove excess water

(e) Dry ditches are typically dry in summer or early fall and are constructed primarily to carry away water during winter storm events;

(f) Wet ditches are wet all year round and carry water for drainage or irrigation purposes.

(55) "Dolphin" is a cluster of piles or piling which is bound together.

(56) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(57) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(58) "Dredging" means removal of bed material using other than hand held tools.

(59) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(60) "Emergency Letter of Authorization" is an expedited authorization that the Department may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(61) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(62) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(63) "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.

(64) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(65) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(66) "Estuarine Resource Replacement" 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 diversity of native species, unique features, and water quality.

(67) "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, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(68) "Expiration Date" means the date the authorization to conduct the removal-fill specified in the authorization has ended. The authorization holder's obligation to comply with the Department's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

(69) "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 Mean Lower Low Water.

(70) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominantly for agricultural purposes.

(71) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(72) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(73) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(74) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(75) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(76) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 141-102-0045) and in designated Scenic Waterways (OAR 141-100-0000 to 141-100-0090) "fill" means any deposit by artificial means.

(77) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(78) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(79) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(80) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(81) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(82) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(83) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(84) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) are those stream reaches that flow during a portion of every year, that contain food and game fish and all tributaries one stream order classification upstream. For example, if food and game fish are present in a second order stream, then all its first order upstream tributaries would be classified under this definition.

(85) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(86) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(87) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankful stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(88) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values." For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those func-

tions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(89) "General Authorization" means a rule adopted by the Department authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(90) "Geographic Region" for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(91) "Governmental Body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(92) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(93) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(94) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(95) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(96) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(97) "Headwater" means the source of a stream or river (e.g. a spring).

(98) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(99) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(100) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(101) "Highbanking" means the use of a highbanker for the recovery of minerals.

(102) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(103) "Hydraulicizing" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(104) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(105) "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(106) "Hydrogeomorphic Method" or "HGM" is a 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.

(107) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

(108) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(109) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(110) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(111) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(112) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, *Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 8).

(113) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(114) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(115) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(116) "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.)

(117) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(118) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(119) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(120) "Levee" means a human-made feature that restricts movement of water into or through an area.

(121) "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.

(122) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(123) "Location" as used in OAR 141-084-0010(76) means a physical place where a project is proposed, authorized or conducted.

(124) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the use of the structure. Maintenance includes expansion of a structure by not more than (20) twenty percent of its original footprint within the waters of the state.

(125) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(126) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(127) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(128) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(129) "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 wetlands or other waters.

(130) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(131) "Mitigation Bank Credit" or "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600 (2) further defines this term.

(132) "Mitigation Bank Instrument" or "Instrument" means the legally binding and enforceable agreement between the Director and a mitigation bank sponsor that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Department makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(133) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Department. The Department uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(134) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Department and the Corps on wetland mitigation bank projects.

(135) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(136) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(137) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(138) "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 within the waters of the state.

(139) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(140) "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 as described in "Other Bodies of Water" (OAR 141-085-0015 (2)(e)).

(141) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(142) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(143) "Non-Motorized Methods or Activities" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(144) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Department for the latest listing of navigable waterways.

(145) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

(146) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(147) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(148) "Off-site compensatory wetland mitigation" or "off-site CWM" means activities conducted away from the project site to restore, create or enhance wetland function attributes in order to compensate for the adverse impacts to wetlands from project development.

(149) "On-site compensatory wetland mitigation" or "on-site CWM" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(150) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(151) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to 496.192, administered by ODFW, and ORS 564.010 to ORS 564.994 administered by the Oregon Department of Agriculture (ODA).

(152) "Oregon 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.

(153) "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).

(154) "Other Waters" means waters of the state other than wetlands.

(155) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(156) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Department or by agreement of the Department to an approved third party.

(157) "Perennial Stream" means a stream with flow that lasts throughout the year.

(158) "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.

(159) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(160) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(161) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(162) “Plant Community” is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(163) “Plowing” means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, disking, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(164) “Pond” means an artificially confined body of water.

(165) “Pool” means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(166) “Practicable” means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(167) “Prior Converted Cropland” means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(168) “Private Operator” means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(169) “Project” means the primary development or use intended to be accomplished (e.g. retail shopping complex, residential development).

(170) “Project Area” means the physical space in which the removal-fill takes place including any on site or off-site mitigation site. “Project Area” includes the entire area of ground disturbance, even though not within waters of the state, including all staging areas and access ways, both temporary and permanent.

(171) “Proposed Enforcement Order” means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Department to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(172) “Prospecting” means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(173) “Protection” means to prevent human activities from destroying or degrading functions of waters of state.

(174) “Public Body” means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(175) “Public Use” means a publicly owned project or a privately owned project that is available for use by the public.

(176) “Push-up Dam” is a berm of streambed material that is excavated or bulldozed (i.e. *pushed-up*) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a ‘removal’). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(177) “Rare Plant Communities” means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(178) “Reasonably Expected Adverse Impacts” means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(179) “Recreational and Small Scale Placer Mining” includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include

“prospecting” as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Department.

(180) “Reconstruction” means to rebuild; to construct again.

(181) “Reference Site” means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular compensatory wetland mitigation plan.

(182) “Removal” means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(183) “Removal-Fill Law” means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(184) “Restoration” means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(185) “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.

(186) “Restoration Order” means a legally binding order that requires a violator to restore water resources of the state or provide compensatory mitigation, and in addition may include payment of a civil penalty to the Common School Fund.

(187) “Revetment” is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or pre-formed concrete blocks.

(188) “Riparian” means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(189) “Riprap” means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(190) “Road Prism” means the excavation and embankment areas of roadbed within the waters of the state.

(191) “Scenic Waterway” means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(192) “Sediment” is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(193) “Seeding” means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(194) “Serviceable” means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(195) “Service Area” means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

(196) “Shellfish” are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(197) “Showing Before the Department” means to prove, make apparent, or make clear by presenting evidence to the Director of the Department of State Lands or designee.

(198) “Siltation/Deposition” means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(199) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(200) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(201) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(202) "Stormwater" means storm water runoff, snow melt runoff, and surface runoff and drainage.

(203) "Stream" means a body of running water moving over the surface of the land in a channel or bed including stream types classified as perennial, intermittent and channelized or relocated streams.

(204) "Stream Order Classification" means a system to categorize streams. A small unbranched headwater tributary is a first order stream. Two first order streams join to make a second order stream. A third order stream has only first and second order tributaries and so forth.

(205) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(206) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose. Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(207) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(208) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(209) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation, compensatory wetland mitigation or permit conditions objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects). Also called "performance standards" or "success targets."

(210) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(211) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(212) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(213) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(214) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(215) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(216) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(217) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(218) "Uplands" are any land form that does not qualify as waters of the state.

(219) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(220) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(221) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(222) "Violation" means removing material from or placing fill in any waters of this state without an authorization or in a manner contrary to the conditions set out in an authorization issued under the Removal-Fill law or these rules.

(223) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(224) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(225) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(226) "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.

(227) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

- (a) Measure or regulate the flow of water;
- (b) Divert fish into a trap; or
- (c) Raise the level of the waterway or divert stream flow into a water distribution system.

(228) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(229) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(230) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(231) "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.

(232) "Woody Plants" means trees and shrubs.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 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 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

(2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:

- (a) Estuaries and tidal bays, to the elevation of highest measured tide;
- (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
- (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to

the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;

(d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.

(e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

(A) Wetlands and ponds artificially created from uplands, unless specified in OAR 141-085-0015(4) or (5) that are:

(i) Equal to or greater than (1) one acre in size; or

(ii) Identified in a removal-fill authorization as a compensatory mitigation site.

(B) Except as described in OAR 141-085-0015(3) and (6), channels or ditches that are artificially created from upland that:

(i) Contain food and game fish; and

(ii) Have free and open connection to waters of the state.

(3) "Other Bodies of Water" do not include existing irrigation canals and ditches that meet the following requirements:

(a) Are operated and maintained for the primary purpose of conveying water for irrigation; and

(b) Are dewatered during the non-irrigation season except for water incidentally retained in isolated low areas of the canal/ditch or for stock water runs, provision of water for fire services or storm water runoff.

(4) "Other Bodies of Water" do not include wetlands artificially created from uplands of up to one acre in size for the purpose of controlling, storing or maintaining stormwater (ORS 196.687).

(5) "Other Bodies of Water" do not include channels, wetlands or ponds of any size artificially created from uplands for the purpose of:

(a) Wastewater treatment;

(b) Farm or stock watering (including crop irrigation);

(c) Settling of sediment;

(d) Fire suppression;

(e) Cooling water;

(f) Surface mining, where the site is managed for interim wetlands use or not protected as a significant wetland in the comprehensive plan (pursuant to ORS 196.672(10));

(g) Log storage; or

(h) Aesthetic purposes, including golf course features.

(6) "Other Bodies of Water" do not include drainage ditches alongside roads and railroads where the ditch is:

(a) Ten (10) feet wide or less at the ordinary high water line;

(b) Artificially created from upland or from wetlands (e.g. in mapped hydric soils);

(c) Not adjacent and connected or contiguous with other wetlands; and

(d) Do not contain food or game fish.

(7) Even if located within an area described in OAR 141-085-0015(2), to be subject to the removal-fill law and these rules the removal-fill must also be of a volume that meets one of the following thresholds and must not be exempt from removal fill authorization as described in OAR 141-085-0020:

(a) Oregon Scenic Waterways, the threshold volume is any amount greater than (0) zero, except for recreational prospecting, as defined in ORS 390.835(18)(c) and OAR 141-0100, and any non-motorized activities;

(b) Streams designated as Essential Indigenous Salmonid Habitat (ESH) (see OAR 141-102, the threshold volume is one cubic yard at any one site (for prospecting and non-motorized activities), and cumulatively no more than five cubic yards (for prospecting and non-motorized activities), or an authorization is required (unless exempted under OAR 141-085-0020);

(c) All other waters of the state subject to these rules, the threshold amount is no more than 50 cubic yards (or the equivalent weight in tons) of material removed or filled, or an authorization is required (unless exempted under OAR 141-085-0020).

(8) Fill volume is measured to the elevation of jurisdiction for all waters of the state; removal volume for all waters includes the full extent of the excavation within the jurisdictional area. For wetlands, fill volume is measured to the height of the fill excluding buildings.

(9) When calculating the volume for channel relocation the threshold is met if more than 50 cubic yards of material is removed

in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(10) Removal-fill activities that are exempt under state law may nonetheless be regulated under applicable federal laws, including the federal Endangered Species Act (16 U.S.C. 1531 et seq.), Section 404 of the federal Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), as amended.

Stat. Auth.: ORS 196.800, 196.810 & 390.835

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0105; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0018

Required Authorizations; Permits and Authorizations Generally

(1) Unless exempt as provided in OAR 141-085-0020, no person may conduct any removal-fill in waters of the state and within the thresholds (OAR 141-085-0015) without first being authorized by the Department by one of the following authorization types as appropriate:

(a) An individual removal-fill permit; or

(b) A letter of authorization issued under a General Authorization as defined in OAR 141-085-0070; or

(c) An emergency letter of authorization issued in accordance with OAR 141-085-0066.

(2) The Department shall prescribe the type of authorization to be issued.

(3) Each type of authorization, when issued, shall include, but not be limited to, the following:

(a) Project description.

(b) Expiration date. The date of expiration shall be no more than five years from the date of issue, unless authorized by the Department in accordance with OAR 141-085-0031 or 141-089.

(c) Permit or authorization holder information. Name, address and telephone number of the authorization holder and the person responsible for complying with the permit conditions;

(d) Authorization conditions. A comprehensive, specific listing of all performance requirements to be met by the authorization holder in order to complete the removal-fill activity in a manner that complies with these rules or any general authorization; and

(e) Compensatory mitigation plan. Compensatory freshwater or estuarine mitigation plans for all wetlands and compensatory mitigation plans for other waters as applicable.

Stat. Auth.: ORS 196.800, 196.810, 196.825 & 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0020

Activities Exempt From Removal-Fill Authorization Requirements

The following activities, uses or structures are exempt and not subject to the removal-fill law or these rules. These exemptions do not apply to removal-fill activities in Oregon Scenic Waterways. The Department shall determine if a project is exempt from the requirements of OAR 141-085-0018 by applying the standards described in this section.

(1) Exempt forest management practices. These rules do not apply to removal-fill directly connected (as defined in OAR 141-085-0010) with a forest management practice when conducted within the beds and banks of non-navigable waterways on forestlands and in accordance with the Oregon Forest Practices Act (ORS Chapter 527). Contact the Department for the latest list of state-owned navigable waterways.

(2) Exempt fills for certain dams and water diversion structures. These rules do not apply to fills within waters of the state for the construction, operation and maintenance of dams or other water diversions for which authorizations or certificates have been or shall be issued by the Oregon Water Resources Department (WRD) under ORS Chapters 537 or 539 (water appropriation) and for which preliminary authorizations or licenses have been or shall be issued under ORS 543 or 543A (hydropower). These rules also do not apply to annual work required to activate, operate and maintain flashboard type dams within waters of the state as specifically permitted by WRD. These exemptions apply only when the dam or diversion is referenced in the water permit or certificate. A removal-fill authorization is required for con-

struction of certain structures associated with a dam or water diversion facility (such as but not limited to: fishways, streambank enhancement, fish habitat enhancement, access roads and erosion protection) and for removal activities for projects authorized by ORS 537, 539, or 543.010 to 543.620.

(3) Navigational Servitude. These rules do not apply to removal fill within waters of the state conducted by any agency of the Federal Government acting in the capacity of navigational servitude in connection with a federally authorized navigation channel (i.e., channel dredging within navigational servitude channel). Disposal of dredged material within the ordinary high water line of the waterway containing the federally authorized navigation channel is considered to be an activity covered by this exemption.

(4) These rules do not apply to “normal farming and ranching activities” on converted wetlands, as defined in OAR 141-085-010. Such activities include the following:

- (a) Plowing;
- (b) Grazing;
- (c) Seeding;
- (d) Cultivating;
- (e) Conventional crop rotation;
- (f) Harvesting for the production of food and fiber; and
- (g) Upland soil and water conservation practices or reestablishment of crops under federal conservation reserve program provisions.

(5) These rules do not apply to the following activities conducted on exclusive farm use zoned land as designated in the city or county comprehensive plan and zoning ordinance.

- (a) Drainage or maintenance of farm or stock ponds;
- (b) Maintenance of farm roads where such roads are maintained in accordance with construction practices that avoid significant adverse affect to wetlands. Up to fifty (50) cubic yards of borrowed material for exempt road maintenance annually may come from waters of the state. Maintenance activities shall be confined to the same limits of the originally approved structure(s).

(c) Subsurface drainage, by deep ripping, tiling or moling on converted wetlands;

(d) Any activity described as a farm use in OAR 141-085-0010, including farm road construction and maintenance, that is conducted on prior converted cropland as defined in OAR 141-085-0010, so long as agricultural management of the land has not been abandoned for five or more years.

(6) Exemptions do not apply to non-farm uses. The exemptions in subsections (4) and (5) of this section (OAR 141-085-0020) shall not apply to any fill or removal which involves changing any wetlands to a non-farm use.

(7) Exempt “activities customarily associated with agriculture”. Fill or removal activities involving less than 50 cubic yards of material as defined in OAR 141-102 and 141-085-0010 for activities customarily associated with agriculture within Essential Indigenous Anadromous Salmonid Habitat streams (as designated under OAR 141-102-0030) are exempt from these rules.

(8) Exempt maintenance or reconstruction of certain structures. Maintenance, or reconstruction of certain structures within waters of the state such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches, irrigation structures and tile drain systems are exempt from the requirements of these rules, provided that:

(a) The structure was serviceable within the past five (5) years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Exempt maintenance, repair, replacement or removal of culverts. These rules do not apply to removal-fill activities within waters of the state for the maintenance, reconstruction or removal of culverts as defined in OAR 141-085-0010. This exemption includes culvert replacement (without regard to the size of the replacement culvert) when all of the following apply:

(a) The removal fill is limited to the extent of the existing road prism (as defined in OAR 141-085-0010) and may, consistent with OAR 141-085-0010(124), expand the original footprint of the structure by up to 20 percent if fish passage design requires removal or fill outside the road prism in order to successfully pass fish, the removal/fill volume and area of impact is limited to the minimum necessary to

restore the function of the structure and provide fish passage but not more than 20 percent of the original footprint;

(b) The culvert was serviceable within the past five (5) years;

(c) The removal-fill does not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction and placement of the culvert.

(d) The culvert is replaced in a manner that assures fish passage and complies with the design guidelines of the Oregon Department of Fish and Wildlife (e.g. counter sinking the new culvert to accommodate the natural bank full width and replicating the stream’s natural streambed configuration).

(10) Exempt push-up dams. A push-up dam, as defined in OAR 141-085-0010, within waters of the state, that was first built prior to the effective date of the Removal-Fill Law in 1967 (September 13, 1967) is exempt from the authorization requirements under these rules if:

- (a) It has been reconstructed and used within the past five (5) years; and
- (b) It has the same impact as when it was first constructed (i.e., size, extent and location); and
- (c) It is operated in a manner consistent with the water right certificate and ORS 540.510(5).

(11) On-going maintenance of push-up dams allowed. Once authorized by the Department, a post-1967 push-up dam within waters of the state may be maintained during the irrigation season and reconstructed each successive season provided the work is done in compliance with all original permit conditions and the push-up dam’s impact to the stream is no more than when it was first authorized (i.e., it still has to allow for fish passage). A push-up dam involving less than fifty (50) cubic yards, located within a stream designated as Essential Indigenous Anadromous Salmonid Habitat (see OAR 141-102) and used for “activities customarily associated with agriculture” as defined in OAR 141-102 and 141-085 is exempt from authorization requirements.

(12) Exempt maintenance including emergency reconstruction of roads and transportation structures. These rules do not apply to removal-fill for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches. Volumes and area of impact should be limited to the minimum necessary to restore the serviceability and function of the structure.

(13) Exempt small-scale prospecting and non-motorized activities within Essential Indigenous Anadromous Salmonid Habitat. Prospecting or other non-motorized activities within waters of the state resulting in the removal, fill or alteration of less than one (1) cubic yard of material at any one site and, cumulatively not more than five (5) cubic yards of material, from within an Essential Indigenous Anadromous Salmonid Habitat stream segment (as designated in OAR 141-102) in a single calendar year do not require authorization under these rules. Such exempt prospecting or non-motorized activity must remain within the bed or wet perimeter of the waterway. This exemption does not allow removal or fill within waters of the state at any site where fish eggs are present.

(14) Exempt fish passage and fish screening in Essential Indigenous Anadromous Salmonid Habitat only. The construction and maintenance, involving less than fifty (50) cubic yards of fill or removal, of fish passage and fish screening structures built, operated and maintained in Essential Indigenous Anadromous Salmonid Habitat under ORS 498.311, 498.316, 498.326, or 509.580 to 509.645 do not require authorization under these rules. This exemption includes removal of material or gravel bars that inhibit passage or prevent screens from functioning properly.

(15) Any removal-fill not exempt under this section (OAR 141-085-0020) is subject to authorization requirements.

Stat. Auth.: ORS 196.810 & 196.805

Stats. Implemented: ORS 196.800 - 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; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0021

Oregon State Programmatic General Permit

(1) The State Programmatic General Permit (SPGP) authorizes work in waters of the United States within the State of Oregon for

activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions and limitations contained in the SPGP.

(2) The SPGP has been issued by the Portland District of the US Army Corps of Engineers as provided by 33 CFR 325.5 (c)(3), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the River and Harbor Act of 1899, as amended.

(3) The purpose of the SPGP is to reduce duplicative state and federal regulatory processes, by providing a single application process for applicants and make better use of limited government resources while enhancing protection and conservation of the water resources of the state.

(4) The SPGP is a type of general permit, issued by the Corps that provides federal authorization for certain activities that also are regulated by the Department under state law. This SPGP is based on the existing state Removal-Fill Law and the administrative rules promulgated to administer the law.

(5) The SPGP will be the only vehicle where removal fill applicants can simultaneously obtain approvals under all of these state and federal mandates in one, integrated package. With one exception, to be eligible for the SPGP, removal fill activities must be no larger than 0.5 acre of wetland fill and no more than 1,000 cubic yards of fill or removal (this is a cumulative total and not an additive total, i.e. wetland and other waters removal or fill cannot exceed 0.5 ac. or 1000 cu. yds. combined) and be one of the following categories: The thresholds do not apply to wetland restoration.

- (a) Streambank protection;
- (b) Road construction, repair, and improvements;
- (c) Site preparation for construction of buildings and related features;

- (d) Stream and wetland restoration;
- (e) Minor fills and removals;
- (f) Water control structures (repair of existing structures and necessary; improvements to provide or improve fish passage);

- (g) Utility lines; and/or
- (h) Piling installation and removal.

(6) The Department will advise applicants as to how to qualify a project for the SPGP. A project that is approved by the Department under the SPGP will be in compliance with the federal Endangered Species Act.

Stat. Auth.: ORS 196.600 - 196.905, other auth. Art. VIII, Sec. 5 of the Oregon Constitution

Stats. Implemented: ORS 196.600 - 196.905

Hist.: DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0022

Removal-Fill Permits Authorized in Site Selection or Site Certificate Proceedings; Hazardous Substances

(1) Upon submission by the applicant of proper applications and payment of the proper fees, the Department shall issue the permits authorized by the authorized siting entity, subject to the conditions set forth by the siting entity (including conditions supplied to the siting authority by the Department). The Department will continue to exercise enforcement authority over a permit issued pursuant to this section. This section applies to:

- (a) The decisions of the Corrections Facility Siting Authority, pursuant to ORS 421.628, relating to siting corrections facilities;
- (b) The decisions of the Environmental Quality Commission, pursuant to ORS 459.047, relating to siting solid waste land fills; and
- (c) The decisions of the Energy Facility Siting Council, pursuant to ORS 469.300 et seq. related to siting energy facilities.

(2) The standards contained in these removal-fill program rules do not govern complete applications received by any of the agencies listed above before the effective date of these removal-fill program rules. For all such applications, the standards in effect as of the date of receipt apply to consideration of whether the applicable agency shall approve or deny the application.

(3) Under ORS 465.315, no removal-fill authorization is required for the portion of any removal or remedial action conducted on-site where such removal or remedial action has been selected or approved by the Department of Environmental Quality. The responsible party must notify the Department of its intended action, pay applicable fees in accordance with OAR 141-085-0064, and must comply with protective measures that the Department would otherwise apply.

Stat. Auth.: ORS 421.628, 459.047 & 469.300

Stats. Implemented: ORS 421.628, 459.047 & 469.300

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0023

Expedited Process for Industrial or Traded Sector Sites

(1) The Department shall offer an expedited process of planning and authorizing removal-fill within waters of the state for certain industrial or traded sector sites identified by the Governor's Office of Economic Revitalization (GERT) or having the potential to be certified by the Oregon Economic and Community Development Department.

(2) The Director shall, upon the request of GERT or the Oregon Economic and Community Development Department, designate a site for expedited planning and processing as described in OAR 141-085-0023 of this rule. GERT or the OECDD shall provide the contact information for the project proponent or sponsor. The proponent or sponsor shall have authority to authorize the Department or its agents physical access to the site.

(3) The Director shall assign a project leader from the Department to work with the sponsor and the other applicable regulatory and natural resource agencies. Such work includes assistance and guidance in the preparation of reports, plans and permits application documents necessary to expedite issuance of an authorization under these rules or to avoid the need to obtain an authorization by planning the project in such a way so as to not be within the jurisdiction of these rules.

(4) The project sponsor, the Department and any other parties, public or private, deemed appropriate by the primary partners (i.e. the Department and the project sponsor(s)) will enter into a partnership agreement for the project that outlines the roles and responsibilities of each party and the performance requirements of all involved including a projected schedule for completion and approval of all work.

(5) The work to be accomplished by the Department through the partnership could include, but is not limited to, the following:

- (a) Coordination and direction of contracts for:

(A) The determination and delineation of waters of the state within the project site or mitigation site, if needed;

(B) The completion of functional assessments for the waters of the state within the project site or mitigation site if needed; and/or

(C) The completion of removal-fill authorization application materials (including but not limited to: alternatives analysis; compensatory mitigation plans).

(b) Review and concurrence with jurisdictional determinations in accordance with OAR 141-090;

(c) Technical assistance and guidance in the development of the site master plan with an emphasis on the mitigation (as defined in OAR 141-085-0115) of project impacts to waters of the state;

(d) Technical assistance in the preparation of removal-fill authorization application materials including guidance on the most appropriate and expedient removal-fill authorization to seek from the Department;

(e) Assistance with the early identification and resolution of issues raised by other agencies and the public; and/or

(f) Expedited review of removal-fill authorization application and prompt permit decision in accordance with these rules.

(6) The Department will endeavor to provide the assistance as described in OAR 141-085-0023 to the maximum extent possible taking into account budget constraints and limitations.

(7) The Department recognizes that time is of the essence in fulfilling the requirements of any partnership agreement and will carry out its responsibilities as expeditiously as possible.

Stat. Auth.: ORS 421.628, 459.047 & 469.300

Stats. Implemented: ORS 421.628, 459.047 & 469.300

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0024

Pre-Application Conference

(1) A person contemplating conducting an activity subject to removal-fill authorization requirements (including projects that require a federal permit or involve federal funding) may request a pre-application conference with the Department.

(2) At a pre-application conference, the Department will address pertinent factors based upon the information presented by the applicant, including:

- (a) Whether the proposed project will require an authorization;

- (b) The application requirements and type of authorization needed;
- (c) Ways to avoid and minimize adverse impacts to the water resources and navigation, fishing and public recreation uses;
- (d) The authorization review standards that will be applied to the proposed project;
- (e) The proposed compensatory mitigation plan;
- (f) The need to provide additional information with the application; and/or
- (g) The need to coordinate with certain agencies or public interests.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0025

Application for Individual Removal-Fill Permits

(1) Any person planning a project subject to the Removal-Fill Law or these rules must obtain an individual permit or other authorization from the Department before conducting the removal fill. Persons may submit an application in order for the Department to determine if a removal fill is subject to these rules and requires an authorization.

(2) To obtain an individual permit, a complete application is required in order for the Department to process the application and issue the permit. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the determinations and decisions required by these rules. The same level of documentation and analysis will not be required for all types of projects. The intensity of the analysis and therefore the amount and quality of information needed, will vary depending upon the size of the project and related severity of the expected adverse impacts. For example, projects with minimal impacts on small areas of waters of the state and not involving any listed species will require less documentation than will projects with major impacts on large areas of waters of the state that involve listed species.

(3) A completed and signed application on forms provided by the Department along with any maps, photos and drawings, as required, that includes the following information:

(a) Applicant and property owner information including name, address and phone number;

(b) Project site location information including Township, Range, Quarter/Quarter Section and Tax Lot(s); latitude and longitude, street location if any; and location map with site location indicated;

(c) Location of any off-site disposal or borrow sites if these sites contain waters of the state;

(d) Project information including proposed activity, specific project description, project plan and section views, fill and/or removal volumes expressed in cubic yards (total in waters of the state), and, for wetlands, also the size in acres (to the nearest 0.01 acre);

(e) Description of the purpose and need for the project;

(f) Identification of the limits (area) of the waters of the state (e.g. wetland delineation or determination) and the proposed impact to waters of the state associated with the project;

(g) A written description of any changes that the project may make to the hydraulic and hydrologic characteristics (e.g., general direction of stream and surface water flow, estimated winter and summer stream flow volumes.) of the waters of the state, and an explanation of measures taken to avoid or minimize any adverse effects of those changes. Adverse effects to be considered include but are not limited to:

(A) Impeding or restricting the passage of normal or expected high flows (unless the project purpose is for fill to impound water);

(B) Increasing water flows from the project;

(C) Relocating water or redirecting water flow;

(D) Causing flooding or erosion downstream of the project.

(h) A description of the existing biological and physical characteristics and condition of the water resource and identification of the adverse effects of project development;

(i) A description of the navigation, fishing and public recreation uses, if any, at the project site;

(j) A written analysis of alternatives that were evaluated to determine the practicable alternative to avoid and minimize impacts to waters of this state, including water resources and navigation, fishing and public recreation uses. A practicable alternative is one that is capa-

ble of being done (i.e., feasible) and proposed on a site that is available to the applicant for the project purpose. Sites that are not presently owned or controlled by the applicant, but could be reasonably obtained, utilized, expanded, or managed to fulfill the project purpose may be considered if otherwise feasible. The analysis must explain why the applicant chose the option identified in the application. An alternatives analysis is needed for any estuarine fills. Circumstances when an alternatives analysis is required in an application include but are not limited to projects involving conversion to upland of rare wetland types (such as forested bogs and vernal pools). An application for a removal-fill that meets the following criteria need not include an elaborate explanation of the applicant's process to determine the practicable alternative:

(A) Those located in waters of the state with limited aquatic life and habitats and limited navigation, fishing and public recreation uses.

(B) Small in size; in relationship to the affected waters of the state.

(C) Those that cause only temporary impacts.

(k) Names and addresses of adjoining property owners (including those across a stream or street from the project as required by the Department);

(l) Local government land use information (as shown on the application form);

(m) Coastal zone certification statement, if project is in the coastal zone (as shown on the application form);

(n) Any information, known by the applicant, concerning the presence of any listed species. Information may include but is not limited to:

(A) A site survey;

(B) A database query completed by the Oregon Natural Heritage Program; or

(C) A project-specific or programmatic Biological Assessment and/or approved Biological Opinion and/or a letter from the pertinent state or federal agency;

(o) Any information, known by the applicant, concerning historical, cultural and/or archeological resources. Information may include but is not limited to a statement on the results of consultation with affected Tribal governments and/or the Oregon State Historic Preservation Office.

(4) If reasonably expected adverse impacts to the water resources cannot be avoided, minimized, rectified or reduced, a complete application must also include a compensatory wetland mitigation plan as defined in OAR 141-085-0010 that will meet the requirements in OAR 141-085-0121 thru 0176, or a compensatory mitigation plan, as required in 141-085-0115, or a rehabilitation plan for temporary impacts to waters of the state, as required in OAR 141-085-0171.

(5) If the proposed removal fill involves a wetland, a wetland determination or delineation report that meets the requirements in OAR 141-090-005 thru 0055 shall be submitted by the applicant or required by the Department:

(a) A wetland delineation is generally needed to determine precise wetland boundaries and to accurately identify proposed impacts (fill and/or excavation) and determine Compensatory Wetland Mitigation ratio requirements. In some circumstances, the Department may conclude that a wetland determination is sufficient to identify wetland impacts or to establish the extent, if any, of wetland impacts.

(b) Whenever possible, wetland determination or delineation reports should be submitted to the Department for a jurisdictional determination well in advance of a permit application (i.e., within 90 days of submitting an application) to ensure that the project design is based upon approved wetland boundaries and to ensure that the application will not need to be revised and resubmitted if, during the evaluation process, the wetland delineation report is found to be inaccurate.

(6) If the proposed removal fill involves a wetland, the application shall include a functional attribute assessment of the wetland as described in OAR 141-085-0121.

(7) If the proposed removal fill will directly affect an estuary as defined in OAR 141-085-0010, a complete application must include:

(a) An estuarine resource replacement plan that meets the requirements in OAR 141-085-0240 to 0266 (rather than the compensatory mitigation plan requirements cited in (4); and

(b) For any project involving the placement of fill for a non-water dependent use as defined in OAR 141-085-0010, a written statement that analyzes the following criteria:

- (A) The public use of the proposed project;
- (B) The public need for the proposed project;
- (C) The availability of alternative, non-estuarine sites for the proposed use; and
- (D) The proposed project's identified adverse effects on public navigation, fishery and recreation.

(8) An applicant for fill and removal of material at locations not more than one mile apart shall combine them into one application. Applicants for linear transportation or utility corridor projects shall apply on a single application if the projects:

- (a) Consist of integrally-related activities; and
- (b) Are planned, phased, designed and budgeted as a discrete construction unit.

(9) The Department may require additional information necessary to make an informed decision on whether or not the application and project complies with these rules and ORS 196.800 to 196.990.

(10) A complete application shall include the fee as described in OAR 141-085-0064.

Stat. Auth.: ORS 196.815, 196.825, 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0027

Determination of Complete Application for Individual Removal-Fill Permit

(1) Within 30 days of Department's receipt of an application, the Department shall finish the completeness initial review and provide written results of the review to the applicant. The Department shall review the application materials to determine whether all the forms, plans, maps and other information required in OAR 141-085-0025 are present. During the review, the Department will determine:

(a) If the project, as described in the complete application, is exempt from these rules as described in OAR 141-085-0015 or 141-085-0020. If the Department determines that the application is for an activity that is not subject to these rules, it shall notify the applicant in writing and state the reasons for the determination. If there is insufficient information to make this determination, the Department will provide a list of the information deficiencies to the applicant as part of the results of the initial completeness review.

(b) If the project, as described in the application, is eligible for approval under the General Authorization (GA) as described in OAR 141-089. If the project is eligible for a GA, the Department will continue to process the application as a General Authorization.

(c) If the application is complete in accordance with OAR 141-085-0025.

(d) If the application is incomplete.

(2) If the Department fails to make the completeness determination within the 30 (thirty) calendar day time period and fails to so notify the applicant, the application shall be deemed a complete application and shall proceed to the public review process as described in OAR 141-085-0028.

(3) The Department will accept a preliminary wetland delineation or preliminary wetland determination report along with the application in accordance with OAR 141-085-0025(5). A jurisdictional determination in accordance with OAR 141-090 will be completed prior to or at the time of the permit decision. The Department shall not deem an application incomplete because it lacks a Department-approved wetland delineation or wetland determination report.

(4) When the Department deems the application complete, the Department shall process the application in accordance with OAR 141-085-0028(6).

(5) If the Department determines that the application does not meet the requirements of OAR 141-085-0025 and is therefore deficient and incomplete, the Department shall, within a reasonable time, but no later than thirty (30) days after the initial receipt of the application, notify the applicant in writing and list the missing information. The Department will take no action on the incomplete application until the required information is resubmitted. The applicant must resubmit the entire amended package for reconsideration, unless instructed by the Department to do otherwise. Submission of a new application package starts a new 30-day completeness review period. Examples of information that may be cause for rejection of the application include, but are not limited to, the following:

- (a) Major errors, omissions or inconsistencies in the application;
- (b) Major errors, omissions or inconsistencies in the wetland delineation or determination report, if one is required;
- (c) Lack of a wetland delineation or wetland determination where wetlands are affected by the project;
- (d) Unclear, illegible maps and drawings;
- (e) Lack of a compensatory wetland mitigation plan;
- (f) Lack of an analysis of the adverse effects of the project on the water resources or the navigation, fishing and public recreation uses; or

(g) Lack of payment of fees.

(6) Minor errors, omissions or inconsistencies, as determined by the Department, will not be cause for rejection.

Stat. Auth.: ORS 196.815, 196.825 & 196.845

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0028

Individual Removal-Fill Permit Review Process Including the Public Review and Notice Process

(1) General Description. The Department shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Department will do one of the following:

(a) Approve the application and issue an individual removal-fill permit with conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit with special conditions; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Department determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Department agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Department shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OAR 141-085-0028(1). If no agreement is reached, the Department shall take any action described in OAR 141-085-0028(1)(a)(b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Department at any time prior to the permit decision. If the modification is determined by the Department to be substantially different in nature or effect from the original application (e.g. large increase in area of development, or large increase of volume of fill/removal), the Department shall treat the modified application as a new application and process it in accordance with these rules. The Department shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Department will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Department.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Department shall provide notification of the availability of the application for review to:

- (a) Adjacent property owners;

(b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;

(c) Affected local government land use planning and zoning departments;

(d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;

(e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency Department, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and

(f) Affected Tribal governments.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Department shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Department office nearest the project location.

(9) The Department will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public interest groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Department may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Department's discretion, the Department may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Department within the period established by the Department, but not more than thirty (30) calendar days from the date of the notice. However, the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment if the application requires certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended (i.e. 401 certification), unless the Department, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and the Department. In no case shall the extension granted be in excess of one year. If an agency or unit of government fails to comment on the application within the comment period, the Department shall assume the agency or other unit of government has no objection to the project.

(11) Applicant Response to Comments.

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant the Department will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a request, either orally or in writing, for additional time to respond to comments, and the Department shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Department may, as a result of the public review process and/or the Department's investigations, request that the applicant voluntarily submit supplemental information prior to the Department making the permit decision. The Department

shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Department, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815, 196.825 & 196.845

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0029

Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Department shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval To issue an individual removal-fill permit the Department must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Department may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Department will not issue an individual removal-fill permit for a project that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Department may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering practicable mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis The Department will issue a permit only upon the Department's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses.

(5) In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Department will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Department with all information necessary to make this determination.

(6) An alternatives analysis is required for all estuarine fills. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

- (a) The fill is for a public use;
- (b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and
- (c) The project meets all other review standards of these rules.

(7) Mitigation The Department will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Department's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Department shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Department determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Department shall then consider whether limiting the degree or magnitude of the removal fill and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Department determines that project impacts to the waters of the state cannot be further minimized, the Department shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the removal fill impact area can rectify the impact;

(d) Reduction or elimination. When removal fill impacts have been minimized and rectified to the maximum extent practicable, the Department will consider whether the impacts can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Department shall then consider how the applicant's project would compensate for reasonably expected adverse impacts of project development by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(8) Direct and Indirect Effects The Department shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development to waters of the state.

(9) Permit Conditions If the project meets the requirements of this section, the Department shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development to waters of the state. The Department may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order to mitigate for the reasonably expected adverse impacts of project development to waters of the state. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The removal fill shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. removal fill conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and

wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Department based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Department.

(e) The removal fill shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction to waters of the state, the permit holder shall immediately cease work at the discovery site and contact the Department and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Department, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Department may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill in waters of the state any material defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use in waters of the state any fill material such as chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0031

Documentation of Individual Removal-Fill Permit Decision; Term of Certain Individual Removal-Fill Permits

(1) The Department shall prepare written findings documenting and supporting any decision to deny an individual removal-fill permit. In addition, the Department shall prepare written findings to support any decision to issue an individual removal-fill permit for the following:

(a) Projects involving fill of two acres or more in freshwater wetlands.

(b) Projects involving fill in estuaries (except cable crossings, pipelines, or bridge construction).

(c) Projects involving the removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging).

(d) Projects involving placement of greater than 2,500 cubic yards riprap in coastal streams and estuaries.

(e) Projects in the Oregon territorial sea in accordance with Statewide Planning Goal 19 — Ocean Resources.

(2) The Department shall prepare written findings documenting and supporting a permit decision that is contrary to the recommendation of a state agency.

(3) Terms of Permits The term for individual removal-fill authorizations shall be as described.

(a) The Department may issue an individual removal-fill authorization for up to five (5) years for projects that occur on a continuing basis or will take more than one year to complete as follows:

(A) For commercial aggregate removal including dredging and bar scalping when the Department determines that:

(i) There is sufficient aggregate resource or annual recharge to allow the proposed volumes to be removed; and

(ii) The applicant has conducted removal in compliance with any individual removal-fill authorization conditions for the same site for at least one year preceding the pending application.

(B) For projects associated with flood event recovery (e.g. streambank stabilization) when the Department determines that the project(s) are part of a comprehensive multidisciplinary flood recovery plan that specifically addresses and supports the type of treatment that is proposed in the removal-fill authorization application.

(C) For projects that are for the purpose of watershed restoration that are developed from a watershed assessment and identified as a priority in a watershed action plan.

(D) For other types of projects, when the Department determines that:

(i) The project is expected to require more than one year to complete; or

(ii) The project purpose requires annual activity or reconstruction (e.g. irrigation diversions); and

(iii) 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.

(E) Fees for a multi-year period permit, in accordance with ORS 196.9159(5), shall be paid annually on the anniversary date of the permit as established by the Department.

(F) The Department may modify conditions of a multi-year authorization based upon new information or project monitoring that indicate a need for different operating conditions.

(G) Before modifying any condition that significantly affects the scope and extent of the removal fill (e.g. amount of material to be filled/removed) of any individual removal-fill authorization authorized for more than one year, the Department shall give notice as described in OAR 141-085-0028(4) and treat the proposed notification in the same manner as described in OAR 141-085-0028(6) thru (12).

(H) If a person fails to comply with reporting requirements or any other condition of a multi-year authorization the Department may revoke the multi-year status and require annual renewal, suspend the permit pending correction, or take any other enforcement action available to the Department under the Removal-Fill Law and these rules.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0034

Transfer of Authorization/Waiver or Modification of Authorization Conditions

(1) The person or party listed on the authorization is responsible for complying with the conditions of the authorization, unless the authorization is transferred in writing by the Department to a different person or party through the following process:

(a) A transfer form shall be submitted by the authorization holder.

(b) If the original authorization has not expired, the authorization may be transferred by issuing a modification to the original authorization.

(c) If the authorized activity has been completed and/or the authorization expired, but mitigation monitoring is still required as a condition of the original authorization, that obligation shall be transferred to the new authorization holder.

(d) If a bond was required for the mitigation, a new bond must be provided prior to the transfer.

(2) Upon the written request of the authorization holder, the Department may grant a waiver or modification of any condition. The authorization holder shall have the burden to prove, to the satisfaction of the Department, that the waiver or modification will not result in adverse impacts on the water resources or otherwise be contrary to the policies in OAR 141-085-0006. Significant modifications of individual removal-fill permit conditions may require public review as specified in OAR 141-085-0028(6) thru (12).

(3) Exceptions to a permit condition regarding the in-water work period shall be authorized by the Department as described in OAR 141-085-0029(7)(C).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0036

Renewal and Extension of Individual Removal-Fill Permits

Permits may be renewed or extended by the Department under the following conditions:

(1) At least ninety (90) calendar days prior to the expiration of a valid removal or fill permit, the Department shall notify the permit holder of the expiration date and request that the applicant report to the Department in writing the status of project completion and the permit holder's desire to renew the permit.

(2) If the applicant submits a request in writing for renewal with the appropriate fee at least forty-five (45) calendar days prior to the permit expiration date, the Department may:

(a) Renew the permit, with or without modified conditions (consistent with OAR 141-085-0029); or

(b) Extend the permit for an additional time period but less than the original term, one time only, without modified conditions; or

(c) Extend the term of the permit with new or modified conditions for up to an additional one-hundred and twenty (120) calendar days, one time only; or

(d) Deny the request for permit renewal.

(3) In the event a permit holder does not respond forty-five (45) days prior to the date of permit expiration, the Department may extend the expiration date of the permit for not more than 120 days, if:

(a) The permit holder makes a written request to the Department prior to the expiration date of the permit;

(b) There is a reasonable likelihood that the project can be completed prior to the new expiration date; and

(c) All other conditions of the original permit are met or can be fulfilled.

(4) The Department may require a new permit application or additional information if:

(a) There is a proposed change in the project that may increase the reasonably expected adverse impacts of the project on the water resources;

(b) There is a change in the method of operation of the project that may increase the reasonably expected adverse impacts of the activity on the water resources of the state;

(c) There is a change in natural conditions at the project site that may increase the reasonably expected adverse impacts than previously identified in the application review process;

(d) New information becomes available indicating that additional adverse impacts may accrue as a result of the project; or

(e) Substantial adverse comments or comments requesting a change in substantive conditions are received.

(5) Requests for renewals shall be reviewed pursuant to the standards contained in the applicable rules in effect at the time of the request.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.825

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0064

Removal-Fill Authorization Fees; Disposition of Fees

(1) Any application for an individual removal-fill authorization submitted as described in OAR 141-085-0025 of these rules must be accompanied by a base fee in accordance with the following schedule:

(a) For a removal by a private operator, or a person contracting to perform services for a private operator, \$50.

(b) For a removal by a public body: \$150.

(c) For a removal by a commercial operator: \$150.

(d) For a fill by a private operator, or a person contracting to perform services for a private operator: \$150.

(e) For a fill by a public body: \$375.

(f) For a fill by a commercial operator: \$375.

(g) For erosion-flood repair, including riprap, by a private landowner or public body, or a person contracting to perform services for such persons: no fee.

(2) In addition to the base fee for removal established under OAR 141-085-0064 (1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities involving 500 to 4,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 5,000 to 50,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities over 50,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(3) In addition to the base fee for fill established under OAR 141-085-0064(1)(a) of these rules each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(a) For activities involving less than 500 cubic yards: no volume fee.

(b) For activities of 500 to 2,999 cubic yards: \$75 for private operator; \$75 for public body; and \$75 for commercial operator.

(c) For activities involving 3,000 to 10,000 cubic yards: \$150 for private operator; \$150 for public body; and \$150 for commercial operator.

(d) For activities of over 10,000 cubic yards: \$225 for private operator; \$225 for public body; and \$225 for commercial operator.

(4) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher, per ORS 196.815(4), according to the fee schedule described in section (1) to (3) of this rule.

(5) The annual fee for an individual removal-fill authorization is equivalent to the base fee according to the schedule set forth in section (1) of this rule. Fees for a multi-year period permit, in accordance with ORS 196.815(5), shall be paid annually on the anniversary date of the permit. Any authorization may be suspended during any period of delinquency of payment and shall be treated as though no authorization had been issued.

(6) There shall be no application fee for the issuance of an Emergency Authorization (OAR 141-085-0010(59) or Letter of Authorization (OAR 141-085-0010(119)).

(7) Fees received under this section shall be credited to the Common School Fund for use by the Department in administration of these rules and ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law.

Stat. Auth.: ORS 196.815

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0066

Emergency Authorization for Removal-Fill

(1) In the event an emergency exists, as described in OAR 141-085-0010, the Department may issue an emergency authorization. Activities covered by OAR 141-085-0020 are exempt from this section.

(2) Any person requesting an emergency authorization may apply orally or in writing. Written applications may be submitted in the same manner as described in OAR 141-085-0025 and sent via facsimile, e-mail or via U.S. mail. Any request submitted orally must be documented, in writing, by the Department and provided to the applicant.

(3) The application and review requirements described in OAR 141-085-0025, 0027, and 0028 do not apply to emergency authorizations. An application for an emergency authorization shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request.

(4) Applications for an emergency authorization shall contain enough information for the Department to determine:

(a) The applicant and responsible party planning and carrying out the activity;

(b) The physical area of the project;

(c) The nature of the emergency (specifically, the nature of the threat to public health, public safety or property and the immediacy of the threat and need to act promptly);

(d) The approximate volume of material to be removed and/or filled;

(e) The schedule for doing the work;

(f) The date and approximate time when the event that caused the emergency took place;

(g) The area of impact of the emergency and the proposed emergency action;

(h) A statement as to whether the emergency action is intended as a temporary or permanent response measure; and

(i) A description of how the work will be accomplished.

(5) In order to make a timely and legally defensible determination, the Department may request additional information from the applicant. The Department may authorize an Department employee or other person to act as a representative of the Department to conduct an on-site evaluation of the planned activity and make recommendations as to whether or not the application should be approved as requested, approved with conditions, denied or processed as an individual removal-fill authorization application.

(6) In determining whether or not to approve the application, the Department shall determine, as quickly as is reasonable and feasible, whether:

(a) An emergency, as defined in OAR 141-085-0010 exists, and the factual circumstances indicate:

(A) The emergency poses a direct threat to substantial property, including but not limited to a dwelling, farm or cropland;

(B) Some prompt removal-fill is required to reduce or eliminate the threat; and

(C) The nature of the threat does not allow the time necessary to obtain some other form of authorization as described in these rules.

(b) The removal-fill is planned for waters of the state, including wetlands and is an activity subject to these rules; and

(c) The planned minimizes, to the extent practicable, adverse impacts to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state; and

(7) Based upon the review of the application as described in OAR 141-085-0066(6) the Department may:

(a) Approve the emergency authorization as requested;

(b) Approve the emergency authorization with conditions;

(c) Request additional information from the applicant and make a decision to reject, approve with conditions or approve the application without conditions; or

(d) Deny issuance of the emergency application.

(8) An emergency authorization shall contain conditions designed to minimize the reasonably expected adverse impacts of the activity to aquatic life, water quality and navigation, fishing and public recreation uses of the waters of the state while taking into account the impact of the emergency on persons and property. The Department may also require compensatory mitigation or compensatory wetland mitigation in some cases where significant loss of water resources and/or navigation, fishing and public recreation uses has resulted directly from the authorized removal fill.

(9) All conditions of an emergency authorization are enforceable on the permit holder beyond the expiration date of authorization.

(10) If a request for an emergency authorization is denied, the applicant may resubmit the application as an individual removal-fill authorization or general authorization in accordance with the procedures set out in these rules.

(11) If an emergency authorization is issued orally, the written form of the emergency authorization shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation.

(12) The term of the emergency authorization shall be limited to the time necessary to complete the planned removal-fill activity and be specifically stated in the authorization. In no case shall the term exceed 60 days. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990
 Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0070**General Authorizations; Standards and Criteria; Process for Establishing General Authorizations (see OAR 141-089)**

(1) A person may be exempt from the requirement to obtain an individual removal-fill permit through the use of an applicable general authorization. Any person proposing to conduct a removal-fill under a general authorization shall first notify the Department in writing in accordance with the requirements of the specific general authorizations being sought.

(2) General authorizations, are adopted, amended and repealed as administrative rules in accordance with the Administrative Procedure Act (ORS 183.310 to 183.550).

(3) The Department may propose to adopt a general authorization upon a finding that the category of removal-fill, as described in the proposed general authorization (including the applicable conditions):

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impact;

(c) Will not result in long-term harm to the water resources of the state; and

(d) Are consistent with the policies of these rules as described in OAR 141-085-0006.

(4) The Department may amend or rescind any general authorization, through rulemaking, upon a determination that the removal-fill conducted under the general authorization has resulted in or would result in more than minimal environmental impact or long-term harm to the water resources of this state. Any person may request the Department invoke this provision. Such a request must include the specific general authorization to be rescinded or amended and clearly and convincingly state the reasons for the request. The Department may process the request in the same manner as described in OAR 141-085-0070(2).

(5) No general authorization is valid where the removal-fill is prohibited by the local comprehensive land use plan or implementing regulations or other applicable ordinance.

(6) The rule promulgating the general authorization shall be effective for up to a five-year term and shall be reviewed, every five years. Upon review, the general authorization shall be reissued in a similar or amended form or repealed.

(7) Failure of a person to adhere to the terms of any general authorization adopted under this section will be considered a violation of the removal-fill law and subject to appropriate enforcement in accordance with these rules.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 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; DSL 2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0075**Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit**

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Department may request the Department enter into an alternative dispute resolution process. The Department and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been deemed incomplete, denied, or who objects to any of the conditions imposed by the Department under OAR 141-085-0029, may, within twenty-one (21) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Department. The request shall include the reasons for the appeal hearing.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Department may file a written request for a hearing with the Department within twenty-one (21) calendar days after the date the authori-

zation was granted. The request shall include the reasons for the appeal hearing.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/ permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Department's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill to the Department.

(5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Department shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Department.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Department may take official notice under ORS 183.450(3) in removal/fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Department delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Department.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Department shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Department may be suspended by the Department during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Department and will be either granted or denied by the Department. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Department by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Department's decision on a permit will be notified at the time of issuance or denial. The Department's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally

be held at the Department offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835
 Stats. Implemented: ORS 196.800 - 196.990
 Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0505; 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; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0079

Revoking or Suspending an Authorization; Allowing Corrective Action

(1) The Department may revoke or suspend an authorization if an alleged violator is not in compliance with any conditions of an authorization.

(2) The Department shall give notice of suspension to the permit holder and advise them as to the reasons and terms of the suspension.

(3) The Department may initiate the following proceedings to revoke an authorization:

(a) The Department shall issue a preliminary order to the alleged violator indicating the intent to revoke the authorization;

(b) The preliminary order shall include, but not be limited to, the following information:

(A) A statement of the alleged violator's right to a contested case hearing, as provided in ORS 196.865 before a hearings officer before the authorization 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 contested case hearing is to be held;

(C) A reference to the particular portions of the removal-fill law and these 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 alleged violator 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 twenty (20) calendar days in which to complete the corrective action;

(B) If the alleged violator completes such action within the specified time period, the revocation procedure shall be terminated.

(d) If the authorization holder fails to request a contested case hearing as allowed under ORS 196.865, the Department may issue a final order revoking the authorization after presenting a prima facie case demonstrating that a violation has occurred.

Stat. Auth.: ORS 196.865
 Stats. Implemented: ORS 196.800 - 196.990
 Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0080

Violations and Investigations

(1) In its discretion, the Department shall conduct appropriate investigations of reported violations and make compliance inspections to determine whether violations of the removal-fill law, these rules (OAR 141-085) or the terms and conditions of any authorization have occurred.

(2) The Department shall make a reasonable effort to obtain permission from the landowner or agent, or a duly authorized representative of the landowner or agent, for the Department or its authorized representative to conduct a site visit. The Department shall document its efforts to obtain permission to conduct a site visit.

(3) As described in OAR 141-085-0080(1) a violation includes, but is not limited to:

(a) Fill, removal, or channel relocation without a valid authorization;

(b) Non-compliance with any condition of an authorization;

(c) Obtaining an authorization or reporting on conditions of an authorization by misrepresentation or by failure to fully disclose known material facts;

(d) Failing to comply with any terms of an enforcement order; or

(e) Violation of any condition of an approved wetlands conservation plan.

(4) Alleged or suspected violations may be reported to the Department by e-mail, facsimile, telephone or in writing.

(5) When reports of alleged or suspected violations are submitted to the Department in confidence and the information is not otherwise required by law to be submitted, the Department 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.

Stat. Auth.: ORS 196.860
 Stats. Implemented: ORS 196.800 - 196.990
 Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0405 and 141-085-0420; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0085

Enforcement Actions and Procedures

(1) The Department is authorized to take such civil, criminal or administrative actions as are necessary to enforce the removal-fill law and these rules (OAR 141-085) including, but not limited to the following (ORS 196.870 and 196.890):

(a) Consent orders;

(b) Consent agreements (used for violations that do not require compensatory mitigation or compensatory wetland mitigation and are easily resolved);

(c) Cease and desist orders;

(d) Restoration orders;

(e) Civil penalties; and

(f) Liens.

(2) The Department shall give notice of any proposed order (except Consent Agreements or Consent Orders) relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the Department may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183.310 to 183.550 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(3) Any notice of violation shall describe the nature and extent of the violation.

(4) The Department may take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.905 or of any rule or final order of the Department under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the Department may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the Department shall set forth if applicable the dates of notice and hearing and the specific rule or order of the Department, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

(5) In addition to the actions described in OAR 141-085-0085(4) and 141-085-0090 the Department may enter an order requiring any person to cease and desist from any violation if the Department determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) If a person subject to an order under this subsection files a timely demand for hearing, the Department shall hold a contested case hearing before a hearings officer according to the applicable provisions of ORS 183.310 to 183.550. If the person fails to request a hearing,

the order shall be entered as a final order upon prima facie case made on the record of the agency.

(c) Neither the Department nor any duly authorized representative of the Department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the Department's order in the same manner as with an order of that court.

(6) Proposed Order to Restore, Cease and Desist Order and/or Civil Penalties. Any 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.

Stat. Auth.: ORS 196.860, 196.870 & 196.875

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84, Renumbered from 141-085-0435; LB 2-1991, f. & cert. ef. 3-15-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0090

Civil Penalties

(1) In addition to any other remedy allowed by law or these rules (OAR 141-085), the Department may assess a civil penalty for any violation of the removal-fill law or these rules (OAR 141-085).

(2) More than one civil penalty may be assessed for an unauthorized removal or fill activity.

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.

(3) Required notice; contents of notice. The Department shall give written notice of Intent to Assess a civil penalty by personal service or by registered or certified mail to the permit holder or person (hereinafter referred to as 'party') incurring the civil penalty. The notice shall include, but not be limited to, the following:

(a) The particular section of the statute, rule, order or authorization 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 twenty (20) calendar days of receiving the notice; and

(d) A statement of the amount of civil penalty assessed and terms and conditions of payment.

(e) The party may request a contested case hearing in accordance with procedures described in OAR 141-085-0075.

(4) Calculating the civil penalty.

(a) The amount of civil penalty (F), as expressed in U.S. currency dollars, shall be determined by the Department using the following formula: $F = BPCI$.

(A) B is the base fine factor of \$600;

(B) "P" is the prior knowledge factor to be determined as follows:

(i) A value of 1 shall be applied if the alleged violator was unaware of the removal-fill law at the time of the alleged violation; or

(ii) A value of 2 shall be applied if the alleged violator was aware of the removal-fill law at the time of the alleged violation (e.g., permit non-compliance, prior penalties or other exposure to the Removal-Fill Law);

(iii) A value of 5 shall be applied if the alleged violator had a previous violation. A previous violation exists, for example, if there was an adjudication (either in court or administrative hearing), or the violator failed to appeal an enforcement order (and a final order was issued), or the violator signed a consent order or consent agreement. This value shall not be imposed if the previous violation occurred more than (5) five years prior to the current incident.

(C) The cooperation value (C) shall be determined by the Department 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:

(i) A value of 1 shall be applied where the person complies with restoration as requested by the Department without the need for an enforcement order or court action by the Department, or where the Department determines that restoration efforts would be unlikely to benefit the resource;

(ii) A value of 3 shall be applied where the person is not cooperative in complying with restoration as requested by the Department and the Department must issue an enforcement order or obtain a court order to restore.

(D) "T" is water resource impact factor to be determined as follows:

(i) A value of 1 shall be applied if the damaged resource is expected to naturally self-restore within one year; or

(ii) A value of 3 shall be applied if the adverse effects are not expected to naturally self-restore within one year.

(b) In cases where the prior knowledge (P) factor is greater than one (1) and the cooperation (C) factor is greater than one (1), the total amount of the civil penalty (F), in dollars U.S. currency, as determined by applying the calculation methods described in OAR 141-085-0090(4) shall be doubled, not to exceed \$10,000 per day.

(5) Failure to pay civil penalty. Once the final adjudication of any civil penalty calculated in the manner described in OAR 141-085-0090(4) has been completed in accordance with OAR 141-085-0090(3), the amount of the civil penalty shall increase by the amount of the original civil penalty for every twenty (20) calendar days that pass without the alleged violator remitting payment to the Department for the full amount of the civil penalty and the Department taking receipt of the payment. In no case shall the amount of the civil penalty be increased by more than ten times the original civil penalty amount. If a civil penalty or any portion of the civil penalty is not paid as required by OAR 141-085-0090(5), interest shall accrue at the rate of nine percent per annum pursuant to ORS 82.010 on the unpaid balance.

(6) Civil penalty relief. The Department may, upon written request of the alleged violator assess a civil penalty as described in OAR 141-085-0090 and including evidence of financial hardship, remit or mitigate the amount of any civil penalty. The request shall be received within twenty (20) calendar days from the date of personal service or mailing of the notice of civil penalty as described in OAR 141-085-0090(3). Evidence provided as to the alleged violator's economic and financial condition may be presented 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 196.890

Stats. Implemented: ORS 196.800 - 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; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0095

Request to Close Specified Waters of the State to the Issuance of Removal-Fill Authorizations

(1) The Department may request the Oregon Water Resources Commission (OWRC) to close, by administrative rule, specified waters of the state to the issuance of removal-fill authorizations (ORS 196.840).

(2) Any state resource agency listed in ORS 196.825 may make such a request of the Department. In determining whether or not to submit a request to the OWRC the Department shall consider:

(a) The reasons for requesting a closure;

(b) The specific waters of the state to be affected;

(c) The effect, including economic effects, of the proposed closure on potential future applicants;

(d) The effect, including benefits, of the proposed closure on aquatic life, water quality and public use of the waters; and

(e) The time period the closure should be recommended to be in effect.

(3) Prior to submitting a closure request to the OWRC, the Department shall hold at least one public hearing within the affected watershed. Interested and affected parties, including local government and watershed councils are to be notified at least thirty (30) calendar days prior to the hearing date. Public comment on the proposal shall be accepted at least fourteen (14) calendar days following the last hear-

ing. The Department shall issue a report explaining the proposal and outlining the reasons for considering a closure. Notice of the Department's final decision shall be provided all participating parties and parties of interest as identified by the Department.

Stat. Auth.: ORS 196.840
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0096

Monitoring; Annual Report; Public Information and Education

(1) Program Monitoring. Pursuant to ORS 196.910, the Department will monitor removal and fill authorized under these rules to determine:

- (a) Compliance with permit conditions;
- (b) The effectiveness of permit conditions in achieving the policies of these rules; and
- (c) The adverse impacts of authorized activities on salmonid spawning and rearing habitat and wetland functional attributes.

(2) Annual Reporting. Pursuant to ORS 196.885, commencing with fiscal year 2002–2003 and continuing each fiscal year thereafter, the Department shall submit an annual report to the State Land Board on the activities conducted under these rules. The report shall be delivered to the State Land Board and posted on the Department's website no later than 120 days after the end of the fiscal year. The report shall also be provided to the appropriate legislative committee(s). The annual report shall include the following:

(a) The number of removal-fill authorizations applied for, denied and authorized. For all authorizations granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body that shows:

(A) The total number of authorizations, the number of new authorizations and the number of renewal authorizations.

(B) The volume and/or wetland acreage of removals and fills authorized during the past year, and to the extent possible, the volume and/or wetland acreage of fills and removals completed during the past year.

(C) The areal extent of wetlands lost, by habitat type, and the areal extent of wetlands gained, by habitat type, through compensatory wetland mitigation.

(b) A summary of compensatory mitigation measures, including a description of each compensatory mitigation project approved during the past year including the location and size of each compensatory mitigation project, whether creation, enhancement or restoration, and a report on the status of all compensatory mitigation projects pending or completed during the past year.

(c) A summary of enforcement activities, including:

- (A) The number of complaints reported.
- (B) The number of compliance investigations conducted.
- (C) The results of compliance actions, including:
 - (i) The number of cases resolved by either voluntary compliance, administrative hearings or judicial enforcement proceedings;
 - (ii) The penalties assessed; and
 - (iii) The penalties recovered.

(d) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(e) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.640 and 196.655.

(f) The number of and average time for responding to notices received by local governments and the number of responses that took more than thirty (30) calendar days.

(g) The number of wetland conservation plans approved by the Department and a description of each, including the issues raised during the approval process.

(3) Public Information. The Department shall develop and maintain a public information program to educate permit applicants and the general public about:

- (a) Wetland functions and values;
- (b) The status and trends of Oregon's wetlands;
- (c) The Statewide Wetlands Inventory; and
- (d) Wetland identification, regulations and permit requirements.

(4) Technical Assistance and Cooperation. Upon request, within the limits of staffing ability and available resources, the Department shall provide technical assistance to other state agencies, local governments and the public in identifying wetlands.

Stat. Auth.: ORS 196.885, 196.910 & 196.688
Stats. Implemented: ORS 196.800 - 196.990 & 196.600 - 196.692
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0115

Compensatory Mitigation

(1) The Department may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public recreation uses on waters of the state other than freshwater wetlands or estuarine areas. Such conditions impose obligations on the permit holder beyond the expiration of the authorization.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Offsite or onsite enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Offsite or onsite improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Department, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Department, may contract with a third party to construct, monitor or maintain the compensatory mitigation site. The permit holder remains responsible for compliance with the compensatory mitigation conditions unless the authorization is transferred to another entity in accordance with these rules.

(3) The Department may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

(4) The Department may require some form of long term protection for the compensatory mitigation site.

Stat. Auth.: ORS 196.825
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0121

Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR-141-085-0121 to OAR-141-085-0151, apply to removal-fill that occur within freshwater wetlands and do not apply to removal-fill:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR-141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse impacts of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland. The requirements to provide CWM impose obligations on the permit holder that extend beyond the expiration date of the authorization.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that on-site CWM is impracticable. The applicant may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site CWM to provide the replacement of the functional attributes of the lost wetland. If on-site CWM is impracticable as documented by the applicant, off-site CWM shall be utilized. In considering off-site CWM, the applicant may create, restore or enhance a wetland or if the project development occurs with-

in the service area of an established wetland mitigation bank, the applicant may purchase credits, if available, from the bank to fulfill CWM requirements so long as the functional attributes of the lost wetland are replaced. If no mitigation bank is available, CWM may be fulfilled through payment to provide as described in OAR 141-085-0131.

(5) The Department will review the CWM plan for sufficiency and compliance with these rules. The Department may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Department will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Department may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Department shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes. The assessment shall assess:

(a) Existing functional attributes of the entire wetland at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) A functional assessment of the impact site is not needed if the proposed CWM plan utilizes payment to provide or the purchase of credits from a wetland mitigation bank to satisfy all the compensatory wetland mitigation requirements.

(10) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(11) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Department, the "Judgmental Method" in the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(12) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(13) Additional assessments or data may be required by the Department if the functional assessment results, public/agency review comments, or the Department's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0126

Requirements for All CWM

(1) CWM shall replace:

(a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system and class (e.g., palustrine forested); and

(b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Department of State Lands 2001); and

(c) The functional attributes of the lost wetland (impact wetland).

(2) The Department may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Department, may at any time contract with a third party to construct, monitor or maintain the CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.

(5) CWM:

(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Department may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR 141-085-0136.

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) CWM sites may fulfill multiple purposes including stormwater retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) CWM using wetland enhancement must conform to the following additional requirements. The CWM shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;

(c) Not replace or diminish existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a CWM plan.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0131**Requirements for CWM Involving Wetland Mitigation Banks, Payment-to-Provide or Conservation**

(1) The requirements in this section are in addition to the general requirements in OAR 141-084-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment to provide mitigation. The Department will approve the bank option only after on-site mitigation has been examined and found to be impracticable. Documentation of the purchase of the required number of mitigation bank credits must be received by the Department prior to issuance of the authorization.

(3) Payment to provide mitigation:

(a) The individual removal-fill permit or letter of authorization for an activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Department. Once an approved removal-fill permit activity has begun as proposed, the payment to provide mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Department to provide CWM shall be the average cost of credits available from all active mitigation banks in the state as compiled annually by the Department.

(4) Conservation in lieu:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation in lieu should be encouraged as the preferred CWM option when the impact site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for indirect CWM using conservation in lieu. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Department.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0136**Ratio Requirements for CWM**

(1) The purpose of CWM ratios is to:

(a) Ensure that the state's wetland resource base is maintained as required in ORS 196.672;

(b) Offset the temporal loss of wetland functions as compensatory mitigation sites mature (i.e., become fully functional replacement of the lost, impacted wetland);

(c) Replace wetland functions that may be size dependent; and

(d) Compensate for the likelihood of success in the different CWM methods (creation, restoration, enhancement). The methods are techniques used to achieve the replacement of functional attributes lost from the impacted wetland.

(2) Except as provided in Sections (3) through (6) of this section, the following minimum ratios shall be used in the development of CWM plans:

(a) Restoration: One (1) acre of restored wetland for one (1) acre of impacted wetland.

(b) Creation: One and one-half (1.5) acres of created wetland for one (1) acre of impacted wetland.

(c) Enhancement: Three (3) acres of enhanced wetland for one (1) acre of impacted wetland.

(d) Enhancement of cropped wetland as determined by the Department: Two (2) acres of enhanced cropped wetland for one (1) acre of impacted wetland. Cropped wetland is converted wetland that is regularly plowed, seeded and harvested in order to produce a crop for market. Pasture, including lands determined by the Natural Resources and Conservation Service to be "farmed wetland pasture," is not cropped wetland.

(e) Conservation in Lieu: Variable: See OAR 141-085-0131(4).

(3) The Department shall double the minimum ratio requirements for project development impacting existing CWM sites; for example,

using enhancement to compensate for impacts to an existing CWM site will require a ratio of six (6) acres enhanced for every one (1) acre impacted.

(4) The Department may increase the ratios when:

(a) Mitigation is proposed to compensate for an unauthorized removal or fill activity; and/or

(b) Mitigation is not proposed for implementation concurrently with the authorized impact.

(5) At the option of the applicant, CWM may consist of any one or a combination of the following CWM ratios for commercial aggregate mining operations where both the mining operation and the CWM are conducted on converted wetlands (not including pasture):

(a) One (1) acre of wetland and open water habitat, with depths less than thirty-five (35) feet, for one (1) acre of wetland impacted;

(b) Three (3) acres of wetland and open water habitat, with depths greater than thirty-five (35) feet, for one (1) acre of wetland impacted;

(c) One (1) acre of a combination of restored, created or enhanced wetland and upland, comprising at least fifty percent (50%) wetland, for one (1) acre of wetland impacted.

(6) The Department may also apply the following CWM measures for commercial aggregate mining operations on converted wetland (not including pasture):

(a) Allow for staged CWM or mined land reclamation required under ORS 517.700; or

(b) Based on the value the Department determines under OAR 141-085-0131(3), allow the applicant, upon approval by the Department, to pay the entire cost of CWM:

(A) On an annual basis for a period not to exceed twenty (20) years over the life expectancy of the operation, whichever is less; or

(B) On an annual basis over time at a monetary rate per cubic yard or ton of aggregate material removed annually from the site.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0141**Requirements for All CWM Plans/Application Requirements**

(1) On-site or off-site CWM involving the creation, restoration and/or enhancement of wetlands by the applicant. A CWM plan shall, at a minimum, include:

(a) CWM site information including:

(A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Physical Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment, except when PTP or purchase of credits from a wetland mitigation bank is proposed, of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR 141-085-0176), if the impact is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(M) Plans for vegetated buffers, if needed, to protect the viability and functions of the CWM site.

(N) Plans for the long term protection of the CWM site:

(i) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(ii) The applicant shall offer a preferred method and justification.

(iii) The Department will make the final determination for the need and type of long-term protection.

(2) Other CWM. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR 141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement); and

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0146

Removal-Fill Authorization Conditions for CWM Plans

(1) For permits involving CWM:

(a) The approved CWM plan shall become part of the removal fill authorization and, by reference, all portions of the CWM plan shall become conditions of the authorization.

(b) Additional compensatory mitigation conditions may be included in the authorization.

(c) All compensatory mitigation conditions shall be enforceable until the CWM is deemed successful by the Department in accordance with OAR 141-085-0151, regardless of the authorization expiration date.

(2) Conditions for authorizations shall also state:

(a) If applicable, the amount of the payment to provide mitigation made by the applicant and how it was calculated; and

(b) If applicable, the mitigation bank utilized; and

(c) The loss of wetland by area, Cowardin and HGM class(es), and function(s) of wetland(s) expected to be lost or impaired; and

(d) The applicant's remaining responsibility after payment to provide mitigation payment was made, if any; and

(e) No removal or fill of any amount of material shall be permitted within compensatory wetland mitigation sites without prior authorization of the Department.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0151

Monitoring Requirements for CWM Plans Involving On-site or Off-site Creation, Restoration or Enhancement of Wetlands

(1) The purpose of the CWM monitoring requirement is to provide information for the Department to:

(a) Determine if the CWM complies with the conditions of the authorization;

(b) Evaluate whether the CWM meets the goals, objectives and success criteria of the CWM plan; and

(c) Provide information for removal/fill program monitoring.

(2) The permit holder shall monitor the CWM site and provide to the Department:

(a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Department, the post construction report shall be submitted within ninety (90) calendar days of completing grading;

(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and success in meeting the CWM goals. These data may include photographs, topographic surveys, plant survival data, botanical surveys, results from functional assessment, hydrologic data and other information as required to demonstrate compliance. The report shall include the following sections:

(A) Introduction;

(B) Goals, objectives and success criteria;

(C) Methods;

(D) Results;

(E) Summary and recommendations;

(F) Figures;

(G) Appendices with data and photographs.

(3) Monitoring shall be conducted for 5 years unless otherwise specified by the Department.

(4) The Department may require modifications to the CWM plan as well as require additional monitoring any time the CWM is failing to meet the CWM goals.

(5) At the end of the five (5) year monitoring period, the Department shall determine if the mitigation project meets the CWM success criteria. If it fails to meet the success criteria, the Department may require modifications to the CWM site as well as additional site monitoring.

(6) When the CWM complies with the compensatory mitigation success criteria, as described in the approved removal-fill authoriza-

tion, the Department shall notify the permit holder in writing of compliance with the authorization's conditions and that additional monitoring is not required. If the Department fails to notify the permit holder within ninety (90) calendar days of the Department's receipt of the final monitoring report, the permit shall be deemed in compliance and no further monitoring required.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0156

Payments; Expenditure of Funds for Compensatory Wetland Mitigation Payment to Provide; Agency Accounting of Payment to Provide Funds and Expenditures

(1)(a) The Department 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.

(b) The Department shall expend funds collected under the payment to provide option of compensatory wetland mitigation only to:

(A) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functional attributes lost or diminished as result of an approved removal-fill authorization activity;

(B) Purchase credits from an approved wetland mitigation bank for the purpose of fulfilling the CWM requirements of an approved removal-fill authorization activity.

(C) Monitor the compensatory wetland mitigation; or

(D) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful.

(2) The Department shall expend funds collected under the payment to provide option of compensatory wetland mitigation only within the geographic region, as defined by OAR-141-085-0010 of these rules, in which the wetland functional attributes occur, unless the Department determines, in writing that expending the funds is not feasible or appropriate within a respective region.

(3) The Department shall expend funds collected from specific approved removal-fill activities within two (2) years from the authorization issuance date unless the Department determines, in writing, that meeting the two year time limit is not feasible.

(4) Third party recipients of funds collected under the payment to provide option of a compensatory wetland mitigation plan shall sign a written agreement provided by the Department that requires the recipient(s) to utilize the funds for specific wetland compensatory mitigation that has been reviewed and approved by the Department. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Department.

(5) All payment to provide monies collected and expended, as well as the success of the compensatory wetland mitigation, authorized by the Department in accordance with these rules, shall be recorded by the Department and shall include:

(a) A description of the compensatory wetland mitigation funded and including an evaluation of the success of these projects in meeting project goals.

(b) A description of the wetland functional attributes lost or diminished from approved removal-fill activities summarized individually and cumulatively by basin;

(c) A summary of the amount of payments collected and expended on individual compensatory wetland mitigation projects as well as cumulatively by basin.

(d) A description of the wetland functions expected to accrue as a result of compensatory wetland mitigation projects funded in accordance with these rules and summarized by basin and statewide.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0161

Department Responsibilities Under Payment to Provide Option

(1) The Department, by eliminating the applicant's responsibility for compensatory wetland mitigation by approving a removal-fill

authorization including a payment to provide option, assumes the following responsibilities to:

(a) Defend the sufficiency of the compensatory wetland mitigation plan to compensate or replace the wetland functional attributes lost or diminished; and

(b) Monitor, manage, and otherwise assure the success of the compensatory wetland mitigation project performed by the Agency Department or designated third party(ies) under these rules.

(2) The Department, as part of an intergovernmental agreement, may transfer or extend the Department's responsibility for the compensatory wetland mitigation plan to another person or governmental agency.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0166

Advance Mitigation

(1) As part of an existing, active individual removal-fill permit application process, an applicant may request that the Department consider the possibility that the applicant's proposed CWM project, if successful, could result in producing potential mitigation credits in excess of those needed to satisfy the requirements of OAR 141-085-0029(5).

(2) If the applicant desires to preserve the option of possibly receiving additional mitigation credit for future projects from the excess credits identified under subsection (1) above, then the following additional information shall be submitted as a part of the applicant's Compensatory Wetland Mitigation Plan:

(a) Identify the specific area(s) of the CWM site that compensates for the specific permitted impact, and identify the specific areas of the CWM site that are proposed for credit in future projects;

(b) Include separate protection instruments for each area of the CWM site (existing and proposed);

(c) Provide a separate monitoring program for each section of the CWM site (existing and proposed);

(d) Provide a table showing how much credit, in acres under suitable mitigation ratios, is being claimed at the CWM site.

(3) If the applicant elects to pursue this option, he/she does so completely at his/her own risk. CWM in advance does not create the presumption that the proposed future wetland impact is a permissible action, or that the CWM will be authorized as suitable CWM for any application. A separate alternatives analysis conducted under OAR 141-085-0029(4) shall be required for each and every separate individual removal-fill permit application.

(4) Monitoring to determine if success criteria are met shall continue for five (5) years or until the success criteria is achieved, whichever is longer. Such success criteria monitoring requirements shall apply to each designated mitigation area or the entire mitigation site, if constructed at one time.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0171

Mitigation for Temporary Impacts

Projects that do not result in the permanent loss of wetland functions and values, must, as part of the application, provide a rehabilitation plan for temporary impacts, including:

(1) Plans and specifications for rehabilitating the area of temporary impacts, including grading plans and planting plans, timeline and location of fill disposal areas; and

(2) Planting plans shall specify species, number and spacing. Such plans shall be designed to re-establish the pre-impact conditions of the site as rapidly as is reasonably possible.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0176

Security Bonding and Instruments

(1) Financial Security Instruments are required for CWM projects for impacts greater than (two-tenths) of an acre. Financial security instruments are not required when CWM is satisfied by purchase of credits from wetland mitigation bank or payment to provide mitigation

is utilized. To ensure compliance with CWM requirements, the Department may allow for any of the following types of financial security instruments:

- (a) Surety bond;
- (b) Certificate of Deposit;
- (c) Irrevocable letter of Credit; or
- (d) such other financial instrument as the Department deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument(s) on a form prescribed and furnished by the Department. The financial security instrument(s) shall be made payable to the Oregon Department of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Department and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Department shall set the amount of the financial security instrument based on the estimated cost of implementing, maintaining and monitoring the CWM if the Department were to carry out the CWM plan as authorized by the removal-fill authorization. The applicant may submit cost estimates for the construction, maintenance and monitoring of the proposed CWM for consideration by the Department.

(6) General terms and conditions of financial security instruments.

(a) The shall be in an amount determined by the Department as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Department of State Lands."

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permitholder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Department, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required to complete the CWM. The scope of work to be guaranteed and the liability assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permitholder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Department, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Department.

(c) The letter must be payable to the "Department of State Lands" in part or in full upon demand by and receipt from the Department of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Department may allow a permitholder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Department shall not release an existing financial security instrument until the permit holder has submitted and the Department has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Department shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permitholder shall file a request with the Department for the release of all or part of a financial security instrument. The request shall include:

- (a) The precise location of the CWM area.

(b) The permitholder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permitholder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Department shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permitholder defaults on the conditions under which the financial security instrument was posted. The Department shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permitholder shall forfeit the amount of the financial security instrument for which liability is outstanding and either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

Estuarine Mitigation

141-085-0240

Purpose

(1) The purpose of these rules is to set out the policy of the Department 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 diversity of native species, unique features and water quality — when intertidal or tidal marsh resources are destroyed by removal or fill activities.

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

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 Department shall advise the applicant that mitigation will be required as a condition of any permit for such activity as may be issued.

(2) The Department shall notify the applicant that the application for permit is not complete until a written proposal for mitigation has been received.

(3) The Department shall review any application for intertidal removal or fill permit in conjunction with a written mitigation proposal. The Department's review shall consider the statutory criteria set out in ORS 196.830 to determine whether a permit shall be issued. When a permit is to be issued, the Department shall consider the mitigation proposal and determine its adequacy in accordance with these rules.

(4) The Department shall review and process the application in the same manner as described in OAR 141-085-0027, 0028, and 0029.

(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 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. (OAR 141-085-0246 thru 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 comply with and supply information as required under OAR 141-085-0136, 0141 and 0146. 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.

(6) In reviewing an application for a removal-fill permit involving mitigation, the Department shall determine:

(a) The adverse affects of the proposed project, 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 Department 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 diversity of native species, unique features and water quality.

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

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. Strong currents influence the bottom, 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 microhabitats 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 that 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 riverbank.

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

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, Figure 1 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 8). 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. Macroalgae, diatoms, and seagrasses also commonly colonize beds and flats. Animals and plants have adapted 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 lives among and grazes on marsh plants.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

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 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

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 (*Zostera marina*, *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 (*Salicornia virginica*), seaside arrow grass (*Triglochin maritima*), Seacoast bullrush (*Scirpus maritimus*), or Lyngbyei's sedge (*Carex lyngbyei*) (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 freshwater 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 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 1996.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0254**Habitat Classification**

(1) The ODFW under contract to the Department of Land Conservation and Development (DLCDD) 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 (Cowardin et al., 1979, *Classification of Wetlands and Deep Water Habitats of the United States*, Fish and Wildlife Service, U. S. Department of the Interior).

(2) 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 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 12) shows the Estuarine Mitigation Intertidal Habitat Classification System.

[ED. NOTE: Figures referenced are available from the agency.]

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

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 1996.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

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 diversity of native species, 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 196.830(4).

(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 affects of the intertidal or tidal marsh removal-fill activity.

(4) Mitigation shall "maintain" (replace) the natural biological productivity and diversity of native species 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. As an alternative to the Relative Value method described below, another method of determining the amount of mitigation area necessary may be approved by the Director if it meets the objectives of this section. 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 diversity of native species 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 that 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 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 16) 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 Department 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) The equation for determining how much intertidal or tidal marsh area is required for mitigation shall be:

AM = (RVd/RVm) (AD) 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

(7) The equation for determining how much shallow subtidal area is required for mitigation shall be:

AM = 2.0(RVd/RVm) (AD)

(8) 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).

(9) Figure 4 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 17) 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 OAR 141-085-0256(4) of this rule.

(10) 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.

(11) 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 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 16) 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.

(12) 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 141-085-0010;

(a) The Department 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 OAR 141-085-0256(4) of this rule;

(b) 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.

(13) Mitigation shall “maintain” habitats and diversity of native species. 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 diversity of native species of an estuary generally will be adversely affected by an intertidal removal or fill, and if so, what mitigation will offset the impact. The Department will maintain habitats and diversity of native species through habitat replacement required under OAR 141-085-0256(4) of this rule;

(a) “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 Department 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 Department determines that a mitigation proposal under OAR 141-085-0256(4) of this rule would reduce or impair habitats and diversity of native species.

(14) Mitigation shall maintain “water quality” through enhancement of physical, chemical, and biological characteristics of the waters at and near the site;

(a) Oregon has stringent water quality standards that the Department routinely incorporates into removal-fill permits. The Department will not approve a development activity that reduces water quality to a persistent level below state water quality standards, nor will the Department approve a mitigation proposal that would degrade water quality. The Department will rely on state and federal resource agencies, primarily DEQ for guidance on water quality issues;

(b) 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 OAR 141-085-0256(4) of this rule in an amount at least equal to the area affected by the intertidal removal and fill;

(c) 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;

(d) If the Department determines that the water quality enhancement proposal will significantly enhance water quality, mitigation credits may be determined as provided in OAR 141-085-0256(9) of this rule.

NOTE: An acceptable mitigation must include creation, restoration, or enhancement of an estuarine area approximately equal to the intertidal removal-fill area. Mitigation 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.

(15) Activities that 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.

(16) Examples of activities that are not considered mitigation within the meaning of ORS 196.830 except when mitigation would otherwise be waived in part under ORS 196.830:

(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) Large scale piling and dolphin removal unless associated habitats would be enhanced by the removal through increased circulation;

(d) 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.

(17) 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 public 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.

(18) 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;

(a) The Department may require bonding in an amount sufficient to cover the costs of site acquisition, any necessary physical alterations, monitoring and contingencies. 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.

(19) The Department will require monitoring of a mitigative action to determine performance over time in the same manner as described in OAR 141-085-0151.

(20) The Department 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 authorization.

(21) 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 Department and interested parties;

(a) However, estuarine habitats are diverse and dynamic, and the circumstances of any given application may require the Department to amend or adjust mitigation proposals to carry out the provisions of the Removal-Fill Law. Such right is reserved to the Department.

(22) The Department shall require security bonding for estuarine mitigation in the same manner as described in OAR 141-085-0176.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 196.825 & 196.835

Stats. Implemented: ORS 196.800 - 196.990

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0257**Estuarine Resource Replacement**

(1) As used in this section, “estuarine resource replacement” 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 diversity of native species, unique features and water quality.

(2) Except as provided in OAR 141-085-0257(4) of this section, the Department shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the Department requires estuarine resource replacement, the Department shall consider:

- (a) The identified adverse affects of the proposed activity;
- (b) The availability of areas in which replacement activities could be performed;
- (c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;
- (d) The recommendations of any interested or affected state or local agencies; and
- (e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS Chapter 195, 197 or the statewide planning goals adopted there under to the contrary, the Department may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the Department 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 estuarine resource replacement 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

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement 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 resource 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.

(5) Nothing in this section is intended to limit the authority of the Department to impose conditions on a permit under ORS 196.825(4).

Stat. Auth.: ORS 196.825 & 196.830

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

Mitigation Trust Fund**141-085-0262****Mitigation Trust Fund**

(1) The Department may establish an Oregon Mitigation Trust Fund to provide loans for approved mitigation banks.

(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.

Stat. Auth.: ORS 196.64, 196.645 & 196.650

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

Estuarine Mitigation Banks**141-085-0263****Estuarine Mitigation Banks**

(1) Credits from an estuarine mitigation bank may be used only as a condition imposed on an authorization or to resolve a violation of ORS 196.800 to 196.905 or these rules approved within the same estuarine ecological system.

(2) The mitigation needs of an intertidal removal-fill can be met using mitigation “credits” stored in a “mitigation bank.” Mitigation credits result from a mitigative action accomplished under agreement with the Department. Such credits can be used to offset the mitigation needs of projects that occur at some time after the mitigation bank is created.

(3) “Mitigation Credits,” the currency of a mitigation bank, can be established by using:

(a) The product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s).

(b) Any other credit accounting system based on an alternative wetland function assessment method approved by the Department, which provides that credits within a bank are determined by the difference between the baseline functions of the bank prior to restoration, enhancement, creation, or conservation activities, and the increased wetland functional attributes that result, or are expected to result, from the activities.

(4) The following rules are established for the creation and use of mitigation banks and are to be used in conjunction with OAR 141-085-0421.

(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 Department and may be administered by the Department. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

(A) The exact physical 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; and

(H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding.

(5) The Department 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. Such mitigation banks shall be created under the procedures set out in OAR 141-085-0263(2) of this rule.

(6) 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 Department's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS 196.600 - 196.665 & 196.825
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

Estuarine Maps and Charts

141-085-0264

Maps and Charts

The following maps and charts are adopted by reference and are available from the Department (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 25).

- (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 196.825 & 196.835
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0266

Tidal Elevations in Oregon Estuaries

The figures and tables in Exhibit 1 (*Estuarine Mitigation The Oregon Process*, Department of State Lands, April 1984, p 47) 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 196.825 & 196.835
Stats. Implemented: ORS 196.800 - 196.990
Hist.: LB 1-1984, f. & ef. 1-20-84; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

Freshwater Wetland Mitigation Banks

141-085-0400

Purpose

These rules describe when, and under what conditions, the Department will allow mitigation banking as a means of wetland com-

pensation when fill or removal of material is proposed in wetlands regulated by the State of Oregon. Mitigation banking is used to provide larger scale compensatory wetland mitigation in advance of anticipated smaller wetland losses. These rules also specify the requirements to obtain authorization to develop a wetland mitigation bank.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0406

Applicability

(1) These rules shall apply to:

(a) All wetland mitigation banks proposed after rule adoption; and

(b) Existing mitigation banks that are substantially modified after rule adoption.

(2) The sponsor of a mitigation bank that has been proposed, is under construction, or was established prior to the adoption of these rules, may request that the Department apply the provisions of these rules to the proposed, under construction, or established bank.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0410

Policies

(1) The Department shall encourage the development of and the expeditious approval of mitigation banks and other types of compensatory wetland mitigation.

(2) Mitigation banks can only be used to provide compensatory wetland mitigation for anticipated losses in wetland functional attributes when on-site CWM is impracticable.

(3) The availability or use of mitigation banks shall not:

(a) Create a presumption that the Department will be more willing to allow wetland losses under the Removal-Fill Law (ORS 196.800 through 196.990); or

(b) Eliminate the requirement to fully demonstrate that the applicant for a Removal-Fill Permit has considered alternatives that avoid and/or minimize losses to jurisdictional wetlands; and

(c) Eliminate the requirement to comply with these rules.

(4) Both freshwater and estuarine mitigation banks shall only be debited for a condition imposed in an authorization or to resolve a violation of these rules.

(5) Mitigation banks shall be designed to compensate for expected or historic wetland losses to:

(a) Ensure maintenance of regional wetland function in their service area;

(b) More closely match the demand for wetland credits with wetland losses; and

(c) Meet other ecological or watershed needs as determined by the Department.

(6) The long-term goal of mitigation banks is to provide compensatory wetland mitigation in advance of wetland losses.

(7) Mitigation banks shall be subject to all rules governing freshwater and estuarine resource replacement in OAR 141-085-0102 thru 141-085-0266.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0421

Requirements to Establish a Mitigation Bank

(1) All persons proposing to establish a mitigation bank shall:

(a) Meet with the Department to discuss their proposed bank and the content of their Mitigation Bank Prospectus.

(b) Prepare and submit a Mitigation Bank Prospectus to the Department.

(2) The Mitigation Bank Instrument shall contain the following elements, as applicable:

(a) The physical location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).

(b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.

(c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.

(d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.

(e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas where grading will be required, location of buffers, vegetation planting plan, etc.

(f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.

(g) Description of the ecological goals and objectives of the bank.

(h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.

(i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.

(j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.

(k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.

(l) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.

(m) A site assessment of the proposed bank area providing information on the:

(A) Hydrogeomorphic and Cowardin wetland classes;

(B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), using a standardized regionally-appropriate function assessment method (such as the Willamette HGM) as well as vegetation, soils, hydrology, and wildlife habitat and usage; and

(C) Results of a wetland determination or delineation.

(n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.

(o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Department will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Department that does not provide sufficient information for review, or that appears to present a proposal in which the Department will not participate, will be returned to the sponsor with a written explanation.

(5) The Department reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

(a) Need for the mitigation credits; or that

(b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Department shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Department shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Department shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Department and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Department may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Department and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Department and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Department concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and

objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Department throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Department prior to undertaking any construction. However, such consent from the Department does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Department recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Department, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Department.

(b) Be approved and signed by the Department and the sponsor, at the discretion of the Department.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Department shall notify city and county planning departments where the bank is located and affected state agencies, adjacent landowners, and persons who have requested to be notified.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 1-2006, f. 3-21-06, cert. ef. 3-27-06

141-085-0425

Establishment of Mitigation Credits

(1) Credits can be established by using:

(a) The ratios stipulated in OAR 141-085-0136; or

(b) Any other wetland and habitat functional assessment and evaluation methodology approved by the Department, which provides that credits within a bank are determined by the difference between the baseline conditions of the bank prior to restoration, enhancement, or creation activities, and the increased wetland functional attributes that result, or are expected to result, from those activities.

(2) Additional credits within the bank may be realized contingent on achievement of the performance standards contained in the Instrument over time and subject to the discretion of the Department. These credits are derived from the increased wetland functions that accrue as wetlands in the bank improve over time. Wetlands that are enhanced should exhibit a measurable increase in wetland function more readily than those that are created. Credits created by restoration may be subject to certification at an earlier date. Adjustments in credits shall be calculated based on superior performance as follows:

(a) For banks utilizing ratios provided in OAR 141-085-0136(2) or 141-085-0256:

(A) After five (5) years, the remaining enhanced wetland credits within the bank may be increased by no more than one-third and after ten (10) years, remaining enhanced wetland credits may be increased by no more than two-thirds;

(B) After ten (10) years or more, the remaining created wetland credits within the bank may be increased by no more than one-half.

(C) For the purpose of calculating available credits by these rules, the new number of credits is determined by multiplying the relative proportion of restored, enhanced, created, and/or protected wetlands and buffers present at the time of bank establishment by the total number of credits remaining.

(b) For banks using wetland assessment methods other than the ratios provided in OAR 141-085-0136(2) or 141-085-0256, remaining credits within the bank may be reevaluated at five (5), and ten (10) year intervals at the discretion of the Department. A new number of available credits may be realized using the same assessment method as originally employed to determine credits expected to be produced from the bank. OAR 141-085-0425(4) of these rules does not apply when the chosen assessment method evaluates the included upland buffers along with the wetlands because credits for inclusion of upland buffers in the bank shall not be counted twice.

(3) Credits may be granted on an area basis for upland buffers at the discretion of the Department. The calculation provided here is only for banks using ratios provided in OAR 141-085-0136(2) or 141-085-0256 and wetland functional assessment methods that do not evaluate buffers. However, such credits can only be established if the buffers are included as an integral part of the bank, a majority of credits are produced by the bank are from wetland restoration, enhancement, or creation, and all performance standards required in the Instrument are met. Credits for buffers will be determined as follows:

(a) Five (5) years after construction, credits for buffers may be granted. Depending on the quality of the buffer, between 10 to 20 acres of buffer will produce one (1) acre of wetland credit.

(b) Ten (10) years after construction, credits for buffers may again be calculated. Depending on the quality of the buffer, between 5 to 10 acres of buffer will produce one (1) acre of wetland credit.

(4) Credit for the protection of existing wetlands shall be considered only if:

(a) The area(s) to be preserved exhibit(s) healthy wetland functional attributes that are not likely to be increased appreciably by restoration or enhancement. The existence of "healthy wetland functional attributes" may be evaluated partly through comparison of the level of each function in the wetlands with the levels of the same functions in wetlands (of the same hydrogeomorphic class) identified as being among the least altered in the region or basin;

(b) The functional attributes of the wetlands proposed for protection are clearly threatened by human activities outside of the control of the bank sponsor;

(c) 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 are proposed; and

(d) The applicant provides proof of ownership of, or explicit legal and recordable permission granted by the landowner, to perpetually dedicate the protection of wetland(s) and buffer(s) through any mechanism that unequivocally preserves the functional attributes of the wetland(s);

(e) The applicant provides documentation of the signed and recorded perpetual protection mechanisms.

(5) Mitigation bank credits for conservation in lieu may be granted on an area basis at no less than a 10:1 ratio for wetland(s) protected to wetland(s) lost in compliance with the criteria in OAR 141-085-0131(4).

(6) All adjustments in credits shall be applied only to those credits remaining in, or newly added to, the bank.

(7) The Department reserves the right to allow a bank sponsor to create credits by improving nonwetland ecological resources such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components provided that a bank producing credits in such a manner has produced a majority of its credits by wetland restoration, enhancement, or creation. Sponsors seeking to derive credits for nonwetland ecological resources shall develop a method to quantify and compare the derived credits. The method proposed must be acceptable to the Department, the Federal action agency, and the MBRT.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665

Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0430

Use and Sale of Mitigation Credits

(1) Mitigation credits may only be purchased from a sponsor to offset permitted wetland losses or to resolve violations under the removal-fill law. Credit sales and purchases for future anticipated adverse affects not part of removal-fill permit applications are prohibited.

(2) The Department may purchase credits from an approved bank with funds received from payment to provide mitigation payments where such purchases will provide off-site CWM.

(3) The maximum number of credits that may be sold in advance of certification of the bank credits by the Department shall be clearly specified in the Instrument. In no case shall more than thirty (30) percent of the total credits expected to be produced initially by the bank be sold prior to their certification.

(4) The Department shall not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the Instrument, the Removal-Fill Law, and all rules governing freshwater and estuarine resource replacement in OAR 141-085-0121 through 141-085-0266. The Department may consult with the MBRT for the bank in order to determine noncompliance and appropriate remedies, including enforcement action.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0436

Siting of Mitigation Banks

(1) Banks shall be sited in locations where they will conflict to the least extent possible with other existing and potential land uses, while yielding the most functional benefits.

(2) Ecological criteria to be considered in the siting of banks include:

- (a) Maintenance and enhancement of wildlife/fish habitat and corridors.
- (b) Reliability of hydrological sources.
- (c) Ability to provide stormwater storage/flood attenuation.
- (d) Ability to enhance the water quality of the watershed.
- (e) Ability to provide buffers for the site(s).
- (f) Ability to provide a diversity of wetlands.
- (g) Proximity to large undisturbed uplands, wetlands or other riverine or aquatic systems.
- (h) Absence of disturbance by human (airports, dumping, vehicular intrusion, nearby presence of exotic species, etc.)
- (i) Presence of rare plants or animals and the ability of the bank to accommodate them.

(3) Banks on public lands shall be allowed provided that the public agency owning or having authority over the subject land(s) grants its approval and perpetually dedicates the land upon which the bank, and any associated buffer, is proposed.

(4) To the extent possible, the Department shall require that bank site locations and/or bank construction activities will not result in any adverse affects to state or federally listed species, and that the bank is in compliance with the state and federal endangered species acts.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0440

Removal-Fill Permits for Mitigation Banks

(1) Bank sponsors shall be required to obtain removal-fill permits if any of the actions necessary to create the proposed bank are subject to the requirements of the removal-fill law (ORS 196.800 through 196.990).

(2) When removal-fill permits are not required to establish a mitigation bank, the Instrument shall be accompanied by an order from the Department.

(3) If a removal-fill law is required for a bank, the Instrument shall become a part of that permit and an order will not then be required from the Department.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0445

Appeals

Appeals shall be processed in the manner described in OAR 141-085-0075.

Stat. Auth.: ORS 196.825 & 196.600 - 196.665
Stats. Implemented: ORS 196.600 - 196.692 & 196.800 - 196.990
Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0450

Records; Reporting

(1) The Department shall maintain a record of credit withdrawals for each active wetland mitigation bank.

(2) The Department shall report annually to the Land Board on funds expended from the Oregon Wetlands Mitigation Bank Revolving Fund for each wetland mitigation bank.

Stat. Auth.: ORS 196.600 - 196.692 & 196.800 - 196.990

Stats. Implemented: 2003 OL 738
Hist.: DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

Wetlands Priority Plan

141-085-0610

Purpose

The purpose of these rules is to implement the requirements of ORS 196.635 regarding development of an Oregon Wetlands Priority Plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS 196.635
Stats. Implemented: ORS 196.600 - 196.692
Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0620

Definitions

(1) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by State Parks and Recreation Department pursuant to the federal land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(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.)

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

Stat. Auth.: ORS 196.635
Stats. Implemented: ORS 196.600 - 196.692
Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

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 196.635
Stats. Implemented: ORS 196.600 - 196.692
Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-085-0640

Plan Development Process

(1) The Department 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 Department shall consult with the Oregon Departments of Fish and Wildlife, Land Conservation and Development, Environmental Quality, Economic and Community Development, and State Parks and Recreation Department 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 OAR 141-085-0640(2) of this rule;
- (b) Other state agencies including, but not limited to those on the Department 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, Natural Resources 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 Department for such purposes.

(4) The Department shall hold one or more public hearings to provide opportunity for clarifications, recommendations and other public input on the draft plan.

(5) The Department shall review and evaluate comments received to determine appropriate revisions to the draft plan.

(6) After consideration of comments received, the Department 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 Department shall submit the Oregon Wetlands Priority Plan, as approved by the Land Board, to the State Parks and Recreation Department for inclusion in the Statewide Comprehensive Outdoor Recreation Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

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 State Parks and Recreation Department into the Oregon Wetlands Mitigation Bank Revolving Fund Account pursuant to ORS 196.650.

(2) As provided in ORS 196.650 funds received pursuant to OAR 141-085-0650(1) of this rule shall be reserved for disbursement by the Department for acquisition of wetland parcels or interests therein identified by the Oregon Wetlands Priority Plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-085-0660

Plan Update

(1) The Department 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.

(2) The Department shall report to the State Land Board annually on the status of wetland acquisitions taken under the plan.

Stat. Auth.: ORS 196.635

Stats. Implemented: ORS 196.600 - 196.692

Hist.: LB 1-1988, f. & cert. ef. 3-18-88; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

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 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.

(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" = 200' 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 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

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 183 & 196
Stats. Implemented: ORS 196.668 - 196.692
Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0020

Comments

(1) After notice has been 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 183 & 196
Stats. Implemented: ORS 196.668 - 196.692
Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

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 183 & 196
Stats. Implemented: ORS 196.668 - 196.692
Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

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 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 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 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. 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 183 & 196
Stats. Implemented: ORS 196.668 - 196.692
Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

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.

(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 183 & 196

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 4-1990, f. & cert. ef. 11-7-90; DSL 2-2001, f. & cert. ef. 2-26-01

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 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 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 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 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.

(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.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 196.800 - 196.990, 215 & 227

Stats. Implemented: ORS 196.668 - 196.692

Hist.: LB 10-1991, f. & cert. ef. 11-15-91; DSL 2-2001, f. & cert. ef. 2-26-01

Local Wetlands Inventory (LWI) Standards and Guidelines**141-086-0180****Purpose**

Pursuant to ORS 196.674 pertaining to the Statewide Wetlands Inventory (SWI), these rules establish a system for uniform wetland identification and comprehensive mapping. These rules also establish wetlands inventory standards for cities or counties developing a wetland conservation plan (WCP) pursuant to ORS 196.678. A Local Wetlands Inventory (LWI) is developed for all or a portion of a city or county according to the standards and guidelines contained in these rules (OAR 141-086-0180 through 141-086-0240).

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; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0185**Uses**

(1) Once approved by the Division of State Lands (Division), the LWI shall be used in place of the National Wetlands Inventory (NWI) and is incorporated into the SWI.

(2) The approved LWI shall be used by cities and counties in lieu of the NWI for notifying the Division of land use applications affecting mapped wetlands (ORS 215.418 and 227.350).

(3) A LWI fulfills the wetlands inventory requirements for Goal 5 and Goal 17 (OAR 660-023-0000 through 660-023-0250 and 660-015-0010). A LWI that meets the additional WCP requirements specified in these rules shall be used as the wetlands inventory basis for a WCP.

(4) In order to designate significant wetlands (OAR 141-086-0300 through 141-086-0350) as required for Goal 5, or to assess wetland functions for a WCP, a wetland function and condition assessment of mapped wetlands must be conducted as part of the LWI using the *Oregon Freshwater Wetland Assessment Methodology (OFWAM)* published by the Division in 1996. An equivalent functional assessment methodology may be used or adjustments may be made to OFWAM upon written approval by the Director.

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, Renumbered from 141-086-0190(1) & (4); DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0190**Policy**

(1) A LWI provides good information for planning purposes on the location of potentially regulated wetlands and streams, but is generally not of sufficient detail for permitting purposes under the state Removal-Fill Law (ORS 196.800 through 196.990). A wetland delineation is usually needed prior to site development.

(2) Wetland determinations conducted for the purpose of developing the LWI shall be conducted according to the criteria, methodologies and guidance currently accepted by the Division.

(3) All wetlands inventory procedures and products are subject to review and approval by the Division before the products:

(a) Are incorporated into the SWI;

(b) Can be used in lieu of the NWI for Wetland Land Use Notification purposes; or

(c) Can be used by a city or county for Goal 5, Goal 17 or WCP purposes.

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, Renumbered to 141-086-0185(1) & (4); DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0200**Definitions**

(1) "Coverage" means a set of digital data files that store a single layer or theme of geographic information such as roads or wetlands.

(2) "Cowardin Class" means the wetland classification according to the U.S. Fish and Wildlife Service's *Classification of Wetlands and Deepwater Habitats of the United States*, Cowardin et al., 1979.

(3) "Director" means the Director of the Oregon Division of State Lands or designee.

(4) "Division" means the Oregon Division of State Lands.

(5) "Field-Verify" or "Field Verification" means to walk over and/or visually check an area to make a wetland determination and map wetlands. This may or may not include collecting sample plot data.

(6) "Georeference" or "Geographical Reference" means linking geographic data to known coordinates on the surface of the earth.

(7) "GIS" or "Geographic Information System" means a system of hardware, software and data storage that allows for the analysis and display of information that has been geographically referenced.

(8) "HGM class or subclass" means the hydrogeomorphic classification of the wetland based upon its landscape position and hydrology characteristics, according to the HGM key developed by the Division.

(9) "Indicator" means the soil, vegetation, and hydrology characteristics or other field evidence that indicate that wetlands are present.

(10) "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.

(11) "Mapping" means representing the identified wetlands and their approximate boundaries on a map.

(12) "Offsite Determination" means a wetland determination conducted without field verification using NWI maps, soils maps, and aerial photographs.

(13) "Other Waters" means waters of the state other than wetlands, such as streams and non-vegetated ponds.

(14) "Possible Wetland" means an area noted during the course of LWI development that appears to meet wetland criteria but is too small to require its inclusion in the LWI.

(15) "Rectified" means correcting the scale variation and image displacement from aerial photos and similar imagery that results from ground relief and airplane tilt.

(16) "Sample Plot" means a specific area on the ground where soils, vegetation and hydrology data are recorded on a field data form in order to make a wetland determination.

(17) "Statewide Wetlands Inventory" or "SWI" means an inventory which contains the location, wetland 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.

(18) "Stream" means a watercourse created by natural processes, or one that would be in a natural state if it were not for human-caused alterations.

(19) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(16)).

(20) "Wetland Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

(21) "Wetland Determination" means identifying an area as wetland or non-wetland.

(22) "Wetland Mosaic" means a complex of several wetlands smaller than one-half (0.50) acres in size each, or less than one-tenth (0.10) acres in size for a WCP, that are interspersed between areas of non-wetland.

(23) "Wetland Boundary" means a line marked on a map that identifies the approximate wetland/non-wetland boundary.

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; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0210

Inventory Development Process and Standards

(1) Sources of inventory information shall include:

(a) U.S. Natural Resources Conservation Service (NRCS) county soil survey and county list of hydric soils and soils with hydric inclusions, or other available soil surveys;

(b) NWI maps;

(c) NRCS-certified wetland determinations, where available;

(d) Federal Emergency Management Act floodplain maps, where available;

(e) Other available local wetlands inventories or wildlife habitat inventories that include wetlands;

(f) Division wetland determination files; and

(g) Color and/or color infrared aerial photos, or other aerial photography approved by the Division, taken within five (5) years of inventory initiation. The minimum photo scale shall be 1 inch = 600 feet (1 inch = 200 feet for a WCP) unless another scale is approved by the Division.

(2) Sources of inventory information may include but are not limited to:

(a) U.S. Department of Agriculture Farm Services Agency aerial color slides;

(b) Local knowledge of area (e.g., residents);

(c) Oregon Natural Heritage Program data;

(d) Division permit files; and

(e) Resource agencies, including the Oregon Department of Fish and Wildlife and U.S. Fish and Wildlife Service.

(3) Before beginning field verification, a field map such as an aerial photograph with a mylar overlay shall be prepared and shall include the approximate location of:

(a) Any wetlands and deepwater habitats (other waters) from the NWI;

(b) Any wetlands from the Division's wetland determination files or other inventories;

(c) Hydric soils and soils with hydric inclusions (each coded separately);

(d) Wetlands or possible wetlands identified on aerial photos; and

(e) Sites to field-verify based on other leads.

(4) Aerial photo interpretation shall be tested early in the inventory process by interpreting several wetland types, ground truthing the interpretations, then completing the aerial photo interpretations.

(5) The local government shall be responsible for requesting property access permission from landowners in the study area for parcels identified by inventory staff and/or the Division as possibly containing wetlands.

(6) All probable wetlands, other waters and streams identified through the process described in OAR 141-086-0210(1) through (3) of these rules shall be field-verified.

(7) Sample plot data shall be provided according to the following minimum standards:

(a) At least one (1) sample plot that best characterizes each wetland or each portion of a wetland that has a distinctly different character (e.g., different landscape position, land use and Cowardin classification);

(b) Verify any uncertain wetland/non-wetland boundaries with paired sample plots;

(c) Verify with at least one (1) sample plot each probable wetland where land use activities such as ditching, water diversion, or agricultural practices are likely to have significantly altered site conditions, making observations from a distance or a site walk-over unreliable; and

(d) Verify with at least one (1) sample plot probable wetlands with unreliable indicators (e.g., one dominant plant that grows in both wetlands and non-wetlands, such as *Phalaris arundinacea*).

(8) If the LWI will be used for a WCP, in addition to the requirements in OAR 141-086-0210(6) and (7), a minimum of one (1) sample plot shall be provided that best characterizes each dominant wetland plant community.

(9) If the landowner denies access permission, employ off-site wetland determination methods and map those areas as wetland that appear to have wetland indicators.

(10) All wetlands one-half (0.5) acre and larger shall be identified and mapped. For a WCP, all wetlands one-tenth (0.10) acre and larger shall be identified and mapped.

(11) Each wetland shall be assigned a unique identification code. Contiguous wetlands assigned different codes may be grouped into a

single OFWAM assessment unit based upon the guidance in OFWAM and/or in consultation with the Division.

(12) All previously delineated wetlands from the Division's files shall be field-verified, if possible, to determine if wetlands are still present and are approximately the same size and configuration as when delineated.

(13) All identified wetlands shall be classified:

(a) To Cowardin "class" level including special modifiers (i.e., "farmed" or "excavated"); and

(b) By dominant HGM class and subclass.

(14) When a wetland contains more than one (1) adjoining Cowardin classification, the minimum wetland class which must be differentiated shall be one-half (0.5) acre.

(15) Artificially created wetlands or other waters (such as a stormwater detention pond) shall be included in the inventory regardless of their jurisdictional status, and their purpose shall be labeled on the inventory maps.

(16) Where a wetland/non-wetland mosaic occurs, the site shall be labeled as a wetland/upland mosaic on all inventory maps and so described on the wetland summary sheet.

(17) Streams shall be mapped, but no further documentation such as wetland summary sheets (OAR 141-086-0220(6)) or OFWAM assessment (OAR 141-086-0220(7)) is required.

(18) Possible wetlands noted during inventory development shall be mapped as point data on the appropriate parcel(s) and shall all be assigned the code "PW" and so labeled on the maps. No sample plot data is required and no further documentation such as wetland summary sheets (OAR 141-086-0220(6)) or OFWAM assessment (OAR 141-086-0220(7)) is required.

(19) Vacant, former wetlands, consisting mostly of relict (dewatered) hydric soils, which are five (5) acres or larger in size shall be identified and mapped as potential wetland mitigation or restoration sites and shall be described in the LWI report as follows:

(a) Assign a unique identification code for mapping and reference in the text;

(b) Briefly describe easily-observed soil, vegetation and hydrologic alterations; and

(c) Identify the most likely water source (e.g., stream, groundwater) for restoring wetland hydrology.

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

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; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0220

Maps and Reports

(1) Maps shall be developed and submitted to the Division in both paper and electronic format. If the study area is covered by more than one (1) wetland map, a single, smaller scale reference map of the complete study area is required. The reference map shall be indexed to the individual, large-scale maps and show, at a minimum, the Public Land Survey System grid, the location and code of all identified wetlands, the study area boundary, and major, named streets.

(2) Wetland maps shall include:

(a) Map name;

(b) Scale bar;

(c) Geographic reference to the Public Land Survey System;

(d) Roads, with major roads named, and railroads;

(e) Streams and stream names;

(f) Property boundaries if a parcel-based coverage of the study area exists;

(g) Watershed boundaries;

(h) Legend that explains all map symbols, line work and patterns;

(i) Map date (month and year final map prepared);

(j) All wetlands, clearly and accurately drawn and clearly identified by a unique wetland code that relates each wetland to field data forms, tables, databases, wetland summary sheets, and OFWAM summary forms;

(k) Previously delineated wetlands labeled with the Division's file number;

(l) Distinctive symbol or pattern for wetlands or significant portions of wetlands that were field-verified as opposed to those not field-verified;

(m) Disclaimer that reads: "Information shown on this map is for planning purposes only and wetland information is subject to change. There may be unmapped wetlands subject to regulation and all wetland boundary mapping is approximate. In all cases, actual field conditions determine wetland boundaries. You are advised to contact the Oregon Division of State Lands and the U.S. Army Corps of Engineers with any regulatory questions;"

(n) Numbered sample plots; and

(o) Study area boundary.

(3) A separate map shall be provided showing the approximate location of potential wetland mitigation/restoration sites and which includes the map elements described in Section 0220(2)(a) through (i) and (o) of this rule.

(4) Minimum map scale shall be 1 inch = 600 feet (1:7, 200) or 1 inch = 200 feet (1:2, 400) for a WCP.

(5) The inventory and mapping process shall be fully documented in order to ensure accuracy and consistency throughout the process. Documentation shall include:

(a) Wetland verification procedures used;

(b) Date(s) and scale(s) of source maps and aerial photos used;

(c) Technical staff members and qualifications;

(d) Sample plot data on standard field data forms, including data for sites sampled that failed to meet wetland criteria;

(e) Aerial photos or other field maps with an overlay of wetland mapping, sample plots, and any measurements taken; and

(f) All mapping and map transfer procedures used.

(6) A wetland summary sheet shall be prepared for each wetland.

The summary sheet shall at a minimum include:

(a) The unique wetland code;

(b) Street address or equivalent location description;

(c) Township, Range, Section, Quarter Quarter Section and tax lot(s) that contain the mapped wetland;

(d) Approximate wetland size (in acres);

(e) Cowardin wetland classification(s);

(f) Soil type(s);

(g) Hydrologic basin;

(h) HGM classification;

(i) Sample plot numbers;

(j) Common name of dominant plant species;

(k) Primary hydrology source, including hydrology source and use of artificially created wetlands;

(l) Field verification date(s);

(m) Summary of OFWAM assessment results;

(n) Significant wetland determination, if made; and

(o) Comments which describe the wetland, including topographic position, land uses, alterations (including agricultural) and the basis for the wetland boundary determination.

(7) OFWAM assessment results shall be submitted for each wetland assessment unit and shall include:

(a) Wetlands of Special Interest for Protection (OFWAM, Chapter Five (5));

(b) Wetland Characterization results (OFWAM, Appendix B);

(c) Answer sheets for all wetland assessment questions (OFWAM, Appendix C);

(d) Function and condition summary sheet (OFWAM, Appendix C); and

(e) Assessment results represented in table format.

(8) A study area summary shall be prepared that includes:

(a) Total acreage in the study area;

(b) Total acreage of wetlands in the study area, excluding actively used, artificially created wetlands such as detention ponds or aggregate extraction ponds; and

(c) Total number of wetlands in the study area.

(9) A minimum of two (2) sets of final LWI products shall be prepared; one (1) set shall be provided to the Division for inclusion in the SWI and the other shall be provided to the local government.

(10) LWI maps and documents provided to the Division are public record and may be made available at cost to the public and state and federal agencies.

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

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; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0225**Digital Map Standards**

(1) Digital versions of map materials and associated databases are required and shall be submitted to the Division according to the requirements in OAR 141-086-0225(2) through (8). GIS products are preferred.

(2) GIS files shall have a linked database containing descriptive attributes and be georeferenced.

(a) GIS coverages shall be submitted in an ArcView shape file, ArcInfo export file or a format that is compatible to these, or in other formats approved by the Division.

(b) The following attributes must be included for each wetland polygon: a unique wetland identification label, Cowardin class code, field verified or not, and the Division's wetland delineation file number, if any. Sample points must be attributed with unique identification labels, and linear waterways must be attributed with unique identification labels.

(3) If GIS is not available, then other map files (such as AutoCAD drawing files) shall be submitted.

(a) Non-GIS maps shall be in a digital format such as .dxf, .dwg, or Microstation .dgn files, or other formats approved by the Division.

(b) Digital database information associated with the data layers shall be provided, including: a unique identification label for each wetland polygon, a unique identification label for each sample point, and a unique identification label for each linear waterway segment.

(c) A database must be included that links the wetland polygon layer to the Cowardin class, field verification status, and wetland delineation file number, if any, for each wetland polygon.

(4) If the digital product is not georeferenced and rectified, a minimum of five (5) points, evenly distributed within the LWI area, shall be recorded with a Geographical Positioning System (GPS) unit and include:

- (a) A record of the positional accuracy of each point;
- (b) Brand and model type of the GPS equipment used; and

(c) GPS points established at identifiable stable landmarks in the field and located on the final map.

(5) All georeferenced data sets shall report the following projection parameters:

- (a) Projection (Oregon Lambert preferred);
- (b) Zone (if UTM);
- (c) Units of Projection;
- (d) Datum; and
- (e) Spheroid.

(6) Separate coverages or data layers shall be submitted showing:

- (a) Wetland polygons;
- (b) Streams;
- (c) Study area boundary;
- (d) Tax lot lines (if they exist in digital format);
- (e) Wetland and upland sample points;
- (f) Potential mitigation/restoration sites, if any; and/or
- (g) Other coverage combinations approved by the Division.

(7) Attribute or layer code list and metadata (description for each coverage or dataset and source material citations) shall be provided, including date and a disclaimer as is described in OAR 141-086-0220(2)(m) of these rules.

(8) Digital maps shall also be provided in a print file (such as .eps, .rtl, .cgm or .gra).

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 196.668 - 196.686 & 196.692
Hist.: DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0228**Review and Approval Process**

(1) A draft of all the LWI products required in OAR 141-086-0220 of these rules shall be provided to the Division (if the inventory was not developed by the Division) and the local government(s) for review.

(2) The local government shall provide opportunity for public review of and comment on the draft LWI products.

(3) Public and local government comments on draft LWI products shall be provided to the Division. The Division shall request in writing from the party responsible for preparing the LWI any revisions or additions required in order for the LWI to be approved.

(4) The Division shall review final products to ensure that all changes requested by the Division have been adequately addressed.

(5) If the final LWI products meet the requirements in these rules, the Division shall send a letter of approval to the local government.

Stat. Auth.: ORS 273.045
Stats. Implemented: ORS 196.668 - 196.686 & 196.692
Hist.: DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0230**Revisions**

(1) When local jurisdictions are required by the Department of Land Conservation and Development to review and update their LWI, the provisions of OAR 141-086-0230(1)(a) through (d) of these rules shall be followed.

(a) All Urban Growth Boundary expansion areas or other areas not included in the original LWI study area shall be inventoried according to the requirements in these rules.

(b) Within the previous LWI study area, wetland additions or boundary changes equal to or greater than one-half (0.5) acre shall be identified, mapped and assessed using OFWAM. A summary report including the results and any map changes shall be provided to the Division and is subject to Division review and approval.

(c) Sources of information for review of the previous study area shall at a minimum include:

(A) Wetland delineation reports approved by the Division or map errors verified by the Division after the date of the approved LWI;

(B) Color and/or color infra-red aerial photos, or other aerial photos approved by the Division, taken within three (3) years of inventory revision initiation; and

(C) A field reconnaissance of the study area.

(d) Wetlands not previously mapped on the LWI shall be field verified as required in OAR 141-086-0210(7) through (9) of this rule; previously mapped wetlands no longer apparent on aerial photos shall also be field verified as necessary to confirm their absence.

(2) If the LWI was used as the basis for an approved WCP, the local jurisdiction shall instead:

(a) Provide to the Division, as part of the annual report (OAR 141-086-0035), a revised map and report indicating wetlands filled and wetlands restored, enhanced or created for mitigation; and

(b) Every five (5) years, in conjunction with the Division's five (5) year WCP review (ORS 196.684(6)), conduct a LWI review and incorporate new information, as required in OAR 141-086-0230(1)(b) through (1)(d) of these rules.

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; DSL 2-2001, f. & cert. ef. 2-26-01

141-086-0240**Landowner Notification**

When the LWI is approved by the Division, the local jurisdiction shall notify by mail within one hundred twenty (120) calendar days all landowners of record whose parcel contains a wetland or possible wetland that:

(1) Their parcel(s) was included in the wetlands inventory study area; and

(2) There is a wetland mapped on their parcel.

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; DSL 2-2001, f. & cert. ef. 2-26-01

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 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 sub-

section 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 197.279

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

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 273 & 274

Stats. Implemented:

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 273 & 274

Stats. Implemented: ORS 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 273 & 274

Stats. Implemented: ORS 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 273 & 274

Stats. Implemented: ORS 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: Publications referenced are available from the agency.]

Stat. Auth.: ORS 273 & 274

Stats. Implemented: ORS 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 273 & 274

Stats. Implemented: ORS 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 273 & 274

Stats. Implemented: ORS 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 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: LB 6-1986, f. & ef. 5-20-86

DIVISION 88

PUBLIC RECREATIONAL USE OF
STATE-OWNED PROPERTY

141-088-0000

General Provisions

(1) Legally accessible land (including state-owned submerged and submersible land) under the jurisdiction of the State Land Board and the Department of State Lands (Department) shall remain available and open to public recreational use provided that such use:

- (a) Is lawful under local, state and federal law and
- (b) As determined by the Director:

(A) Does not substantially interfere with the use of land by persons holding a written authorization from the Department for the land area including leases, easements, and temporary use permits; and

(B) Does not pose a significant risk of danger to the natural and/or cultural resources of the land and/or public health and safety.

- (2) For the purposes of this division:

(a) "Public Recreational Use" means casual recreational activities including hunting, fishing, sightseeing, wildlife observation, hiking, boating, swimming, camping and picnicking.

(b) "Person" means an individual, political subdivision, public agency, corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in Oregon.

- (3) Closures or restrictions shall be:

(a) Based on a determination by the State Land Board that the action is necessary to protect the land, related natural or cultural resources, or public health or safety;

- (b) For as specific an area or activity as possible;

- (c) For as short a duration as possible;

- (d) Commensurate with the identified problem;

(e) Promulgated in compliance with ORS 183.310 to 183.510 including that for permanent rulemaking at least one (1) public hearing will be held in the geographical area(s) of the subject land(s) at a place convenient to the residents in that area;

(f) Published following adoption by the State Land Board, at least one time in a newspaper of general circulation in the geographic area(s) of the subject land(s); and

(g) To the extent possible, noticed through signs describing the restriction or closure and placed on or near the subject land(s).

(4) In addition to any other liability or penalty provided by law, a person that violates any closure or restriction in this division may be subject to citation and conviction for criminal trespass.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 9-1998, f. & cert. ef. 10-15-98; DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0010

Restrictions for the State-Owned Property at Dibblee Point
(Columbia River)

All state-owned land that is under the jurisdiction of the Department 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.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: LB 4-1988(Temp), f. & cert. ef. 11-7-88; LB 3-1989, f. & cert. ef. 5-18-89; DSL 5-1998(Temp), f. & cert. ef. 5-4-98 thru 10-28-98; administrative correction 8-5-99; DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0020

Restrictions for the State-Owned Banks of the McKenzie River
Bar

All state-owned land that is under the jurisdiction of the Department between the line of ordinary high water and line of ordinary low water 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.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: LB 9-1991(Temp), f. 9-13-91, cert. ef. 11-1-91; LB 1-1992, f. & cert. ef. 3-9-92; DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0035

Restrictions for the State-Owned Banks of the Sandy River

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water and on river islands on the Sandy River from River Mile 0.0 to 37.5 is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) Open fires at any time beginning May 1 and ending November 1 of every year.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0040

Restrictions for the State-Owned Banks of the Columbia River
in the Vicinity of Dodson and Warrendale

All state-owned land that is under the jurisdiction of the Department in the vicinity of Dodson to Warrendale that is between the line of ordinary high water and the line of ordinary low water on the Columbia River from River Mile 139.5 to 142.5 is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) Open fires at any time beginning May 1 and ending November 1 of every year.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0050

Restrictions for the State-Owned Banks of the Chetco River

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the Chetco River from the Highway 101 Bridge to River Mile 11 (about one mile upstream from the mouth of Elk Creek) is closed to:

- (1) All uses between 10 p.m. and 5 a.m. throughout the year, and
- (2) Open fires at any time beginning May 1 and ending November 1 of every year, unless a longer period is ordered by the Coos Forest Protective Association.

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0060

Restrictions for the State-Owned Banks of the Willamette River
in the Vicinity of Wheatland Bar Island and Willamette Mission
State Park and Adjacent Upland

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the Willamette River, and all state-owned upland that is managed by the Department that is also in the vicinity of, or that comprises Wheatland Island or Willamette Mission State Park is closed to:

- (1) All uses between 10 PM and 5 AM throughout the year,
- (2) Open fires at any time beginning May 1 and ending November 1 of every year, and
- (3) All-terrain vehicles or other motorized vehicle uses except for those involved in the loading or unloading of recreational watercraft and parking during allowable use periods (i.e., 5 A.M. to 10 P.M.).

Stat. Auth.: ORS 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0070

Restrictions for the State-Owned Bed and Banks of the
Willamette River in the Vicinity of the Former McCormick-
Baxter Plant

All state-owned land that is under the jurisdiction of the Department that is on the north side of the Willamette River at about River Mile 7 and fronting and abutting the site of the former McCormick-Baxter Plant, the Burlington Northern Bridge, and Willamette Cove as described in easement EA-31530 is temporarily closed to all public uses during the construction period while a sand cap is being placed over contaminated sediments.

Stat. Auth.: ORS 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0080**Restrictions for the State-Owned Banks of the Columbia River in the Vicinity of the Gary Island**

All state-owned land that is under the jurisdiction of the Department that is between the line of ordinary high water and the line of ordinary low water on the south bank of the Columbia River in the vicinity of Gary Island between River Mile 123.5 and 124.5 is closed to any use without prior written authorization from the Department.

Stat. Auth.: ORS 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0090**Closure of Sand Lake Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0100**Closure of Siltcoos River Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-00110**Closure of Tenmile Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 mile 1.1, at the Tenmile Lake Outlet (Sections 22, 23, and 14 of Township 23 South, Range 13 West, Willamette Meridian).

Stat. Auth.: ORS 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0120**Closure of Tahkenitch Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0130**Closure of Berry Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0140**Closure of Sutton Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274
 Stats. Implemented: ORS 273 & 274
 Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0150**Closure of Twomile Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0160**Closure of New River, Floras Creek and Fourmile Creek**

(1) All submerged and submersible land under the jurisdiction of the Department 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).

(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 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0170**Closure of Euchre Creek Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

141-088-0180**Closure of Pistol River Estuary**

(1) All submerged and submersible land under the jurisdiction of the Department 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 183, 273 & 274

Stats. Implemented: ORS 273 & 274

Hist.: DSL 2-2004, f. & cert. ef. 6-11-04

DIVISION 89**GENERAL AUTHORIZATIONS****General Authorization for Fish Habitat Enhancement****141-089-0100****Purpose and Applicability**

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit from the Department place or remove material within waters of the state (including Essential Salmon Habitat as designated in OAR 141-102) for the purposes of fish habitat enhancement as defined by OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless specified, the terms used in this general authorization (GA) are defined in OAR 141-085-0010.

(6) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085 except a single application, for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0105**Eligibility Requirements; Ineligible Projects**

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the sole purpose of improving habitat conditions for fish;

(b) Consist of fill or removal of material as:

(A) Randomly placed rock;

(B) Deflectors;

(C) Rock and log weirs;

(D) Gravel placement;

(E) Pool and pond construction;

(F) Back/side channel construction;

(G) Channel reconstruction;

(H) Barrier removal and placement of fish passage ways;

(I) Woody material.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements;

(b) The project is not for the sole purpose of improving habitat conditions for fish or other aquatic habitat restoration in wetlands; or

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085; except as provided for in OAR 141-089-0205 Wetland Restoration and Enhancement.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0110**Mandatory Requirements**

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) Be consistent with the *Oregon Aquatic Habitat Restoration and Enhancement Guide*.

(2) Demonstrate consistency with the Oregon Department of Fish and Wildlife's requirements under ORS 509.580 to 509.645 for upstream and downstream fish passage.

(3) Fills shall be of a size appropriate to the stream, and not exceed 150 cubic yards per site unless otherwise recommended by the Oregon Department of Fish and Wildlife for purposes of providing or improving fish passage (e.g., a simulated stream bottom or reconstructed channel). For purposes of this general authorization, a site can be a single location of the entire project or a component of a project with multiple elements and geographic locations.

(4) Channel reconstruction projects shall restore pre-channelized morphology to channelized streams by providing for sinuosity and width/depth ratios that emulate the natural stream channel, as practicable.

(5) In order to stabilize deflectors, log weirs and other similar structures, the bed and the bank may be stabilized with nonstructural methods or riprap not more than 15 feet upstream and downstream of the structure. Rock fill shall not exceed 50 cubic yards at each site.

(6) Rock and log weirs and full-spanning boulder weirs may be placed within the bed and banks only if they promote fish passage, prevent streambed degradation and/or recruit spawning gravel and do not require annual reconstruction. Weirs must incorporate a keystone rock or rocks that allow for juvenile fish passage at all flows.

(7) Deflectors may be placed only if they add stream structure and increase habitat complexity.

(8) Clean, river-run gravel used for enhancing or improving spawning areas must come from within the same river system as the placement site and not exceed 100 cubic yards per site.

(9) Pools and ponds shall be designed to allow fish to escape during low water periods. Bed material may be removed to create instream pools and hydrologically connected off-channel ponds, so long as pool depth does not exceed the depth of adjacent pools.

(10) Gravel and bed materials may be removed to create or clear side or back channels.

(11) Artificial barriers to fish passage including but not limited to culverts, tidegates and road crossings (not exempt from the removal-fill law under OAR 141-085-0020) may be removed and fish passage

structures may be placed within the bed and banks of waters of the state.

(12) The project may convert wetlands to other waters if the project approximates or restores fish habitat lost by past land use activities. The project shall have only minimal adverse impacts to wetlands.

(13) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless exempt) in accordance with OAR 141-100.

(14) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0115**Application Requirements; Public Notice Review Process**

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department 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 Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0120

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall demonstrate that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual obser-

vation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall obtain a water right or reservoir permit, if needed, from the Oregon Department of Water Resources if the project involves a water diversion or impoundment.

(15) The authorization holder may use streambed gravels from the trench excavation for a filter blanket.

(16) Upon completion of the project the authorization holder shall report to the Oregon Watershed Enhancement Board on Restoration Inventory Report forms provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0125

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0130**Appeals; Expiration; Review of General Authorization**

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

**General Authorization
for Streambank Stabilization**

141-089-0135**Purpose and Applicability**

(1) This rule sets forth conditions under which an applicant may, without an individual removal-fill permit, place or remove material within waters of the state, except estuaries and the Pacific Ocean, for streambank stabilization.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0140**Eligibility Requirements; Ineligible Projects**

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be an active erosion area.

(b) Involve not more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or more than two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(2) A project is not eligible for this general authorization if:

(a) The project is not for streambank stabilization;

(b) The project area is not currently subject to active erosion;

(c) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085;

(d) The project includes channel relocation and gravel bar alteration;

(e) The project consists entirely of structural streambank stabilization methods (e.g. riprap, bulkheads);

(f) The project involves fill in wetlands exceeding 0.2 (two-tenths) acres; or

(g) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0145**Mandatory Requirements**

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) Where revetments, riprap and/or any other structural techniques are unavoidable, they shall be used in combination with non-structural approaches to streambank stabilization.

(2) Nonstructural approaches such as slope pull-back, willow mats, rock barbs, revegetation with native plant species, log and boulder deflectors, shall be used to the maximum extent possible and where technically feasible.

(3) Only clean, durable rock shall be used as riprap. Riprap used for the toe material shall be placed in an irregular pattern using large boulders or rock clusters.

(4) 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.

(5) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(6) No material shall be placed in excess of the minimum needed to stabilize the area subject to active erosion.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0150**Application Requirements; Public Notice; Review Process**

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department 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 Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0155

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If pre-

viously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (< 2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or main-

tenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0160

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0165

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Certain Transportation-Related Structures

141-089-0170

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, may place or remove material from waters of the state (as described in OAR 141-085-0016), except within the Pacific Ocean, for certain transportation

related structures including roads, railroads, culverts, bridges, bicycle lanes and trails.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0175

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must:

(a) Be for one of the following purposes:

(A) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;

(B) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;

(C) Widening, realigning, replacing, or removing existing railroad beds;

(D) Widening, realigning, replacing, or removing existing roads;

(E) Widening, realigning, replacing, or removing existing bridges or similar structures;

(F) Widening, realigning, replacing, or removing existing bicycle, pedestrian or other lanes or trails;

(G) Widening, realigning, replacing, or removing existing boat ramps.

(H) Constructing new bicycle, pedestrian or other lanes or trails;

(I) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(J) Construction of new culverts;

(K) Extension of existing culverts beyond the existing road prism;

(L) Streambank stabilization associated with projects listed in (A) through (K); and

(M) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation.

(b) In waters other than wetlands, no more than a total of five thousand (5000) cubic yards of material filled, removed, or altered in waters of the state for a single and complete project. Exceeding five thousand (5,000) cubic yards may be authorized only where necessary

to improve or restore fluvial processes on a project specific basis (i.e. removal of constrictive fill).

(c) Be for streambank stabilization associated with a transportation-related project as listed above, with no more than one thousand (1,000) cubic yards of material placed in a one-quarter mile reach of waters of the state for a single project or two thousand (2,000) cubic yards for multiple-related projects within a subbasin.

(d) Involve fill in wetlands of 0.5 acres or less for projects as described above in (a).

(e) Be for test holes, borings and similar activities associated with planning and design of transportation structures.

(f) Be for an activity that is incidental to the project necessary to provide fish passage or needed for the structural integrity of the project (i.e. compensatory mitigation, relocate or add utilities, etc.).

(2) A project is not eligible for this general authorization if:

(a) The project is not a transportation-related structure as described above;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project is located within the Pacific Ocean.

(d) The project involves stream channel relocation, other than temporary diversions approved by the Department.

(e) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0180

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100; and,

(2) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055 is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0185

Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0190

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project,

the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) Stormwater from any authorized activity, conveyed or discharged to a water of the state, including wetlands, must be treated by a facility specifically designed to remove stormwater contaminants before entering streams, wetlands, or other waters of the state, including mitigation wetlands, so as to minimize pollutants entering those water bodies.

(15) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(16) The authorization holder shall ensure that nonstructural approaches to bank stabilization such as slope pull-back, willow mats,

rock barbs, revegetation with localized native plant species, log and boulder deflectors, are utilized unless otherwise approved by Department. Where, riprap and/or

other structural techniques are unavoidable, they shall be used in combination with nonstructural approaches. Where riprap is used, the toe material shall be placed in an irregular pattern using large boulders or rock clusters. Only clean, durable rock shall be used as riprap. No concrete or asphalt shall be used.

(17) In the case of road removal, the authorization holder shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(23) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(24) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0195

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0200

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of

issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Wetland Restoration and Enhancement

141-089-0205

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without an individual permit from the Department, place or remove material within waters of the state for the purposes of wetland restoration or enhancement as defined in OAR 141-085-0010.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085, except a single application for activities eligible for General Authorizations for Fish Enhancement and Wetland Restoration and Enhancement may be used in combination to authorize the same project.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0210

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be constructed for the specific purpose of restoring or enhancing a wetland such as a project developed and funded by the Wetland Reserve Program, the Oregon Conservation Reserve Enhancement Program, Coastal Wetlands Protection and Enhancement Program or the North American Waterfowl Conservation Act; and

(b) Restore wetland types historically found in the region; and

(c) Restore or enhance wetland functional attributes such as fish and wildlife habitat, water quality and quantity; or

(d) Support the purposes of waterfowl or wetland management within a state or federally designated management area as identified in a management plan for the area.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085 except as provided for in OAR 141-089-0100(6) Fish Habitat Enhancement.

(c) The project is proposed primarily for the purpose of storm or waste water management, stock ponds, or aquaculture; or

(d) The project is proposed for the purpose of complying with the requirements of compensatory wetland mitigation under OAR 141-085 unless the project is included in a Wetland Conservation Plan approved by the Department under ORS 196.678; or

(e) The project is for restoring a wetland previously constructed, restored or enhanced for the purpose of complying with the requirements for compensatory wetland mitigation under OAR 141-085; or

(f) The project is proposed within a Wetland Conservation Plan area and is not in conformance with the approved plan; or

(g) The project is designed to restore or enhance wetlands used as amenities in golf courses, subdivisions or similar settings where their purpose is primarily aesthetic.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0215

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The project shall have only minimal adverse impact to existing wetlands and result in a measurable increase in wetland functional attributes;

(2) The project may not include clearing or removal of trees from forested wetlands to convert the forested wetland to emergent or open water wetlands, unless the resultant wetland type was historically abundant but currently scarce within the basin;

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(4) When necessary to protect and conserve the water resources of the state, the Department may waive and/or modify any conflicting guidelines, mandatory requirements or conditions in either the Fish Habitat Enhancement or Wetland Restoration and Enhancement General Authorizations.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0220

Project Guidelines

(1) The wetland restoration or enhancement project should use techniques identified in *An Introduction and Users' Guide to Wetland Restoration, Creation and Enhancement* developed by the Interagency Work Group on Wetland Restoration.

(2) The following activities are specifically allowed under this general authorization:

(a) Water diversion structures. Water diversion structures may be used to direct flow into restoration or enhancement sites. The diversion structure will be consistent with the fish passage and screening requirements of ODFW.

(b) Water impoundment structures. Water depth, duration and degree of fluctuation in the restored wetland should be characteristic of similar wetlands in the eco-region. Water control structures may be used to manipulate water levels to simulate historical conditions, including complete drying out of the wetland.

(c) Dikes and ditches. Dikes and/or ditches may be altered or constructed. Relocating existing dikes to expand the floodplain and enlarge wetlands is an appropriate use of this general authorization. All spoil materials should be removed from the wetland or floodplain portion of the wetland site, but some material may be used within the restoration area as long as it assists in accomplishing the objectives of

the restoration. Dike and levee slopes should be constructed at between 6:1 and 20:1 unless the wetland site does not allow it due to shape/size.

(d) Dike removal or breaching. For the purposes of restoring seasonal, tidal or other periodic flooding or saturation, dikes may be removed or breached under this General Authorization. Any breach should be sized sufficiently to prevent hydraulic interference in tidal and/or other flooding and to prevent scour. Dike material may be used in the restoration project or moved to an offsite, upland location.

(e) Filling of drainage ditches and or removal of drain tile. Drainage ditches may be filled and drain tile removed or broken under this general authorization.

(f) Streambank excavation. Expanding the surface area of areas subject to seasonal inundation in order to expand the wetland fringes of adjacent wetland areas by removal of bank material may be authorized under this general authorization.

(g) Surface excavation and recontouring. Restoring the uneven topographic surface to lands that have been subject to excavation and historical degradation may be authorized. All materials removed must be placed on uplands.

(h) Blasting. Blasting to create depressions or recreate habitat channels is allowed. A blasting permit may be required by the Oregon Department of Fish and Wildlife.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0225

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department 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 land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0230

Conditions for Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(15) The authorization holder shall provide a vegetated buffer of at least 50 feet to be maintained on uplands adjacent to the wetland enhancement or restoration project area, unless otherwise authorized by the Department.

(16) Upon completion of the project, the project shall be reported to the Oregon Watershed Enhancement Board and the Department on a Restoration Inventory Report form provided by the Department.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(20) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(21) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(22) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(23) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0235

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0240

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Recreational and Small Scale Placer Mining Within Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat)

141-089-0245

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place (fill), remove (removal), alter material in waters of the state within areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for the purposes of recreational and small scale placer mining.

(2) "Prospecting" as defined by law and OAR 141-085-0010; "non-motorized methods" as defined in OAR 141-085-0010; and "Highbanking" as defined in OAR 141-085-0010, conducted beyond the jurisdiction of the removal-fill law, as described in OAR 141-085-0015 are all activities exempt from regulation under the removal-fill law, OAR 141-085 and this general authorization.

(3) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. This letter of authorization is not transferable to another person.

(4) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(5) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(6) This general authorization is exclusive to recreational and small scale placer mining.

(7) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(8) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(9) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(10) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0250

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be for the specific purpose of recreational or small scale placer mining;

(b) Be conducted within Essential Salmon Habitat; and

(c) Remove, fill or alter less than twenty-five (25) cubic yards of material annually from the bed of a stream designated as Essential Salmon Habitat; and

(2) A project is not eligible for this general authorization if:

(a) The project does not meet the eligibility and mandatory requirements;

(b) The project involves the construction of permanent dams; or

(c) The project involves excavation from the streambank.

(d) The project involves the use of a suction dredge within a Scenic Waterway.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0255

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements: If the project is within a state Scenic Waterway the use of a suction dredge is not permitted.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0260

Application Requirements; Review and Approval Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) Within ten (10) calendar days of receipt of an application, the Department will review the application for eligibility and compliance with the mandatory requirements and notify the applicant of approval, denial, or modification.

(3) If the application is deemed incomplete, the Department shall notify the applicant, return the application and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application meets all the requirements for this general authorization, it shall do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department 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 land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0265

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) An authorization holder may construct a temporary low rise dam if the structure:

(a) Does not extend across the entire width of 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 Department.

(2) The general authorization does not allow nozzling, sluicing, or digging to occur outside the wet perimeter, nor extend the wet perimeter.

(3) The general authorization does not allow disturbance of rooted or embedded woody plants including trees and shrubs, regardless of their location (for example, on gravel bars).

(4) The general authorization does not allow movement of boulders, logs, stumps, or other woody material from within the wet perimeter other than movement by hand and non-motorized equipment.

(5) The general authorization requires that the authorization holder upon completion of the project, and to the greatest extent possible, level all piles outside the main channel of the waterway created by the activity. In addition, all furrows, potholes, or other depressions outside the main channel of the waterway created by the activity shall, if practical, have at least one open side to prevent fish entrapment as the water level falls.

(6) The authorization holder shall obtain landowner permission before operating on public or private property.

(7) If the authorization holder intends to use a motorized suction dredge, a suction dredge waste discharge permit (700 PM) from the Department of Environmental Quality, must be obtained, as applicable.

(8) The authorization holder shall conduct the activity 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", unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(9) The authorization holder shall not allow petroleum products, chemicals or deleterious materials to enter the water.

(10) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(11) The authorization holder must ensure that the activity complies with other applicable local, state, and federal laws and regulations, including the state and federal Endangered Species Act.

(12) The authorization holder shall not allow the project to interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(13) The authorization holder shall adhere to the following conditions:

(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

residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site.

(c) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(14) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed, or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

(15) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during the authorized activity, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(16) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(17) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(18) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0270

Violation of Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0275

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this General Authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General

Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Removing and Disposing of Sediment Behind Tidegates for Channel Maintenance

141-089-0280

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, dispose (fill), and place (fill), remove (removal), or alter material in waters of the state for the purposes of removing and disposing of sediment while maintaining or cleaning natural or artificially created drainage ditches upstream from tidegates.

(2) This general authorization is exclusive to:

(a) The disposal of sediments within waters of the state (e.g. wetlands) removed as a result of ditch maintenance/cleaning in drainage ditches upstream of tidegates; and/or

(b) The removal of material from drainage ditches (cleaning) upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) below.

(3) Drainage ditches that have a free and open connection (as defined in OAR 141-085-0010) to other natural waterways (as defined in OAR 141-085-0010) and are presumed to contain food and game fish are waters of the state.

(4) The regular maintenance of legally constructed or altered ditches upstream of tidegates is exempt from regulation under the removal-fill law, OAR 141-085-0020 and this general authorization if:

(a) The drainage ditch was serviceable within the past five (5) years; and

(b) The maintenance would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of the drainage ditches.

(5) The placement of sediment removed from drainage ditches on wetlands may be an activity subject to the removal-fill law, OAR 141-085 and this general authorization.

(6) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(7) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(8) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(9) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(10) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(11) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(12) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0285

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be conducted for the specific purpose of disposal of sediments within waters of the state (e.g. wetlands) removed as a result of maintenance/cleaning of drainage ditches upstream of tidegates; and/or

(b) Be conducted for the specific purpose of the removal of material (cleaning) from drainage ditches upstream of tidegates that does not meet the requirements described in OAR 141-089-0280(4) above; and

(c) Remove, fill or alter more than fifty (50) cubic yards of material from waters of the state unless the activity is within an Essential Salmon Habitat stream or State Scenic Waterway where the no amount of material is to be removed, filled or altered without prior authorization of the Department.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any eligibility or mandatory requirements.

(b) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0290

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements:

(1) The removal of sediments from drainage ditches shall be kept to the minimum amount necessary to remove recently deposited materials. Additional channel widening or deepening beyond that amount is not allowed under this general authorization.

(2) The sediments removed from drainage ditches may be spread in a thin layer (three inches or less) on farmed wetland or wet pasture provided the impacts are temporary and there is no permanent conversion from wetland to upland. Freshwater wetland (other than farmed wetland or wet pasture mentioned above), salt marsh, tidal flats or permanent or semi-permanent open water areas shall not be used for sediment disposal.

(3) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0295

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(7) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department 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 land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0300

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the autho-

rization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are stabilized with the appropriate erosion control best management practices and revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) For drainage ditch cleaning activities, the authorization holder shall comply with the following:

(a) Removal of existing woody vegetation, other than that growing within the maintained channel bed is prohibited;

(b) Only sand and silt sediments may be removed. This authorization is not for the removal of gravel;

(c) Erosion of disturbed areas (i.e., drainage ditch banks and work areas) shall be minimized through revegetation with grass and/or planting of trees and shrubs; and

(d) Removal shall be conducted with land-based equipment from one side of the drainage ditch unless specifically authorized by the Department.

(e) At any time excavated material is placed on adjacent dikes it shall be stabilized to eliminate erosion back into the drainage ditch.

(f) If excavated material is to be thinly spread over adjacent wetland, wet pasture, or farmed wetland, it is to be spread prior to the

onset of winter rains, and controlled from eroding back into the drainage ditch.

(15) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(16) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(17) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(18) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(19) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(20) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(21) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(22) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0305

Violation of General Authorization; Enforcement

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03

141-089-0310

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) No letter of authorization will be issued with an expiration date beyond January 1, 2011, at which time this general authorization will be reviewed in accordance with the provisions of ORS 196.850(5). An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012.

The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Piling Placement or Removal Within Waters of the State

141-089-0400

Purpose and Applicability

(1) These rules set forth conditions under which an applicant may, without an individual removal-fill permit from the Department, place or remove piling in waters of the state including areas designated as Essential Indigenous Anadromous Salmonid Habitat (Essential Salmon Habitat as described in OAR 141-102) for such purposes as over-water structure support or navigational aid.

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0016 and 0021.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must be processed as an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0011.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0405

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Be placement of no more than five (5) piles or one (1) dolphin consisting of three (3) to five (5) piles;

(b) Be individual piles and piles placed for over-water structure support (e.g., pile associated with docks, piers), mooring and turning dolphins, or navigational aids not otherwise exempt from the removal-fill law as described in OAR 141-085-0015 and 0020);

(c) Be untreated wood, steel, fiberglass or plastic piles;

(d) Be piles fitted with devices to effectively prevent perching by piscivorous bird species;

(e) Be placed from a barge-mounted or above top-of-bank position. If barge-mounted, barge shall not at any time be grounded on the bed or banks.

(f) Be placed by means of impact or vibratory methods or removed (to the extent regulated as material pursuant to OAR 141-085-0010 (125)) by means of vibratory method only.

(2) A project is not eligible for this general authorization if:

(a) Piling is placed to construct headwalls or other bank treatment structure;

(b) Piling is placed to create new uplands;

(c) Piling is sheetpile;

(d) Piling is placed or removed by excavation (including hydraulic jet method) of streambed or banks;

(e) Piling is placed in wetlands;

(f) Piling is placed so as to impede normal water flow into or within wetlands or deflect water in a manner that causes erosion;

(g) Piling is placed so as to interfere with, or create hazard to, recreational or commercial navigation;

(h) Piling is placed as poured-in-place concrete;

(i) The project includes placement of footings or other support structure for piling;

(j) The project application includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual permits under OAR 141-085; or

(k) The project fails to meet any eligibility or mandatory requirements.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0410

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department (unless otherwise exempt) in accordance with OAR 141-100.

(2) No pile shall be placed in excess of the minimum necessary to fulfill its essential purpose or function.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0415

Application Requirements; Public Notice; Review Process

(1) An application for general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the appli-

cation that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual removal-fill permit as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for a project that would otherwise be authorized by this general authorization, if the Department 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 Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0420

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Department designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) When listed species are present, the authorization holder shall comply with the state and Federal Endangered Species Acts. If previously unknown listed species are encountered during the project, the authorization holder shall contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall not disturb or destroy woody vegetation to complete the project.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% slope).

(B) One 4-hour period in slow moving water (< 2% slope).

(b) Turbidity shall be monitored at least 100 feet up current of work area to obtain a natural background level and 100 feet down current of work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down current of the work area is considered an exceedance of the standard.

(c) Compliance monitoring shall take place during daylight hours each day of in-water activity every 2 hours in fast moving waters and every 4 hours in slow moving waters. A written record of monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(11) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(12) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(13) The authorization holder shall ensure that all structures are placed in a manner that does not increase the upland surface area.

(14) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(15) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(16) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(17) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(18) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(19) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(20) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0425

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action, which may result

in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

141-089-0430

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0077. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Minimal Disturbance Activities (Less Than Two Cubic Yards) Within Essential Indigenous Anadromous Salmonid Habitat

141-089-0500

Purpose and Applicability

(1) These rules set forth the conditions under which an applicant may, without an individual removal-fill permit from the Director, place or remove very small quantities of material within designated essential indigenous anadromous salmonid habitat areas for projects that have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects. For purposes of this General Authorization "project" means the same as defined in OAR 141-085-0010(165).

(2) An authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. An applicant is authorized to commence an activity under this general authorization by submitting a complete application on a form provided by the Department and by agreeing to the eligibility requirements (OAR 141-089-0505), mandatory requirements (141-089-0510) and the conditions for issuance (131-089-0520). The term and conditions of issuance shall be stated in the authorization. The term shall not exceed the expiration date of this general authorization. The authorization is not transferable to another person.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0505

Eligibility Requirements; Ineligible Projects

(1) In order to authorize an activity under this general authorization the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must:

(a) Have only minimal, temporary short-term adverse effects and no mid-term or long-term adverse effects;

(b) Place or remove not more than two cubic yards of material at any individual site and, cumulatively, not more than ten cubic yards of material within a designated essential indigenous anadromous salmonid habitat stream in a single project year;

(c) Have no effect on any listed species; and

(d) Have no effect on known archeological sites.

(2) Examples of eligible projects include, but are not limited to, the following:

(a) Investigative drilling to gather necessary technical data for designing building and/or road foundations;

(b) Installation of scientific measurement devices whose purpose is to measure and record scientific data such as staff gages, tide gages, water recording devices, water quality testing and improvement devices and similar structures;

(c) Limited surveys for historic resources.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0510

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory requirements: If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0515

Application Requirements; Review and Approval Process

(1) Any person proposing to conduct an activity covered by this general authorization shall submit an application to do so on a form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department will review the application for eligibility and compliance with the mandatory requirements.

(3) If the application is deemed incomplete or ineligible, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information.

(4) If the Department determines that the application does not meet all the requirements for this general authorization, it shall deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization, the applicant may submit the project for processing and review as an individual permit under OAR 141-085.

(5) The Department may require an individual permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department 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 land use planning department.

Stat. Auth.: ORS 196.850
Stats. Implemented: ORS 196.800 - 196.990
Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0520**Conditions for Issuance of General Authorization**

All persons conducting activities under this general authorization shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown listed species are encountered during the project, the authorization holder shall immediately cease work and contact the Department as soon as possible.

(6) When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(8) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(9) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(10) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(11) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring

interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall not remove and/or dispose of sediments in violation of the applicable state water quality standards.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0525**Violation of General Authorization; Enforcement**

Violations of the terms and conditions of this general authorization are subject to administrative and/or legal action, which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990

Hist.: DSL 1-2003, f. & cert. ef. 7-10-03

141-089-0530**Appeals; Expiration; Review of General Authorization**

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be reviewed in accordance with the provisions of ORS 196.850(5), and modified, reissued or rescinded. The review will include public notice and opportunity for public hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850
 Stats. Implemented: ORS 196.800 - 196.990
 Hist.: DSL 1-2003, f. & cert. ef. 7-10-03; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Oregon Department of Transportation Bridge Replacement and Repair Projects

141-089-0550

Purpose and Applicability

(1) This rule sets forth conditions under which the Oregon Department of Transportation (ODOT) may, with a letter of authorization from the Director, place or remove material from waters of the state for the purposes of replacing and repairing highway bridges. This rule is put forth to promote a bridge replacement program that is heavily influenced by sustainable development practices. A goal of the performance standards under this rule is to guide the design and construction of environmentally sound bridges that improve the condition and performance of natural systems.

(2) A letter of authorization from the Department verifying compliance with this general authorization is required prior to any person commencing an activity authorized by this general authorization. The terms and conditions of issuance shall be stated in the letter of authorization. A letter of authorization is transferable from ODOT to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long-term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0020.

(5) Unless otherwise specified below, the terms used in this general authorization are defined in OAR 141-085-0010.

(6) Bridge replacement and repair activities that qualify for this General Authorization are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(7) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0555

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization, the Department shall determine that the project is eligible and meets the applicable mandatory requirements as described in this rule. To be eligible a project must be a bridge replacement or repair and shall be limited to the following purposes:

- (a) Widening shoulder for new roadside embankment, curbs, trails, sidewalks and rail crossings;
- (b) Widening road for additional passing lanes, turn lanes and refuges and travel lanes;
- (c) Widening, replacing, realigning or removing existing railroad beds;
- (d) Widening, replacing, realigning or removing existing roads;
- (e) Widening, replacing, realigning, removing or replacing existing bridges or similar structures;

(f) Widening, replacing, realigning or removing existing bicycle, pedestrian or other lanes or trails;

(g) Constructing new bicycle, pedestrian or other lanes or trails;

(h) Replacement of culverts or similar water conveyance structures along roads and trails that extend beyond the existing road prism;

(i) Construction of new culverts;

(j) Extension of existing culverts beyond the existing road prism;

(k) Streambank stabilization associated with projects listed in (a) through (j);

(l) Hydraulic scour protection associated with bridges and similar structures including but not limited to: construction of a new trench and stone embankment; construction of new bridge footings; placing new riprap to stabilize a transportation structure foundation;

(m) Temporary structures;

(n) Staging areas for equipment that will be restored at time of project completion;

(o) Test holes, boring and similar activities associated with planning and design of transportation structures; and

(p) Other activities that within the discretion of the Department are determined to be necessary to:

(A) Provide fish passage;

(B) Ensure the structural integrity of the project; or

(C) Relocate utilities spanning the original bridge structure or similar activities that are integrally related to accomplishing the bridge repair or replacement.

(2) A project is not eligible for this general authorization if:

(a) The project is not primarily a bridge replacement or repair;

(b) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(c) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide compensatory mitigation, compensatory wetland mitigation, fish passage or for the structural integrity of the project.

(3) Permanent fill in wetland is limited to 0.5 acres or less. In waters other than wetlands, no more than a total of five thousand (5,000) cubic yards of material may be filled, removed or altered in waters of the state for a single and complete project. Exceeding five thousand (5,000) cubic yards is authorized only where necessary to improve or restore fluvial processes on a project specific basis.

Stat. Auth.: ORS 196.850
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0560

Mandatory Requirements

(1) The applicant must be ODOT or a party approved by ODOT to be qualified as an applicant as defined in OAR 141-085-0010(3).

(2) If the activity is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(3) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085-0115 to 141-085-0176 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses.

(a) Prior to initiating construction, ODOT shall provide a project notification form that documents how compensatory wetland mitigation or compensatory mitigation for waters other than wetlands is to be achieved for the individual project;

(b) ODOT shall develop and implement a comprehensive compensatory mitigation site monitoring, reporting, and corrective action program as approved by the Department.

(4) Prior to expiration of this General Authorization, ODOT shall calculate total acres of permanent wetland impact for those projects authorized under this rule and determine if the functional attributes of the compensatory wetland mitigation has compensated for functions lost through project development in accordance with OAR 141-085-0136. If a deficit exists, the balance shall be achieved through additional on-site or off-site mitigation including payment-to-provide options in accordance with OAR 141-085-0131.

(5) If wetlands may be affected by the proposed activity, a previously-approved, unexpired wetland delineation report, less than five (5) years old that meets the requirements OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site,

if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0565

Application Requirements; Review Process

(1) To qualify for a General Authorization under this rule, ODOT shall, before beginning construction, submit to the Department an application, on a form provided by the Division that includes the following information:

- (a) Location of project;
- (b) Map of project area with removal-fill impact area clearly identified;
- (c) Dates of expected work;
- (d) References to documents previously reviewed and approved by the Department (e.g., environmental assessments);
- (e) Project design information, including plan and section view of proposed new structures;
- (f) Locations of temporary access areas, staging areas, and other areas of disturbance;
- (g) Wetland delineation concurrence letter, if applicable;
- (h) Location of ordinary high water, if applicable;
- (i) Jurisdictional impact acreage and volume (in cubic yards) of removal and/or fill;
- (k) List of ODOT performance standards applicable to the project;
- (l) Documentation demonstrating how and when compensatory mitigation will be achieved;
- (m) Documentation demonstrating how project complies with applicable ODOT Performance Standards, and any other relevant information requested by the Department.
- (n) Documentation of local government land use approval; and
- (o) Documentation of coordination with adjacent property owners, Tribal governments (as applicable) and state and federal natural resource agencies.

(2) Within fifteen (15) calendar days of receipt of a completed application, the Division will review the application for compliance with the conditions in OAR 141-089-0570 of these rules and notify ODOT whether the project is eligible, eligible with new or modified conditions, or ineligible. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0570

Conditions of Issuance of General Authorization

ODOT shall adhere to the conditions of the General Authorization.

(1) ODOT shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project.

(2) ODOT shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of construction activities for a project authorized under this general authorization.

(3) ODOT shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by the Department for a longer or alternative time period.

(4) When listed species are present, ODOT shall comply with the state and Federal Endangered Species Acts. If previously unknown

listed species are encountered during the project, ODOT shall contact the Department as soon as possible.

(5) ODOT shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, ODOT shall immediately cease work at the discovery site and contact the Department.

(6) ODOT shall ensure that the authorized work does not unreasonably interfere with or create a hazard to recreational navigation.

(7) ODOT shall implement and comply with all relevant ODOT Bridge Program Performance Standards.

(8) ODOT shall flag the boundaries of clearing limits associated with site access and construction to prevent ground disturbance of critical riparian vegetation, wetlands and other sensitive sites beyond the flagged boundary.

(9) ODOT shall prepare and carry out a site restoration plan as necessary to ensure that all habitats (e.g., streambanks, soils and vegetation) disturbed by the project are cleaned up and restored. Site restoration shall be conducted using a diverse assemblage of species native to the project area or region, including grasses, forbs, shrubs and trees as appropriate. Grass and forb seed mixes containing exotic species are permitted, if they will hold the soil, not persist, and are certified to be free of noxious weeds.

(10) ODOT shall locate vehicle staging, cleaning, maintenance, refueling, and fuel storage facilities:

(a) In areas that have been previously compacted, disturbed, and cleared (if available); and

(b) In areas where delivery of contaminants to the soil and waters can be prevented, contained, and cleaned rapidly.

(11) ODOT shall assure that the work will not cause turbidity of affected waters to exceed 10% of natural background turbidity 100 feet downstream of the fill point. For projects proposed in areas with no discernible gradient break (gradient <2%), monitoring shall take place at 4 hour intervals and the turbidity standard may be exceeded for a maximum of one monitoring interval per 24 hour work period provided all practicable control measures have been implemented. This standard applies only to coastal lowlands and floodplains, valley bottoms and other low-lying and/or relatively flat land. For projects in hilly or mountainous areas, the turbidity standard can only be exceeded for a maximum of 2 hours (limited duration) provided all practicable erosion control measures have been implemented. These projects will also be subject to additional reporting requirements. Turbidity shall be monitored during active in-water work periods. Monitoring points shall be 100 feet upstream from the fill point at an undisturbed site (background), 100 feet downstream, from the fill point and at the point of fill. A turbidimeter is recommended, however, visual gauging is acceptable. Turbidity that is visible over background is considered an exceedance of the standard.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) ODOT shall eliminate direct discharge of stormwater from bridge decks to waters.

(14) ODOT shall prepare and carry out a pollution and erosion control plan to prevent pollution caused by surveying or construction operations. The pollution and erosion control plan will meet requirements of all applicable laws and regulations.

(15) ODOT shall ensure that other structures, uses or activities not associated with the application for the proposed project (i.e., vehicle maintenance, construction of storage buildings, parking lots) are not permitted.

(16) ODOT shall comply with the following bank stabilization guidelines:

(a) Unless precluded by flow conditions, channel and bank stabilization efforts should use a vegetative stabilization approach such as one of the following methods:

(A) Woody plantings and variations (e.g., live stakes, brush layering, fascines, brush mattresses), where appropriate.

(B) Herbaceous cover, where analysis of available records (e.g., historical accounts and photographs) shows that trees or shrubs did not exist on the site within historic times.

(C) Deformable soil reinforcement, consisting of soil layers or lifts strengthened with fabric and vegetation that are mobile ('deformable') at approximately two- to five-year recurrence flows.

(D) Coir logs (long bundles of coconut fiber), straw bales and straw logs used individually or in stacks to trap sediment and provide growth medium for riparian plants.

(E) Bank reshaping and slope grading, when used to reduce a bank slope angle without changing the location of its toe, increase roughness and cross-section, and provide more favorable planting surfaces.

(F) Floodplain roughness, e.g., floodplain tree and large woody debris rows, live siltation fences, brush traverses, brush rows and live brush sills; used to reduce the likelihood of avulsion in areas where natural floodplain roughness is poorly developed or has been removed.

(G) Floodplain flow spreaders, consisting of one or more rows of trees and accumulated debris used to spread flow across the floodplain.

(b) Flow-redirection structures known as barbs, vanes, or bend-way weirs may be used for bank stabilization, when designed as follows or otherwise approved in writing by DSL:

(A) No part of the flow-redirection structure may exceed bank full elevation, including all rock buried in the bank key.

(B) The flow-redirection structure shall be composed primarily of wood or otherwise shall incorporate large wood at a suitable elevation in an exposed portion of the structure or the bank key. Placing the large woody debris near streambanks in the depositional area between flow direction structures to satisfy this requirement is not approved, unless those areas are likely to be greater than 1 meter in depth, sufficient for salmon rearing habitats.

(C) The trench excavated for the bank key above bankfull elevation shall be filled with soil and topped with native vegetation.

(D) The maximum flow-redirection structure length shall not exceed 1/4 of the bankfull channel width.

(E) Rock shall be placed individually, without end dumping.

(F) If two or more flow-redirection structures are built in a series, the flow-redirection structure farthest upstream shall be placed within 150 feet or 2.5 bankfull channel widths, from the flow-redirection structure farthest downstream.

(G) Woody riparian plantings shall be included as a project component where appropriate.

(c) When used for bank stabilization, rock will be class 350 metric, or larger, wherever feasible, but may not impair natural stream flows into or out of secondary channels or riparian wetlands. Whenever feasible, topsoil shall be placed over the rock and planted with woody vegetation. Rock may be used instead of wood for the following purposes and structures:

(A) As ballast to anchor or stabilize large woody debris components of an approved bank treatment.

(B) To fill scour holes, as necessary to protect the integrity of the project, if the rock is limited to the depth of the scour hole and does not extend above the channel bed.

(C) To construct a footing, facing, head wall, or other protection necessary to prevent scouring or downcutting of, or fill slope erosion or failure at, an existing flow control structure (e.g., a culvert, water intake), utility line, or bridge support.

(D) To construct a flow-redirection structure as described above.

(d) If flow conditions require the use of riprap to achieve bank stabilization, adequate fines and substrate materials must be incorporated to sustain the growth and survival of native herbaceous vegetation and shrubs.

(17) In the case of road removal, ODOT shall ensure that all affected stream and bank areas are restored to their approximate original contour.

(18) If temporary roads are required through wetlands, ODOT shall install culverts to maintain connectivity between wetland areas.

(19) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(20) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public

access requirements of ORS Chapters 196 and related administrative rules.

(21) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(22) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long-term harm to water resources of the state.

(23) The Division may, at any time, by notice to ODOT 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.

(24) ODOT is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

(25) ODOT shall keep a copy of all relevant permits and approvals available at the work site whenever the activity is being conducted.

(26) The General Authorization applies only to the permit requirements of the Removal-Fill Law. Any activity on designated State Scenic Waterways must still obtain prior approval from the Director as required by the Oregon Scenic Waterway Law and Scenic Waterway Removal-Fill Rules (OAR 141-100).

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0575

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action that may result in revocation of the authorization. ODOT is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0580

Appeals; Expiration; Review of General Authorization

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process resolution process described in OAR 141-085-0075. However, this is only opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

General Authorization for Minor Impacts to Freshwater Wetlands located within Urban Growth Boundaries or Urban Unincorporated Communities

141-089-0585

Purpose and Applicability

(1) This rule sets forth conditions under which an applicant may, without obtaining an individual removal-fill permit, place or remove material from certain freshwater wetlands within waters of the state (as described in OAR 141-085-0016), for all types of activities within designated Urban Growth Boundaries (UGB) or Urban Unincorporated Communities (UUC).

(2) A letter of authorization from the Department is required prior to any person commencing an activity authorized by this general authorization. The term and conditions of issuance shall be stated in the letter of authorization. The term shall not exceed the expiration date of this general authorization. A letter of authorization is transferable to another person in accordance with OAR 141-085-0034.

(3) This general authorization is made pursuant to ORS 196.850 and is based upon the determination that the authorized activities are similar in nature and when conducted in accordance with this general authorization rule will not result in long term harm to water resources of the state, and will cause only minimal individual and cumulative environmental impacts.

(4) This general authorization does not apply to activities or waters exempt from the removal-fill law as described in OAR 141-085-0015 and 141-085-0020.

(5) Other structures, uses or activities included in any application for this general authorization that are subject to another general authorization under OAR 141-089 or individual permit under OAR 141-085 will not be authorized or covered by this general authorization. An application encompassing multiple activities must obtain an individual removal-fill permit under OAR 141-085.

(6) Unless otherwise specified, the terms used in this general authorization are defined in OAR 141-085-0010.

(7) Activities and/or projects, which qualify for this general authorization, are exempt from removal-fill permit fees as described in OAR 141-085-0064.

(8) In the event a dispute arises as to the applicability of this general authorization to any project application, the Department shall make the final determination. The Department shall rely upon the applicant's project application and supporting documentation for its decision.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0590

Eligibility Requirements; Ineligible Projects

(1) In order to issue a letter of authorization the Department shall determine that the project is eligible and meets the applicable Mandatory Requirements as described in this rule. To be eligible a project must be for a removal-fill activity that:

- (a) Is located in a freshwater wetland;
- (b) The removal-fill is less than 0.1 (one-tenth) acre;
- (c) Is within a designated Urban Growth Boundary (UGB) or Urban Unincorporated Community (UUC);

(d) Is not within an area that contains state or federal listed species;

(e) Is not in an area designated in the local comprehensive land use plan as a locally significant wetland;

(f) Is beyond the floodway or flood fringe area as designated on maps approved by the Federal Emergency Management Agency; and

(g) Is not located adjacent to an estuary or to designated Essential Indigenous Anadromous Salmon Habitat.

(2) A project is not eligible for this general authorization if:

(a) The project fails to meet any of the requirements of (1) above or the mandatory requirements;

(b) The project includes any structure, use or activity subject to another general authorization under OAR 141-089 or individual removal-fill permit under OAR 141-085, unless it is incidental to the project or is necessary to provide fish passage or for the structural integrity of the project.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0595

Mandatory Requirements

The Department shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Department in accordance with OAR 141-100.

(2) A wetland delineation report has been approved by the Department in accordance with OAR 141-090-0040.

(3) A compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wetland impacts to areas less than 0.1 (one-tenth) acre may use off-site compensatory wetland mitigation.

(4) If wetlands may be affected by the proposed activity, a previously approved, unexpired wetland delineation report, less than five (5) years old, that meets the requirements in OAR 141-090-0005 to 0055, is required for a complete application. If the project and mitigation site, if different do not have a previously approved, unexpired wetland delineation report, a delineation report must be submitted to the Department at least 120 days in advance of the anticipated GA application submittal.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0600

Application Requirements; Public Notice; Review Process

(1) An application for a general authorization under this rule shall be submitted on an application form available from the Department. A complete application is one that contains all the information required in the application packet provided by the Department.

(2) The Department shall notify the applicant within fifteen (15) calendar days of receipt of the application if the application is incomplete or ineligible; otherwise the application will be considered complete. If the application is deemed incomplete, the Department shall notify the applicant and identify the missing, inaccurate or insufficient information. The Department will not continue to process an incomplete application. To re-initiate the application review process the applicant may submit an amended application at any time within twelve (12) months of the original application date. The applicant must resubmit an entire amended application for reconsideration, unless instructed by the Department to do otherwise. Submission of an amended application commences a new review period.

(3) Once the application is deemed complete, the Department shall provide notice of the application to the adjacent property owners, 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, affected Tribal government, the State Historic Preservation Office, the Oregon Water Resources Department, U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service and National Marine Fisheries Service. Diking and drainage districts shall also be notified as applicable. If the project is on a federally designated Wild and Scenic River, the Department shall provide notice to the appropriate U.S. Forest Service or Bureau of Land Management office.

(4) The Department shall consider comments received with fifteen (15) calendar days of the notice date. In the event a party fails to comment within the (15) calendar day period, the Department shall assume the party has no objection to the application.

(5) The Department may waive or shorten the comment period described in (4) above upon a showing by the applicant in the application that the interested parties listed in (3) have previously reviewed and approved the project.

(6) Following comment period and not more than forty (40) calendar days from the receipt of an application, the Department will determine if the project meets the eligibility requirements set out in this general authorization and do one of the following:

(a) Approve the application and issue a letter of authorization to the applicant;

(b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or

(c) Deny the application and notify the applicant. If the Department determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

(7) The Department may require an individual removal-fill permit for projects that would otherwise be authorized by this general authorization, if the Department 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 Department may also require an individual removal-fill permit if requested to do so by the Oregon Department of Fish and Wildlife, the Oregon Department of Environmental Quality or the affected local land use planning department.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0605

Conditions of Issuance of General Authorization

All holders of a letter of authorization (authorization holder) shall adhere to the conditions of the general authorization.

(1) The authorization holder shall conduct all work in compliance with the comprehensive plan, zoning requirements or other local, state, or federal regulations pertaining to the project. Local land use planning department approval shall be obtained if the project is located within a Federal Emergency Management Agency designated floodway. All other necessary approvals and permits shall be obtained before commencing with the authorized project. All necessary approvals and permits shall be obtained before commencing the project under this general authorization.

(2) The authorization holder shall obtain all necessary access permits or rights-of-way prior to entering lands owned by another for the purposes of completing a project authorized under this general authorization.

(3) The authorization holder shall conduct the activity during the time period recommended by the Oregon Department of Fish and Wildlife, unless after consultation with ODFW, a waiver is granted by Department for a longer or alternative time period.

(4) The authorization holder shall ensure that the activity will not interfere with fish passage, as required by the Oregon Department of Fish and Wildlife.

(5) If previously unknown state or federal listed species are encountered during the project, the authorization holder shall cease work immediately and contact the Department as soon as possible.

(6) The authorization holder shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the authorization holder shall immediately cease work at the discovery site and contact the Department.

(7) The authorization holder shall ensure that woody vegetation removal is limited to the minimum amount needed to complete the project including construction access and keying in of structures.

(8) The authorization holder shall ensure that areas disturbed in the course of completing the authorized work are revegetated with the same mix of native herbs, shrubs and/or trees in approximately the same numeric proportion as were removed from the site, unless otherwise approved by the Department, except that grass seed mixes of exotics certified free of noxious weeds that will hold the soil and not persist are permitted.

(9) The authorization holder shall ensure that no petroleum products, chemicals or deleterious materials are allowed to enter the waters of the state.

(10) The authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by more than 10 percent, as measured 100 feet downstream from the work area.

(a) If all appropriate erosion/turbidity control measures, as described in the ODEQ Erosion and Sediment Control Manual (April 2005), are in place and functioning properly then this standard may be exceeded, in each 24-hour period, for only:

(A) One 2-hour period in fast moving water (>2% stream bed gradient).

(B) One 4-hour period in slow moving water (<2% stream bed gradient).

(b) Turbidity shall be monitored at least 100 feet up stream of the current work area to obtain a natural background level and 100 feet down stream of the current work area, in the visible plume if one is present, unless otherwise approved by DSL after consulting with DEQ. A turbidimeter is recommended for measuring; however, visual observation is acceptable. If a turbidimeter is not used, turbidity that is visible over background at a distance of 100 feet down stream of the current work area is a violation of the permit conditions.

(c) Monitoring of turbidity shall take place during daylight hours each day of in-water work and every 2 hours in fast moving waters and every 4 hours in slow moving waters as described above in (a). A written record of turbidity monitoring shall be kept.

(d) If the levels of turbidity are elevated at the time of the first compliance-monitoring interval, all practicable erosion control measures should be implemented to reduce the levels of turbidity. If the levels of turbidity are in exceedance during the second monitoring interval, the activity causing the elevated levels of turbidity must cease until the levels of turbidity return to background.

(12) The authorization holder shall ensure that all applicable Department of Environmental Quality water quality requirements are adhered to and permits and certifications are obtained prior to commencing construction activities.

(13) If a 401 Water Quality Certification (WQC) is issued by DEQ in conjunction with a US Army Corps of Engineers 404 permit for the same project, the turbidity condition in the 401 WQC will replace the above listed turbidity language (a copy of the 401 Water Quality Certification shall be retained on site).

(14) The authorization holder shall ensure that all structures are constructed using equipment operating outside the waterway or wetland unless otherwise approved by the Department as a part of the project plan.

(15) The authorization holder shall keep a copy of the letter of authorization available at the work site whenever the activity is being conducted.

(16) Employees of the Department and all duly authorized representatives shall be permitted access to the project area at all reasonable times for the purpose of inspecting work performed under this authorization.

(17) The Department makes no representation regarding the quality or adequacy of the project design, materials, construction, or maintenance, except to approve the project's design and materials as satisfying the resource protection, scenic, safety, recreation, and public access requirements of ORS Chapters 196 and related administrative rules.

(18) The State of Oregon, and its officers, agents, and employees shall be held harmless from any claim, suit, or action for property damage or personal injury or death arising out of the design, material, construction, or maintenance of the permitted improvements.

(19) The Department may add other project-specific conditions to the letter of authorization as necessary to meet the requirements of the general authorization. Such additional conditions may be needed to ensure that the project will cause only minimal individual and cumulative environmental impacts and will not result in long term harm to water resources of the state.

(20) The Department may, at any time, by notice to affected authorization holders revoke or modify any letter of authorization granted under this general authorization if it determines the conditions of the general authorization are insufficient to minimize individual or cumulative environmental impacts.

(21) The authorization holder is responsible for the activities of all contractors or other operators involved in project work covered by the letter of authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

141-089-0610

Violation of General Authorization; Enforcement

Violations of the terms and conditions of any general authorization are subject to administrative and/or legal action which may result in revocation of the authorization. The authorization holder is responsible for the activities of all contractors or other operators involved in work done at the site or under the authorization.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04

141-089-0615**Appeals; Expiration; Review of General Authorization**

(1) An applicant whose application for the general authorization is determined by the Department to be ineligible or otherwise not qualified for this general authorization may obtain an informal review of the Department's decision through the alternative dispute resolution process described in OAR 141-085-0075. However, this is only an opportunity to review the Department's decision and does not give the person a right to a contested case hearing.

(2) This general authorization shall be reviewed by the Department on or before January 1, 2011, at which time it shall be modified, reissued or rescinded. The review will include public notice and opportunity for public informational hearing. An approval issued prior to expiration of this General Authorization shall remain in effect until January 1, 2012.

(3) Any activities authorized by a letter of authorization issued prior to January 1, 2006 are authorized until the activity is completed or until January 1, 2012, whichever comes first. All conditions of issuance continue to be in force. Activities authorized by this General Authorization that are not completed by January 1, 2012, shall require the submittal of a new application in order to complete the proposed activities. However, a one time 90 day extension will be allowed by the Department, if the applicant provides the Department with a written Notice that states that the activities authorized by this General Authorization will be completed within 90 days of January 1, 2012. The Department shall acknowledge and approve in writing the one time 90 day extension.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 1-2004, f. & cert. ef. 5-21-04; DSL 5-2005, f. 12-30-05, cert. ef. 1-3-06

DIVISION 90

**ADMINISTRATIVE RULES FOR WETLAND
DELINEATION REPORT REQUIREMENTS AND
FOR JURISDICTIONAL DETERMINATIONS FOR THE
PURPOSE OF REGULATING FILL AND REMOVAL
WITHIN WATERS OF THE STATE**

141-090-0005**Purpose**

The purpose of these rules is to establish standards and procedures by which the Department of State Lands makes jurisdictional determinations of wetlands and other waters of the state. These rules also establish minimum standards for wetland determination and delineation reports submitted to the Department for review and the procedures for Department review and approval.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0010**Applicability**

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

(2) These rules are supplemental to administrative rules for issuance and enforcement of removal and fill authorizations (OAR 141-085; 141-0102); rules pertaining to wetland conservation plans and local wetlands inventories (OAR 141-086; 141-120); rules pertaining to the identification of significant wetlands (OAR 141-086); rules pertaining to General Authorizations (OAR 141-098); and rules pertaining to Oregon Scenic Waterways (OAR 141-100).

(3) Agencies such as the U.S. Army Corps of Engineers (Corps of Engineers) and the Natural Resources Conservation Service have separate regulatory authority over waters of the United States and separate jurisdictional determination procedures.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0015**Policy**

(1) It is the policy of the State of Oregon that the protection, conservation and best use of the water resources of this state are matters

of the utmost public concern (ORS 196.805) and that the state use a single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS 196.672).

(2) In accord with these policies the Department shall, to the greatest extent possible:

(a) Provide a clear process for making, modifying or reissuing jurisdictional determinations, including wetland boundary delineations;

(b) Make jurisdictional determinations using the best available science, technical guidance and documents, including the 1987 U.S. Army Corps of Engineers Wetland Delineation Manual;

(c) Use sound professional judgment in interpreting maps, aerial photographs, environmental data and other relevant documents;

(d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that fill or removal of material in waters of the state does not occur without a required removal or fill permit; and

(e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of site development planning in order to incorporate measures to avoid and minimize impacts to wetlands and other waters and thus prevent unnecessary regulatory delays.

(3) Because wetlands and other waters of the state can be affected over time by both natural changes and human activities, jurisdictional determinations are not valid for an indefinite period of time.

(4) The Director of the Department of State Lands shall designate employees responsible for making jurisdictional determinations as described in these rules.

(5) The Department shall give priority to the review of wetland delineation reports submitted with or in advance (i.e., within 90 (ninety) days) of an authorization application.

(6) Final authority for determining the adequacy of the procedures, methods, application of technical documents, interpretation and analysis of maps and data, and conclusions regarding the identification of waters of the state and jurisdictional determinations rests with the Department (ORS 196.815(1); 196.845).

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist.: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0020**Definitions**

For the purpose of these rules:

(1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.

(2) "Applicant" means a person who has applied to the Department for a jurisdictional determination and/or a removal or fill authorization.

(3) "Atypical Situation" means a site or situation where the usual methods of making a jurisdictional determination cannot be employed due to human-caused activities or alterations of the "normal circumstances," or natural events, such as a flood, that have recently altered a site.

(4) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of the state as required by OAR 141-085, 141-089, 141-100 and 141-102.

(5) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Department's jurisdictional determination.

(6) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology and/or substrate to the extent that the "normal circumstances" of waters of the state are changed. The change in circumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

(7) "Consultant" means a private individual or firm whose business is to provide professional services to the public.

(8) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

(9) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of the state, including wetlands.

A determination need not include the precise location or boundaries of any wetlands or waterways determined to be present.

(10) "Director" means the Director of the Department of State Lands or his or her designate.

(11) "Department" means the Oregon Department of State Lands, including the Director.

(12) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.

(13) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a receiver, their respective position in latitude, longitude, and altitude.

(14) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of the state.

(15) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of the state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-100 and 141-102 are present or not present on a land parcel. The JD may include a determination of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the ordinary high water line of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in 141-090-0050.

(16) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.

(17) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.

(18) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual.

(19) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(20) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Department after the Department has issued a jurisdictional determination or issued an authorization.

(21) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(22) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Department may determine if the placement of fill material required a fill permit.

(23) "Offsite Determination" means a determination by the Department or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, and/or interviews with persons familiar with the site. An offsite determination is considered to be a Preliminary Jurisdictional Determination unless otherwise stated in writing by the Department.

(24) "Onsite Determination" means a determination by the Department or any other person that includes a site visit to collect relevant data. An onsite determination may be either a Preliminary Jurisdictional Determination or a JD.

(25) "Other Waters" means waters of the state other than wetlands.

(26) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(27) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of the state are present or not present on a parcel of

land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Department, and also include wetlands mapped on the NWI or on a LWI.

(28) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Department's contact for the purpose of the review and approval of a wetland determination or delineation report.

(29) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of the state.

(30) "Report" means a wetland determination or delineation report.

(31) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area.

(32) "Waters of the state" means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state (ORS 196.800(14) and 141-085-0010 and 0015).

(33) "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 (ORS 196.800(16) and 141-085-0010).

(34) "Wetland Boundary" means a line marked on the ground and/or on a map that identifies the boundary line between wetlands and non-wetlands.

(35) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes and maps their location and geographic extent.

(36) "Wetland Determination Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes their approximate location and size.

(37) "Wetland Map" means a map included in a Wetland Determination or Delineation Report or provided by the Department that shows the parcel(s) and/or areas investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0025

Procedures for Determinations Conducted Entirely by the Department

(1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

(2) The Department may make a determination for a number of reasons, including but not limited to:

(a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a particular parcel or parcels;

(b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

(c) A site development notice from a local government;

(d) A request from a local government or other government entity acting in its capacity to conduct site assessments for project or planning purposes;

(e) A removal-fill authorization application, request for a pre-application meeting or a compliance investigation;

(f) A request to review and approve a wetland determination or delineation report (see additional requirements and procedures in 141-090-0030 and 141-090-0035); or

(g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, 196.800 to 196.990 and any applicable rules of the Department.

(3) The Department may prioritize the completion of determinations based upon the availability of staff and budget resources.

(4) A request to the Department to provide a determination apart from an authorization application or local government notice shall include:

(a) A written request including landowner/agent permission to conduct a site visit;

(b) Landowner or agent name, company or agency, mailing address and phone number;

(c) A location map such as a city map showing the precise parcel location with respect to nearest streets and parcel address, if any;

(d) A detailed site map such as a tax map or hand drawn parcel map showing, as appropriate, such features as the location of streets, roads, buildings, streams, and area of any planned development or fill or excavation, if known; and

(e) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(5) A request for a determination may include additional helpful information, such as:

(a) A large scale topographic map of the site (e.g., 1 inch = 50 feet);

(b) A large scale aerial photograph of the site; or

(c) Photographs of the site.

(6) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.

(7) The Department may request additional information and/or conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.

(8) An Onsite JD conducted by the Department shall include at a minimum:

(a) A location map showing the location of the parcel(s) with respect to major roads;

(b) A parcel map showing property boundaries;

(c) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).

(d) The NWI map or, if available, the LWI map with the site located;

(e) The county soil survey map with site located and soil type(s) mapped on the site identified;

(f) A sketch map showing the approximate location of any waters of the state on the parcel(s);

(g) At least one data form (or equivalent notes) documenting any wetlands identified or possible wetlands determined not to meet wetland criteria; and

(h) Conclusions and recommendations regarding additional requirements (e.g., the need for a delineation or permit), as appropriate to the determination request and the situation.

(9) After review of the information and the site visit, if conducted, the Department may:

(a) Provide a written PJD or JD in accordance with Subsection (10) of this section; or

(b) Provide a written PJD and recommend that the landowner, agent or applicant obtain a wetland determination and/or delineation that meets the requirements in 141-090-0030 and 141-090-0035.

(10) A written PJD or JD by the Department shall include at a minimum:

(a) A letter or form addressed to the applicant, landowner or agent that includes the location of the parcel(s) investigated, a file number for future reference, and the expiration date of the JD, or a response on or attached to a wetland land use notice form or other site development notice submitted by a local government; and

(b) Comments regarding the precision or use of the PJD or JD, as appropriate;

(c) Additional requirements or recommendations, such as the need for a wetland delineation;

(d) A determination of the requirements or exemptions in accordance with OAR 141-085, 141-089, 141-100 and 141-102 that apply to any waters of the state identified on the parcel(s) and/or the proposed activity, if the information provided to or obtained by the Department is sufficient to make such determination; and

(e) A map or reference to a map showing the parcel(s) investigated and the approximate location and boundaries of any waters of the state identified on the parcel(s), unless the information provided

to or obtained by the Department is not sufficient to make or refer to such a map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0030

Technical Requirements

(1) Wetland determinations and delineations shall be conducted in accordance with the *1987 U.S. Army Corps of Engineers Wetlands Delineation Manual* ("the manual") along with any supporting technical or guidance documents issued by the Department and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.

(2) In addition to the requirements in this section, wetland determination and/or delineation reports submitted to the Department for review and approval shall meet the standards and requirements in 141-090-0035.

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0035

Standards and Requirements for Wetland Determination and Delineation Reports Submitted to the Department

(1) **General Requirements:** All wetland determination and/or delineation reports ("reports") submitted to the Department for review, approval and a JD shall meet the technical requirements in 141-090-0030 as well as the minimum standards and requirements in this section.

(2) All wetlands or other waters on the parcel or study area shall be included; the Department will determine whether or not they are "waters of the state" subject to jurisdiction under OAR 141-085, 141-089, 141-100 and 141-102.

(3) All reports shall include the following sections:

(a) A fully completed "Wetland Delineation/Determination Report Cover Form" (form provided by the Department);

(b) Text as described in subsection (8) of this section;

(c) Maps as described in subsections (9) through (14) of this section;

(d) Data forms as described in subsections (15) and (16) of this section; and

(e) Appendices, as needed.

(4) All report text, maps, aerial photographs and data forms must be legible and, with the exception of aerial photographs, must copy legibly on a black and white copier.

(5) If a wetland function and condition evaluation is conducted, the methods and results of that evaluation should be presented in a separate section of the report or in a separate document.

(6) All reports shall include:

(a) The name, address, phone number, fax number and e-mail (if any) of the landowner;

(b) The name, address, phone number, fax number and e-mail (if any) of the applicant, if different;

(c) The address or, if no address is assigned, the approximate location of the site investigated, including county and city if within a city limits;

(d) The tax map number including the Township, Range, Section(s), Quarter Quarter Section(s), and Tax Lot(s) of the parcel(s) covered by the report;

(e) The latitude and longitude of the centroid of the parcel(s) or the start and end points of a linear project;

(f) The name, address, phone number, fax number, and e-mail address of the person that prepared the report; and

(g) Permission in writing from the landowner or agent, or a duly authorized representative of the landowner or agent, for the Department or its authorized representative to conduct a site visit.

(7) Reports may include, or the Department may in some circumstances require:

(a) Aerial photographs;

(b) Photographs of the site;

(c) A detailed topographic survey of the site; and

(d) Additional information regarding site history or field indicators helpful to evaluating the site and making a JD.

(8) **Text Requirements:** The report text shall include, in addition to the elements in subsection (6) of this section:

(a) A detailed description of the site, its landscape setting, and previous and current land uses;

(b) A description of any wetlands, including whether or not they extend offsite, and the characteristics of the wetland/non-wetland boundaries on the site;

(c) A description, approximate year, and analysis of any site alterations that likely affected the presence, location or geographic boundaries of any waters of the state on the site (e.g., surface drainage ditches or fill material);

(d) The site-specific methods used to conduct the field investigation, select sample plot locations, and make the PJDs;

(e) The methods and rationale used to determine the boundaries of any wetlands on the site;

(f) The wetland map accuracy (see subsection 12 of this section);

(g) The methods used to determine the geographic extent of other waters of the state (e.g., ordinary high water);

(h) The date(s) of the field investigation(s);

(i) The precipitation on the day of and immediately preceding (approximately 1 to 2 weeks) the date(s) of the field investigation(s) and percent of normal rainfall for the water year to date;

(j) The results and conclusions of the investigation; and

(k) The following statement: "This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055."

(9) **Map Requirements:** All reports shall include the following maps:

(a) A location map, such as city map, showing the precise site location;

(b) A tax lot map showing the entire parcel(s);

(c) The appropriate LWI map showing the site location and boundaries, or if no LWI has been completed, the NWI map(s), including map name(s), showing the site location and boundaries;

(d) The county soil survey map, if published, showing the site location and boundaries and including a legend identifying the sheet number and all soil series mapped on the site; and

(e) One or more wetland maps comprising the wetland determination and/or delineation that shows parcel and/or study area boundaries and tax lot number(s), includes all waters of the state on the site, and meets the additional requirements in subsections (10) through (14) of this section.

(10) The wetland map(s) shall be at a scale suitable for the site size and for legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large sites or projects, a scale of 1 inch = 200 feet or smaller is preferable. Minimum map scale for a JD and/or for permitting purposes is subject to Department approval.

(11) The wetland map(s) shall at a minimum include:

(a) The boundaries of the entire parcel(s) subject to investigation; or

(b) If only a portion of the parcel(s) was investigated, the study area boundary in relation to the parcel boundaries; and

(d) Existing structures (unless shown on a current aerial photo included in the report), areas of fill, water diversions, or other major alterations;

(d) All water features and their boundaries;

(e) Numbered sample plots corresponding to data forms (see subsections (15) and (16) of this section);

(f) North arrow and scale bar; and

(g) Photograph locations and direction of view, if photographs are included in the report.

(12) The wetland map(s) and the report text shall indicate whether the location of the parcel boundaries and waters of the state depicted on the map are approximated, measured from known points visible on the map or on an aerial photo included with the report, mapped using a GPS, or professionally land surveyed, and shall include the estimated accuracy of the mapping (in feet) relative to the actual location of the boundaries on the ground. The estimated map accuracy should reflect both the precision of the field work and the precision of the mapping (i.e., using the map, how accurately could a

person relocate the wetland boundary?). If mapping was done using a GPS, provide the post-processing error estimate for the mapping precision.

(13) The appropriate or necessary degree of map accuracy is dependent upon a variety of factors including, but not limited to, the size and complexity of the site and whether the map is provided as part of a wetland determination (showing approximate wetland location) or a wetland delineation. A very precise wetland delineation map prepared by a registered professional land surveyor or by a trained person using a mapping or survey grade GPS is generally needed for such activities as subdivision planning and removal-fill permitting.

(a) The level of map detail and accuracy must be substantiated by a corresponding level of field investigation and data collection detail (See subsection 17 of this section).

(b) The appropriate level of map accuracy for removal-fill permitting is subject to the judgment of the Department.

(c) The Department may condition its approval of a report to reflect the Department's judgment of map accuracy and suitability (see Subsection 10).

(14) The wetland map may be hand drawn or computer assisted. For large sites, the wetlands and other waters identified may be mapped onto a large scale aerial photograph (to be included in the Report) but must also be accurately transferred to a drawn map (as described in subsections (11) and (12) of this section) unless otherwise authorized by the Department.

(15) **Data Form Requirements:** All reports shall include a wetland determination data form for each sample plot. The data form used must be that provided by the Department or, if a customized data form is used, it must include all of the information contained on the Department prescribed data form and be clearly laid out in a similar format.

(16) All wetland determination data forms must:

(a) Be fully completed;

(b) Include only data collected from a single sample plot on a single date (additional dates of hydrology data may be reported in the comments section);

(c) Include the Latin botanical name and percent cover of all plant species listed;

(d) Use the 50/20 method (as described in the on-line edition of the Manual) for determining dominant plant species;

(e) Use standard soils terminology and abbreviations as established by the U.S. Department of Agriculture, Natural Resources Conservation Service; and

(f) Include the depth range below ground surface (dug to at least 16 inches) of soils and hydrology features noted (e.g., 0-3 inches, 3-8 inches, 8-16 inches).

(17) **Field Methods:** The field investigation methods and level of detail required for making and documenting a PJD or JD and mapping waters of the state is dependent upon site size, complexity and disturbance history, and on whether atypical situations or problem areas are encountered. At a minimum:

(a) The entire parcel (tax lot) or project area must be investigated during a field investigation. If only a portion of a parcel or project area is investigated, that must be made clear in the report text and on the wetland maps.

(b) All waters of the state in addition to wetlands must be identified, described, supported by data as appropriate, and mapped.

(c) Sufficient data and additional information shall be collected for any waters of the state to enable the Department to make an JD and also to determine if removal-fill permit requirements apply or if the water identified may be specifically exempt from permit requirements.

(d) Wetland delineation data must include a sample plot that best represents the characteristics of each wetland present (minimum of one plot per wetland); a sample plot that best represents adjacent non-wetland(s); and paired sample plots located close enough to either side of the wetland boundary (e.g. 4 (four) feet apart) to substantiate the wetland boundary location.

(e) Wetland determination data must be provided for any site or portion of a site where there is significant deviation from wetlands mapped on the NWI or LWI. Note in the report text if the deviation is due to development of the area mapped as wetland on the NWI or LWI, thus precluding data collection.

(f) If the site does not contain wetlands, at least one sample plot must be placed in the lowest topographic area or other location most likely to contain wetlands to document site conditions.

(18) If a wetland boundary is long or irregular in shape, paired data points sufficient to accurately identify and substantiate the wetland boundary are required; for a very irregular wetland boundary, several pairs of plots may be required. If the wetland boundary can be determined based upon one set of paired data points and a defined break in slope or other clearly visible features, that information must be fully described in the report text.

(19) Parcel boundaries, wetland boundaries and sample plots shall be identified on the ground with numbered stakes, flags, spray paint or similar markers, and/or identified on an aerial photo and/or the wetland map, such that the boundaries and sample plots can be readily relocated in the field during a site visit by the Department.

(20) Because sites are highly variable and JD needs also vary, there are many potential situations where minimal field documentation may be acceptable (e.g., linear projects covering extremely large geographic areas), where non-standard field documentation and wetland mapping may be appropriate (e.g., intricate wetland/non-wetland mosaics), or where more intensive sampling may be required (e.g., an atypical site). In such situations, persons conducting wetland delineations are encouraged to consult with the Department regarding appropriate methods.

(21) Depending on site conditions and circumstances, additional information that may be required to establish state jurisdiction includes, but is not limited to:

(a) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff);

(b) Data sufficient to determine whether or not an identified water area is artificially created entirely from upland and/or the purpose for which it was created;

(c) Hydrology monitoring data;

(d) Historical aerial photographs;

(e) Extent and date of site alterations;

(f) Data or other information on pre-disturbance conditions, such as excavation to an original (unfilled) soil surface or identification of a former stream course;

(g) Data collected at a certain time of year;

(h) Additional plant species identification; or

(i) More rigorous field sampling methodologies.

(22) **Short Report Option:** An abbreviated wetland determination process and short report format may be used in lieu of the requirements in subsections (3) through (21) of this section for reporting the results of a PJD on very small parcels or study areas (one-quarter acre or smaller) according to the following conditions and requirements:

(a) There are no wetlands or other waters mapped on the NWI or LWI for the parcel, the parcel has not been farmed or recently disturbed in any way that would obscure wetland indicators, and in the judgment of the investigator the parcel is clearly non-wetland in its entirety and contains no other potential waters of the state.

(b) The report includes:

(A) A fully completed "Wetland Determination Form for Small Parcels With No Wetlands" (form provided by the Department) and all map attachments listed on the form; and

(B) At least one completed data form reporting data collected at the lowest topographic area on the site or other area most likely to meet wetland criteria based upon soils mapping, vegetation or other characteristics and indicators. The plot location must be shown on the parcel map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0040

Procedures for Review and Approval of a Wetland Determination or Delineation Report Submitted to the Department for a Jurisdictional Determination

(1) When a wetland determination or delineation report is submitted to the Department for review, approval and a JD, the Department shall review the report (according to its established priorities) to ensure that:

(a) The work meets the technical requirements in 141-090-0030;

(b) The report meets the standards and requirements in 141-090-0035;

(c) There is sufficient information for the Department to make a JD, including the geographic extent of any waters identified, as appropriate; and

(d) There is sufficient information for the Department to determine the removal-fill authorization requirements or exemptions that apply to the wetlands or other waters identified and/or the activities proposed.

(2) During or upon completion of the Department's review, the Department may take any of the following actions:

(a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent or applicant and the consultant, if any, in accordance with 141-090-0025(9).

(b) Request missing information, clarification or additional data (see 141-090-0035(21)).

(A) The request will be made to the primary contact by telephone, e-mail or in writing.

(B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner and/or applicant, as appropriate.

(C) The primary contact shall be responsible for promptly informing the Department of any change in the primary contact during the Department's review process.

(c) Conduct a site visit to confirm the report findings or obtain additional information (See 141-090-0025(6));

(d) Revise the wetland map and/or the PJD based upon the report review, any additional information requested, and/or a site visit, and provide a JD accordingly after consulting with the primary contact and report author, if different; or

(e) Reject the report, along with a written explanation to the primary contact, without further review or approval, if:

(A) The work has not been completed according to the technical requirements in 141-090-0030;

(B) The report does not meet the standards and requirements in 141-090-0035;

(C) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD; or

(D) Additional or clarifying information, permission for a site visit, or requested revisions are not provided within 120 calendar days of the Department's written request.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0045

Duration, Expiration and Reissuance of Jurisdictional Determinations

(1) All JDs by the Department shall be in writing and shall remain valid for a period of not more than five years from the date of issuance unless:

(a) A field investigation or new information reveals that site conditions and/or the geographic extent of waters of the state are not consistent with the information in a report or permit application submitted to the Department;

(b) Additional site information or data is provided voluntarily by an applicant or landowner to the Department;

(c) Additional information is provided to or obtained by the Department in conjunction with a request for reconsideration (141-090-0050) or a contested case hearing associated with an authorization application (ORS 196.825(6) and 141-085-0075);

(d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S. Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331); or

(e) New information obtained by or provided to the Department shows a change in circumstances resulting in a change in the jurisdictional area.

(2) Upon expiration, a JD is no longer valid for purposes of the Removal-Fill Law.

(3) An expired JD may be reissued upon written request from the landowner or agent to the Department.

(4) Information required for reissuing a JD shall include at a minimum:

(a) Onsite re-inspection by Department staff and/or another person to determine if there has been any change in circumstances.

(b) If no change in circumstances is found, a short report noting or including:

(A) A fully completed Wetland Delineation/Determination Report Cover Form, unless the inspection is conducted by the Department;

(B) The date of the most recent field inspection;

(C) The name of the person conducting the field inspection;

(D) The precise area inspected (e.g., tax lot or portion of tax lot);

(E) Description of site conditions and any changes between the date of the original wetland determination or delineation and the date of the re-inspection;

(F) Any additional maps, aerial photographs or other documents consulted; and

(G) Conclusions regarding the accuracy of the original JD.

(c) If a change in circumstances is noted, the information in subsection (4)(b) of this section shall be provided along with:

(A) Additional field data, including wetland determination data in conformance with OAR 141-090-0035(15) and (16), needed to verify and document any change in the jurisdictional status or extent of waters of the state that were or were not identified and mapped as part of the original jurisdictional determination;

(B) A revised wetland map that meets the requirements in OAR 141-090-0035(9)(e); and

(C) Data, documentation, and other information as needed to establish the nature and timing of the activity or activities that resulted in the change in circumstances, particularly if fill or excavation has occurred.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0050

Request for Reconsideration

(1) A JD by the Department may be reconsidered upon written request to the Department by the applicant, landowner or agent within sixty (60) calendar days of the date of the JD (date the letter or form was signed by the Department). The request for reconsideration initiates an informal review process.

(2) New information may be provided by the applicant, landowner, agent or the Department, or may be requested by the Department.

(3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

(4) In the event that the applicant, landowner or agent disagrees with the reconsideration decision, he or she may initiate a contested case proceeding pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-090-0055

Effective Date

These rules become effective immediately upon filing with the Secretary of State.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 1-2004, f. & cert. ef. 5-21-04

DIVISION 91

CHARGES FOR COPIES AND SERVICES

141-091-0005

Fees

Unless otherwise stated by rule, the Division of State Lands shall make charges for copies and services as follows:

(1) Per image for xerox copies:

(a) State agencies — \$.05;

(b) General public for material from Division files, copies made by Division staff — \$.25;

(c) General public for material from Division files, making their own copies — \$.10;

(d) Parties in contested cases, first 20 pages — \$.25 each;

(e) Additional pages — \$.20;

(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 192 & 273

Stats. Implemented:

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 192 & 273

Stats. Implemented: ORS 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 192 & 273

Stats. Implemented: ORS 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 192 & 273

Stats. Implemented: ORS 192 & 273

Hist.: LB 11-1982, f. & ef. 12-20-82

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 273 & 279

Stats. Implemented: ORS 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 273 & 279

Stats. Implemented: ORS 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 273 & 279

Stats. Implemented: ORS 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/quota-tions considered;

(b) The basis for selection of the contractor;

(c) How reasonableness of price was determined.

Stat. Auth.: ORS 273 & 279

Stats. Implemented: ORS 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 273 & 279

Stats. Implemented: ORS 273 & 279

Hist.: LB 13-1982, f. & ef. 12-20-82; LB 6-1985, f. & ef. 7-24-85

DIVISION 95

STATE AGENCY COORDINATION PROGRAM

141-095-0005

Purpose

(1) This division adopts the Department of State Lands state agency coordination program entitled "A Program for Coordinating DSL's Activities with Oregon's Cities and Counties, Tribal Governments, Federal and State Agencies, and Special Districts" pursuant to ORS 197.180 and chapter 660, divisions 030 and 031.

(2) The four required elements of a state agency coordination program listed in ORS 197.180(3)(a)-(d) and OAR 660-030-0060(2)(a)-(d) are an agency's:

(a) Rules and summaries of programs determined to affect land use (i.e., land use programs);

(b) Exempt and compatible land use programs and procedures for assuring that such programs will comply with the statewide planning goals and be compatible with acknowledged comprehensive plans and land use regulations;

(c) Procedures for coordinating its land use programs with state and federal agencies, and special districts; and

(d) Program for cooperation with and technical assistance to local governments.

(3) Upon adoption by the State Land Board, this state agency coordination program replaces the department's previous state agency coordination adopted by the State Land Board on October 23, 1990.

(4) This division becomes effective upon approval by the Department of Land Conservation and Development or upon certification by the Land Conservation and Development Commission.

(5) Copies of the department's state agency coordination program are available at the following locations:

(a) Department of State Lands, 775 Summer Street, Suite 100, Salem, Oregon 97301-1279; DSL website: www.oregonstatelands.us; and

(b) Department of Land Conservation and Development, 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540.

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

Stat. Auth.: ORS 196, 197, 273, 274

Stats. Implemented: ORS 196, 197, 180, 273, 274

Hist.: DSL 3-2006, f. & cert. ef. 7-13-06

141-095-0010

Definitions

For the purposes of this division, the definitions contained in ORS 197.015, 273.006 and 274.005 shall apply. In addition, the following definitions shall apply:

(1) "Acknowledgment" means that a local government comprehensive plan and land use regulations, land use regulation or plan or regulation amendment complies with the statewide planning goals.

(2) "Board" means the State Land Board consisting of the Governor of Oregon, State Treasurer and Secretary of State.

(3) "Certification" is an order issued by the Land Conservation and Development Commission finding that a state agency's coordination program satisfies the requirements of ORS 197.180(3)(a)-(d) and OAR 660-030.

(4) "Commission" means the Land Conservation and Development Commission (LCDC). The staff of LCDC is the Department of Land Conservation and Development (DLCD).

(5) "Compatibility with Comprehensive Plans" as used in ORS 197.180 means that a state agency has taken actions pursuant to OAR 660-030-0070, including following procedures in its coordination program where certified, and there are no remaining land use conflicts between the adoption, amendment or implementation of the agency's land use program and an acknowledged comprehensive plan.

(6) "Compliance with the Goals" means that a state agency's land use programs and actions must comply with the applicable requirements of the statewide planning goals pursuant to OAR 660-030-0065.

(7) "Consistency with Comprehensive Plans" shall have the same meaning as the term "compatibility" as provided in section (5) of this rule and OAR 660-030-0070.

(8) "Coordination" as used in ORS 197.015(5) means the needs of all levels of government, semipublic and private agencies and the citizens of the State of Oregon have been considered and accommodated as much as possible.

(9) "Department" means the Department of State Lands (DSL).

(10) "Director" means the director of the Department of State Lands

(11) "Goals" or "Statewide Planning Goals" means the mandatory statewide planning standards adopted by the Land Conservation and Development Commission pursuant to ORS chapters 195, 196 and 197.

(12) "Rules and Programs Affecting Land Use" or "State Agency Land Programs":

(a) Are a state agency's rules and programs which are:

(A) Specifically referenced in the statewide planning goals; or

(B) Reasonably expected to have significant effects on:

(i) Resources, objectives or areas identified in the statewide planning goals; or

(ii) Present or future land use identified in acknowledged comprehensive plans.

(b) Do not include state agency rules and programs, including any specific activities or functions which occur under the rules and programs listed in paragraph (12)(a)(A) of this rule, if:

(A) An applicable statute, constitutional provision or appellate court decision expressly exempts the requirement of compliance with the statewide goals and compatibility with acknowledged comprehensive plans; or

(B) The rule, program, or activity is not reasonably expected to have a significant effect on:

(i) Resources, objectives or areas identified in the statewide goals; or

(ii) Present or future land uses identified in acknowledged comprehensive plans; or

(C) A state agency transfers or acquires ownership or an interest in real property without making any changes in the use or area of the property. Action concurrent with or subsequent to a change of ownership that will affect land use or the area of the property is subject to either the statewide goals or applicable city or county land use regulations.

(c) A final determination of whether or not an agency program affects land use will be made by the Commission pursuant to ORS 197.180 and OAR Chapter 660, Division 030.

(13) "State Agency Coordination Program" or "SAC Program" is the program adopted by a state agency and submitted to the Department of Land Conservation and Development pursuant to ORS 197.180(3)(a)-(d) and OAR 660-030.

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

Stat. Auth.: ORS 196, 197, 273, 274

Stats. Implemented: ORS 196, 197.180, 273, 274

Hist.: DSL 3-2006, f. & cert. ef. 7-13-06

141-095-0015

Applicability of State Agency Coordination Program to Department Rules and Programs

(1) This division and the applicable provisions of ORS 197.180 and OAR Chapters 660, Division 030 shall apply to all department land use programs referenced in the department's state agency coordination program adopted pursuant to OAR 141-095-005(1) and to any future or subsequently amended department rule or program determined to affect land use in accordance with OAR 141-095-0010(12).

(2) Before taking any action to adopt, amend or implement a department land use program, the director shall confirm whether the proposed action will affect land use, and if so assure that all applicable provisions of the department's state agency coordination program are followed. Of particular importance is for the director to assure that the proposed action affecting land use is compatible with the affected local government(s) acknowledged comprehensive plan(s) and land use regulations, and where necessary, complies with the statewide planning goals and applicable rules in OAR Chapter 660.

(3) The director shall review and take other actions as needed to ensure that all department land use programs, including applicable administrative rules in OAR Chapters 141 and 142, are consistent with and will be carried out in accordance with the department's state agency coordination program and the provisions OAR 141-095.

(4) The director where necessary shall recommend revisions and other appropriate actions to the State Land Board to revise existing department land use programs and applicable administrative rules to comply with OAR 141-095-0015(3).

(5) The director as needed shall consult with and request assistance from the Department of Land Conservation and Development in carrying out OAR 141-095-0015(2)-(4) and any related sections of the department's state agency coordination program.

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

Stat. Auth.: ORS 196, 197, 273, 274

Stats. Implemented: ORS 196, 197.180, 273, 274

Hist.: DSL 3-2006, f. & cert. ef. 7-13-06

DIVISION 100

RULES FOR OREGON SCENIC WATERWAY REMOVAL/FILL PERMITS INCLUDING RECREATIONAL PROSPECTING AND PLACER MINING

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;

(w) Prospecting;

(x) Recreational Placer Mining (except any dredging).

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(5) 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(6) 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) "Bed and/or Banks" means the land lying beneath the waters of the Scenic Waterway and extending to the Ordinary High Water Line.

(3) "Demonstrated Need" means the proposed activity is clearly and convincingly required.

(4) "Director" is the Director of the Department of State Lands (ORS 196.800(3)) or designate.

(5) "Department" means the Oregon Department of State Lands and/or its Director or designate.

(6) "Easement" is a property right granted by the Department to use state-owned land for a specific purpose and time period.

(7) "Emergency Circumstances" are immediate natural or human caused events such as, but not limited to fire, flood, or hazardous substance spills, the effects of which require prompt action to prevent irreparable harm, injury or damage to persons or property.

(8) "Filling" is the act of depositing material onto the bed and/or banks of a Scenic Waterway.

(9) "Irreparable" means without reasonable possibility of repair or restoration, or an extreme condition which cannot be corrected.

(10) "Lease" is an agreement between a person and the Department allowing a specific use of state-owned land for a specific period of time, subject to specified terms and conditions.

(11) "License" is a temporary, short-term (usually less than one year) authorization from the Department for a particular use or activity on state-owned land.

(12) "Material" is rock, gravel, sand, silt and other substances, organic or inorganic, removed from or used to fill waters of this state.

(13) "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).

(14) "Ordinary High Water" is the line on the bank or shore of a waterway to which the water ordinarily rise annually. Ordinary high water is established by the Department by reference to historical data, vegetation, field observations, survey, or other generally accepted methods under OAR 141-085-0010.

(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) "Prospecting/Recreational Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(17) "Recreational Placer Mining" includes, but is not limited to, the use of nonmotorized equipment and motorized equipment except any dredging. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(18) "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.

(19) "Removal" is the taking or movement of material from the bed and/or banks of a Scenic Waterway.

(20) "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.

(21) "Scenic Waterway" as described in ORS 390.805(3) includes Waldo Lake, or any river segment that has been designated under ORS 390.805 to 390.925 or any subsequent act, and includes related adjacent lands.

(22) "Scenic Waterway Emergency Removal/Fill Permit" is an authorization issued by the Director for temporary, emergency-specific removal/fill activity in a Scenic Waterway upon a finding of emergency circumstances.

(23) "Scenic Waterway Removal/Fill Permit" is an authorization issued by the Department for any removal, filling or alteration of the bed and banks of a Scenic Waterway.

(24) "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)

(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 Department.

(26) "Wet Perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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 Department 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, archaeological, 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 all types of large scale 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 Department.

(6) Prohibit filling, removal, or alteration of the beds and banks of Scenic Waterways except as permitted by the Director 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 Department 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 Department'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, 390.835, 478, 223

Stats. Implemented: ORS 390.835, 478, 223, 1997 OL

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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 Department. In addition, ODFW, DEQ, the Department of Forestry (DOF) and the Oregon State Marine Board play key roles. Therefore, the Department 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 Department 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; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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 (except for dredging)

(1) Application Procedures. Applications for approval of removal/fill activities in Scenic Waterways shall be submitted to the Department in writing, in advance of the proposed activity, and shall include all information needed to evaluate the request. The application shall be submitted on the Joint Permit Application Form of the COE and the Department and must meet the standards for completed applications in OAR 141-085-0025.

(2) Review Standards. The Department 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 Department 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 Department.

(3) Review Procedures:

(a) Applications shall be reviewed and processed in a manner consistent with OAR 141-085, the Department rules for individual removal and fill permits;

(b) In reviewing an application, the Department 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 Department 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 Department;

(d) The Department 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 Department 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 Department State Agency Coordination Program, the Department 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 Department will act in accordance with Coordination Procedure III.A.2. of its State Agency Coordination Program;

(f) The Department shall give reasonable consideration to permit conditions or comments offered by any person;

(g) 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;

(h) Permits may be issued for multi-year projects in the same manner as OAR 141-085-0031.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223

Stats. Implemented: ORS 390.835, 478 & ORS 223, 1997 Law

Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

141-100-0055

Scenic Waterway Removal/Fill Permit (Recreational Placer Mining)

(1) To be eligible for a Scenic Waterway removal/fill permit, recreational placer mining operations must conform to the following:

(a) The activity must be for recreational placer mining as defined in these rules;

(b) The activity shall not dam or divert a waterway or obstruct fish passage;

(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 or embedded 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 (i.e., between the edge of the wet perimeter and the Ordinary High Water Line.);

(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 completion of the mining activity all piles, pits, furrows or potholes outside the main channel of the waterway created by the activity shall be leveled.

(h) The recreational placer miner shall obtain landowner permission before operating on private property;

(i) The recreational placer miner shall obtain prior permission, as applicable, before operating on public lands;

(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;

(l) The activity shall not impede recreational boating;

(m) Use of motorized equipment shall be restricted to the hours between 8 a.m. and 6 p.m. within five hundred (500) feet of a residence or within five hundred (500) feet of a campground except within a federally designated recreational mining site; and

(n) The activity shall not occur within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(2) To qualify for a Scenic Waterway removal/fill permit for recreational placer mining under these rules, the applicant shall, before beginning operation, submit to the Department an application on a form provided by the Department, 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; 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 Department will review the application for compliance with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules and notify the applicant of approval, denial, or modification. Where it determines that a proposed recreational placer mining activity qualifies for approval the Department will approve the application by letter. Where it determines that a proposed recreational placer mining activity does not meet the eligibility requirements the Department will:

- (a) Deny the application and inform the applicant; or
 - (b) Request that the applicant modify the activity to conform with the requirements in OAR 141-100-0055(1)(a)-(n) of these rules.
- (4) No permit approval for recreational placer mining will be issued with an expiration date greater than five (5) years from issue date.

(5) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single Scenic Waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(6) For the purposes of review and issuance of Scenic Waterway removal/fill permits for recreational placer mining, "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(7) The authorization holder shall report, on a form provided by the Department, the estimated amount of material removed, placed or altered in each waterway operated in during the preceding calendar year. The Department must receive this report no later than January 31st of each year that this general authorization is valid.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL
Hist.: DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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 Department 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 five days of receiving a verbal confirmation of an emergency permit for removal/fill activities, the applicant shall submit to the Department 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) 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.

(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 Department shall visit the site of the emergency permitted activity as soon as practical following permit issuance;

(c) Following the issuance of an emergency permit, the Department shall review the emergency permit and determine if any further action is necessary to modify the permit conditions after the emergency has passed.

Stat. Auth.: ORS 196.800 - 196.990, 390.835, 478 & 223
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

141-100-0070

Appeals

(1) Any applicant whose application to the Department 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 applicants, aggrieved or adversely affected by issuance or denial of permits by the Director 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, 390.835, 478 & 223
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

141-100-0080

Enforcement

The Director is authorized to take civil, criminal, or administrative action to enforce the Removal/Fill Law as provide in 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:

(a) A Cease and Desist Order may be issued to halt activity as provided in ORS 196.860(2), if the Department determines the removal/fill activity threatens to exceed 50 cubic yards in volume;

(b) The Department 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, 390.835, 478 & 223
Stats. Implemented: ORS 390.835, 478 & 223, 1997 OL
Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98; DSL 2-2006, f. 3-21-06, cert. ef. 3-27-06

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, 390.835, 478 & 223
 Stats. Implemented: ORS 390.835, 478 & ORS 223, 1997 OL
 Hist.: LB 3-1994, f. 5-11-94, cert. ef. 5-15-94; DSL 3-1998, f. & cert. ef. 4-22-98

DIVISION 102

OREGON ESSENTIAL INDIGENOUS ANADROMOUS SALMONID HABITAT (ESH)

141-102-0000

Purpose

Pursuant to ORS 196.810(b), these rules:

(1) Designate “essential indigenous anadromous habitat” (hereafter referred to as “essential habitat”) on maps that are made a part of this rule;

(2) Establish the process to amend the designation; and

(3) Require an authorization from the Department for activities involving the fill or removal of any amount of material in essential habitat, unless the activity is:

(a) Exempt under ORS 196.905;

(b) Non-motorized “prospecting” (defined in ORS 390.835(18)(b) and 141-089-0040(3)); or

(c) An activity customarily associated with agriculture (defined in OAR 141-102-0020(1)).

Stat. Auth.: ORS 196.810
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99;
 DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-102-0010

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 Department shall:

(a) Consult with the Department of Fish and Wildlife (ODFW) concerning the status of Oregon’s indigenous anadromous salmonid species;

(b) Identify essential habitat in consultation with ODFW and the public; and

(c) Review all projects proposed in essential habitat pursuant to the standards set forth in the state’s Removal-Fill Law and rules (OAR 141-085-0005 to 141-085-0660).

Stat. Auth.: ORS 196.810
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99;
 DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-102-0020

Definitions

(1) “Activities customarily associated with agriculture” (ORS 196.810(b)) is a phrase that applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat. This subsection exempts other specified agricultural activities that are less than 50 cubic yards in addition to the activities that are already exempted under the Removal-Fill Law’s agricultural exemptions contained in ORS 196.905(3), (4) and (6) and 141-085-0020 that apply to all projects regardless of size. “Activities customarily associated with agriculture” includes maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris.

(2) “Essential indigenous anadromous salmonid habitat” as defined in ORS 196.810(f)(B) is called “essential habitat” in these rules. “Essential 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 as designated in these rules and shown on the associated maps that are incorporated by reference into these rules. “Activities customarily associated with agriculture”

(ORS 196.810(b)) is a phrase that applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat. This subsection exempts other specified agricultural activities that are less than 50 cubic yards in addition to the activities that are already exempted under the Removal-Fill Law’s agricultural exemptions contained in ORS 196.905(3), (4) and (6) that apply to all projects regardless of size.

(3) “Essential” means those portions of a stream reach that fill all or part of the basic or indispensable spawning and rearing need of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include “spawning and rearing,” and “rearing and migration” areas as defined below under subsections (3) and (4) of this section.

(4) “Indigenous anadromous salmonid” means Chum, Sockeye, Chinook and Coho Salmon, and Steelhead and Cutthroat Trout that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(5) “Spawning and rearing” areas are where eggs are deposited and fertilized, where gravel emergence occurs, and where at least some juvenile development occurs.

(6) “Rearing and migration” areas are outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and utilize the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning areas.

Stat. Auth.: ORS 196.810
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99;
 DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-102-0030

Designation of Essential Salmon Habitat (ESH)

(1) Areas designated as essential habitat shall include the waters of the state as described in OAR 141-085-0015, including side channels and off-channel wetland areas that are hydrologically connected by surface water.

(2) The streams and stream segments designated as essential habitat are shown on maps which are made part of this rule.

(3) The Department shall make available detailed maps of essential habitat at cost as provided in OAR 141-091-0005.

(4) New designations (i.e., streams not previously designated) adopted by the Department on the effective day of this rule shall be effective sixty (60) days thereafter.

[Publications: Publications referenced are available from the agency.]
 Stat. Auth.: ORS 196.810
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99;
 DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

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 these administrative rules according to the following procedure:

(1) Periodically, the Department shall request from the public and the Department of Fish and Wildlife all changes in the status or distribution of indigenous salmonid species under the state or federal Endangered Species Act or applicable rules.

(2) The Department, in consultation with Oregon Department of Fish and Wildlife and other affected parties, shall work to continuously improve the accuracy, detail, consistency and quality of the base data used for designating essential habitat. The Department shall revise the maps when new listings occur, or when de-listings occur by Oregon Department of Fish and Wildlife or the National Marine Fisheries Service. The Department may also revise the maps at any time when new or higher quality data become available that would substantially change the extent of designated habitat on one or more maps.

Stat. Auth.: ORS 196.810
 Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
 Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99;
 DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

141-102-0045

Removal-Fill Law Requirements

(1) The standards at ORS 196.825 and the rules adopted to implement them shall apply to the authorizations issued under these rules.

(2) The standards at ORS 390.835(2) and 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 authorizations issued under these rules.

Stat. Auth.: ORS 196.810

Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925

Hist.: DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04

DIVISION 110

MANAGEMENT AND LEASING OF RANGELAND FORAGE

141-110-0000

Applicability

These rules shall be used by the Division to guide the management and leasing of state rangeland forage, and shall apply to all rangeland forage leases:

(1) Issued after rule adoption; and

(2) 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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0010

Policies

The following policies shall guide the Division in managing and leasing rangeland forage:

(1) All Trust Land shall be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.

(2) All Trust and 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.

(3) The Division shall honor the terms and conditions of any existing valid forage lease including any that entitle the lessee to compensation or renewal.

(4) The Division shall manage rangeland to prevent human-induced loss of rangeland health. Toward this end, the Division:

(a) Shall continue to implement rangeland practices that maintain, achieve or restore healthy, properly functioning ecosystems and maintain, restore, or enhance water quality; and

(b) May assist in rangeland improvements and practices that will maintain or enhance rangeland health.

(5) The Division shall monitor and assess 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.

(6) The Division may authorize other, non-forage-related uses for a leasehold, even if the leasehold is already subject to a forage lease, pursuant to these regulations and the terms and provisions of the forage 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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0020

Definitions

(1) “Animal Gain” is the number of pounds gained by an animal over a specific period while grazing on rangeland.

(2) “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.

(3) “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.

(4) “Applicant” is any person applying for a rangeland lease.

(5) “Bonus Bid” means a one-time payment offered by an applicant to lease vacant unleased rangeland.

(6) “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.

(7) “Contributory Value” is the full fair market value of any structure or improvement as it contributes to the overall value of the land, taking into consideration physical condition, replacement cost, and any economic and/or functional obsolescence of the improvement.

(8) “Director” means the Director of the Oregon Division of State Lands or the Director’s designee.

(9) “Division” means the Oregon Division of State Lands.

(10) “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.

(11) “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.

(12) “Improvement” is any structural project or non-structural activity undertaken by either the Division and/or a lessee which typically benefits the use or condition of a leasehold. An improvement may either be structural in nature (for example, the placement or construction of fencing, buildings, ponds, pipelines, watering troughs, power lines, etc.), or nonstructural activities or treatments to improve the land (for example, seeding, brush control, etc.).

(13) “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.

(14) “Lease” for the purposes of these rules, is a legal contract issued by the Division allowing the use of a specific leasehold for forage rental under specified terms and conditions.

(15) “Leasehold” is a particular area of rangeland subject to lease.

(16) “Lessee” refers to any person having a valid rangeland forage lease issued by the Division.

(17) “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.

(18) “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.

(19) “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.

(20) “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.

(21) “Pasture” is a specific area of rangeland, usually enclosed and separated from other areas by a fence, or isolated by some physical feature. A leasehold may contain numerous pastures.

(22) “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 livestock and the leasehold.

(23) “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.

(24) "Rangeland" is state land classified and managed by the Division for forage rental and other authorized uses.

(25) "Rangeland Health" is the degree to which the integrity of the soil and the ecological processes of rangeland ecosystems are sustained.

(26) "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 forage lease.

(27) "Rangeland Practices" are activities that improve or maintain rangeland health. 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.

(28) "Riparian Area" means a zone of transition from an aquatic to a terrestrial system, dependent upon surface or subsurface water, that reveals through the zone's 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.

(29) "State Land" is land owned and/or managed by the Division and includes Trust Land and Non-Trust Land.

(30) "State Share" is the percent of net livestock weight gain designated to the Division for the use of rangeland forage.

(31) "Sublease" means a leasing by lessee of all or part of the leasehold for any portion of the unexpired lease term.

(32) "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.

(33) "Vacant" means rangeland not under a forage lease.

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

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0030

Rangeland Classification/Reclassification Process

(1) Lands that are determined by the Division to be chiefly suitable for the grazing of livestock shall be classified as "rangelands."

(2) State land classified as rangeland shall be identified on maps maintained by the Division. These maps shall be at a scale adequate to identify individual leaseholds.

(3) Lands may be evaluated by the Division for reclassification to a land classification other than rangeland if they are determined to be:

- (a) Isolated and/or uneconomic to manage;
- (b) Zoned for a use other than exclusive farm use, exclusive grazing use, or similar exclusive agricultural use;
- (c) Required for public infrastructure use, community expansion or economic development purposes;
- (d) Surrounded by land dedicated to another use which precludes grazing such as critical habitat for threatened or endangered species; or

(e) Incapable of supporting sustained forage yields under proper rangeland practices.

(4) Reclassifications can occur at any time for vacant lands. Reclassifications for lands under lease can only occur upon expiration of the term of that lease following two (2) years advance notice and consultation with the affected lessee, the pertinent Oregon legislative committee(s), and other interested persons.

(5) Reclassifications for lands under lease shall be restricted to the minimum acreage necessary to meet the purpose of and need for the reclassification. The Division shall work with the affected lessee to minimize, and wherever practicable, offset the loss of Animal Unit Months (AUMs) of grazing capacity on a leasehold due to a land reclassification. Affected leaseholds shall be given a priority in the allocation of Division rangeland improvement funding. Affected lessees shall also be notified of any opportunity to lease vacant lands in their operating area.

(6) The Division shall report all proposed rangeland reclassifications to the State Land Board for review and final approval.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0040

The Leasing Process

(1) Persons interested in obtaining a rangeland forage lease or renewal thereof must submit a timely and complete written application to the Division using a form provided by the Division. A notice will be sent by certified mail indicating the date of expiration and a lease renewal application form will be sent to each lessee at least one hundred and twenty (120) days prior to the current lease expiration date. The lease renewal application form must be received by the Division sixty (60) days prior to the expiration of a lease.

(2) The leasing process for lands classified as rangeland consists of the following steps:

(a) For rangeland under lease subject to a renewal provision, the Division shall review the lands incorporated in the leasehold prior to expiration of the lease. Upon receipt of an completed lease renewal application form, the lease shall then be renewed for a subsequent term of fifteen (15) years unless:

(A) The land has been reclassified to a land classification other than rangelands pursuant to OAR 141-110-0030. If the reclassification process has been initiated but not been completed by the lease expiration date specified, the lease shall be extended on a month-to-month basis until the review is completed. In no event shall a lease expire any earlier than two (2) years after the lessee has been notified that the land will be reclassified and their lease will be terminated as to the reclassified land.

(B) The lessee has not complied with the terms of the lease, related statutes, these rules, or any applicable RMP and amendments thereto; or

(C) The Division determines that the renewal of the lease for all or portions of the leasehold is contrary to local, state, or federal law; or inconsistent with the Land Board's fiduciary responsibilities; or will not result in the greatest public benefit, consistent with the conservation of the resource under sound techniques of land management as required by Article VIII, Section 5, of the Oregon Constitution. Unless the renewal of the lease is contrary to law, the Division shall provide the lessee with two (2) years advance written notice of its intent to not renew the lease for all or portions of the leasehold. The Division shall report all determinations pursuant to this subsection to the Land Board for review and approval.

(b) For vacant rangeland not under a forage lease which the Division determines is available for a forage lease, the Division shall issue a Notice of Leasehold Availability to solicit applications from interested persons. This notice shall be 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, and sent to persons who request such notices and pay any associated charges.

(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 rangeland forage lease.

(4) If more than one application for a vacant unleased parcel is received from qualified applicants, selection of the applicant who will receive the rangeland forage lease will be determined by:

(a) Ownership and/or control of adjacent or intermingled land and facilities which will best enhance, or facilitate proper management of the leasehold parcel.

(b) Willingness of the applicant to execute the terms of the applicable RMP and/or enter into cooperative agreements for needed maintenance and/or desired construction of new improvements to enhance overall management of the leasehold parcel.

(c) Any additional factors the Division decides are pertinent in the selection process to a particular leasehold parcel including but not limited to any bonus bid offered by an applicant.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0050**Application Requirements**

(1) All persons applying to lease rangeland forage, 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;

(b) Submit a non-refundable application fee for each leasehold as provided in OAR 141-110-0090(1); and

(c) Provide copies of the relevant corporate/partnership organizing documents.

(2) Each applicant for a leasehold shall meet the following minimum qualification requirements:

(a) Be a "person" 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; and

(c) Be able and willing to fully meet all terms and conditions of the lease, including all provisions of an approved RMP.

(3) The Division reserves the right to deny an application if the Division determines that issuance or renewal 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 consistent with the conservation of the resource under sound techniques of land management, or if the land is reclassified to a land classification other than rangeland pursuant to OAR 141-110-0030.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0060**General Lease Terms and Conditions**

(1) The Land Board shall approve the forage lease form which shall establish the general terms and conditions of the lease, including any reservations to the state and restrictions on lessee uses.

(2) A lease shall grant a lessee the right to use a leasehold for rangeland forage purposes in accordance with the lease terms and conditions; applicable local, state and federal laws; an approved RMP, if applicable; and these rules.

(3) If, during the established term of the lease the Division determines that it is desirable to lease or authorize use of any portion of the leased premises for another purpose not otherwise reserved to the Division, and in a manner that substantively impairs the rights and privileges granted by the lease, the Division shall compensate the lessee for liquidated damages with a one-time payment of fifty dollars (\$50) per AUM for any and all substantively impaired forage production capacity. The Division shall also modify the leasehold description and adjust the average annual forage production capacity to delete the substantively impaired portion of the leasehold.

(4) 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.

(5) 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 by pasture.

(6) A lessee shall obtain prior written authorization from the Division before using, placing, or storing any material on the leasehold. A lessee shall use, place, store or release, or allow to be used, placed, stored or released, any material that may pose a danger to the public, wildlife, or its habitat, including, but not limited to, hazardous wastes, pesticides, or toxic substances only in strict compliance with all laws and manufacturer's instructions and shall take all necessary precautions to protect the leasehold and its soil and vegetation. The lessee shall keep and maintain accurate and complete records of the amount of such materials stored and/or used on the leasehold and shall immediately notify the Division of any potential risk to the leasehold.

(7) As authorized in writing by the Division, a lessee shall control noxious weeds, plant pests and diseases on the leased premises as directed by the local county weed control district, the Oregon Department of Agriculture and/or any other governmental authority which may now or in the future have authority with regard to the prevention

and/or control of noxious weeds, plant pests and/or diseases, or as may be authorized or directed by the Division.

(8) 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; LB 8-1996, f. & cert. ef. 12-13-96; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0070**Public Access and Recreational Use Reservation**

(1) Pursuant to the provisions of OAR 141-088-0000(1) through (8), legally accessible state-owned rangeland under the jurisdiction of the State Land Board and the Division shall remain available and open to public recreational use (including camping, hunting, fishing, and hiking), provided such public recreational use:

(a) Is not otherwise prohibited or restricted by other state law, rule or local ordinance; and

(b) Does not substantially interfere with the Division-authorized rangeland forage purposes or lessee operations.

(2) The Division may on its own initiative, or in response to requests by the lessee or other persons, order closed or otherwise restrict all or portions of such state-owned rangeland to public recreational use upon a determination that the action is necessary to protect the land and related natural and cultural resources or to protect public health and safety.

(3) Such closures or activity restriction shall be:

(a) For as specific an area or activity as possible;

(b) For as short of duration as possible; and

(c) Commensurate with the need for the closure or restriction(s).

(4) To the extent possible, the Division shall give written notice of any public recreational use closure at least twenty-four (24) hours in advance to local government, lessees and interested persons. In addition, the Division shall place a public notice describing the action in a newspaper of general circulation in the area in which the subject closure or restriction is located.

(5) The Division or the State Land Board may, at any time, rescind or modify the action in response to changing circumstances or public or agency comment.

(6) A lessee may not interfere with lawful public access on, and use of 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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0080**Rangeland Forage Use Base Rental Fees**

(1) The annual base rental for the use of a leasehold for rangeland forage shall be determined on an AUM basis using the following formula: For each leasehold, the Division shall:

(a) Establish an average base rate grazing capacity, which shall be subject to review and revision in consultation with the lessee and other interested persons; and

(b) Determine the base AUM rental rate using the following formula:

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%).

(c) State share of calf gain (S) shall be twenty percent (20%).

(d) Average weighted calf price (P) shall be based on USDA Oregon agriculture price data indicating the average statewide sales price of calves for the preceding one (1) year period based on an October through September year.

(3) The formula and factors in sections (1) and (2) of this rule shall be reviewed by the Division at least once every three (3) years to ensure they reflect at least fair market rental rate.

(4) The annual rental due to the Division for forage rental shall be determined by multiplying the AUM rental rate by the average

annual base rate forage production capacity in AUMs of each leasehold as established by the Division. For those leaseholds which periodically have highly variable annual forage production, the base rate forage production capacity may be determined based on reliable actual grazing use records for a given year. As a result, the annual rental may vary substantially from year to year for such leaseholds.

(5) The minimum annual forage lease rental for all leaseholds subject to these rules shall be \$100.

(6) The lease will indicate the amount of the initial annual rental payment and the date payment is due to the Division.

(7) 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.

(8) Unless otherwise authorized by the Division, annual rental due must be paid to the Division each year within thirty (30) days of the date of the Division's billing notice.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0090

Other Fees

(1) Except for isolated parcels, each application for a rangeland forage lease (including renewals) shall be accompanied by a non-refundable fee payable to the Division in the amount of \$250. Applications for isolated parcel leases (including renewals) shall be accompanied by a non-refundable fee of \$100.

(2) An application for Division authorization of a sublease, assignment, or pasture agreement shall be accompanied by a non-refundable application fee of \$250 payable to 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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0100

Rangeland Management Plan (RMP)

(1) The Division shall prepare a written RMP for each leasehold unless the parcel is determined by the Division 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 improvements 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 Division's 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; and
- (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 average base rate grazing capacity/forage production (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 improvements and any new treatments or improvements 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; and

(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 lessee's compliance with the plan's terms and conditions;

(b) Assess the effectiveness of the plan; and

(c) Decide if the plan needs to be revised to reflect changes in use, rangeland health 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 average base rate 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.

(14) Any person may request that the Division review or revise an RMP if they believe that rangeland health goals or other plan objectives are not being met. Such a request shall be in writing and state the reason(s) why, or present evidence indicating that a review or revision is necessary.

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; DSL 1-1999, f. & cert. ef. 3-2-99

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(2).

(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. The Division may condition its approval of any sublease, assignment, or pasture agreement.

(4) Under an approved sublease or pasture agreement, the lessee shall, in addition to paying the annual base lease rental, pay the Division fifty percent (50%) of the difference between what s/he pays the Division for the lease, and what s/he collects from the sublessee or person entering the pasturing agreement for use of the state-owned rangeland forage within the leasehold. In no case shall the Division refund any part of a lessee's rental payment if the amount received by the

lessee for an approved sublease or pasture agreement is less than annual base rental rate owed to the Division.

(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 sublease or 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 unexpired term of the lease. An assignee of a rangeland lease shall be bound by the existing lease and, if applicable, the RMP.

(8) Assignees must meet all applicable requirements as set forth in OAR 141-110-0050.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0120

Improvement Authorization

(1) No improvement that exceeds one thousand dollars (\$1000) in cost or value may be constructed or placed upon leased land unless the lessee shall have first obtained the prior written authorization of the Division.

(2) The Division shall consider the following factors before deciding whether to authorize a proposed improvement on a leasehold without an approved RMP:

- (a) Need for the proposed improvement;
- (b) Benefits of the proposed improvement;
- (c) Impacts of the proposed improvement on rangeland health, and fish and wildlife habitat and historical and cultural resources; and
- (d) Whether the proposed improvement is permitted by the local jurisdiction's acknowledged comprehensive plan and land use regulations.

(3) The Division reserves the right to provide financial assistance to a lessee for a portion or all of an authorized improvement upon application to the Division using a form provided by the Division.

(4) Division financing of any part or all of an authorized improvement is contingent on the availability of funds and the need for the proposed improvement as determined by the Division in the RMP.

(5) The Division may only assist a lessee in the financing of any improvements if the Division determines that the proposed action:

(a) Will result in increased revenue 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.

(6) Regardless of the source of financing:

(a) All improvements shall be maintained by the lessee in good working order as appropriate to the type of improvement;

(b) If a lessee fails after receipt of written notification by certified mail from the Division to maintain improvements within the time period set by the Division, the Division may perform the required maintenance and assess the costs incurred to the lessee; and

(c) The lessee shall take whatever steps are necessary to ensure that an improvement does not pose a danger to public safety.

(7) If the Division decides to loan funds to a lessee to finance an improvement, 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 Treasury.

(8) Contributions to structural improvements by lessees, the Division, or other interests, either by funds, labor, or material, shall be credited to the contributing party for the purpose of complying with OAR 141-110-0130.

(9) The following provisions apply to water resource improvements:

(a) Except as provided for in ORS 537.545, any water resource improvement 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 improvement, such permits or rights shall be applied for and issued in the name of the Division in accordance with applicable statutes governing the appropriation and use of water;

(c) Except when the Division initiates water resource improvements 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); and

(d) Water resource improvements shall be designed to:

(A) Utilize water beneficially for grazing livestock 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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0130

Removal of, and Compensation for Structural Improvements

(1) When a lease expires without renewal, or is terminated by the Division, or the leasehold area is modified by the Division, any structural improvements located in the expired or terminated leasehold, or the area no longer included in the modified leasehold, shall be subject to the following provisions:

(a) If a structural improvement (for example, fencing, buildings, ponds, pipelines, power lines, etc.) was constructed or placed by a lessee with Division authorization, the lessee may, with the written consent of the Division, remove those improvements from the leasehold at the time of lease expiration, termination, or modification.

(b) If a structural improvement was constructed or placed by a lessee without Division authorization, the Division may, at its discretion, require the lessee to remove the improvement from the leasehold. Any structural improvements placed upon the leased premises without Division authorization may, at the option of the Division, immediately become the property of the State of Oregon. The Division shall not compensate a lessee for any unauthorized improvements.

(c) If the Division decides to retain a structural improvement which it previously authorized, the Division shall compensate the lessee for the fair market contributory value of the subject improvement.

(d) The Division shall notify a lessee in writing by certified mail what, if any, structural improvements the Division wants to retain, or that the lessee shall remove, and the date that such removal must be completed.

(e) The lessee shall be responsible for the costs of removing any or all structural improvements as directed by the Division.

(f) If the lessee refuses to remove the structural improvements, the Division may remove them and charge the lessee for the removal costs.

(2) Division compensation to a lessee for authorized structural improvements which the Division wants to retain shall be established as follows:

(a) If the Division and the lessee are unable to agree on the fair market contributory value of a structural improvement, the value will be determined by an independent appraiser appointed by the Division.

(b) The costs of all appraisals conducted under this subsection shall be paid in equal shares by the Division and the lessee, or by other such arrangement as is mutually acceptable to them.

(c) If a structural improvement is jointly constructed or financed by adjacent landowners and/or lessees, or by the Division or other interests, only that share of the facility improvement belonging to the lessee shall be assigned a value for compensation purposes.

(3) Any leasehold improvement debt of the former lessee owed the Division shall become the responsibility of the new lessee pursuant to the same terms and conditions governing that debt.

(4) The Division shall not compensate a lessee for non-structural improvements or treatments to the land (such as seeding and brush control).

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0140**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 or regulations covering the use of his/her leasehold, the Division shall notify the lessee in writing by certified mail 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.

(3) Notwithstanding the above, if the Division in good faith believes that a material default has occurred which may imperil the Division's rights in the land or its fiduciary duties under law, the Division may declare an immediate default without any right of the lessee to cure the deficiency.

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; DSL 1-1999, f. & cert. ef. 3-2-99

141-110-0150**Appeals**

(1) An applicant, lessee or any other person adversely affected by a forage lease decision of the Division pursuant to these rules 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.

(2) When 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 141-110-0150(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; DSL 1-1999, f. & cert. ef. 3-2-99

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 Local Wetlands Inventory (LWI) according to the criteria of OAR 141-086-0180 to 141-086-0240;

(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; DSL 2-2001, f. & cert. ef. 2-26-01

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 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 Marshal 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

Local governments shall provide:

(1) 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;

(2) 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;

(3) Maps of the land use designations used in the local comprehensive plan;

(4) Maps if available, and explanatory narrative of the local buildable lands inventory;

(5) Where applicable, consideration of plans and projects of adjacent jurisdictions;

(6) The list of sites placed into each Wetland Resource Designation and supporting information; and

(7) 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 government'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 impact 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

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

141-121-0040

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

DIVISION 122

RULES FOR GRANTING EASEMENTS ON TRUST AND NON-TRUST LAND

141-122-0010

Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of easements on state-owned Trust and Non-Trust land as specified herein.

(b) Supersede any provisions contained in OAR 141-065-0010 through 141-065-0600 (Granting Easements Across Common School Fund Lands and Other Board-Owned Uplands) and OAR 141-083-0010 through 141-083-0700 (Granting Easements And Rights-of-Way Across State-Owned Submerged and Submersible Lands).

(c) Do not apply to the granting of:

(A) Easements for fiber optic and other cables on state-owned submerged and submersible land within the Territorial Sea, an activity governed by OAR 141-083-0800 through 141-083-0870 (Rules For Granting Easements For Fiber Optic And Other Cables On State-Owned Submerged and Submersible Land Within The Territorial Sea); or

(B) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land.

(d) Require prior authorization for all uses described under OAR 141-122-0010(2) and (3) unless otherwise exempt from easement under the provisions of OAR 141-122-0010(4) of these rules.

(e) Contain specific provisions relating to the granting of easements by:

(A) The Division and the Oregon State Forester on Common School Forest Land, and

(B) The Division to persons who have or will place a pipeline and associated fixtures on state-owned Non-Trust Land to take water for which they have either a valid water use permit or certificate, or have applied for such a permit by June 30, 2003.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) of these rules, developments and/or uses of state-owned land subject to easement include, but are not limited to the following:

- (a) Gas, electric and communication lines (including fiber optic cables);
- (b) Innerducts and conduits for cables (regardless of whether they contain a cable or are in use);
- (c) Water supply pipelines, ditches, canals, and flumes;
- (d) Drainage and irrigation works;
- (e) Sewer, storm, and cooling water lines, including outfalls;
- (f) Bridges, skyines, and logging lines;
- (g) Railroad and light rail track, stations, depots, and other related facilities;
- (h) Roads and trails of all types;
- (i) Overhead transportation lines (for example, skyines, tramways, logging lines, etc.);
- (j) Storage of materials (for example, sand, gravel, dredge spoils, etc.);
- (k) Encroachments; and
- (l) Other uses and developments which limit the full use or development of state-owned land.

(3) The Director may determine that other uses and developments similar to those specified in OAR 141-122-0010(2) are also subject to authorization by, or exemption from an easement and these rules.

(4) An easement is not required:

(a) For uses or developments on Non-Trust Land subject to these rules if the person owning the use or development has obtained:

(A) A valid lease, temporary use permit or public facility license from the Division pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Lands) and the use or development otherwise subject to easement is located within the authorized area; or

(B) A registration from the Division pursuant to the provisions of OAR 141-082 (Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Lands) and the use or development otherwise subject to easement is physically attached to, or in any way part of the registered structure.

(b) For pipelines and associated fixtures crossing or situated on Non-Trust Land that are used to withdraw water from a waterway or lake for any use (except those associated with hydroelectric facilities) if:

(A) The withdrawal is authorized by a valid right to appropriate water issued by the Oregon Water Resources Department prior to June 30, 2003; or

(B) The owner of the pipeline and associated fixtures has applied to the Oregon Water Resources Department for a right to appropriate the water prior to June 30, 2003; or

(c) For pipelines and associated fixtures placed prior to June 30, 2003 that cross or are situated on Non-Trust Land that are used to circulate a fluid, usually water, for heating or cooling purposes.

(d) For uses or developments on either Trust or Non-Trust Land subject to these rules if the person owning the use or development has obtained a valid authorization from the Division for another use pursuant, for example, to the provisions of OAR 141-110 (Management and Leasing of Rangeland Forage) or OAR 141-125 (Authorizing Special Uses on State-Owned Land).

(5) A person who is exempt from obtaining an easement under the provisions of OAR 141-122-0010(4) may apply to obtain an easement, and the Division may authorize an easement even though none is required under these rules. The application shall be processed in accordance with OAR 141-122-0050.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03;

141-122-0020 Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Division, has a constitutional

responsibility to manage all land (Trust and Non-Trust) 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."

(2) In addition to the constitutional mandate stipulated in OAR 141-122-0020(1), the Division is required to manage its Trust Land to ensure that full market value is obtained from any use of this asset.

(3) The Division shall follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition an easement on state-owned land.

(4) The Division shall manage state-owned submerged and submersible land to ensure the collective rights of the public to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other related public purposes consistent with applicable federal and state laws.

(5) The Division shall:

(a) Recognize all valid easements of record on land acquired by the Division as disclosed at the time of acquisition, and

(b) Honor any renewal provisions contained in existing valid easements granted by the Division if the holder of the easement has complied with all terms and conditions of the easement and applies to the Division as prescribed in these rules.

(6) Unless otherwise exempt by these rules, each individual use of, or development placed on state-owned land shall constitute a separate discrete activity subject to:

(a) An easement specifically authorizing only that individual use or development, and

(b) Payment of compensation as required in these rules.

(7) Uses of, and developments placed on state-owned land subject to these rules shall conform to local (including local comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(8) The Division shall administer these rules to ensure to the greatest extent possible that persons applying for and holding an easement receive timely, consistent, predictable, and fair treatment.

(9) The Division shall not grant an easement if the Division determines that the proposed use or development substantively impairs uses or developments proposed or already in place within the requested area. Such a determination will be made by the Division after consulting with holders of leases, easements, and permits in the requested area, and other interested persons.

(10) An easement cannot be established on Division-managed land by adverse possession regardless of the length of time the use or development has been in existence.

(11) Uses or developments shall not encroach on state-owned land regardless of their height above or below, or manner of crossing the state-owned land, unless specifically authorized by an easement or other form of authorization issued by the Division.

(12) The Division may:

(a) Conduct field inspections to determine if the uses and developments in place on state-owned land are authorized by, or conform with the terms and conditions of an easement, and, if not,

(b) Pursue whatever remedies are available under law to ensure that unauthorized uses subject to an easement on state-owned land are either brought into compliance with the requirements of these rules or removed.

(13) Pursuant to the provisions of ORS 530.490(2) and (3), the Oregon State Forester may issue temporary easements on Common School Forest Land in accordance with these rules (OAR 141-122-0100) and those adopted by the Oregon State Board of Forestry.

(14) The Division shall not grant an easement if the proposed use or development is inconsistent with any endangered species management plan adopted by the Division under the Oregon Endangered Species Act (ORS 496.171 to 496.192).

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0030**Definitions**

(1) “Cable” means a conductor of electricity or light with insulation, or a combination of conductors insulated from one another within a single jacket or sheath.

(2) “Circuit” means a system of conductors through which an electric current is intended to flow. A single pole or transmission tower may support one (1) or more circuits, each of which may consist of up to four (4) separate conductors.

(3) “City” means a city incorporated under ORS 221.020 through 221.100.

(4) “City Limits” refers to the boundaries of a city incorporated under ORS 221.020 through 221.100.

(5) “Common School Forest Land” is Trust Land that has been designated or “certified” by the State Land Board and the Oregon Board of Forestry for management by the Oregon Department of Forestry under contract between the State Forester and the State Land Board as allowed in ORS 530.450 through 530.520.

(6) “Communication Line” is any cable including fiber optic cable which transmits electronic information, telephone and/or television signals or other data.

(7) “Comparative Compensatory Payment” is the amount of money paid for an easement to the owners of similar land adjacent to, or in the vicinity of Division-managed parcels.

(8) “Compensatory Payment” is the amount of money paid on an annual or term-based schedule by an easement applicant or holder to the owners of the land encumbered by the easement.

(9) “Conduit” is a pipe that protects cables from damage. It may be buried or used in above-ground applications such as bridge crossings. Innerducts may be installed within a conduit to facilitate individual cable installation.

(10) “Development” is any structure or physical facility (for example, each cable, innerduct, innerduct and cable, conduit, conduit and cable, pipeline, electrical line, communication line, bridge, road, fence, ditch, reservoir, or easement-associated building) on state-owned land subject to, or authorized by an easement granted by the Division.

(11) “Director” means the Director of the Division of State Lands or designee.

(12) “Division” means the Division of State Lands.

(13) “Easement” is an authorization granted by the Division that gives a person the use of a specifically designated parcel of state-owned land for a specific purpose and length of time. The Division offers four (4) types of easements: temporary, term, permanent, and special. An easement does not convey any proprietary or other rights of use to the holder other than those specifically granted in the easement authorization.

(14) “Encroachment” is an unauthorized development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or otherwise occupies and/or restricts the full use of state-owned land. An encroachment may also occur when the holder of an easement granted by the Division extends their use outside of the area authorized by that easement or adds a use or development not authorized.

(15) “Fair Market Value” is the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell, and both having reasonable knowledge of the relevant facts concerning the property.

(16) “Fiber Optic Cable” means an insulated and often armored cable used to transmit telecommunications through glass fibers using pulses of light.

(17) “Governmental Body” means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof as defined in ORS 271.005.

(18) “Individual Use” or “Individual Development” is each separate use of, or development placed on state-owned land

(19) “Innerduct” is tubing that not only protects fiber optic and other types of cables, but also facilitates their installation. It is often placed inside a conduit, or may be buried directly into the ground.

(20) “Non-Trust Land” is 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 and tidally influenced waterways.

(21) “Permanent Easement” is an easement issued in perpetuity.

(22) “Right To Appropriate Water” is either a permit or certificate granted by the Oregon Water Resources Department authorizing a person to take and use a specific quantity of water for a specific use or uses from a specific location under specific terms and conditions.

(23) “Person” is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(24) “Public Infrastructure” means streets, roads, bridges, light-rail tracks and water, sewer and drainage pipelines, irrigation and water control facilities, including outfalls and appurtenant facilities, constructed and maintained by a governmental body.

(25) “Special Easement” is an easement granted for water pipelines and fixtures associated with a right to appropriate water, and uses or developments subject to easement that are associated with facilities authorized by a license issued by the Federal Energy Regulatory Commission. The term of a special easement is determined by the Division.

(26) “State Land” or “State-Owned Land” is land owned and/or managed by the Division or its agents and includes Trust Land and Non-Trust Land.

(27) “Submerged Land” means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(28) “Submersible Land” means land lying between the line of ordinary low water and the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(29) “Temporary Easement” is an easement which does not exceed a term of more than ten (10) years.

(30) “Term Easement” is an easement having an initial term of more than ten (10) but not more than thirty (30) years.

(31) “Trust Land” is land granted to the state upon its admission into the Union, or obtained by the state as the 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.

(32) “Use” means an activity on state-owned Trust and Non-Trust Land that requires an easement under these rules.

(33) “Water Pipelines and Associated Fixtures” are the pipelines and required stands, pumps, wiring, fish screens, etc. necessary to convey water from the point of diversion to the user.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0040**Easement Application Requirements**

(1) Except as provided by OAR 141-122-0010(4) (Purpose and Applicability) and 141-122-0100 (Easements Issued on Common School Forest Land), any person wanting to use state-owned land for any of the purposes described in OAR 141-122-0010(2) and (3) shall:

(a) Apply to the Division for the easement using a form provided by the Division; and

(b) Submit a non-refundable application processing fee payable to the Division to cover the administrative costs of processing the application and issuing the authorization. When applying for a special use easement, a person may submit to the Division a copy of their application to the Department of Water Resources for a right to appropriate water in lieu of using the Division’s easement application form.

(2) Unless otherwise exempt under the provisions of OAR 141-122-0010(4) (Purpose and Applicability), each individual use of, or development placed on state-owned land shall be authorized by a separate easement specifically authorizing only that use or development. With regard to fiber optic cables, each single empty conduit, or single conduit containing one (1) fiber optic cable, or every fiber optic cable placed within a conduit after the first fiber optic cable has been installed is an individual use subject to authorization by an easement. With regard to electric power transmission lines, one (1) transmission line with one (1) or more circuits will constitute an individual use subject to authorization by an easement. Additional parallel transmission lines owned by the same entity with one (1) or more circuits may be

included in the same individual use so long as such parallel lines are located within the designated boundaries of the easement.

(3) Except as provided by OAR 141-122-0105 (Special Easements For Water Pipelines and Associated Fixtures), the application processing fee for all easements shall be seven hundred and fifty dollars (\$750). The application fee for all water pipeline and associated fixture-related easements shall be one hundred and twenty-five dollars (\$125).

(4) A single easement application form may be used to request:

(a) Multiple easements required for a single pipeline, cable, or similar use or development which cross one (1) or more parcels of state-owned land; or

(b) An easement for one (1) or more identical uses or developments which cross the same parcel of state-owned land or state-owned waterway, for example, two (2) parallel pipelines.

(5) Unless otherwise allowed by the Director in writing, a fully completed application shall be submitted to the Division at least sixty (60) calendar days prior to the proposed use or placement of a development subject to easement on state-owned land.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0050

Easement Application Review and Approval Process

(1) Upon receipt of an application the Division shall determine whether it is complete. Applications determined to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.

(2) If a rejected application is resubmitted within ninety (90) calendar days from the date the Division returned it to the applicant, no additional application fee will be assessed.

(3) If determined by the Division to be complete, the application will be circulated to affected various local, state, and federal agencies and other interested persons including tribal governments, lessees, and easement holders for review and comment. As a part of this review, the Division will specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archeological and historic resources within the requested area which may be disturbed by the proposed use;

(b) Conformance with other local, state, and federal law and rules;

(c) Conformance with the local comprehensive land use plan and zoning ordinances; and the

(d) Conformance with the policies described in OAR 141-122-0020 of these rules.

(4) The Division may waive the circulation requirement described in OAR 141-122-0050(3) if:

(a) The use or development has been previously reviewed by the listed agencies and other interested persons, and the results are documented in the easement application; or

(b) The application is for a special easement associated with the right to appropriate water and the Water Resources Department is conducting/has conducted a public interest review sufficient to make the determinations required by OAR 141-122-0050(3).

(5) An applicant for an easement may amend their application at any time to address issues, concerns, or information needs identified by the Division or other commentors.

(6) After receipt of agency and public comment concerning the proposed use, the Division shall determine, and advise the applicant in writing if:

(a) Changes to the requested easement area are necessary to respond to agency or public comment;

(b) Additional information is required from the applicant, including but not limited to a survey of:

(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or

(B) Archaeological and historic resources within the requested area.

(c) The request is denied. Applicants will be given the opportunity to revise their proposed project if the Division denies the request;

(d) The easement will be granted with specified terms and conditions.

(7) If the Division decides to grant the easement, the written notification will also indicate:

(a) The amount of compensation pursuant to the requirements of OAR 141-122-0060 that the applicant shall remit to the Division to obtain the authorization;

(b) Any surety bond amount required by the Division pursuant to the provisions of OAR 141-122-0070(11); and

(c) The draft easement terms and conditions.

(8) The Division shall not grant an easement to an applicant until it has received all fees and compensation specified in these rules, and evidence of a surety bond (if required). However, the Division, at its discretion, may grant a provisional easement prior to receipt of compensation due for removal of timber, sand and gravel, or other natural resources in the easement area if determination of the fair market value of those resources is based on actual receipts from their sale occurring after placement of the use or development authorized by the easement.

(9) Except as provided in OAR 141-122-0105(7) for easements on Non-Trust Land that are associated with a right to appropriate water, the Division shall refer any request for an easement to the Land Board for approval if it is for a permanent easement.

(10) The Director may refer unusual or controversial easement applications or temporary use permits to the Land Board for review and approval.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0060

Compensation

(1) The Division shall, prior to granting an easement, require an applicant not otherwise exempt under OAR 141-122-0060(2) to submit to the Division a compensatory payment for each individual crossing of state-owned land in the greater of:

(a) One-hundred percent (100%) of the fair market value of the area requested for the easement;

(b) Two-hundred and fifty dollars (\$250); or

(c) The highest comparative compensatory payment.

(2) The following types of easements located on Non-Trust Land are exempt from the mandatory compensatory payment to the Division specified in OAR 141-122-0060(1):

(a) All public infrastructure projects.

(b) Gas, electric and communications service line easements not within designated city limits up to a maximum width of twenty-five (25) feet on each side of the center line.

(c) Water ditches, pipes, and other methods of water conveyance up to a maximum width of twenty-five (25) feet on each side of the center line.

(d) All sewer and storm water pipes and outfalls up to a maximum width of twenty-five (25) feet on each side of the center line.

(3) The Division is limited to one dollar (\$1.00) per acre consideration for easements on Non-Trust Land for:

(A) Railroad track right of way (exclusive of bridges over state-owned submerged and submersible land) up to a maximum width of fifty (50) feet on each side of the center line of the road; and

(B) Railroad stations, depots, and other related facilities (exclusive of bridges over state-owned submerged and submersible land) up to a maximum of ten (10) acres in any one place.

(4) Compensatory payments shall be required at the rate stipulated in OAR 141-122-0060(1) for that part of an easement for the uses specified in OAR 141-122-0060(2) and (3) which exceeds the maximum widths or acreages indicated, and/or occurs on land not exempt from a mandatory compensatory payment.

(5) If required by the Division, applicants shall also submit to the Division a payment in an amount to be determined by the Division for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the easement area which must be removed during or after placement of the proposed use, or which cannot be developed because of the easement use. Such payment shall be due at a date to be determined by the Division.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0070

General Easement Terms And Conditions

- (1) Four types of easements are available from the Division:
 - (a) Temporary easements which have a term not to exceed ten (10) years;
 - (b) Term easements which have an initial term of more than ten (10) but not more than thirty (30) years;
 - (c) Permanent easements; and
 - (d) Special easements:
 - (A) For water pipelines and associated fixtures have the same term as that of the associated right to appropriate water; or
 - (B) For uses or developments associated with a facility authorized by a license issued by the Federal Energy Regulatory Commission, the same term as that license. The length of the initial term of an easement shall be determined by the Division based upon the nature of the use; term requested by the applicant; and other possible uses of the easement area. The easement holder may apply to the Division for renewal of an easement issued under these rules for a term equal in length to that first granted.
- (2) Easements shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use. Unless otherwise authorized by the Director, the minimum width of an easement shall be no less than fifteen (15) feet.
- (3) The Division may grant additional easements which, as determined by the Division, do not substantially interfere with other authorized easements within a given area.
- (4) An easement granted by the Division will be to a specific person for a specific use, location, and term. Any easement holder wanting to:
 - (a) Change the type of use;
 - (b) Expand the number of authorized developments or uses;
 - (c) Change the authorized area; and/or
 - (d) Permit other persons to utilize the area authorized by the easement for uses and developments requiring separate authorization by the Division (for example, attachment of cables, conduits, or pipes under a bridge already authorized by an easement); shall apply to and obtain prior written approval from the Division as provided for in OAR 141-122-0040. Such changes may require a separate application and approval as determined by the Division.
- (5) State-owned land authorized for a specific use by an easement shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or Division. An easement holder may request the Division to partially restrict or close an easement area to partial or total public use if it can be demonstrated to the Division that:
 - (a) Public entry on the area encumbered by the easement could cause damage to the use of, or development placed on the authorized area; or
 - (b) The use of the authorized area could cause harm to the public.
- (6) The Division and/or its authorized representative(s) shall have the right to enter into and upon the authorized easement area at any time for the purposes of inspection or management.
- (7) Except as expressly authorized in writing by the Division, an easement holder shall not:
 - (a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation within the authorized area; or
 - (b) Remove any sand, gravel, or other mineral or natural resources within the authorized area for commercial use or sale. Routine right-of-way maintenance including vegetation trimming shall be allowed as specified by the easement conditions.
- (8) An applicant for an easement shall compensate the Division for the fair market value of any commercially valuable timber, sand and gravel, or other natural resources in the requested area that must be removed during or after placement of the proposed use, or cannot be developed because of the use.
- (9) The holder of an easement shall conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, disturbed lands shall be reclaimed as specified by the Division.

(10) The holder of an easement shall maintain all buildings, pipelines, cables, and other developments or items placed in or on state-owned land in good working order.

(11) Applicants for an easement may be required to obtain a surety bond to ensure that they will perform in accordance with all terms and conditions of the authorization. The surety bond amount shall be determined by the Division. A cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond which names the State of Oregon as co-owner may be substituted in lieu of a bond.

(12) Easement holders shall inspect the condition of the easement area and the developments placed on it on a frequency to be determined by the Division in consultation with the easement holder and other interested parties.

(13) The easement form contained in Exhibit A shall be the principal easement form used by the Division to authorize the use of state-owned land. However, the Division in its good faith discretion may determine that the size and/or nature of a proposed use or placement of a development, or the risks associated therewith, make it advisable to require an easement with terms other than those contained in **Exhibit A**. In such an event, the Division may condition acceptance of the proposed use or placement of a development upon acceptance of an easement form proposed by the Division and, if requested by the Division or otherwise required by law, approved by the Department of Justice.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0080

Transfer of Easements

An easement in good standing is freely transferable. However, no transfer may increase the burden on the estate or detract from the value of the underlying state land.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0090

Termination for Non-Use

- (1) The right to use an easement shall automatically terminate:
 - (a) If the use or development within the easement area is not used within five (5) consecutive years of the date the easement was granted; or
 - (b) If the easement is for water pipeline and associated fixtures and the associated right to appropriate water is cancelled by the Oregon Water Resources Department or abandoned by the easement holder. Upon such termination, the Division shall notify the easement holder in writing using the last known address reported by the easement holder to the Division. This notification shall state that the easement has terminated, and that the easement holder will have thirty (30) calendar days from the date of the notice to respond in writing to the Director why the easement should be reinstated. The Director shall notify the easement holder in writing of his/her decision within sixty (60) calendar days of receipt of the request for reinstatement of the easement.
- (2) Unless otherwise approved in writing by the Director, the easement holder shall remove all cables, pipes, fixtures, conduits, roads and other developments placed by them on the easement, and shall restore the surface of the easement area to a condition satisfactory to the Division within one (1) year following termination of use or expiration of an easement.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0100

Easements Issued on Common School Forest Land

- (1) The Oregon State Forester may issue temporary easements on Common School Forest Land in accordance with applicable statutes and administrative rules.

(2) Temporary easements may be issued by the Oregon State Forester for uses such as, but not limited to:

- (a) Use of roads for forest management purposes;
 - (b) Constructing, improving and/or maintaining temporary roads, including spur roads;
 - (c) Constructing landing sites to deck timber;
 - (d) Use of stumps and/or trees for guylines and tailholds;
 - (e) Extracting sand, gravel, or quarry rock for the improvement, construction or maintenance of state-owned roads; and
 - (f) Use of existing roads for forest management purposes.
- (3) Any person wanting to obtain a temporary easement on Common School Forest Land shall apply directly to the Oregon Department of Forestry.

(4) Any person wanting to obtain a term or permanent easement on Common School Forest Land for uses described in OAR 141-122-0010(2) and (3), shall apply to the Division pursuant to these rules.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0105

Special Easements For Water Pipelines And Associated Fixtures

(1) Unless otherwise exempt from easement under OAR 141-122-0010(4) or associated with a hydroelectric facility, all pipelines and associated fixtures that cross or are otherwise situated on state-owned Trust and Non-Trust Land managed by the Division that are used to withdraw water from a waterway, lake or other source shall be authorized by an easement from the Division.

(2) Persons who own, use, have placed, or have the legal authority to represent the owners or users of said pipelines and associated fixtures shall apply to the Division for an easement:

- (a) On a form provided by the agency or,
- (b) By submitting to the Division a completed Water Resources Department application for the right to appropriate the water to be conveyed by said pipeline and associated fixtures.

(3) A person applying for an easement for a water pipeline and associated fixtures associated with a right to appropriate water shall submit with the application a non-refundable application processing fee in the amount of one hundred and twenty-five dollars (\$125) payable to the Division to cover the administrative costs of processing the application and issuing the easement.

(4) An application received by the Division for an easement for a water pipeline and associated fixtures shall be processed pursuant to the provisions of OAR 141-122-0050 and 141-122-0060 (as applicable) of these rules.

(5) The Division shall allow a person to include up to three (3) water pipelines and associated fixtures per lot of record on their application for a special easement.

(6) A special easement issued by the Division under this section shall have the same term as that of the associated right to appropriate the water as determined by the Oregon Water Resources Department. Land Board approval shall not be required for an easement granted under this section.

(7) The Division may enter into an agreement with the Oregon Water Resources Department to consolidate the processing of special easements for water pipelines and associated fixtures with the processing of a right to appropriate water.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0110

Unauthorized Uses and Penalties

(1) Uses and developments not authorized by an easement issued by the Division, or by another agency as a valid existing right of record on land acquired by the Division, constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law, the placement of any development on, or use of state-owned land without the required Division authorization as described in these rules,

or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

141-122-0120

Reconsideration of Decision

(1) An applicant or any person adversely affected by a decision regarding granting an easement by the Division may request the Division enter into an alternative dispute resolution process. The Director and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) An applicant for an easement, or any person adversely affected by the issuance or denial of an easement on state-owned land may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision.

(a) Such a request shall be received by the Director no later than thirty (30) calendar days after the delivery of the decision.

(b) The Director shall review the request within sixty (60) calendar days after the date of delivery of the request.

(c) If the Director made the decision of concern, s/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the easement issuance or denial be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(3) If the Director recommends that the Land Board initiate a contested case proceeding, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 273.045

Stats. Implemented: ORS 273.761, 274.040, 274.720, 376.620, 530.050, 530.490 & 758.010

Hist.: DSL 6-2000, f. 8-11-00, cert. ef. 9-1-00; DSL 7-2002, f. 12-23-02, cert. ef. 1-1-03

DIVISION 125

ADMINISTRATIVE RULES FOR AUTHORIZING SPECIAL USES ON STATE-OWNED LAND

141-125-0100

Purpose And Applicability

(1) These rules:

(a) Apply to the management of state-owned Trust and Non-Trust Land (exclusive of rangeland for rangeland purposes and state-owned submerged and submersible lands) for special uses.

(b) Establish a process for authorizing such uses through the granting of leases and permits.

(c) Do not apply to the granting of leases and permits for uses governed by other Division administrative rules, for example OAR 141-082-0000 through 141-082-0210 (Rules for Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Land); OAR 141-122-0010 through 141-122-0120 (Rules for Granting Easements and Temporary Use Permits on Trust and Non-Trust Land; and OAR 141-110-0000 through 141-110-0180 (Rules for Management of Rangeland).

(2) A special use is one not governed by other Division administrative rules. Special uses include, but are not limited to using state-owned upland for:

- (a) Agriculture;
- (b) Communications facilities;
- (c) Wind farms;
- (d) Industrial, business and commercial purposes;
- (e) Native seed harvesting;
- (f) Scientific experiments;
- (g) Sporting and other events;
- (h) Residences and recreational cabins;
- (i) Outfitting and guiding services; and
- (j) Motion picture filming and set construction.

(3) The Director may determine what other uses and developments similar to those specified in OAR 141-125-0100(2) are also subject to authorization by a special use lease or permit and these rules.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0110

Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Division, has a constitutional responsibility to manage all land (Trust and Non-Trust) 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."

(2) All Trust Land shall be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.

(3) The Division shall follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a special use lease or permit on state-owned land.

(4) The use of state-owned land for the placement of communications facilities is recognized by the Division as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.

(5) Each individual use of, or development placed on state-owned land shall constitute a separate discrete activity subject to payment of compensation as required by these or other applicable Division rules, or as determined by the Director.

(6) Uses of, and developments placed on state-owned land pursuant to a special use lease or permit shall conform with local (including local comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(7) The Division shall administer these rules to ensure to the greatest extent possible that persons applying for and holding a special use lease or permit receive timely, consistent, predictable, and fair treatment.

(8) The Division shall not grant a special use lease or permit if it determines that the proposed use or development substantively impairs uses or developments proposed or already in place within the requested area. Such a determination will be made by the Division after consulting with holders of leases, permits, and easements in the requested area, and other interested persons.

(9) All uses subject to these rules must be authorized by a special use lease or permit issued by the Division. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.

(10) The Division may:

(a) Conduct field inspections to determine if uses of and developments on state-owned land are authorized by, or conform with the terms and conditions of a special use lease or permit and, if not,

(b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a special use lease or permit are either brought into compliance with the requirements of these rules or removed.

(11) 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 renewal.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0120

Definitions

(1) "Applicant" is any person applying for a special use lease or permit.

(2) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.

(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) "Authorized Area" is the area of state-owned land which the Division allows a development to occupy or person to use through a lease or permit.

(5) "Communications Facility" consists of the towers, antennas, dishes, buildings, and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross state-owned land to serve a communications facility, however, are governed by the administrative rules for granting easements on state-owned land (OAR 141-122-0010 through 141-122-0120).

(6) "Cropshare" is a method of determining the annual leasehold rental fee charged of a lessee for the use of state-owned land for agricultural purposes. A cropshare approach is typically based on the owner of the land receiving a pre-agreed percentage of the value of the crop at the time it is harvested or sold.

(7) "Development" is any structure (for example, a communications or cellular tower, shed or barn, fence, irrigation system, or recreational cabin) authorized by the Division on an area of state-owned land managed by the Division.

(8) "Director" means the Director of the Division of State Lands or designee.

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

(10) "Fair Market Rental Value" is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.

(11) "Industrial, Business and Commercial Purpose" are uses of state-owned land not governed by other Division administrative rules. Such uses include, but are not limited to manufacturing facilities, retail stores, outfitting and guide facilities, and restaurants.

(12) "Non-Trust Land" is land owned and/or 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 and tidally influenced waterways.

(13) "Person" is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon.

(14) "Rangeland" as defined in OAR 141-110-0020(29) is state land designated and managed by the Division for rangeland purposes.

(15) "Rangeland Purpose" as defined in OAR 141-110-0020(33) is the use of rangeland for livestock grazing and/or conservation use.

(16) "Recreational Cabin" is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).

(17) "Special Use" is a use of state-owned land not governed by other Division administrative rules. Special uses include, but are not limited to, using state-owned upland for agriculture; communications facilities; wind farms; industrial, business and commercial purposes; native seed harvesting; scientific experiments; sporting and other events; and recreational cabins. The Director may determine that other uses are most appropriately governed by these rules.

(18) "Special Use Lease" is a written authorization issued by the Division to a person to use a specific area of state-owned land for a special use under specific terms and conditions for a term of one (1) to thirty (30) years.

(19) "Special Use Permit" is a written authorization issued by the Division to a person allowing the short term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use permit has a maximum term of one (1) year and does not convey any proprietary or other rights of use to the holder other than those specifically granted in the permit authorization.

(20) "State Land" or "State-Owned Land" is land owned and/or managed by the Division or its agents and includes Trust and Non-Trust Land.

(21) "Structure" means anything placed, constructed, or erected on state-owned land.

(22) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the 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.

(23) "Wind Farm" is an area where numerous towers have been constructed, each of which has a wind-powered turbine installed at its top, to generate electricity.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0130

Application Requirements

(1) Any person wanting to use state-owned land for any of the purposes described in OAR 141-125-0100 shall:

(a) Apply to the Division for a special use lease or permit using a form provided by the Division; and

(b) Submit a non-refundable application processing fee payable to the Division to cover the administrative costs of processing the application and issuing the authorization.

(2) The application processing fee for a special use lease shall be five hundred dollars (\$500). The application processing fee for a special use permit shall be determined by the Director, and shall not be less than two hundred and fifty dollars (\$250), nor more than five hundred dollars (\$500).

(3) Unless otherwise allowed by the Director in writing, a fully completed application shall be submitted to the Division at least one hundred and eighty (180) days prior to the proposed use or placement of a development subject to these rules on state-owned land.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0140

Special Use Lease and Permit Application Review and Approval Process

(1) Upon receipt of an application for a special use lease or permit, the Division shall determine:

(a) If the application is complete;

(b) If the subject area is available for the requested use; and

(c) What method will be used to determine the amount of compensation payable to the Division pursuant to OAR 141-125-0150.

(2) The Division will then advise the applicant of its determination concerning each of the three factors in OAR 141-125-0140(1). Applications determined by the Division to be incomplete, or for an area in which the use would be incompatible will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within ninety (90) calendar days from the date the Division returned it to the applicant (as determined by the date of postmark), no additional application fee will be assessed.

(4) Upon acceptance by the Division, the application will be circulated to various local, state, and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and easement holders for review and comment. As a part of this review, the Division shall specifically request comments concerning:

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;

(b) Conformance of the proposed use with other local, state, and federal laws and rules;

(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;

(d) Conformance with the policies described in OAR 141-125-0110 of these rules;

(e) Potential conflicts of the proposed use with existing leases, permits or easement holders.

(5) If the application is for a communications facility, the Division shall request comments from the Federal Communications Commission, Public Utility Commission, and any other persons owning/leasing communications facilities who advise the Division that they want to receive such applications.

(6) After receipt of agency and public comment concerning the proposed use, the Division shall advise the applicant in writing:

(a) If changes in the use or the requested lease or permit area are necessary to respond to agency or public comment;

(b) If additional information is required from the applicant, including but not limited to a survey of:

(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or

(B) Archaeological and historic resources within the requested area.

(c) If the area requested for lease or permit will be authorized for use by the applicant through a lease or permit, or made available to the public through competitive bidding pursuant to OAR 141-125-0150.

(7) If the Division decides to issue a special use lease or permit to the applicant without competitive bidding, the written notice will also indicate:

(a) The amount of compensation pursuant to OAR 141-125-0160 that the applicant shall remit to the Division to obtain the authorization.

(b) Any insurance and/or surety bond required by the Division pursuant to the requirements of OAR 141-125-0180; and

(c) A draft copy of the special use lease or permit.

(8) The Division shall not grant a special use lease or permit to an applicant until it has received all fees and compensation specified in these rules, and evidence of any required insurance and/or surety bond. In addition, no authorization will be given until the applicant has met the requirements of OAR 141-125-0170(4) of these rules.

(9) The Director may refer any applications for a special use lease or permit to the Land Board for review and approval.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0150

Competitive Bidding Process

(1) The Division shall determine on a case-by-case basis if an area requested for a special use lease shall be offered to the public through competitive bidding. This decision shall be made after considering:

(a) Whether the area requested for a special use lease or permit is Trust or Non-Trust Land;

(b) The nature of the use and length of authorization requested;

(c) The availability of reliable data regarding the fair market rental value of the subject parcel for the proposed use; and

(d) Whether other applications are received by the Division to use the same area requested for the same or competing uses.

(2) If the Division determines that the greatest public benefit and/or trust obligations of the Division would be best served by offering the subject area through competitive bidding, it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted.

(3) The Notice of Leasehold Availability shall state:

(a) The location and size of the subject area;

(b) The use(s) approved by the Division for the subject area;

(c) The type of auction and minimum acceptable bid amount;

(d) What developments, if any, on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Division; and

(e) The deadline for submitting a completed application to the Division.

(4) The Notice of Leasehold Availability shall be:

(a) Published at the applicant's expense not less than once each week for two (2) successive weeks in a newspaper of general circulation in the county(ies) in which the subject parcel is located;

(b) Posted on the Division internet website; and

(c) Sent to persons indicating an interest in the subject parcel.

(5) The highest qualified bidder shall be awarded the lease at auction subject to satisfaction of the requirements of OAR 141-125-0140(8) and 141-125-0170(4) of these rules. However, the Division shall have the right to reject any and all bids submitted.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0160

Compensation

(1) In establishing the amount of annual compensation, or minimum bid at auction, the Division shall:

(a) Adhere to the policies contained in OAR 141-125-0110(1) and (2) of these rules;

(b) Whenever practicable, base the amount of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner;

(c) When employing a cropshare approach for an agricultural use, establish the state's share to be no less than twenty-five percent (25%) of the value received in payment for each crop harvested from the authorized area; and

(d) Require the holder of a special use lease for a communications facility to annually remit to the Division both:

(A) The full amount of the base annual compensation required by their lease, and

(B) A payment of twenty-five percent (25%) of the rental received by the lessee during the previous calendar year from sublessees using the subject facility authorized by the lease.

(2) The amount of annual compensation received by the Division shall not be less than:

(a) Five hundred dollars (\$500) per year for all special use leases except those for communications facilities,

(b) Seven hundred and fifty dollars (\$750) per year for special use leases for communications facilities, and

(c) One hundred dollars (\$100) per year for special use permits.

(d) The minimum bid when the lease is awarded through public auction.

(3) In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.

(4) Communications facilities located on Non-Trust Land outside of the designated limits of a city are exempt from the mandatory compensation payments specified in OAR 141-125-0160(1)(d) and (2) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities shall apply for and obtain a lease from the Division.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0170

General Terms and Conditions

(1) The term of a special use lease shall not exceed thirty (30) years. The Division shall determine the length of a special use lease based on the nature of the use intended for the requested site. The Division may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Division.

(2) The term of a special use permit shall not exceed one (1) year. A special use permit may, at the discretion of the Division, be renewed up to two (2) times for a maximum term of one (1) year each time.

(3) Special use leases and permits shall be offered by the Division for the minimum amount of area determined by the Division to be required for the requested use.

(4) Pursuant to the requirements of ORS 291.045, a special use lease issued by the Division shall be on a form supplied by the Division that has been approved for legal sufficiency by the Department of Justice pursuant to the requirements of ORS 291.045 to 291.047 (Public Contract Approval).

(5) The lessee or permittee may request the Division to close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, and/or crops from harm.

(6) The Division or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious weed or pest abatement, or for wildfire control.

(7) The lessee or permittee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) A lessee or permittee may not interfere with lawful public use of an authorized area, or obstruct free transit across state land, or intimidate or otherwise threaten or harm public users of state land.

(9) The lessee or permittee shall cooperate with:

(a) Appropriate county agencies and the 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 concerning which noxious weeds present on an authorized area require corrective action by the lessee or permittee, or the Oregon Department of Agriculture or its agents;

(b) The Oregon Department of Agriculture and the Division in the management of plant pests and diseases; and

(c) The Division and other agencies in the detection, prevention and control of wildfires on an authorized area.

(10) Upon the expiration or termination of a special use lease or permit, the holder of the lease or permit shall remove any or all developments as directed by the Division within sixty (60) calendar days of the date of termination of the lease or permit. Any developments remaining on the area authorized by the lease or permit after the sixty (60) day period shall become the property of the Division. If the lessee or permittee refuse to remove the subject developments, the Division may remove them and charge the lessee or permittee for doing so.

(11) The holder of a special use lease or permit shall not allow any other use to be made of, or occur on the site or facility that is not specifically authorized:

(a) By that lease or permit; or

(b) By the Division in writing prior to the use.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0180

Insurance and Bond

(1) The Division may require a lessee or permittee to obtain insurance in a specified amount if the use, 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, lessee or permittee provide information concerning the use of the area 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 use.

(3) The Division may, at its discretion, require that a lessee or permittee obtain a surety or bid bond in an amount specified by the Division (or a cash deposit or certificate of deposit which has the 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

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0190

Termination of a Lease or Permit For Default

(1) If the lessee or permittee fails to comply with these rules or other lease terms and conditions, or otherwise violates laws covering the use of his/her authorized area, the Division shall notify the lessee or permittee in writing of the default and demand correction within a specified time frame.

(2) If the lessee or permittee fails to correct the default within the time frame specified, the Division may:

(a) Modify or terminate the lease or permit; and/or

(b) Request the Attorney General to take appropriate legal action against the lessee or permittee.

Stat. Auth.: ORS 273

Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5

Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0200

Assignment of Special Use Leases and Permits; Subleasing

(1) A special use lease in good standing is freely assignable.

(2) Special use permits are non-assignable.

(3) To assign a special use lease, the lessee shall submit a:

(a) Notice of proposed assignment on a form provided by the Division; and

(b) Non-refundable assignment processing fee of two hundred and fifty dollars (\$250) payable to the Division.

(4) The Division shall make every effort to complete its review of such proposed assignments within thirty (30) calendar days of receipt of the notice. The Division may request additional information concerning the proposed assignment.

(5) A lessee wanting to offer a sublease to another person shall:

- (a) Obtain prior written authorization from the Division by applying to the Division on a form provided by the Division, and
- (b) Submit to the Division the amount provided in OAR 141-125-0160(1)(d)(B) at the end of each calendar year.

Stat. Auth.: ORS 273
 Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5
 Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0210

Unauthorized Uses and Penalties

(1) Uses and developments subject to, but not authorized by a special use lease or permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.

(2) In addition to any other penalties provided or permitted by law, the placement of any development on, or use of state-owned land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.

Stat. Auth.: ORS 273
 Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5
 Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0220

Reconsideration of Decision

(1) An applicant for a special use lease permit, or any other person adversely affected by the issuance or denial of special use lease or permit on state-owned land may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision:

(a) Such a request 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 review the request within sixty (60) calendar days after the date of delivery of the request.

(c) If the Director made the decision of concern, s/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the special use lease or permit issuance or denial be modified based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(2) If the Director recommends initiating a contested case proceeding, the Division shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

Stat. Auth.: ORS 273
 Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5
 Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

DIVISION 130

AGREEMENTS FOR VOLUNTEER SERVICES

141-130-0010

Purpose

The purpose of OAR chapter 141, division 130 is to establish procedures for volunteer associations to enter into agreements with the Department of State Lands to provide volunteer services. These services may include assistance with program implementation, maintenance or improvement of state lands administered by the department, and interpretative and educational programs.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045
 Stats. Implemented: ORS 273.196 - 273.199
 Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

141-130-0020

Definitions

The following definitions apply to this division:

(1) "Agreement" means a form signed by a volunteer association and the department.

(2) "Department" means the Department of State Lands.

(3) "Director" means the director of the Department of State Lands or designee.

(4) "State land facility" means a building or other structure located on lands owned by or under the control of the department.

(5) "Volunteer association" means:

(a) An entity that is tax exempt under section 501(c)(3) of the Internal Revenue Code including a group of individuals, volunteer group, service club;

(b) A private, non-profit scientific, historic, or educational organization organized solely for the purpose of providing interpretative services for state land facilities in Oregon;

(c) A business; or

(d) A state or federal agency other than the Department of State Lands.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045
 Stats. Implemented: ORS 273.196 - 273.199
 Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

141-130-0030

Volunteer Agreements

(1) A volunteer association may request that the department enter into an agreement with the association to allow volunteers to participate in:

(a) The operation of department programs;

(b) The maintenance or improvement of state lands or state land facility; or

(c) Providing educational and interpretive programs and information to the public.

(2) If more than one volunteer association requests an agreement under section (1) above, the department may solicit a proposal for services from each association. The department shall select an association based upon the needs and priorities of the state lands or state land facility. The department may enter into an agreement with more than one association if the services provided by the associations are complementary for an area of state lands or a state land facility.

(3) An agreement between the department and a volunteer association shall remain in effect for five years and shall be on a form developed by the department. The agreement shall include, but need not be limited to:

(a) Identification of the state lands or state lands facility where the activity will occur;

(b) A list of the duties and responsibilities of the department and the volunteer association under the agreement;

(c) If the department agrees to provide space to a volunteer association at a state land facility, the agreement shall include a description of the space provided and the uses of the space;

(d) A requirement that the volunteer association or its members submit the appropriate information to receive volunteer injury coverage under ORS 278.125 for those members who will be participating in activities covered by an agreement;

(e) A requirement that the volunteer association or its members submit the appropriate forms to indemnify, defend and hold harmless the State of Oregon, the State Land Board and members thereof, the department, together with its officers, agents and employees from all claims, suits or actions of any nature, including but not limited to negligence, arising from or in connection with an activity conducted under an agreement;

(f) A requirement that any member of the volunteer association who is participating in an activity under an agreement will be fingerprinted if the member:

(A) Is working with minors and is unsupervised by department staff; or

(B) Has access to department funds.

(g) An agreement by the parties to enter into an annual written work plan detailing how the general duties and responsibilities described in a five-year agreement will be carried out. The annual work plan shall be incorporated by reference into the five-year agreement and shall be renewed annually by both parties. Either party may request an amendment to the work plan at any time. An amendment shall require the approval of both parties.

(4) An agreement shall remain in effect for five years unless terminated by either the department or the volunteer association upon 30 days written notice to the other party. A five-year agreement may be amended or renewed upon the review and approval of both parties.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045
 Stats. Implemented: ORS 273.196 - 273.199
 Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

141-130-0040

Guidelines for Approval of Interpretive and Educational Materials

(1) The state land facility manager has final approval authority for any items sold or displayed by a volunteer association at a state land facility. The following guidelines apply to any sales or displays:

(a) An association may display educational or interpretive products;

(b) A private, non-profit scientific, historic or educational organization organized solely for the purpose of providing interpretive services for state land facilities in Oregon may sell educational or interpretive products; and

(c) The products should relate to, be consistent with and provide information about or promote the mission, cultural, natural or historical features of the state land facility, the state lands, or the surrounding region.

(2) No tobacco, firearms, ammunition or alcohol products may be sold at a state land facility.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045

Stats. Implemented: ORS 273.196 - 273.199

Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05