



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

July 8, 2016

Kate Brown
Governor

To: Interested Parties

From: James T. Paul, Director

Jeanne P. Atkins
Secretary of State

Subject: Final Approval of the "Advance Aquatic Resource Plan for Selected Industrial Sites in The Dalles and Wasco County, Oregon."

Ted Wheeler
State Treasurer

Enclosed, please find one copy of the Department of State Lands' final order approving the "Advance Aquatic Resource Plan for Selected Industrial Sites in The Dalles and Wasco County, Oregon" (Plan).

By this order, the Department has established an expedited process for removal-fill permit decisions for six industrial sites located in the City of The Dalles and Wasco County. This work is the culmination of a multi-year effort to find the best approach for balancing the protection of high value aquatic resources with the need, for land on which to site larger-scale industrial development.

This collaborative effort was conducted by The Port of The Dalles in partnership with the State of Oregon; the City of The Dalles and Wasco County; economic partners; and landowners.

A copy of the Plan is available for download at:
<http://www.oregon.gov/dsl/WETLAND/Pages/TheDallesAARP.aspx>

If you have any comments or questions on this transmittal, please contact DSL's project manager for this effort, Jevra Brown at 503-986-5297, or jevra.brown@dsl.state.or.us.

ORDER OF THE DIRECTOR

OREGON DEPARTMENT OF STATE LANDS

Action: Approval of an Advance Aquatic Resource Plan titled *“Request for AARP for Selected Industrial Sites in The Dalles and Wasco County, Oregon”* (“Plan”) pursuant to OAR 141-085-0768

Sponsor: Port of The Dalles
3636 Klindt Drive
The Dalles, Oregon 97058

BACKGROUND FINDINGS

The Port of The Dalles (the Port) has coordinated a multi-year effort to find the best approach for balancing the protection of high value aquatic resources with the need for land on which to site larger-scale industrial developments.

The Port facilitated a collaborative effort that included the following entities (“Technical Advisory Committee”):

- US Environmental Protection Agency, Region 10
- US Army Corps of Engineers (Portland District)
- US National Marine Fisheries Service
- US Fish and Wildlife Service
- Oregon Department of State Lands
- Oregon Department of Environmental Quality
- Oregon Department of Fish and Wildlife
- Oregon Department of Land Conservation and Development
- Business Oregon
- Governor’s Regional Solutions Team
- Columbia River Gorge Commission
- Mid-Columbia Economic Development District
- Infrastructure Finance Authority
- Wasco County Soil and Water Conservation District
- City of The Dalles
- Wasco County
- Landowners

The partners worked to develop an approach to balance economic development and natural resource interests at six sites planned or zoned for industrial use totaling 316 acres in the City of The Dalles and Wasco County, Oregon. Within this total area, a portion of Site One is also in the Columbia River Gorge National Scenic Area.

The Plan documents a comprehensive analysis for the identification and characterization of wetlands and other waters within the planning area; an avoidance and minimization strategy to reduce impacts to wetlands and other waters; and a mitigation strategy for identified unavoidable impacts. These components address the Department of State Lands' ("Department") interest in conserving locally important functions and values of wetlands and other waters, while allowing responsible and sustainable economic development.

DESCRIPTION OF ALTERNATIVE REMOVAL-FILL PERMITTING PROCESS

The Department has, by this Order, approved the Plan and specified an expedited individual removal-fill permit application process for defined eligible projects that are located within the planning area. The planning area is generally identified in Attachment A to this Order, and specifically identified in the Plan at Volume 1, Figure 4-1B and Table 4-1.

1. Eligibility Requirements

A proposed project seeking to use the expedited individual removal-fill permit application process approved by this Order must meet all of the following eligibility requirements.

A. Activity Types

The project must be for uses as defined in the local land use authority's zoning codes and including conditional uses as defined in the Plan, Volume 1, Section 5.0.

B. Location

The project must be wholly located within one of the six identified sites in the Plan, Volume 1, Figure 4-1B. The Department may allow the inclusion of off-site activities necessary to make the on-site development possible and requiring removal-fill authorization. This allowance shall be limited to new access roads, required road widening or other transportation system improvements, utility line extensions, or other similar required infrastructure improvements required to accomplish the project.

All off-site impacts to waters of this state are subject to the jurisdictional determination requirements of OAR chapter 141, division 090 and functional assessment, alternatives analysis and compensatory mitigation requirements of OAR chapter 141, division 085.

C. Designated Avoidance Areas

The project shall not include permanent impact within any designated avoidance areas identified or mapped in the Plan, Volume 1, Figures 7-1A, 7-1B, 7-2, 7-3, 7-4, 7-5, and 7-6, and additionally includes all current and future aquatic resource setbacks established by City of The Dalles ordinances, as noted in the Plan Volume 1, page 53. At the discretion of the Department, temporary impact (impact that is rectified within 24 months from the date of initiation of the impact) to a designated avoidance area may be allowed to maintain project eligibility.

Maintaining the integrity of the designated avoidance and buffer areas is integral to the avoidance and minimization analysis conducted for the Plan. Therefore, if any future activity results in any conversion of a designated “avoidance” area to upland, or any other substantial degradation to a designated “avoidance area”, then the entire site may be removed, at the Department’s discretion, from the Plan as an eligible site.

D. Compensatory Wetland Mitigation

Appropriate state and federally approved wetland mitigation bank or in-lieu fee credits are acceptable wetland mitigation methods for unavoidable wetland impacts within the six sites. However, The Dalles is not within the service areas of any existing mitigation banks or in-lieu fee sites (2016). Therefore, the use of mitigation bank or in-lieu fee credit is not an available alternative at this time.

In the absence of bank or in-lieu fee credits, the preferred mitigation method is permittee-responsible wetland mitigation using the on-site mitigation concepts described in the Plan, Volume 1, Section 8, “Compensatory Wetland Mitigation Strategy.”

E. Pre-Application Meeting

Unless otherwise waived by the Department, a pre-application meeting with Department staff is required, and it is the responsibility of the applicant to convene such a meeting. At a minimum, the purpose of the meeting will be to assess the compatibility of the proposed project with the Plan, any substantive changes in site conditions since the evaluation documented in the Plan, Volume 1, and suitability for the alternative removal-fill permit processing that is described in this Order.

2. Application Requirements

Permit applications for removal-fill activity will be in the form of a Joint Permit Application with requirements and content described in OAR 141-085-0550, with the following modifications:

A. Cover Letter

The application shall include a cover letter clearly stating that the applicant intends to qualify the proposed project for coverage under the Plan and this Order.

B. Project Drawings

In addition to the requirements of OAR 141-085-0550(5)(g), the application shall include drawing(s) that clearly depict the boundaries of ground disturbance areas relative to all avoidance areas that are designated in the Plan, Volume 1, Section 7, and that are within all tax lots that comprise the project site.

C. Description of Existing Biological and Physical Characteristics

To the extent such information remains accurate at the time that the application is filed with the Department, the applicant may use the biological and physical characteristics information provided in the Plan, Volume 1, Section 6, in order to provide the description of the existing biological and physical characteristics of the water resources that is required by OAR 141-085-0550(5)(i).

D. Wetland Determination or Delineation

If the proposed activity involves wetland impacts, then the applicant may, at their discretion, fulfill the wetland determination and delineation requirements of OAR 141-085-0550(5)(k) by either:

- o Submittal of a wetland determination or delineation report consistent with the requirements of OAR 141-085-0550(5)(k); or
- o Use of the concurred wetland delineation in the Plan for the following sites:

Approved:

Site 3: WD2012-0159, expiration 07/23/2017. Potentially eligible for reissuance.

Site 4: WD2009-0216R; expiration 06/18/2019. Not eligible for reissuance.

Approved with Revisions:

Site 1: WD2014-0399; expiration 03/04/2020. Potentially eligible for reissuance.

Site 2: WD2014-0400; 03/05/2020. Potentially eligible for reissuance.

Site 5: WD2014-0401; expiration 03/04/2020. Potentially eligible for reissuance.

Site 6: WD2009-0353R; expiration 01/21/2020. Not eligible for reissuance.

E. Wetland Functions and Values Assessment

If the proposed activity involves permanent wetland impacts, then the applicant may, at their discretion, fulfill the wetland functions and values assessment requirements of OAR 141-085-0550(5)(l) by either:

- o Submittal of a wetland function and values assessment consistent with the requirements of OAR 141-085-0550(5)(l); or
- o Applicant's expressed acceptance and use of the applicable wetland functions and values assessment that is provided in the Plan, Volumes 1 and 2.

F. Analysis of Alternatives

Toward fulfillment of the requirement in OAR 141-085-0550(5)(o) to analyze alternatives, applicant may incorporate relevant elements of the avoidance and minimization strategy described in the Plan, Volume 1, Section 7.

G. Compensatory Wetland Mitigation

The application shall include a compensatory mitigation plan pursuant to the requirements of OAR 141-085-0550(5)(p) and(q).

H. Administrative Protection of Designated Avoidance Areas

The application shall include draft administrative protection instrument(s) for all avoidance areas that are designated in the Plan, Volume 1, Section 7, Figures 7-1A, 7-1B, 7-2, 7-3, 7-4, 7-5, and 7-6, and located within tax lots that comprise the project site. The instrument(s) shall be a deed restriction or conservation easement that is consistent with the provisions of OAR 141-085-0695. The applicant must receive the Department's approval of all of the draft instruments before the Department may issue the permit.

K. Application Fees

Application fees shall be paid, consistent with the Removal-Fill Fee Schedule in effect at the time of application submittal.

3. Review Process

The Department will use the following process for reviewing eligible individual removal-fill permit applications:

A. Initial Review

Within 30 calendar days of the receipt of an application, the Department will review the application to determine if eligibility requirements have been met and for application completeness. Following this review, the Department will inform the applicant of one of the following:

- o The application is eligible and complete. Application will proceed to the public review and final review processes as described in paragraphs B. and C., below.
- o The application is eligible but is incomplete. See **incomplete applications**, below.
- o The application is not eligible but is complete. Application will proceed to the public review and final review processes consistent with processes for individual permit applications under OAR 141-085-0555, -0560, and -0565.
- o The application is not eligible and is incomplete. See **incomplete applications**, below.

Incomplete Applications:

If the Department determines that the application is incomplete or deficient, the Department will notify the applicant in writing and list the missing or deficient information. To initiate a new completeness review, the applicant must resubmit the entire amended application package for consideration, unless instructed by the Department to do otherwise. Submission of a new or amended application package starts a new 30-day initial review period.

If a revised application is not resubmitted within 120 calendar days of an incompleteness determination, the Department may administratively close the application. If the Department closes the file for failure of the applicant to respond in a timely fashion to the request for additional information, the Department will retain the application fee. A subsequent application for the same or similar project will require submittal of a new application and payment of another application fee.

B. Public Review Period

Once the Department determines that the application is eligible and complete, the Department will provide notification of availability of the application for a 30-day public review period in accordance OAR 141-085-0560(1)–(5).

C. Final Review

Unless the timeline is extended, the Department will make a final permit decision as follows:

- o Within 45 calendar days after determining an application is eligible and complete when the proposed compensatory wetland mitigation is the use of a wetland mitigation bank or in-lieu fee credits, if these become available at the time of application.
- o Within 60 calendar days after determining an application is eligible and complete when the proposed compensatory wetland mitigation is permittee-responsible mitigation incorporating the concepts described in the Plan, Section 8.

D. Other Processing Requirements Apply

The procedures and requirements of the Oregon Removal-Fill Law and OAR chapter 141, division 085 apply for all other elements of application processing and permit issuance, including but not limited to: permit decision deadline extensions, application withdrawals, application modifications, determinations and considerations for permit decisions, permit appeals, permit transfers, permit renewals and extensions, permit enforcements, permit revocations, and permit suspensions.

EXPIRATION, CANCELLATION

Unless otherwise renewed pursuant to provisions of this Order, the Plan and this Order will expire five years from the date of Order issuance. Upon written request from the Port of The Dalles and for any reason, the Department will cancel this Order. Expiration or cancellation does not affect any individual removal-fill permit that may have been issued under the Plan and this Order.

RENEWAL, MODIFICATION

1. Renewal

The Plan and this Order may be renewed by the Department for additional five year periods, not to exceed 20 years in total duration. A request for renewal must be submitted by the Port of The Dalles at least six months in advance of the current expiration date and shall include at least the following elements, as determined by the Department to be applicable. The Department will coordinate with the Port of The Dalles in determining the scope and requirements for the renewal.

A. Cover Letter

The request for renewal shall include a cover letter requesting that the Department renew the Plan and this Order.

B. Assessment of Goals, Purpose, and Need

The request for renewal shall include statements assessing whether the Plan as implemented is substantially meeting the approved goals, purpose and need.

C. Changes in Applicable Statutes and Rules

The request for renewal shall identify all changes in applicable state statutes or administrative rules that would cause the Department to re-evaluate the Plan or this Order.

D. Regulatory Actions for Each Site

The request for renewal shall summarize each of the regulatory actions for each site for the previous five years including:

- o Authorization number(s) and permittee(s)
- o Authorized wetland/waterway impact acreage
- o Status of project(s) development
- o Status of compensatory mitigation

F. Deletion of Sites

The request for renewal shall identify any site that has been effectively developed and no longer requires inclusion in the Plan or this Order.

G. Avoidance Areas

The request for renewal shall review each site to identify any substantive changes in land use, other site conditions or environmental parameters that could cause the designated avoidance areas to be re-considered. Any proposed mapping changes will be accompanied by rationale for the change. The request will identify, as necessary, those environmental parameters for each site that need to be updated in the Plan.

2. Modification

The Department may modify the Plan or this Order at any time. The Port of The Dalles may request modification of the Plan or this Order at any time.

A. Potential Causes for Modification

Potential causes for modification include, but are not limited to:

- o Removal of a site or any portion of a site from the defined planning area for any reason.
- o Addition of a new site, or expansion of an existing site, to replace a removed site.
- o The Plan is not substantially achieving its described goals, purpose or need.

- o Substantive changes in conditions within the planning area are materially affecting ongoing Plan implementation
- o The Plan is resulting in, or will result in, unanticipated adverse effects to waters of this state.

B. Elements of a Request for Modification

The Department will determine the elements of a request for modification on a case-by-case basis, with consideration of the purpose of the modification. Unless otherwise specified by the Department, a request for modification will include at least the following elements, as applicable:

- o All requests for a modification shall include a cover letter that requests the modification and identifies the reason for the modification.
- o For site reduction or removal:
 - Identification of the site or the portion of a site to be removed including: site name, legal description of the area to be removed and a map clearly illustrating the removal area and remaining coverage area.
 - An explanation of the rationale for removal or reduction.
- o For addition of a new site or expansion of an existing site to replace a removed site:
 - Identification of the new or expanded site including: site name, legal description, current land use, zoning, tax map and recent aerial photo clearly illustrating the boundary of the proposed area.
 - Site description identifying and characterizing aquatic resource boundaries; site evaluation using, at a minimum, the development and avoidance evaluation parameters documented in the Plan – Section 7;
 - Proposed avoidance areas including the rationale for the proposed designations.
 - Any proposed change in the mitigation strategy from that described in the Plan, Volume 1, Section 8.
- o For modification of the Plan or Order for other reasons:
 - Identification of the proposed modification(s).
 - The rationale for each proposed modification.

SUSPENSION, REVOCATION

At any time and upon a finding by the Director that the Plan or this Order is not being implemented in good faith or that implementation of the Plan or this Order is otherwise allowing or facilitating significant, unanticipated adverse effects to waters of this state, the Director may suspend this Order and provide the Port of The Dalles the opportunity to correct the implementation, or, revoke the Order without an opportunity to correct. The Port of The Dalles has the right to appeal a suspension or revocation in the same manner as for this Order.

ANNUAL REPORTS

The Port of The Dalles shall prepare an annual report summarizing use of the Plan and this Order for the previous year, their effectiveness in meeting the established goals and purpose, and any known, substantive changes in conditions within the planning area that could materially affect ongoing implementation or cause unintended adverse effects to waters of this State. The first annual report is due one year from the issuance date of this Order. Each subsequent report will be due the same date each year thereafter that this Order approving the Plan remains in effect.

DEPARTMENT DETERMINATIONS

1. General Department Findings of Compliance

Based on the Department's entire file for this project, including the Plan, and as summarized below, the Department has approved the Plan because: (1) it is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905; (2) it would not unreasonably interfere with the public trust doctrine of this state to preserve the use of its waters for navigation, fishing, commerce and public recreation; (3) a public need is fulfilled by approval of the Plan; (4) implementation of the Plan is, or shall be, consistent with the comprehensive plans and the local land use regulations and ordinances of the governing jurisdictions; and (5) allows responsible and sustainable economic development.

2. Summary of Department Findings of Compliance

A. Protection, Conservation and Best Use of Water Resources

The Plan is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.905.

The Port of The Dalles has coordinated a multi-year effort and worked with the Department to find the best approach for balancing the protection of high value aquatic resources with the need for land on which to site larger-scale industrial developments. The Plan documents a comprehensive analysis for the identification and characterization of wetlands and other waters within the planning area, an avoidance and minimization strategy considering opportunities to reduce impacts to wetlands and other waters, and a mitigation strategy for identified unavoidable impacts that address the Department's interest in protection and conservation of locally important functions and values of wetlands and other waters. The Department finds that this comprehensive analysis will lead to preferable environmental outcomes for the planning area over site-by-site analysis and decision-making that would occur in the absence of the Plan and this Order, thereby protecting, conserving and best using the water resources of this state.

B. No Unreasonable Interference with the Public Trust Doctrine of This State

The Plan would not unreasonably interfere with the public trust values of this state to preserve the use of its waters for navigation, fishing, commerce and public recreation.

Chenoweth Creek and Taylor Lake are the only waters supporting recreational navigation, fishing and other recreational use within the six-site study area. Chenoweth Creek and Taylor Lake and their

adjacent wetlands are, in all cases, designated as avoidance areas for the purpose of the Plan and this Order. Existing public access points to Chenoweth Creek and Taylor Lake are not altered by the Plan. No interference with public trust values is anticipated.

The Columbia River (adjacent to Site Three) supports navigation, fishing, commercial and recreational uses. However, the river is not included within the study area boundary and the Plan specifically describes a 50-foot development setback from the designated Riverfront Trail to avoid conflict with recreational use along the river. It is anticipated that the plan adequately protects the public trust values.

C. Public Need

A public need is fulfilled by approval of the Plan.

The Plan, Volume 1, Section 1, “Purpose and Need” states that the purpose of the Plan is to improve the development-readiness of a twenty-year supply of 10-acre and larger industrial sites while simultaneously protecting high value natural resources. The need for the Plan and this Order includes, but is not limited to:

- o The need to balance industrial development needs for the region with the protection of high value aquatic resource lands.
- o Allowing a broader review area to take a comprehensive look at aquatic resources from a landscape perspective rather than the site-by-site/permit-by-permit approach.
- o Bringing development certainty for new and expanding industries and the relatively high wage generation and tax revenues these developments create for local communities.
- o Bringing certainty to wetlands avoidance and minimization – the undeveloped, zoned large-lot industrial land within The Dalles is substantially constrained by wetlands or other waters. The Plan identifies the constrained lands and presents a framework for protection of high value wetlands and waterways, and other types of mitigation of unavoidable impacts.

D. Land Use Consistency

Implementation of the Plan is, or shall be, consistent with the comprehensive plans and the local land use regulations and ordinances of the governing jurisdictions

Sites two – six are either zoned for industrial, or commercial/light industrial use by the City of The Dalles. The portion of Site One south of Chenoweth Creek is within the City of The Dalles. The larger portion, north of Chenoweth Creek, is within the general management area of the Columbia River Gorge National Scenic Area, and Wasco County, and is planned for industrial use by the county’s comprehensive plan. Site one is proposed to be brought into the City of The Dalles, however there is no current plan for accomplishing this proposal. Future removal-fill permit applications for development on these sites will require completion of a land use compatibility statement by the governing land use jurisdiction.

ORDER SIGNATURE

Pursuant to the Oregon Removal-Fill Law and OAR 141-085-0768, and based on the Department's entire file for this project, I hereby approve the Advance Aquatic Resource Plan titled "Request for Letter AARP/Regional General Permit for Selected Industrial Sites in The Dalles and Wasco County, Oregon, February 2016", as modified by this Order.

Signed: _____

James T. Paul

Director

Department of State Lands

Date: _____

7/8/16

Appeal rights: Pursuant to OAR 141-085-0768(4)(f) and OAR 141-085-0575 as it is applied to permit decisions, the sponsor whose request for an Advanced Aquatic Resource Plan has been deemed incomplete or has been denied, or who objects to any of the conditions imposed, may request in writing a hearing from the director. The request must be in writing and submitted so that it is received by the Department within 21 days of the incompleteness determination, of the denial of the Advanced Aquatic Resource Plan or of the imposition of any condition. The request must include the reasons for the request.

Pursuant to OAR 141-085-0768(4)(f) and OAR 141-085-0575 as it is applied to permit decisions, any person who is aggrieved or adversely affected by the Department's final decision concerning an Advanced Aquatic Resource Plan or a condition therein may file a written request for a hearing from the director. The request must be in writing and submitted so that it is received by the Department within 21 days of the decision or the imposition of the condition. The request must include the reasons for the request.

Any written request for hearing related to this action must be sent by email to jevra.brown@dsl.state.or.us or by regular mail to:

Department of State Lands
Attn: Jevra Brown
775 Summer St. NE Suite 100
Salem, OR 97301-1279

Attachment A: The Port of The Dalles AARP Planning Area in Proximity to The Dalles, Oregon

