

Water Related Permits Process Improvement Team (WRPPIT)

Making clear whether and how a project gets to YES & transitioning to a consolidated state permit system.

MEETING RECORD

February 1, 2006

9:00 – 12:00, DCBS, Meeting Room 260, Salem

Members Present:

Pat Allen, Office of Regulatory Streamlining (RSL)
Dale Blanton, DLCD
Kim Grigsby, Water Resources (by phone)
Kirk Jarvie, DSL
Laura Leshar, Project Manager, Office of Regulatory Streamlining (RSL)
Gary Lynch, DOGAMI
Patty Snow, ODFW
Christine Svetkovich, DEQ
Susan White, SHPO
Ken Franklin, ODOT

Members Absent:

John Lilly, DSL
Jas Adams, DOJ

Intermittent Members Not Present:

Tony Stein, OPRD

Consultant:

Jenny Carmichael, Carmichael Consulting

1. Updates

- a. Directors Update. The Directors Update will be held March 6 from 1-2 in Conference Room B, Basement, Labor and Industries Building. The regular WRPPIT meeting will begin at 2 and continue til 4 pm that day in the 2nd floor Conference Room in the same building.
- b. Advisory Committee Meeting. The next Advisory Committee meeting will be from 9 – 10:30 on March 22 in Conference Room B, Basement, Labor and Industries Building.
- c. Legislative Proposals. Laura Leshar (RSL), WRPPIT Project Manager, distributed a schedule for submission of legislative proposals to DAS. Please see attachment A. Pat Allen joined the discussion to determine whether WRPPIT agencies should be submitting legislative placeholders to address potential legislative changes that might be proposed from WRPPIT. The team concluded that the Office of Regulatory Streamlining, DSL, DEQ, ODFW, and DOGAMI should each request a placeholder for potential WRPPIT-related legislation. The topic of the placeholder could be: “placeholder for recommendation from the WRPPIT process.” Pat Allen will be checking with the Governor’s office to determine if these placeholder requests are acceptable. If they are not Pat will notify WRPPIT members. The next significant deadline is April 3rd when proposals are due to DAS.

At a later time the team will need to be considering information required for the 2007-2009 budget process.

- d. Customer Service Training Evaluation. Laura distributed a summary of written evaluations from the 170 agency staff that attended the fall customer service training. Please see Attachment B.
- e. Inter-Agency Staff Training Opportunity. Laura and John Lilly (DSL) have been working with the Luke Center to develop an opportunity for inter-agency staff training on negotiation/mediation skills to be held sometime this June. The Luke Center can offer 1.5 days of training to 50 participants for approximately \$4,000. Coordination of the training would be done by the Luke Center. Laura will send a brief description of training outcomes and potential dates out to WRPPIT members. WRPPIT team members were asked to be ready to report at the February 17 WRPPIT meeting how many people from their agencies would pay \$80 each to attend this training.

Laura reported that she and John have discussed a general strategy of a technical multi-agency training each spring and a professional skills multi-agency training each fall. The first multi-agency technical training was held in the spring of 2005 and is now being followed by SPGP training in 2006. The customer service training in the fall of 2006 could be followed by a mediation/negotiation training in the fall of 2007.

- f. WRPPIT NEWS. Laura circulated a draft WRPPIT NEWS bulletin that has been drafted to update staff in WRPPIT agencies about the WRPPIT project. WRPPIT team members should send comments and edits to Laura.
- g. Multi-Agency Pamphlet. Laura reported that 8300 copies of the WRPPIT pamphlet describing the requirements of federal, state and local agencies to do work in wetlands and waterways have been distributed throughout the state.
- h. DOGAMI. Laura reported that she, Pat Allen, Rich Angstrom from OCAPA, and Gary Lynch and Vicki McConnell of DOGAMI had met to provide further clarity about the DOGAMI-related deliverables of the WRPPIT budget note. A summary of two specific deliverables will be circulated in the near future.
- i. Advisory Committee Outcome-based Priority. Laura reported on a brief survey she had conducted with a few members of the Advisory Committee to obtain further clarity about the meaning of their customer expectation that the state focus on outcomes and that customers clearly understand what outcomes are designed to achieve. The WRPPIT team suggested that the redesigned process be tested against all customer expectations when completed.

2. **Getting an Overall Sense of the Next Directors Update**

Prior to today's meeting Jenny Carmichael sent team members a first draft of a Directors Update to be sent to Directors of all WRPPIT agencies in late February. The purpose of the update is to inform the Directors of the status of the WRPPIT project and to obtain their support of the cornerstones of the product and process redesign. The team supported the overall approach of the update, asked that information be included regarding cost issues, check-in with the Advisory Committee, and modifications to the Road Map. A second draft of the update incorporating February 1 WRPPIT team decisions will be prepared for the team's review at the February 6 team meeting.

3. Completing the Large Picture Redesign

Please see Attachment C for additional redesign decisions reached by the team at today's meeting.

4. SHPO Archeological Reviews

Susan White from SHPO provided a detailed breakdown of the types of reviews conducted by SHPO of DSL removal-fill permits. Please see Attachment D.

5. Public Review Comparative Analysis

Prior to this meeting Jas Adams from DOJ had distributed the following items:

- Inventory of public review processes for water-related authorizations; 0ES227/ES227 (Please see Attachment E).
- WRPPIT: Public Review Processes (Please see Attachment F).

Jas was unable to attend the meeting due to illness so these items will be discussed in more detail at the next meeting.

6. Next Meeting – February 6, 2006, 1-4, 2nd Floor Conference Room, DCBS.

Deadlines for Legislative Proposals

Agency Heads and Legislative Coordinators,

We have received notice from Dave Heynderickx, Acting Legislative Counsel, regarding agency procedures to obtain drafting services for measures for the 2007 legislative session. Please ensure that this information is shared with the appropriate staff in your agency.

Each agency must submit the name, phone number and e-mail of their key legislative contact to Counsel. (midge.g.hershfelt@state.or.us) Both the drafts and the bills will be sent to this person who has the responsibility to ensure the documents get to the appropriate people in their agency.

DEADLINES

April 3, 2006 – 5:00 PM	Last day to submit Concepts to DAS
June 1, 2006 – 5:00 PM	Last day for DAS to submit concepts to Legislative Counsel
July 14, 2006 – 5:00 PM	Last day for agencies to submit additional information Necessary for drafting
November 1, 2006 – 5:00 PM OR fourteen calendar days after the date on the draft – whichever is sooner	Deadline for requesting a revised draft.
December 15, 2005 – 5:00 PM	Deadline for Governor to pre-session file agency bills
January 8, 2007	Session begins

FEES

- As in the 2005 regular session, Legislative Counsel will charge \$80/hour for drafting services, regardless of who performs the work within Counsel.
- For each draft, agencies will receive a bill that lists the hours worked and the amount due for the draft. **Payment is due before the agency receives the draft.**

*****Let Counsel know if you'd prefer to be called so that you may pick up the draft, (after they have received your payment)**

- Counsel will revised a draft ONE time. The deadline for requesting a revised draft is 5:00 PM, November 1, 2006, **or fourteen days after the date on the draft – whichever is sooner.**

- If requested, Counsel will provide a very rough estimate of the cost to turn a concept into a draft measure.
- Legislative Counsel welcomes comments on a bill for drafting service and will make adjustments that Counsel considers appropriate under the circumstances. Counsel's determination on a bill is final.
- House and Senate rules prohibit members from requesting drafts for an agency unless the agency has made arrangements with the office to pay for drafting services.
- Questions about billing procedures should be directed to Corinne Rollman at 503-986-1243.

SUGGESTIONS

- Have a clear and thorough understanding of the concept before requesting the draft. This will cut down on revisions to the draft.
- Provide a detailed explanation of the problem that the draft addresses and the proposed solution. Providing proposed language does not substitute for explanations of the problem and proposed solution.
- Provide the name and phone number of the person who can make decisions about the scope and terms of the draft.

WRPPIT Customer Service Evaluation Summary

January 2006

Overview: During the months of October, November and December of 2005, 170 natural resource agency staff and managers participated in eight Customer Service trainings around the state. Each session was approximately 4_ hours and included an overview of the general mistrust of government and challenges that regulatory entities are confronted with, active listening techniques, an active listening role-playing exercise, and an email etiquette tutorial. The following is a summary of the evaluations that were submitted after each training.

Question 1. The Likert scale options were excellent, above average, average, below average and poor for the following: In this workshop ... content of the presentations was; organization for the workshop was; instructor's pace was; and, opportunity for participation was. Of these options rankings in excellent and above average were predominate.

Question #2: Was state as: Overall I rate the workshop: followed by the Likert scale above.

A total of 149 evaluations were received from participants. The overall rankings for the customer services training was 49% rated the training excellent, 50% rated the training above average and 7% rated the training average. No participants rated the training below average.

Question #3: Did the workshop meet your expectations? Options were fully, partially, and not at all. The majority of evaluations checked fully. Most of those that checked "partially" or "not at all" also wrote that they did not have any expectations, that they thought that the training was about the permitting process, or that the pre-workshop information was very vague. Many evaluations included comments such as "Thought the workshop was going to be about removal/fill applications" and "Was unsure how the training related to streamlining" were included in responses to other questions.

Question #4: What did you like most about the workshop?

Many responses focused on the presenter: "dynamic, fast-paced, easy-to-follow, engaging instructor" were typical in many evaluations. Many commented that the content was relevant and the tools provided were helpful. The fact that real-life scenarios were used, the opportunity for a high level of participation, and having the opportunity to interact with staff from other agencies was also included in many of the evaluations.

Question #5: What did you like least about the workshop?




Some of the responses were not substantive ie: "Training was too long and should not have gone through lunch." Others commented that the scenarios used in the role-plays were not relevant or were difficult to understand. Some commented that the training was too basic and what was really needed was tools on "how to deliver the service when the service really was not wanted, "negotiation and conflict resolution."

Question #6: What did you learn that you will be able to use on the job tomorrow?

Most of the responses included specific tools that were discussed in the workshop including, "paraphrase, reflect, and summarize," "think and empathize prior to responding," "proper use of emails and phone messages", and, "how to handle difficult situations."

At the end of the evaluation was space for “additional comments.” The comments varied considerably. Below is a representation of some of the comment themes in this section:

- With customer responses and front line decisions “No” sometimes means “No,” but further up the food chain, no sometimes molds into perhaps and yes when money and pressure are applied – this is a real problem!
- Was hoping for more information on how different agencies interact and which agency is responsible for what.
- The public does not seem to have a clear idea as to why natural resource agencies are here. How can we communicate that to them?
- We need more help balancing workload and the need to spend more time with customers. It is not sufficient so say “everything is a priority.”
- We need more guidance on communication protocols and expectations.
- More discussion between agencies of how to handle multi-agency situations is needed. Many (most) employees would benefit from this, not just the permit types.
- We need tools that help us expedite our delivery of service
- Suggestion for orientation of new employees and customer service
- A session related to consensus building is needed
- More time is needed on the unevenness of public knowledge.
- More conflict resolution help is needed
- We need to have upper managers also be “trained” on proper email usage. Some are terrible.
- More tools to disarm difficult situations are needed
- A toolbox I needed
- Have upper management take this training- many of the principles identified are not utilized by those individuals who are in positions of greatest authority.

Applicant Or Applicant's Consultant	State Of Oregon	Interested Parties	Explanatory Notes
POSSIBLE ON RAMP	Step 1. Provide permit guidance materials		<i>Provide written literature and on-line information about the Oregon Removal-Fill permit, the steps and timing involved, what is required of applicants, and how to meet state requirements. Provide information regarding best management practices, design considerations, how to reduce impacts, and how to qualify for a general authorization.</i>
POSSIBLE ON RAMP	Step 2. Obtain permit guidance materials Optional		
POSSIBLE ON RAMP	Step 3. Request assessment of preliminary design Optional		<i>New thing. 3-4 pages of what, who, when, a couple of sketched out drawings. Given to a "certified smart person" (CSP)</i>
POSSIBLE ON RAMP	Step 4. Certified Smart Person provides written, non-binding template assessment of preliminary design if requested. Optional		<p><i>Provide direction about how to meet state requirements and offer design considerations. CSP lets other state people know of project as appropriate.</i></p> <p><i>ISSUE If a new requirement or concern is raised later in the process, for example water rights or land use, it just becomes new information at that time. This information from the state is non binding and not appealable.</i></p>  <i>Charge Pre-Application/Design Assessment Fee?</i>
POSSIBLE ON RAMP	Step 5. Draft project proposal Optional		<i>Template?</i>
POSSIBLE ON RAMP	Step 6. Request multi-agency TEAM meeting – Optional		.
POSSIBLE ON RAMP	Step 7. Multi-agency TEAM review meeting if requested.	Step 7. Multi-agency TEAM review meeting if requested.	<p><i>Note: involves interagency notice, is not a public meeting, applicant invites who they wish</i></p> <p><i>Non-binding. and not appealable.</i></p> <p><i>Track issues in step 3 for consistency</i></p>  <i>Charge Pre-Application/Design Assessment Fee?</i>
POSSIBLE ON RAMP		Step 8. Provide written summary of multi-agency TEAM review meeting	
POSSIBLE ON RAMP	Step 9. Submit Application		<p><i>Application includes information required for all elements of the Oregon Removal-Fill permit identified in Step 18 below.</i></p>  <i>Is this 401 info or application for 401 permit?</i>
POSSIBLE ON RAMP			<i>If application is incomplete applicant will be referred to above steps.</i>

Notice:
Steps
can
repeat if
applica-
tion
needs
more
infor-
mation.

	Step 10. Acknowledge receipt of application to applicant.		
	Step 11. Determine whether application is complete via check list.		<i>If something is missed, pick up in technical review, e.g. – fish passage.</i>
	Step 12. Post application triggering public review process.		
		Step 13. Public comment with a deadline.	<i>Clarify legal requirements with Jas.</i>
	Step 14. Conduct multi-agency TEAM review to determine whether application technically adequate to make a permit decision.		
Step 15. Modify application in response to technical and public review.			
		Step 16. If significant modification on public review again.	
Step 17. If huge modifications return to step 2, 3, 5 or 9.			
	Step 18. Issue Oregon Removal-Fill Permit Decision		<p>Includes the following 277 Individual Removal-Fill’s 406 General Authorization Removal-Fill’s <u>And will incorporate requirements from:</u></p> <ul style="list-style-type: none"> • In-water-work period comments and habitat mitigation reviews on ~90% of 694 removal-fill’s • Archeological permits on ? removal-fill’s • Coastal zone comments on 74 removal-fill’s <p><u>Special signature required from:</u> → ODFW for fish passage plan approvals on ~100 removal-fill’s → PROVISIONAL 401 certifications on ~150 removal-fill’s</p> <p>Discuss more: → Water quality comments on ~90% of 694 removal-fill’s → 1200 c’s on ~ 100 removal-fill’s (67 DEQ, 33 local gov)</p>

Step 19. Appeal Optional		Step 19. Appeal Optional	
Step 20. Build			

PERMIT OUTCOME: Preserved Natural Resources & Productive Economy

DRAFT

SHPO Archeological Reviews

Data supplied February 1, 2006 by Susan White, SHPO

Review Replies Options

- * No Known Sites – caution with digging
- ☆ Known Sites – archaeological SURVEY needed
- * High Probability Area – caution with digging
- ☆ High Probability Area – archaeological MONITOR needed
- ☆ High Probability Area – archaeological SURVEY needed

- * No Known Sites & HPA – caution area do not require any further archaeological work or investigations. A cautionary or disclaimer paragraph is inserted saying that if they encounter (by accident)
- ☆ Survey Needed – the project location and project activity necessitates that a professional archeological resource survey be conducted before any ground-disturbing activities occur. A list of professional archaeologists would be provided as well as Guidelines for Archaeological Fieldwork and Reporting Standards. A resultant survey report would be submitted to SHPO for review and approval.
- ☆ Monitor Needed – The project area’s probability is not high enough to dictate an archaeological survey be conducted beforehand, however, the project area’s probability is high enough (subjective decision from SHPO based upon archaeological review by staff) to necessitate a professional archaeologist monitor initial ground –disturbing activities during construction. If archaeological resources are encountered during monitoring of construction activities, then construction activities should cease and the archaeologist allow to assess the resource and report to SHPO. A resultant monitoring report would be submitted to SHPO for review and approval.

DEPARTMENT OF JUSTICE
INTEROFFICE MEMO

DATE: January 18, 2006

TO: Jas Adams, Assistant AIC, Natural Resources Section, Oregon Department of Justice

FROM: David Taylor, Paralegal
Natural Resources Section

SUBJECT: Inventory of public review processes for water-related authorizations; 0ES227/ES227

You asked me to draft a memo, describing the public review processes for the permits listed below and to provide copies of the applicable statutes and rules for these permits.

I. Department of State Lands (DSL) Removal/Fill Authorizations (Leases, Easements, Registration).

A permit issued under authority of DSL's director is required before removal of materials from material from the bed or banks of waters of the state or for filling the waters of the state.

DSL's statutes do not address public notice and hearings prior to issuing a permit. DSL must notify adjacent property owners; watershed councils and public interests groups that have indicated a desire to receive such notices; affected local government land use planning and zoning departments; local and state agencies; federal agencies; and affected tribal governments of the application.¹ Notice of the application's availability may be provided by US mail or electronically. Any person adversely affected or aggrieved by the issuance of a permit by the director to file a written request for a hearing and, if the director finds that the person has a legally protected interest which is adversely affected by the permit, the matter will be set for a hearing.² The hearing is conducted as a contested case under ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470.

DSL sends public notice as soon as the removal/fill application is deemed complete.³ DSL is required to make decision within 90 days. Written comments must be submitted within 30 calendar days from the date of notice. (DEQ has 75 days to comment if the application requires Federal Water Pollution Control Act certification.) Public comments are sent to the applicant within 7 days of the conclusion of the comment period and the applicant has 7 days to respond.

If the director grants the permit, a person adversely affected or aggrieved may submit a request for a public hearing within 21 days after the permit is issued. If the director finds the person is adversely affected or aggrieved, the matter shall be set for hearing within 30 days of receipt of the request. The director enters an order with findings of fact and conclusions of law within 45 days of conclusion of the hearing.

¹ OAR 141-085-0028(6)

² ORS 196.835

³ OAR 141-085-0028

II. 401 Water Quality Certification by the Oregon Department of Environmental Quality (DEQ) on behalf of the US Army Corps of Engineers (Corps)

DEQ processes applications for water quality certifications for projects that require federal permits to conduct any activity that may result in any discharge into the navigable waters of the state.⁴

The US Army Corps of Engineers (USACE) provides public notice of an opportunity to comment on the application, including application for certification, provided that DLCD, in its discretion, may provide additional opportunity for comment including a public hearing.⁵ Because DLCD's public notice for water quality certification is attached to USACE's, the public comment period is 30-days.

III. NPDES 1200-C General Permits

DEQ's director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES permits are not necessary to adequately protect the environment.⁶

DEQ's statutes and rules do not provide for public participation. Stormwater runoff from construction activities that disturb one or more acres requires coverage under an NPDES 1200-C General Permit. As a condition of the permit, a 14-day public review period will be required for construction activities that disturb five or more acres. Beginning June 1, 2006, the public can comment on the registration of permit coverage and the adequacy of the erosion and sediment control plan.

IV. In-Water Work Period

Oregon Department of Fish and Wildlife (ODFW) has adopted guidelines to provide the public with a method for planning in-water work during periods of time that would have the least impact on important fish, wildlife and habitat resources. The guidelines are not found in ODFW's statutes or rules and do not entail applying for a permit, license or certification.

ODFW provides for technical review of the guidelines when they are updated. The guidelines are applied, through ODFW recommendations, to state, local and federal permits.

V. Habitat Mitigation Review

A project proponent must provide mitigation for development actions that impact fish and wildlife habitat as a condition of a permit or order.⁷ For all other permits, ODFW recommends mitigation actions consistent with the rules.⁸

Project proponents must submit a written mitigation plan to ODFW for approval if required by an ODFW-implemented statute.⁹ ODFW's rules and statutes do not provide for public participation in this process.

⁴ OAR 340-048-0015.

⁵ OAR 340-048-0032(2).

⁶ OAR 340-045-0033.

⁷ OAR 635-415-0020(2).

⁸ OAR 635-415-0020(3).

⁹ OAR 635-415-0020(5).

VI. Fish Passage Plan Approval

A person constructing maintaining an artificial obstruction in the waters of the state must provide fish passage to for native migratory fish and obtain authorization from ODFW for the obstruction.¹⁰ ODFW's rules and statutes do not provide for public participation.

VII. Fish Passage Waiver or Exemption

Persons owning or operating an artificial obstruction may petition ODFW or the OFWC, depending on the size of the impact, to waive fish passage in exchange for agreed-upon alternatives to fish passage that provide a net benefit to migratory fish. Artificial obstructions without fish passage are exempt if OWFC or ODFW finds there is no appreciable benefit to providing fish passage.¹¹

ODFW's rules require notice and comment for waivers or exemptions from fish passage. The Fish Passage Task Force, local watershed councils, local soil and water conservation districts and others who have expressed an interest in fish passage issues or the specific waiver or exemption request must be notified and provided an opportunity to comment on the request. The rules do not address the form of notice or mention public hearings but provide that notice of an application for a waiver or exemption from fish passage must be given at least three weeks before the decision on whether the waiver or exemption will be granted.¹²

VIII. In-Water Blasting

ODFW requires a blasting permit whenever explosives are used to remove any obstruction in the waters of the state in constructing foundations for dams, bridges or other structures or in carrying on any trade or business.¹³

ODFW's statutes and rules do not provide for public participation in issuing in water blasting permits. Applications for blasting permits must be submitted no less than 90 days before the anticipated in-water blasting.¹⁴ ODFW will either deny the permit or grant it with conditions, within 20 days of receipt of an application for a minor project or 45 days for a major project.¹⁵ ODFW requires the applicant to notify adjacent property owners by registered mail prior to the blasting.¹⁶

IX. ESA Incidental Take/State Scientific Permit

ODFW may issue a permit for the incidental take of a state-listed threatened or endangered species if it will not adversely affect the long-term conservation of the species or its habitat.¹⁷ ODFW's statutes and rules do not provide for public participation.

¹⁰ ORS 509.585(1)-(2).

¹¹ ORS 509.585(7)-(9).

¹² OAR 635-412-0025(12).

¹³ ORS 509.140; OAR 635-425-0000; OAR 635-425-0005.

¹⁴ OAR 635-425-0020(1).

¹⁵ OAR 635-425-0030(3).

¹⁶ OAR 635-425-0040(3).

¹⁷ OAR 635-100-0170(1).

X. Scientific Taking Permit

Any person desiring to take or collect wildlife or food fish for scientific purposes shall first obtain from the Director of the State Fish and Wildlife Commission a scientific taking permit.¹⁸ ODFW's statutes and rules do not provide for public participation.

XI. Coastal Zone Management Program "Certification"

The Department of Land Conservation and Development (DLCD) has responsibility for coordinating ocean planning and carrying out the Coastal Zone Management Act of 1972 (CZMA).¹⁹ DLCD reviews an applicant's federal consistency determination together with necessary data and information to determine whether a project requiring a federal license or permit is consistent with the Oregon Coastal Management Program (OCMP).²⁰ The program includes statewide planning goals; acknowledged local government comprehensive plan and land use regulations; and state agency authorities (*e.g.*, DEQ, DSL, ODFW, ODE, OWRD).

Notice is provided by the federal agency or DLCD. Notice of the opportunity to file written comments is typically 14 to 30 days. DLCD has an option to provide a public hearing opportunity.

DLCD has 30 days to determine whether a consistency certification provided by the applicant is complete.²¹ A complete certification contains "necessary data and information" to support the conclusion that the project "complies with and will be conducted in a manner consistent with [the OCMP]." Once a certification is complete, there is a public review period that is typically 14 to 30 days. DLCD has six months to complete its review and make a decision to "concur" or "object." DLCD must issue its decision at the earliest practicable time and if DLCD has not made a decision within three months, DLCD notifies that applicant and the federal agency that of the status of the matter and basis for further delay.²² If DLCD does not issue a decision within six months from the date it receives the certification, the federal agency can presume DLCD's concurrence.²³ The applicant and DLCD can mutually agree to extend the six month review period by providing written notice to the federal agency.

XII. Water Use Authorization

With limited exceptions, any person intending to acquire the right to beneficial use of surface waters of the state must apply to the Oregon Department of Water Resources (OWRD) prior to "before beginning any construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction or proposed appropriation."²⁴

OWRD provides public notice to of the application to the owner of any land to be crossed by the proposed work set forth in the application.²⁵ If more than 25 property owners are identified from the application, OWRD may publish notice of the application in a newspaper having general circulation in the area in which the proposed project is located at least once each week for three consecutive weeks.²⁶

¹⁸ OAR 635-043-0030; OAR 635-043-0040.

¹⁹ ORS 196.435(1).

²⁰ OAR 660-035-0020(2).

²¹ 15 CFR §930.60(3).

²² 15 CFR §930.62(a).

²³ *Id.*

²⁴ ORS 537.130(1).

²⁵ ORS 537.130(3).

²⁶ ORS 537.130(4).

Within 15 days of receiving the application, OWRD will review the application for completeness.²⁷ No more than 30 days after determining the application is complete, OWRD will notify the applicant of its determination.²⁸ Within 7 days of proceeding with the application, OWRD gives public notice of the application in the weekly notice published by OWRD.²⁹ Interested persons have 30 days to submit written comments to the department.³⁰

Within 60 days of completing its initial review and notifying the applicant that the application is complete, OWRD shall complete its review and issue a proposed final order.³¹ OWRD mails copies of the proposed final order to the applicant and to persons who have requested copies and paid a fee.³² OWRD will also publish notice of the proposed final order by publication in the weekly notice.³³

Requests for standing and protests of the proposed final order must be submitted within 45 days of publication of notice.³⁴ Within 60 days after the close of the period for submitting protests, the Director shall issue a final order or schedule a contested case hearing.³⁵

Within 45 days of scheduling a contested case hearing, OWRD holds the hearing, limiting participation to the applicant, any person who filed a timely protest and any person who filed a timely request for standing and who requests to intervene in the contested case hearing.³⁶

After the conclusion of the contested case hearing, the Director will issue a final order either rejecting the application, modifying the proposed final order or adopting the proposed final order.³⁷ Within 20 days after the Director issues the final order after the conclusion of the contested case hearing, any party may file exceptions with the Water Resources Commission (WRC).³⁸ The WRC issues a modified order or denies the exceptions within 60 days of the close of the exception period.³⁹

DMT: GENP1041

²⁷ ORS 537.150(1).

²⁸ ORS 537.150(5).

²⁹ ORS 537.150(6).

³⁰ ORS 537.150(7).

³¹ ORS 537.153(1).

³² ORS 537.153(4).

³³ *Id.*

³⁴ ORS 537.153(7).

³⁵ ORS 537.153(8)(a)-(b).

³⁶ ORS 537.170(2).

³⁷ ORS 537.170(7).

³⁸ ORS 537.173(1).

³⁹ ORS 537.173(2).

WRPPIT PUBLIC REVIEW PROCESSES

Permit Type	Agency Decision	Type of Public Review	Reviewing Body	Timeline for Public Review
<p>DSL: Removal-Fill Authorization (Leases, Easements and Registrations)</p>	<p>A permit issued under authority of the director of DSL is required before removing materials from the bed or banks of waters of the state or for filling the waters of the state.</p>	<p>Public review is provided in DSL’s rules, not by statute. OAR 141-085-0028(6) requires DSL to notify adjacent property owners; watershed councils and public interests groups that have indicated a desire to receive such notices; affected local government land use planning and zoning departments; local and state agencies; federal agencies; and affected tribal governments identified through the application. Notice of the availability of the application may be provided by US mail or electronically. ORS 196.835 provides that any person adversely affected or aggrieved by the issuance of a permit by the director to file a written request for a hearing and, if the director finds that the person has a legally protected interest which is adversely affected by the permit, the matter will be set for a hearing. The hearing is conducted as a contested case under ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470.</p>	<p>DSL before issuance; DSL’s director for public review purposes after issuance.</p>	<p>Under OAR 141-085-0028, DSL sends public notice as soon as the removal/fill application is deemed complete. DSL is required to make decision within 90 days of this determination unless the applicant requests and DLS grants an extension. Written comments must be submitted within 30 calendar days from the date of notice. (DEQ has 75 days to comment if the application requires Federal Water Pollution Control Act certification.) Public comments are sent to the applicant within 7 days of the conclusion of the comment period and the applicant may respond. If the permit is granted, a person adversely affected or aggrieved may submit a request for a public hearing within 21 days after the permit is issued. If the director finds the person is adversely affected or aggrieved, the matter shall be set for hearing within 30 days of receipt of the request. The director shall enter an order with findings of fact and conclusions of law within 45 days of conclusion of the hearing.</p>
<p>DEQ: 401 Water Quality Certification</p>	<p>DEQ processes applications for water quality certifications for projects that require federal permits or licenses to conduct any activity that may result in any discharge into the navigable waters of the state. OAR 340-048-0015.</p>	<p>The US Army Corps of Engineers provides public notice of an opportunity to comment on the application, including application for certification, provided that DLCD, in its discretion, may provide additional opportunity for public comment, including public hearing. OAR 340-048-0032(2).</p>	<p>DEQ’s Director. OAR 340-048-0042(5).</p>	<p>Because the DLCD’s public notice for water quality certification is attached to the Corps’ notice, the public comment period is 30-days.</p>

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DEQ: NPDES 1200-C General Permits	DEQ's director may issue general permits for certain categories of minor discharge sources or minor activities where individual NPDES permits are not necessary to adequately protect the environment. OAR 340-045-0033.	No public participation is provided by DEQ's statutes or rules. Stormwater runoff from construction activities that disturb one or more acres requires coverage under an NPDES 1200-C General Permit. As a condition of the permit, a 14-day public review period will be required for construction activities that disturb five (5) or more acres. Commencing on June 1, 2006, the public can comment on the registration of permit coverage and on the adequacy of the erosion and sediment control plan.	DEQ's director issues general permits. OAR 340-045-0033(1)	14 days.
ODFW: In Water Work Period	ODFW has adopted guidelines to provide the public with method of planning in-water work during periods of time that would have the least impact on important fish, wildlife and habitat resources. The guidelines are not found in ODFW's statutes or rules. The guidelines do not involve applying for a permit or certification from ODFW.	None. <u>ODFW does provide for technical review of the guidelines when they are updated. The guidelines are applied through ODFW recommendations on local, state and federal permits.</u>	ODFW	Not applicable.
ODFW: Habitat Mitigation Review	ODFW requires a project proponent to provide mitigation for development actions that impact fish and wildlife habitat as a condition of an ODFW permit or order. OAR 635-415-0020(2). For all other permits, ODFW recommends mitigation actions consistent with the rules. OAR 635-415-0020(3)	Project proponents must submit a written mitigation plan to ODFW for approval if required by an ODFW-implemented statute. OAR 635-415-0020(5). ODFW's rules and statutes do not provide for public participation in the process.	ODFW	Not applicable.
ODFW: Fish Passage Plan Approval	Persons constructing or maintaining an artificial obstruction in the waters of the state must provide fish passage for native migratory fish and obtain authorization from ODFW for the obstruction. ORS 509.585(1)-(2).	ODFW's statutes and rules do not provide for public participation in fish passage approval.	ODFW	Not applicable

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ODFW: Fish Passage Waiver or Exemption	Persons owning or operating an artificial obstruction may petition ODFW or the OFWC, depending on the size of the impact, to waive fish passage in exchange for agreed-upon alternatives to fish passage that provide a net benefit to migratory fish. Artificial obstructions without fish passage are exempt if the ODFW or OFWC finds there is no appreciable benefit to providing fish passage. ORS 509.585(7)-(9).	ODFW's rules require notice and comment for waivers or exemptions from fish passage requirements. ODFW must notify the Fish Passage Task Force, local watershed councils, local soil and water conservation districts and others who have expressed an interest in fish passage issues or the specific waiver or exemption request and provide an opportunity to comment on the request. The rules do not address the form of notice or mention public hearings. OAR 635-412-0025(12).	ODFW or OFWC depending on the size of impact	ODFW must give notice of a waiver or exemption from fish passage requirements at least three weeks before a decision on whether the waiver or exemption will be granted. OAR 635-412-0025(12).
ODFW: In Water Blasting	ODFW requires a blasting permit whenever explosives are used to remove any obstruction in the waters of the state in constructing foundations for dams, bridges or other structures or in carrying on any trade or business. OAR 635-425-0000; OAR 635-425-0005.	ODFW's statutes require a blasting permit when explosives are used to remove obstructions in the waters of the state. ORS 509.140. However, neither ODFW's statutes nor its rules provide for public participation in issuing in water blasting permits. Applications for blasting permits must be submitted no less than 90 days before the anticipated in-water blasting. OAR 635-425-0020(1). ODFW will either deny the permit or grant it with conditions, within 20 days of receipt of an application for a minor project or 45 days for a major project. OAR 635-425-0030(3). ODFW requires the applicant to notify adjacent property owners by registered mail before the blasting. OAR 635-425-0040(3)	ODFW	Not Applicable.
ODFW: ESA Incidental Take Permit	ODFW may issue a permit for the incidental take of a state-listed threatened or endangered species if it will not adversely affect the long-term conservation of the species or its habitat. OAR 635-100-0170(1).	ODFW's statutes and rules do not provide for public participation.	ODFW	Not applicable.
ODFW: Scientific Taking Permit	Any person desiring to take or collect wildlife or food fish for scientific purposes shall first obtain from the Director of the State Fish and Wildlife Commission a scientific taking permit. OAR 635-043-0030; OAR 635-043-0040.	ODFW's statutes and rules do not provide for public participation.	OFWC Director.	Not applicable.

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<p>DLCD: Coastal Zone Management Program “Concurrence”</p>	<p>DLCD reviews an applicant’s federal consistency certification together with necessary data and information to determine whether a project requiring a federal license or permit is consistent with the enforceable policies of the Oregon Coastal Management Program (OCMP). 15 CFR §930.56. The program includes statewide planning goals; acknowledged local government comprehensive plans and land use regulations; and state agency authorities (e.g., DEQ, DSL, ODFW, ODE, OWRD).</p>	<p>Notice is provided by the federal agency or DLCD. Notice of the opportunity to file written comments is typically 14 to 30 days. DLCD has an option to provide a public hearing opportunity.</p>	<p>DLCD, with potential appeal to LCDC and Secretary of Commerce.</p>	<p>DLCD has 30 days to determine whether a consistency certification provided by the applicant is complete. 15 CFR §930.60(3). A complete certification contains “necessary data and information” to support the conclusion that the project “complies with and will be conducted in a manner consistent with [the OCMP].” Once a certification is complete, there is a public review period that is typically 14 to 30 days. DLCD has six months to complete its review and make a decision to “concur” or “object.” DLCD must issue its decision at the earliest practicable time and if DLCD has not made a decision within three months, DLCD notifies that applicant and the federal agency that of the status of the matter and basis for further delay. 15 CFR §930.62(a). If DLCD does not issue a decision within six months from the date it receives the certification, the federal agency can presume DLCD’s concurrence. <i>Id.</i> The applicant and DLCD can mutually agree to extend the six month review period by providing written notice to the federal agency.</p>

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<p>OPRD: Oregon Shore Permit</p>	<p>No person shall make an alteration, or construct a pipeline, cable line or conduit or remove any natural product on any property that is within the ocean shore, without first obtaining a permit from OPRD. ORS 390.650(1)</p>	<p>OPRD posts public notice at or near the site of a proposed improvement. ORS 390.650(2). The applicant or 10 or more interested persons may file a request with OPRD for a hearing. ORS 390.650(3). OPRD posts notice of the hearing at or near the site of the proposed improvement. ORS 390.650(3). ORS chapter 183 does not apply to this hearing or the decision issued. <i>Id.</i> If an application is denied or if the applicant objects to conditions placed on the permit, or if any person is adversely affected or aggrieved by the granting of a permit, they may request a hearing from OPRD’s Director. ORS 390.659(2). The hearing is conducted as a contested case. <i>Id.</i></p>	<p>OPRD; OPRD’s director if the applicant contests a denial or permit conditions and requests a hearing</p>	<p>The applicant or interested persons have 30 days from posting of the notice (of the proposed project) to request a hearing. ORS 390.650(3). OPRD must decide on an application within 60 days of receipt of the application or, if a hearing is held, within 45 days after conclusion of the hearing. ORS 390.650(4). An applicant or any adversely affected party may seek review of OPRD’s decision by making a request to the Director within 30 days. ORS 390.659(1). Upon receipt of the applicant’s request or upon finding that a person with a legally protected interest has been adversely affected by the grant of the permit, the director shall set the matter for hearing within 30 days of receipt of the request. ORS 390.659(2). The director issues a final order within 45 days of the hearing’s conclusion. ORS 390.659(3). Note: In limited circumstances, OPRD may grant an emergency period without regard to these procedures. ORS 390.650(6).</p>
<p>SHPO Archeological Review</p>	<p>State agencies must request review from SHPO for any water-related resource permits that involve ground disturbing activities. ORS 358.905.</p>	<p>Not applicable.</p>	<p>SHPO</p>	<p>OPRD must complete its <i>own</i> review within 30 days of receipt of a complete application. OAR 736-051-0080(8)(b).</p>

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OWRD: Water Use Authorization	With limited exceptions, a person intending to acquire the right to use the surface waters of the state must first obtain a permit to appropriate the waters from OWRD. ORS 537.130.	OWRD provides public notice to the owners of any land to be crossed by the proposed application and, if more than 25 owners are identified from the proposed project, OWRD may publish notice of the application in a newspaper of general circulation in the area where the proposed project is located. ORS ORS 537.130(3)-(4). This notice process pertains only to limited situations where an applicant proposes to place a ditch, canal, etc. across property they do not own. For other applications, OWRD gives public notice of an application in its weekly notice after determining the application is complete, correct, not prohibited by ORS Ch. 538 (withdrawals) and after notifying the applicant of its preliminary determinations following its initial review. ORS 537.150(3)-(6). After completing an application review, OWRD issues a proposed final order (PFO), publishing notice of the PFO in the weekly notice. ORS 537.153(4). Requests for standing and protests of the PFO may be submitted to OWRD. ORS 537.153(7). OWRD may hold a contested case hearing if the applicant requests a hearing or if any person submits a timely protest and Director finds there are significant disputes. ORS 537.153(8). The director then issues a final order rejecting the application, modifying the proposed final order or adopting the proposed final order. ORS 537.170(6). If exceptions are filed, the WRC will issue a modified order or deny the exceptions. ORS 537.173(2). WRD notifies the applicant and persons who submitted written comments or protests or who requested notice of the final order and sends a copy as requested (fee required). ORS 537.170(9).	OWRD issues a proposed final order. OWRD's Director issues a final order. If exceptions are filed, the Water Resources Commission issues a final order, denying or accepting the exceptions in whole or in part.	Within 15 days of receiving an application, OWRD will review the application and determine if it is complete. Within 30 days its determination, OWRD notifies the applicant of its preliminary determination. ORS 537.150(1), (5). The applicant has 14 days to notify WRD to stop processing the application. Within 7 days of the end of that period, OWRD will provide public notice of the application in its weekly notice. Within 60 days of the 14-day period above, OWRD will complete its application review and issue a proposed final order. ORS 537.153(1). OWRD then publishes notice of the proposed final order in the weekly notice. ORS 537.153(4). Requests for standing and protests of the proposed order must be submitted within 45 days of publication. ORS 537.153(7). Within 60 days of the close of the period for submitting protests, the Director will issue a final order or schedule a contested case hearing. ORS 537.153(8)(a)-(b). OWRD will hold the hearing within 45 days. ORS 537.170(2). Exceptions must be filed within 20 days after OWRD issues the final order. ORS 537.173(1). If exceptions are filed, within 60 days of the close of the exception period, the Commission will issue a modified order or deny the exceptions. ORS 537.173(2). The time period between the time to stop processing the application and to issue a final order or schedule a contested case hearing is 180 days, but the applicant may request a reasonable extension of time. ORS 537.175. If a hearing is held, OWRD issues a final order within 180 to 270 days after scheduling the hearing, depending on the number of parties.