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CHAPTER 141

DEPARTMENT OF STATE LANDS

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FILING CAPTION: Revisions to the Administrative Rules for Wetland Delineation Report Requirements and for Jurisdictional Determinations.

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RULES:

141-090-0005, 141-090-0010, 141-090-0015, 141-090-0020, 141-090-0025, 141-090-0030, 141-090-0035, 141-090-0040, 141-090-0045, 141-090-0050, 141-090-0055

AMEND: 141-090-0005

RULE TITLE: Purpose

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised purpose statement for clarity.

RULE TEXT:

The purpose of these rules is to establish standards and procedures by which the Department of State Lands makes jurisdictional determinations for the purpose of regulating fill and removal within waters of this state. These rules also establish minimum standards for wetland delineation reports submitted to the Department for review and the procedures for Department review and approval.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0010

RULE TITLE: Applicability

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised applicability statement for clarity.

RULE TEXT:

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of this state, which 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 (141-089); rules pertaining to General Permits (141-093) and rules pertaining to Oregon Scenic Waterways (141-100).

(3) Agencies such as the U.S. Army Corps of Engineers (USACE) and the Natural Resources Conservation Service (NRCS) have separate regulatory authority over waters of the United States and separate jurisdictional determination procedures.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0015

RULE TITLE: Policy

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised for clarity. Removed reference to Oregon Laws 2012, c. 108, § 2, which expired January 2022.

RULE TEXT:

(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, revising, reconsidering, or reissuing jurisdictional determinations;

(b) Make jurisdictional determinations using the best available science, technical guidance and documents;

(c) Use sound professional judgment in interpreting maps, remotely sensed imagery, environmental data and other relevant information;

(d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that removal or fill of material in waters of this 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 to incorporate measures to avoid and minimize impacts to waters of this state and thus prevent unnecessary regulatory delays.

(3) Because waters of this state can be affected over time by both natural changes and human activities, jurisdictional determinations are valid for a limited 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) 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 this state and jurisdictional determinations rests with the Department except when the Department's determination is reviewed by a court of competent jurisdiction.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692, 197.279

AMEND: 141-090-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised definitions for clarity. Added definitions for Aquatic Resources of Special Concern, Cowardin, Fill, Geographic Information System, Hydrogeomorphic Method, Removal, Site-specific methods, Statewide Wetlands Inventory.

RULE TEXT:

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 wetland delineation report approval, a jurisdictional determination, or a removal or fill authorization.
- (3) "Aquatic Resources of Special Concern" (ARSC) means waters of this state that provide functions, values and habitats that are limited in quantity because they are naturally rare or have been disproportionately lost due to prior impacts. These include bogs, fens, cold water habitat, hot springs, interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), ultramafic soil wetlands, vernal pools, wet prairies, wooded tidal wetlands, certain alkaline wetlands and lakes, and others as determined by the Department.
- (4) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of this state as required by OAR 141-085, 141-089, 141-0100 and 141-0102.
- (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 or substrate to the extent that the "normal circumstances" of waters of this state are changed. The change in circumstances may be due to alterations on- or off-site 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 person who provides professional services to the public.
- (8) "Cowardin" means Cowardin, L. M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States, U. S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.
- (9) "Delineation" means a determination of the presence of wetlands and other waters that includes marking boundaries on the ground and on a detailed map prepared by professional land survey or similar accurate methods.
- (10) "Delineation Map" means a map included in a Wetland Delineation Report or provided with a Jurisdictional Determination by the Department that shows the tax lot(s) and study area(s) investigated and the location, size, and boundaries of all wetlands and other waters.
- (11) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of this state. A determination does not include the exact location or boundaries of waters of this state.
- (12) "Director" means the Director of the Department of State Lands or their designee.
- (13) "Department" means the Oregon Department of State Lands, including the Director.
- (14) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state. However, in designated essential salmonid habitat (ESH) areas (OAR 141-102) and in designated State Scenic Waterways (OAR 141-100) "fill" means any amount of deposit by artificial means.
- (15) "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.
- (16) "Geographic Information System" (GIS) means a system of hardware, software, and data storage that allows for the analysis and display of information that has been geographically referenced.

- (17) "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.
- (18) "Hydrogeomorphic Method" (HGM) means the wetland classification based on a wetland's location in the landscape and the sources and characteristics of water flow defined in Adamus, P.R.2001. Guidebook for hydrogeomorphic (HGM)-based assessment of Oregon wetland and riparian sites: Statewide classification and profiles. Oregon Division of State Lands, Salem, OR.
- (19) "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 wetlands and other waters.
- (20) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of this state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100 and 141-0102 are present or not present within a study area. The JD may include a delineation of the geographic boundaries of the 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 (ordinary high water mark) 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.
- (21) "Landowner" means the legal owner of the property for which a JD is requested or made.
- (22) "Local Wetlands Inventory" (LWI) means a wetlands inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.
- (23) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual including the two regional supplements that cover Oregon: Arid West and Western Mountains, Valleys, and Coast, and applicable guidance (see OAR 141-090-0030) all of which is hereby incorporated by reference. The public may obtain a copy of the manual from the Department's website.
- (24) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.
- (25) "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.
- (26) "Non-wetland" means an area that does not meet the wetland definition and criteria.
- (27) "Normal Circumstances" means the soil and hydrologic conditions that are normally present, without regard to whether the vegetation has been removed. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if fill material is 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.
- (28) "Off-site Determination" means a determination by the Department or any other person that is conducted without a site visit using resources such as maps, remotely sensed imagery, observations from adjacent areas, or interviews with persons familiar with the site. An off-site determination is a Preliminary Jurisdictional Determination (PJD) unless otherwise stated in writing by the Department.
- (29) "On-site Determination" means a determination by the Department or any other person that includes a site visit to collect relevant data. An on-site determination by the Department may be either a PJD or a JD.
- (30) "Other Waters" means all waters other than wetlands regardless of jurisdiction.
- (31) "Person" means an individual, corporation, firm, partnership, estate, association, body of government, or other legal entity.
- (32) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued in writing stating that waters of this state are present or not present within a study area. 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 may also include wetlands mapped on the SWI.
- (33) "Primary Contact" means the person 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 delineation report.

(34) "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 ESH areas (OAR 141-102) and in designated State Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(35) "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 this state.

(36) "Report" means a wetland delineation or determination report.

(37) "Sample Plot" means a portion of a study area within which environmental data (i.e., soils, hydrology, and vegetation) are collected that is representative of that area and documented on a wetland determination data form.

(38) "Site-specific methods" means sampling, delineation, and investigative procedures used to address the unique circumstances at a site. Boilerplate content from the manual and generic procedures are not site-specific.

(39) "Statewide Wetlands Inventory" (SWI) means a composite of wetland mapping (i.e., LWI, NWI, approved wetland delineations) and other natural resource mapping for the state of Oregon that is provided by the Department. The SWI is a screening tool to help identify approximate locations of potential wetlands and waterways and is continually revised as additional digital mapping information is received or obtained by the Department.

(40) "Study Area" means the area that was investigated for the presence of wetlands and other waters.

(41) "Upland" means any land that is not a wetland or other water.

(42) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, and all other navigable and non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(43) "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(17) and OAR 141-085-0510(110)).

(44) "Wetland Boundary" means a line marked on the ground and on a map that identifies the boundary line between wetlands and non-wetlands.

(45) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions, and maps used to determine if wetlands and other waters of this state are present within a study area and, if so, describes and maps their locations and geographic extent. A wetland determination report documenting the presence or absence of waters of this state is included within this definition.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0025

RULE TITLE: Procedures for Determinations Conducted Entirely by the Department

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised for clarity.

RULE TEXT:

- (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 one or more tax lots or any portion thereof;
 - (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 delineation report (see additional requirements and procedures in OAR 141-090-0030, 141-090-0032 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 wetland determination apart from an authorization application, wetland delineation report submittal, or local government notice shall include:
 - (a) A written request on a form provided by the Department;
 - (b) Landowner or agent permission to conduct a site visit if an on-site determination is desired;
 - (c) Applicant name and contact information;
 - (d) A site location map, such as a city map, showing the location with respect to nearest streets and site address, if any;
 - (e) A detailed site plan showing, as appropriate, such features as the tax lot boundaries, location of streets, roads, buildings, streams, and area of any planned development or removal or fill, if known; and
 - (f) 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) An appropriately-scaled topographic map of the site;
 - (b) A large-scale aerial photograph of the site; or
 - (c) Ground photographs of the site.
- (6) A wetland determination request as described in section (4) and (5) of this rule may not be used to obtain agency review and approval of a wetland delineation.
- (7) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.
- (8) The Department may request additional information and may conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.
- (9) An on-site determination conducted by the Department to make a JD or PJD shall include at a minimum:
 - (a) A location map showing the location of the study area with respect to major roads;
 - (b) A tax lot map showing property boundaries;
 - (c) The legal location from the tax map (Township, Range, Section, Quarter-Quarter Section and Tax Lot numbers);
 - (d) The appropriate SWI mapping with the site located;
 - (e) The Natural Resources Conservation Service soil survey map with site located and soil type(s) mapped;
 - (f) A sketch map showing the approximate location of any waters of this state on the tax lot(s) or within a defined study

area;

(g) At least one data form 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.

(10) After review of the information and the site visit, if conducted, the Department may:

(a) Provide a written PJD or JD in accordance with section (11) of this rule; or

(b) Provide a written PJD and recommend that the landowner, agent, or applicant obtain a wetland delineation that meets the requirements in OAR 141-090-0030 and 141-090-0035.

(11) 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 tax lot(s) or study area 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;

(b) Comments regarding the 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, 141-093, 141-0100, and 141-0102 that apply to any waters of this state identified on the tax lot(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 tax lot(s) or study area investigated and the approximate location of any identified waters of this state, unless the information provided to or obtained by the Department is not sufficient to make or refer to such a map.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0030

RULE TITLE: Technical Requirements

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised for clarity.

RULE TEXT:

(1) Wetland determinations and delineations shall be conducted in accordance with the manual and any supporting technical or guidance documents issued by the Department.

(2) All other waters (e.g., streams, estuaries, ditches) shall be delineated at the jurisdictional limits described in OAR 141-085-0515.

(3) In addition to the requirements in this section, wetland delineation reports submitted to the Department for review and approval shall meet the standards and requirements in OAR 141-090-0035.

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

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0035

RULE TITLE: Standards and Requirements for Wetland Delineation Reports Submitted to the Department

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Rule revised for clarity and to emphasize digital submittals in place of paper hard copies. Added requirements for submitting GIS files, classifying wetlands by Cowardin and HGM, and identifying and mapping Aquatic Resources of Special Concern when present.

RULE TEXT:

(1) Report Submittal: All wetland delineation reports ("reports") submitted to the Department for review, approval, and a JD shall meet the technical requirements in OAR 141-090-0030 as well as the minimum standards and requirements in this rule. Reports must conform to the report format provided by the Department.

(2) All wetlands and other waters on the tax lot(s) or study area shall be included; the Department will determine whether or not they are waters of this state, subject to jurisdiction under OAR 141-085, 141-089, 141-093, 141-100, and 141-102.

(3) All report text, maps, remotely sensed imagery, ground photographs, and data forms must be legible.

(4) Reports must be submitted as:

(a) A single, unlocked PDF file with minimum resolution of 300 dpi and searchable text for the text portion of the report; or

(b) Paper hard copies, reproduced in color as applicable, unbound and must copy legibly.

(5) Required GIS data are described in the Delineation GIS Template and Data Description provided by the Department.

(a) Effective two years after this rule takes effect, applicants are required to submit GIS data for Cowardin, HGM, Highest Measured Tide Line, Stream Centerline, Stream Ordinary High Water Line, Study Area Polygon, Tax Lot Polygon, Water Polygon, and Wetland Polygon, as applicable.

(b) Effective five years after this rule takes effect, applicants are required to submit GIS data for all applicable layers in the Delineation GIS Template and Data Description.

(6) All submittals must include a fully completed and signed "Wetland Delineation Report Cover Form" (current form provided by the Department).

(7) Field Methods: The field investigation methods and level of detail required for making and documenting a PJD or JD and mapping wetlands and other waters of this state will vary by site. At a minimum:

(a) The entire study area whether a tax lot or portion thereof must be investigated during a field investigation.

(b) All wetlands and other waters must be identified, supported by data as appropriate, mapped, described, and classified to Cowardin system and class, HGM class, and ARSC type, as applicable. Separate polygons are required when more than one adjoining Cowardin class are present within the same wetland and when ARSCs are a portion of a larger wetland.

(c) Sufficient data and additional information shall be collected for any wetlands and other waters to enable the Department to: make a JD; determine location and size of ARSCs within mapped features; and determine if removal-fill permit requirements or exemptions apply.

(d) The wetland delineation must include sample plots that: represent the characteristics of each wetland present; represent each adjacent non-wetland(s); are paired and located close enough to either side of the wetland boundary to accurately substantiate the wetland boundary location; and are sufficient to characterize long or irregular boundaries.

(e) Wetland determination sample plot data must be provided for any portion of the study area where there is significant deviation from wetlands shown on the SWI unless the deviation is due to development that is so significant that it precludes data collection.

(f) At least one sample plot must be placed in all mapped hydric soil units within the study area.

(g) At least one sample plot must be placed in the lowest topographic areas or other locations most likely to contain wetlands.

(8) Study area boundaries, wetland and other water boundaries, and sample plots shall be identified on the ground. For

actively managed sites, such as agricultural fields, golf courses, or recreational fields, where it may be impractical to leave the boundary and plot markers on the ground until the JD is issued, their mapped location must be readily relocated in the field by the applicant or consultant during a site visit by the Department.

(9) Because sites are highly variable and JD needs also vary, some situations may warrant deviation from the Field Methods requirements outlined in OAR 141-090-0035(7), for example large geographic areas, linear projects, mosaics, and difficult wetland sites. In such situations, persons conducting wetland delineations are encouraged to consult with the Department prior to field work regarding appropriate methods.

(10) For farmed sites, field work should be guided by multiple information sources including at least three aerial photos from three different years (early growing season if possible), a detailed topographic survey, and information about site management activities such as irrigation schedules, subsurface drainage systems, and plowing frequency and depth.

(a) Wetland determination and delineation on farmed sites may need to follow procedures outlined in the Difficult Wetland Situations chapter of the appropriate regional supplement to the manual.

(b) On sites where the hydrology indicators may be missing or misleading due to natural or hydrologic manipulation, hydrologic monitoring may be needed to verify the absence or presence of wetland hydrology. When a hydrology monitoring method alternative to the manual standard is being pursued, the proposed method shall be submitted to the Department in writing for prior approval.

(11) Wetland and other water boundaries and sample plot locations must be mapped to the standards described in subsection (a) and (b) of this section.

(a) Except as provided in subsection (b) of this section, the map accuracy standard for wetland and other water boundaries and sample plot locations is within 3.28 feet (one meter) or as otherwise approved by the Department. The accuracy standard is not intended to establish a requirement for authoritative mapping, such as by a professional land surveyor, as described in ORS Chapter 672.

(b) The minimum delineation mapping accuracy standard for voluntary wetland ecosystem restoration projects (see OAR 141-089-0800 through 141-089-0815) that do not include compensatory mitigation activities or payment-in-lieu is 50 feet (14.8 meters).

(c) Mapping procedures may include professional land survey, GPS, measurements made from permanent features identified on a map or from a georeferenced aerial photograph or other remotely sensed imagery included with the report, or approximated when approved by the Department.

(12) Report Text: The report text must include:

(a) A detailed description of the site, its landscape setting, and previous and current land uses.

(b) A description, including the approximate year and extent, of any alterations that likely affected the presence, location or geographic boundaries of any wetlands or other waters on the site (e.g., surface drainage ditches, fill material, grading).

(c) Precipitation for the day(s) of and 2-week period preceding the field investigation(s), observed and percent of normal rainfall for the water year to date, and for the observed rainfall compared to the NRCS WETS table 30% and 70% chance exceedance values for each of the three months preceding the field investigation. An acceptable replacement for the NRCS WETS table is the Antecedent Precipitation Tool output (Environmental Protection Agency, USACE).

(d) The date(s) of the field investigation and site-specific methods used to conduct the field investigation, define study area boundaries, select sample plot locations, determine boundaries of wetlands and other waters, interpolate boundaries between paired plots, and make PJDs.

(e) A description of all wetland and other water polygons identified, including but not limited to:

(A) Area, in acres, for wetlands, ponds, reservoirs, and lakes; length and width, in feet, of streams, ditches, and reservoirs;

(B) Whether they extend off-site;

(C) Cowardin classification to the system and class level (describe if more than one adjoining class occur within the same wetland);

(D) Dominant HGM class;

- (E) Stream flow duration of other waters;
- (F) Type, size, and location of ARSCs that constitute a portion or all of a mapped feature;
- (G) Whether it is a State-approved compensatory mitigation, if known.
- (f) Deviation from the SWI, supported by wetland determination data or explanation of development in area mapped previously as wetlands or other waters.
- (g) An explanation of how the location of the study area or tax lot boundaries, sample plot locations, wetlands, and other waters depicted on the delineation map(s) were mapped. Explanation must be provided for each method used for mapping and to which features each method applies.
- (h) Additional information and rationale for all PJDs sufficient to demonstrate jurisdiction based on OAR 141-085-0515 criteria. This information can include, 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 Fish Habitat Distribution and Barrier Data Viewer, Oregon Department of Fish and Wildlife field staff);
 - (B) Information sufficient to determine whether an identified water feature is artificially created entirely from upland and the purpose for which it was created;
 - (C) Information about the water feature's wetland status, size, average water depth at ordinary high water line, topographic and geomorphological location, mapped soil series and hydric status, and evidence of drainage (e.g., drain tiles, ditching);
 - (D) Hydrology monitoring data;
 - (E) Historical imagery;
 - (F) Data or other information on pre-disturbance conditions, such as excavation to an original (formed in situ) soil surface or identification of a former stream course;
 - (G) A detailed topographic survey;
 - (H) Data collected at a certain time of year;
 - (I) Additional plant species identification; or
 - (J) Documentation from a removal-fill permit including permit number.
- (i) Results and conclusions of the investigation, including a table summarizing details in (12)(e) and (h).
- (j) The following disclaimer: "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."
- (k) Appendices, as needed.
- (13) Report Figures and Maps: All reports shall include the figures and maps listed in (13)(a) through (13)(g). All maps must include an outline of the study area boundary, a north arrow, a scale bar, and legend of all map elements. Any inset maps must include a scale bar.
 - (a) A location map, clearly naming geographical places, waterways, and major roads in the vicinity.
 - (b) Assessors tax lot map(s) for the entire study area, either downloaded as PDFs from the Oregon Department of Revenue's "ORMAP" website or from a County Tax Assessor's Office GIS data. Maps produced from GIS data must label each tax lot with the Assessors tax map number and tax lot number.
 - (c) The appropriate wetland mapping from the SWI (approved delineations, LWI, NWI).
 - (d) The NRCS county soil survey map including the map unit symbol, name, and hydric status for all soil series mapped within the study area.
 - (e) At least one recent aerial photograph, preferably taken early in the growing season or during other periods of peak hydrology, that includes the month and year of the photo (include at least three aerial photos from three different years for farmed sites).
 - (f) One or more delineation maps comprising the wetland and other waters determination or delineation, as

appropriate, that meets the requirements in sections (14) through (16) of this rule.

(g) Ground-level color photographs of the site.

(14) The delineation map(s) must be legible and include:

(a) The boundaries of the tax lot(s) including tax map and tax lot label(s).

(b) The study area boundary in relation to the tax lot boundaries. For large tax lots with small study areas, a map in addition to the delineation map may be required to show the relationship between the study area and tax lot boundaries.

(c) An index map if a large project study area needs to be divided into more than one detail map for clarity or map scale issues. Full-page index map(s) shall show the exact location and extent of the areas shown on the detail maps in relationship to the larger study area.

(d) Locations of existing structures (unless clearly visible on a current aerial photo included as the map's base map), such as culverts, bridges, tidegates, fencelines, powerlines, and roads, where practicable.

(e) Locations of fill, removals, water diversions, or other major alterations.

(f) Boundaries and labeling for mapped features, including:

(A) Boundaries of all wetlands and other waters;

(B) Where features extend off-site;

(C) Area, in acres, for wetlands, ponds, reservoirs, and lakes; length and width, in feet, of streams ditches, and reservoirs;

(D) Cowardin classification to system and class (map separately when more than one adjoining class is present within the same wetland) and HGM class;

(E) ARSC boundaries; and

(F) State-approved compensatory mitigation site boundaries, if known.

(g) Numbered sample plots corresponding to data forms (see section (16) of this rule).

(h) Photograph locations and direction of view.

(i) A statement of all mapping methods used and estimated mapping accuracy for the wetland and other waters boundaries and sample plot locations. Include statement of sources of remotely sensed imagery, topography, and tax lot data provided.

(15) The delineation map(s) shall be at a scale suitable for the study area size and for legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large study areas, a scale of 1 inch = 250 feet may be sufficient. Minimum map scale for a JD and for permitting purposes is subject to Department approval.

(16) Data Form Requirements: All reports shall include a wetland determination data form for each sample plot. The data form used must be the current version provided for the appropriate regional supplement to the manual. 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 or provided in a table) and for a single location (identifying latitude and longitude on data form);

(c) Include the full Latin botanical name and wetland indicator status of all plant species listed per the current National Wetland Plant List;

(d) Use standard soils terminology and abbreviations as established by the U.S. Department of Agriculture, Natural Resources Conservation Service; and

(e) Provide remarks for each disturbed or problematic wetland parameter per procedures outlined in the Difficult Wetland Situations Chapter of the appropriate regional supplement to the manual.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692, 197.279

AMEND: 141-090-0040

RULE TITLE: Procedures for Review and Approval of a Wetland Delineation Report Submitted to the Department for a Jurisdictional Determination

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Rule revised for clarity and an additional example of a reason why a report can be rejected was added to OAR 141-090-0040(f)(C).

RULE TEXT:

(1) When a wetland 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 OAR 141-090-0030;
- (b) The report meets the standards and requirements in OAR 141-090-0035;
- (c) There is sufficient information for the Department to make a JD, including the geographic extent and characteristics 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) The Department shall complete an initial review of the report within 120 calendar days from receipt of the report and the fee.

(3) During or upon completion of the Department's review, the Department may take 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 OAR 141-090-0025(10).

(b) Request missing information (report incomplete), clarification, or additional data (see OAR 141-090-0035(9), (10), and (12)(h)).

(A) The request will be made to the primary contact orally by telephone or in writing by e-mail or regular U.S. Mail.

(B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner, agent, and 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 verify the report findings or obtain additional information;

(d) Withdraw the report from further review if missing payment, if the landowner, agent, or applicant requests withdrawal or if otherwise determined by the Department;

(e) Require revisions of the delineation map(s) and the PJD based upon the report review, any additional information requested, and a site visit (if conducted) and provide a JD accordingly after consulting with the primary contact and report author, if different; or

(f) Reject the report with a written explanation to the applicant, consultant, landowner, and agent, as appropriate.

Examples of reasons for rejecting a report include, but are not limited to:

(A) The work has not been completed according to the technical requirements in OAR 141-090-0030.

(B) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD.

(C) The report contains major errors, omissions, or inconsistencies according to the standards and requirements in OAR 141-090-0035, such as but not limited to:

(i) On-site data are not collected (e.g., an off-site or reconnaissance level report);

(ii) No paired plots, or number of paired plots is clearly inadequate for length and complexity of wetland boundaries;

(iii) Data forms with major gaps (e.g., no soils data collected);

(iv) Wrong data form used;

(v) Clearly erroneous data or conclusions;

(vi) All water features are not mapped;

- (vii) Permission for a requested site visit is not granted;
- (viii) Standard report format is not followed (OAR 141-090-0035(1));
- (ix) Report cannot be field verified because site preparation or construction has already commenced;
- (x) The Department requests and conducts a site visit and the wetland boundaries and sample plots are not identified on the ground or cannot be accurately located by the consultant or applicant (see OAR 141-090-0035(8));
- (xi) After the second written request for information or revisions, the resubmitted information does not address all of the Department's comments or requests or introduces new errors; or
- (xii) Additional clarifying information, requested revisions, or communication requesting additional time are not provided within 60 calendar days of the Department's written request.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0045

RULE TITLE: Duration, Revision, Expiration and Reissuance of Jurisdictional Determinations

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised for clarity.

RULE TEXT:

(1) All JDs by the Department shall be in writing and, except as provided in section (2) of this rule, shall remain valid for a period of five years from the date of issuance. A JD may be revised by the Department prior to the expiration date if:

(a) A field investigation or new information reveals that site conditions or the geographic extent of waters of this 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, agent, or landowner to the Department;

(c) Additional information is provided to or obtained by the Department in conjunction with a request for reconsideration (OAR 141-090-0050(1)-(3)), a contested case hearing associated with an authorization application (ORS 196.825(6) and OAR 141-085-0575), a contested case hearing provided under OAR 141-090-0050(4)(a), or an appeal provided under OAR 141-090-0050(4)(b);

(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) JDs that are issued in the form of a removal-fill authorization will expire after the project is complete or withdrawn. JDs made for an enforcement action will expire after the case is closed.

(3) Upon expiration, a report and JD are no longer valid for determining whether a state removal-fill authorization may be required.

(4) If agency approval is still needed or desired and a wetland professional determines that the wetland boundaries have not changed, the Department may reissue the JD one time for five years within one year of the expiration date.

(5) To request the reissuance of a JD within one year of the expiration date, the landowner, agent, or applicant with landowner permission must submit information prepared by a wetland professional to the Department, as listed in (a) through (i).

(a) A new fully completed wetland delineation/determination report cover form and a request for reissuance of a jurisdictional determination form, referencing the previously approved wetland delineation number.

(b) Date of the field inspection and the name of the person conducting the field inspection.

(c) A concise description of any changes in land use, hydrology, and management of the site and surrounding area relevant to the location and extent of the wetlands and other waters within the study area since the last JD.

(d) A summary of any relevant changes to the manual that have occurred since the most recent JD was issued and a discussion of the effect of those changes on the JD.

(e) A description of the method used to re-locate the wetland and other waters boundary(ies) in the field and a summary of the supporting evidence used to conclude that the location and extent of wetlands and other waters is the same.

(f) A delineation map(s) that meets the requirements in OAR 141-090-0035. The previously approved map can be used if the current mapping requirements are met and the study area boundary is the same.

(g) A recent aerial photograph with the study area boundary identified.

(h) Any figures that may have changed from the previously approved wetland delineation report, such as a smaller study area.

(i) Completed data sheets from representative sample plots illustrating the unchanged wetland and other waters conditions.

(6) Upon receipt of the reissuance information outlined in subsections (5)(a) through (i), the Department shall review the information within 120 days of receipt and may take the following actions:

(a) Reissue the original report for another 5 years;

- (b) Request missing information, clarification, or additional information;
 - (c) Conduct a site visit to confirm the report's findings or to collect additional information;
 - (d) Withdraw the request for reissuance from further review if determined to be ineligible, missing additional or clarifying information, or requested information is not provided within 60 calendar days of the Department's written request; or
 - (e) Disagree with the conclusion that the wetland and other waters boundaries have not changed and require a new report that satisfies the requirements of OAR 141-090-0035 and payment of the fee described in OAR 141-090-0032 for review of a new delineation report.
- (7) At the discretion of the Department and within staffing ability, a landowner can request the Department conduct a site visit to determine if a recently expired JD can be reissued or if a new report is required. If only minor boundary changes have occurred, new boundaries may be flagged at the discretion of staff during a site visit and the landowner shall produce and submit a new map that reflects the changes and meets the mapping requirements in OAR 141-090-0035.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0050

RULE TITLE: Request for Reconsideration, Contested Case, and Appeal

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: Revised for clarity. A portion of the rule describing an independent panel review process was removed because Oregon Laws 2012, c. 108, § 2, which expired January 2022. The expired portion was replaced with an appeal to the Director process to provide applicants with an alternative to the contested case process to pursue disputes.

RULE TEXT:

- (1) A JD by the Department may be reconsidered upon written request to the Department by the landowner, agent, or applicant with landowner approval within six months 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, as part of the reconsideration process.
- (3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.
- (4) In the event that the landowner, agent, or applicant with landowner permission disagrees with the reconsideration decision, the applicant, landowner or agent may:
 - (a) Request a contested case proceeding pursuant to ORS 183.413 through 183.470 by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision; or
 - (b) Request an appeal by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision. The appeal option is available only when the disagreement is over a wetland determination or delineation that has been the subject of reconsideration decision by the Department. The appeal option is not available for ordinary high water line or highest measured tide determinations and does not involve a review of whether the wetland or other water is subject to state regulation.
- (A) The Director shall decide the appeal within 60 calendar days after the date of delivery of the appeal.
- (B) The Director may affirm the reconsideration decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.
- (C) When an applicant has exhausted the appeal process before the Director, they may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

AMEND: 141-090-0055

RULE TITLE: Effective Date

NOTICE FILED DATE: 02/23/2023

RULE SUMMARY: The effective date has been updated.

RULE TEXT:

These rules become effective on June 1, 2023.

STATUTORY/OTHER AUTHORITY: ORS 196.845, 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279