



Regulatory Streamlining Initiative

Office of Regulatory Streamlining, Department of Consumer and Business Services

Water-Related Permit Process Improvement Team

WATER-RELATED PERMITTING:

**Improving the State of Oregon's Process
for Permitting Development Projects
that Affect Oregon's Water Resources**

Recommendations

May 12, 2005

This report and work product was prepared and facilitated by:

Carmichael Consulting, Creswell, Oregon
Jennycarmichael@centurytel.net



executive summary

May 12, 2005

TO: Water-Related Permit Leadership Team
Lindsay Ball, Director, Department of Fish and Wildlife
Mike Carrier, Natural Resources Policy Advisor, Governor's Office
Stephanie Hallock, Director, Department of Environmental Quality
Ann Hanus, Director, Department of State Lands
Lane Shetterly, Director, Department of Land Conservation and Development
Phil Ward, Director, Water Resources Department

FROM: Water-Related Permit Process Improvement Team
Jas Adams, Legal Counsel, Natural Resources Agencies, Attorney General's Office
Patrick Allen, Manager, Office of Regulatory Streamlining
Dale Blanton, State-Federal Relations Coordinator, Department of Land Conservation and Development
Ann Hanus, Director, Department of State Lands
John Lilly, Assistant Director, Department of State Lands
Bill Ryan, Environmental Program Manager, OTIA III Bridge Delivery Unit, Oregon Department of Transportation
Holly Schroeder, Administrator, Water Quality Division, Department of Environmental Quality
Wayne Shuyler, Facilities Program Manager/Deputy Director, State Marine Board
Patty Snow, Land and Water Use Coordinator, Oregon Department of Fish and Wildlife
Adam Sussman, Senior Policy Coordinator, Water Resources Department
Christine Svetkovich, 401 Water Quality Specialist, Department of Environmental Quality
Lori Warner-Dickason, Western Region Manager for Field Operations, Department of State Lands

SUBJECT: Water-Related Permit Process Improvement Recommendations

THE PROBLEM

Development activities that affect Oregon's water resources often require several state agencies to issue approvals before a project can get started. Often the first permit sought is the removal-fill permit from the Department of State Lands. Local governments and the US Army Corps of Engineers also require permits for some of the same activities. Applicants desire a process that simply provides a green light for the Removal-Fill project to commence (i.e., all permits and approvals are obtained in one process). Multiple approvals can require significant time and money and have sometimes involved high consequence surprises and conflicting requirements from the original removal-fill permit causing project delays, substantial cost increases, and even project postponement or failure. Though not considered the norm, the opportunity

exists for these circumstances to occur and therefore can frustrate applicants. In addition, a separate federal process, administered by the US Army Corps of Engineers (USACE), runs concurrently but with different timelines. All of these approvals must be obtained before a Removal-Fill Project begins.

THE WATER-RELATED PERMIT PROCESS IMPROVEMENT TEAM

In support of Oregon's Governor's economic revitalization program and his efforts to streamline governmental regulations under Executive Order (EO 03-01 and EO 03-02) to make Oregon a more business-friendly state, the Directors of Oregon's natural resource agencies and the Governor's office established the Water-Related Permit Process Improvement Team (the "team").

Oregon state government agencies have been active in streamlining the water-related permitting process for some time. For example, in 1993 the legislature directed the Department of State Lands to assume state administration of Section 404 of the federal Clean Water Act (CWA) by a time certain or no longer require state permits for projects regulated by the US Army Corps of Engineers under the CWA. While the 1995 Legislature repealed the earlier statute, it replaced it with ORS 196.795 that admonishes DSL to "...pursue methods to streamline the process for administering permits, reducing paperwork, eliminating duplication, increasing certainty and timeliness, and enhancing resource protection, the efforts of the DSL shall include applying to the US Army Corps of Engineers for a state programmatic general permit (SPGP)...investigating...assuming the federal Section 404 Clean Water Act responsibilities."

In the past years, state agencies in partnership with numerous stakeholders have assisted and encouraged these streamlining efforts. DSL's Removal-Fill Technical Advisory Committee, made up of over 60 individuals representing local, state and federal agencies, and public interest groups has been instrumental in reviewing and molding new innovations.

Among the most recent efforts are the following:

- New General Authorizations for small wetland fills within UGB's and UUC's.
- New General Authorizations for ODOT Bridge Projects.
 - ☐ This program recently was awarded a National Award by the Federal Highway Administration for Environmental Excellence.
- Small scale and recreational placer mining permits are available via on line issuance.
- All removal-fill permit applications and wetland delineation reports are posted on the DSL website and status is project status in 'real-time.'
- All permit public notices and commenting is handled via web-based interaction.
- Applicants can check public and agency project review comments on line at any time.
- State Programmatic General Permit (SPGP). Once issued by the Corps to the DSL, minimal impact projects authorized by DSL that qualify for the SPGP will automatically fulfill all their federal permitting requirements (i.e., "one stop shopping"). Issuance is expected in July 2005.

- Over 50 training sessions held throughout the State for permit applicants.
- Quarterly meetings with Wetland Consultants.
- Checklists available on line for applicants to use for wetland mitigation and applications.
- Enforcement Manual adopted to guide staff.
- Industrial Site Certification assistance.
- Advance site planning, wetland identification, and mitigation planning for certain industrial sites.

This project is viewed by the agencies as a furtherance of the Legislature's 1995 directive.

Most recently, the current project had its genesis in SB 2011 (2003) when the multi-agency Economic Revitalization Team was established, along with an Advisory Committee on Regulatory Permitting (ACRP). This advisory committee consisting of the ERT agency directors and representatives of local government and private industry formed a work group on the subject of water-related permitting. From that group and the ACRP's work, came a recommendation to address the "401/404 nexus between the Department of Environmental Quality (DEQ)/Department of State Lands (DSL) and the US Army Corps of Engineers (Corps)."

The team was charged with identifying ways to improve the water-related permitting process to address applicant concerns, while at the same time continuing to accomplish the water resource protections required by State law. The Department of State Lands removal-fill permitting process was selected as the focus of the process since many other water-related permits are triggered by these activities. For the purposes of this report, the term "Removal-Fill Permit System or Process" refers to the administrative process facilitated by the DSL that includes local governments and state agencies in the process of reviewing applications and conditioning project approvals. Beginning on March 15 and ending on April 14, the 12 member Water-Related Permit Process Improvement Team met for a total of 24 hours to examine the removal-fill permit process. This project did not examine the related local or federal processes that influence the state agency water-related permitting process; that task could be undertaken at a latter time with additional stakeholders.

FINDINGS

Given a limited time window to develop recommendations, the Team focused on the following top two concerns of applicants:

1. Not having a single state voice and process, and
2. Not having clarity at the beginning of the process about what it will take the applicant to get to YES.

The Team found a fundamental gap between the product applicants currently receive at the end of the Removal-Fill Permit process (i.e., DSL permit with requirement to obtain other permits, authorizations, and certifications prior to starting the project) and the product they actually want to receive (i.e., single state permit or simultaneous authorization to begin work). The current system provides an applicant a "Permit with Conditions." The permit is often one of several other authorizations from local, other

state and federal agencies that are required to proceed with a Removal-Fill project. Applicants, however, are looking for authority to proceed with the Removal-Fill project; they are not looking for a list of additional authorizations necessary to proceed. The team also identified a gap in the service level of the agencies compared to the expectations of many applicants. Due to fiscal constraints, most agencies are not able to offer applicants a high level of assistance or project management. Much is left to the applicant or the applicant’s paid consultant to marshal the application through the permit process and to coordinate review, respond to comments, and make plan adjustments to satisfy the various agencies. A notable exception is the work of the ERT Liaison at DSL and ODOT’s funding of staff at DSL, ODFW, and DEQ.

The Team developed a continuum view of these two aspects of the process: a continuum of potential products and a continuum of customer service:

PRODUCT CONTINUUM

Loosely Connected Permits/Authorizations	“Packaged” Permits	One State Permit (all water related activity connected to Removal-Fill projects)
--	--------------------	---

Today’s product (i.e., the DSL removal-fill permit) is a set of loosely connected permits. A more unified end product could be a “package of permits” or several distinct permits that are authorized together. An even more unified end product could be a consolidated permit system that authorizes all water related activity connected with a Removal-Fill project.

SERVICE CONTINUUM (Assistance Provided to Applicant)

Gathering of Comments	Referral Service	Ombudsman	Shepherd	Project Manager
-----------------------	------------------	-----------	----------	-----------------

Various levels of service can also be provided to applicants to assist them in obtaining the authorizations they need. At one end of the continuum, is today’s level of service – simply a gathering of comments received by DSL and passed on to the applicant for review from affected agencies, adjacent landowners, and other interested parties regarding a Removal-Fill application. A “shepherd” level of service, used in other permit processes, could be to assign state staff whose job it would be to assist applicants in obtaining the permits they need. The highest level of service could be to assign a project manager to work with the applicant to get the project approved.

Other details regarding the existing process and gaps in service to applicants are described in the full report.

RECOMMENDATIONS

The Team found that the improvements it recommends fall into one of two categories:

1. Actions that could be implemented within the framework of the existing Removal-Fill Permit System, and
2. A recommendation to fundamentally modify the existing Removal-Fill Permit System.

Both are summarized below.

A. Recommendations To Improve The Existing System

The Team unanimously supported the following recommended changes:

Within the Next Six Months (October 31, 2005)

Recommendation	Will bring Oregon closer to a single state voice & process.	Will provide greater clarity at the start about what it takes to get to Yes.
No statutory or rule changes anticipated.		
1. Develop and implement an inter-agency SPGP roadmap and education program.	X	X
2. Develop applicant checklists for typical projects.	X	X
3. Clarify general authorization process and expectations to natural resource agencies.	X	X
4. Provide consistent structure for agency comments.	X	X
5. Provide applicants a description of each agency's removal-fill permit related requirements, evaluation criteria and expectations.	X	X
6. Provide applicant links to other agency authorization processes and forms.	X	X
7. Develop an effective process measurement system.	X	
8. Provide customer service training to staff involved in removal-fill related authorizations.	X	
9. Develop interagency training for applicants and consultants.	X	X
10. Increase the use of applicant pre-application conferences.	X	X
11. Allow applicants to call for interagency meetings to discuss complex projects.	X	X

Within the Next Year (April 30, 2006)

Recommendation	Will bring Oregon closer to a single state voice & process.	Will provide greater clarity at the start about what it takes to get to Yes.
Rule changes anticipated.		
12. Define/clarify decision thresholds so they are consistent within and between agencies.	X	X
13. Assess the best approach to inter-agency involvement in the process (policy team, improved feedback loops, regional interagency teams, interagency teams for controversial projects, dispute resolution)	X	X

Recommendation	Will bring Oregon closer to a single state voice & process.	Will provide greater clarity at the start about what it takes to get to Yes.
Rule changes anticipated.		
14. Develop a multi-agency memorandum of understanding that addresses coordination, process, timeframes, and dispute resolution.	X	X
15. Develop a super-application, interactive application, and web-based application.	X	X
16. Consolidate water-related permit information and links. Develop a web-based and booklet "roadmap."	X	X
17. Evaluate wetland delineation requirements to improve user-friendliness.		X
18. Review/modify timelines for complex interagency projects and recommend changes as appropriate.		X
19. Develop a legislative package to be presented during the 05-07 Legislative session that may include statutory, rule, and resource revisions to set up the framework to move towards a consolidated permit system for removal/fill activities. (See section E-2 of report.)	X	X

Within the Next Biennium (June 30, 2007)

Recommendation	Will bring Oregon closer to a single state voice & process.	Will provide greater clarity at the start about what it takes to get to Yes.
Statutory and rule changes anticipated.		
20. Consider adopting a multi-agency rule to create clarity and certainty, for example: adopt ODFW mitigation policies as DSL rule, etc.	X	X
21. Develop a master list of permit conditions that meet all state and federal approvals.	X	X
22. Create a connection to the federal process so project changes are consistent with state approvals.	X	X
23. Develop a web-based Comprehensive Project Tracking System.	X	X

Study Further

Recommendation	Will bring Oregon closer to a single state voice & process.	Will provide greater clarity at the start about what it takes to get to Yes.
24. Move focus from process to performance/compliance.	X	X
25. Provide early assistance to identify waterway and wetland jurisdictional boundaries.		X
26. Establish a position responsible for Removal-Fill training and outreach.	X	X
27. Establish a position responsible to provide applicants with information on state approval requirements (an information clearinghouse).	X	X
28. Establish an Ombudsman to assist applicants.		X
29. Develop a consultant certification program.		X
30. Create more General Authorizations to address appropriate problem areas.		X
31. Explore ways for applicants to purchase enhanced service for a fee.		X
32. Provide a list of project design/redesign assistance consultants.		X

B. A Recommendation to Fundamentally Modify the Existing System

The Team unanimously recommends that the product of the Removal-Fill Permit process be fundamentally changed so that all state requirements associated with the Removal-Fill project happen at one time. This consolidated permit system would look to the applicant like one **state** permit for all water-related activities connected to Removal-Fill projects. The Team emphasized that this policy direction should be evaluated separate and apart from any decision as to which agency would be given responsibility for administering the new consolidated permit system. In addition, the Team believes the level of service provided to Removal-Fill applicants should move to the “shepherd” or “project manager” end of the service level continuum.

In order to move the state in these directions, the Team recommends that work be initiated immediately to develop a management, budget, and legislative package for the 2007 Legislative session to implement a consolidated permit system. Any required legislation should be drafted by the April 2006 deadline for the 2007 Legislative Session.

REQUESTED LEADERSHIP TEAM ACTION

The Water-Related Permit Process Improvement Team proposes the Directors take the following actions:

A. Leadership Team Commitment and Direction

→ Establish a clear Leadership Team mandate and consensus:

1. To proceed with specific process improvement recommendations.
2. Regarding the product and customer service continuums and recommendations. Provide resources and prioritization to implement the mandate.

B. Gubernatorial Direction

→ Secure the Governor’s support and direction regarding the process improvement recommendations and product/customer service.

C. Legislative Direction

→ Secure legislative endorsement of this work.

D. “State Water-Related Permit” Project Team

→ Direct the Office of Regulatory Streamlining to convene an inter-agency group to develop a preliminary work plan and budget for a “State Water-Related Permit” Project Team. This plan should propose structure, membership, and resources. The purpose of a “State Water-Related” Project Team would be to:

- ☐ Implement approved process changes,
- ☐ Transition Oregon to a consolidated permit system, and
- ☐ Transition Oregon to a shepherd/project manager level of customer service.

The Project Team should include the following activities early on in its work program:

1. Further develop the preliminary project work plan and budget
2. Develop an interagency Memorandum of Understanding to describe how agencies will collectively move forward.
3. Validate the improvement recommendations with applicants and stakeholders.
4. Establish baseline process measurements and a measurement system.
5. Develop a communications strategy for the project.

CLOSE

The Water-Related Permit Process Improvement Team appreciates the opportunity to forward these recommendations to improve the removal-fill permit process by moving closer to a single state voice and process and by providing greater clarity about what gets an applicant to Yes.

CAVEAT: This report is not a thorough analysis of the topics it discusses, however, it as thorough a review as possible within the one-month time-frame of this project. Statute and rule implications that may be required have also not been exhaustively research.

TABLE OF CONTENTS

	Page
Executive Summary	2
I. Improvement Project Purpose	11
II. The ‘As-Is’ Removal-Fill Permit Process	14
A. ‘As-Is’ Process Purpose	14
B. Steps in the Process	14
C. Customers of the Process	17
D. Process Stakeholders	17
E. Current Process Performance	17
III. Imminent Process Changes	22
IV. Some Good Ideas From Other Processes	25
V. Team Recommendations	26
A. Recommendations to Improve the Existing System	26
B. A Recommendation to Fundamentally Modify the Existing System	29
VI. Criteria for a Successful Water-Related Permit Process Improvement Team Effort	31
VII. Implementation	31
VIII. Close	33
Attachment 1 – Detailed ‘As-Is’ Process Flowchart of the DSL Removal Fill Process	

Water-Related Permit Process Improvement Team

Water-Related Permitting: Improving the State of Oregon's Process for Permitting Development Projects Affecting Oregon's Water Resources

Recommendations

I. Improvement Project Purpose

A priority for Oregon's current Governor is the economic revitalization of Oregon. In 2003, the Governor established an Office of Regulatory Streamlining to streamline governmental regulations in order to make Oregon a more business-friendly state.

Oregon state government agencies have been active in streamlining the water-related permitting process for some time. For example, in 1993 the legislature directed the Department of State Lands to assume state administration of Section 404 of the federal Clean Water Act (CWA) by a time certain or no longer require state permits for projects regulated by the US Army Corps of Engineers under the CWA. While the 1995 Legislature repealed the earlier statute, it replaced it with ORS 196.795 that admonishes DSL to "pursue methods to streamline the process for administering permits, reducing paperwork, eliminating duplication, increasing certainty and timeliness, and enhancing resource protection....the efforts of the DSL shall include: applying to the US Army Corps of Engineers for a state programmatic general permit (SPGP)...investigating...assuming the federal Section 404 Clean Water Act responsibilities."

In the past years, the state agencies in partnership with numerous stakeholders have assisted and encouraged these streamlining efforts. DSL's Removal-Fill Technical Advisory Committee, made up of over 60 individuals representing local, state and federal agencies, and public interest groups has been instrumental in reviewing and molding new innovations.

Among the most recent efforts are the following:

- ☐ New General Authorizations for small wetland fills within UGB's and UUC's
- ☐ New General Authorizations for ODOT Bridge Projects. This program recently was awarded a National Award by the Federal Highway Administration for Environmental Excellence.
- ☐ Small scale and recreational placer mining permits are available via on-line issuance.
- ☐ All removal-fill permit applications and wetland delineation reports are posted on the DSL Web site and status is project status is 'real-time.'
- ☐ All permit public notices and commenting is handled via Web-based interaction.
- ☐ Applicants can check public and agency project review comments on line at any time.

- ☐ State Programmatic General Permit (SPGP). Once issued by the Corps to the DSL, minimal impact projects authorized by DSL that qualify for the SPGP will automatically fulfill all their federal permitting requirements (i.e., “one stop shopping”). Issuance is expected in July 2005.
- ☐ Over 50 training sessions held throughout the State for permit applicants.
- ☐ Quarterly meetings with Wetland Consultants.
- ☐ Checklists available on-line for applicants to use for wetland mitigation and applications.
- ☐ Enforcement Manual adopted to guide staff.
- ☐ Industrial Site Certification assistance.
- ☐ Advance site planning, wetland identification, and mitigation planning for certain industrial sites.
- ☐ Increasing number of wetland mitigation banks.
- ☐ Increased use of wetland mitigation banks for compensatory wetland mitigation (CWM).
- ☐ Easier process for approving off-site CWM.
- ☐ Set fee for Payment to Provide as an alternative to CWM.

This project is viewed by the agencies as a furtherance of this directive.

Most recently, the current project had its genesis in SB 2011 (2003) when the multi-agency Economic Revitalization Team was established, along with an Advisory Committee on Regulatory Permitting (ACRP). This advisory committee consisting of the ERT agency director’s and representatives of local government and private industry formed a work group on the subject of water-related permitting. From that group and the ACRP’s work came a recommendation to address the “401/404 nexus between the Department of Environmental Quality (DEQ)/Department of State Lands (DSL) and the US Army Corps of Engineers (Corps).”

The Office of Regulatory Streamlining has also identified the water-related permitting process as a key area of concern to small and large businesses, as well as government agencies in Oregon.

The Governor has asked the Directors of the state’s Natural Resource agencies, to address this issue. These leaders charged a Water Related Permit Process Improvement Team with the task of identifying ways to improve the water-related permitting process to address applicant concerns, while at the same time continuing to accomplish the water resource protections required by State law. The Department of State Lands removal-fill permitting process was selected as the focus of the process since many other water-related permits are triggered by these activities. For the purposes of this report, the term “Removal-Fill Permit System or Process” refers to the administrative process facilitated by the DSL that includes local governments and state agencies in the process of reviewing applications and conditioning project approvals.

Development activities that affect Oregon’s water resources often require several state agencies to issue approvals before a project can get started. Often the first permit sought is the removal-fill permit from the Department of State Lands. Local governments and the US Army Corps of Engineers also require permits for some of the same activities.

Oregon's Removal-Fill Permit Law, adopted in 1967, requires a state permit to remove or place fill material in waters of the state, including wetland areas. The Oregon legislature decided to regulate these activities in order to:

- Protect, conserve, and make the best use of water resources for multiple uses.
- Protect public navigation, fisheries, and public recreational uses.
- Ensure that actions of one landowner don't adversely affect another.
- Minimize flooding, improve water quality, and provide for fish and wildlife habitat.

Responsibility for the administration of the Oregon removal-fill program was given to the Department of State Lands (DSL) to ensure a consistent approach to permit authorizations statewide.

A variety of other state agencies also have their own unique responsibility for water-related permitting within Oregon:

- The Department of Environmental Quality (DEQ) (converted from the State Sanitary Authority),
- The Department of Fish and Wildlife (ODFW),
- The Department of Land Conservation and Development (DLCD),
- The Water Resources Department (WRD),
- The State Marine Board (SMB),
- The State Historic Preservation Office (SHPO),
- The Department of Agriculture, and
- The Oregon Parks and Recreation Department.

In addition, a variety of federal agencies have a variety of authorities over Oregon waters:

- The U. S. Environmental Protection Agency,
- The U.S. Army Corps of Engineers (USACE),
- National Marine Fisheries Service,
- The U.S. Fish and Wildlife Service,
- The U.S. Coast Guard, and
- NOAA Office of Coastal Resource Management.

Making the situation even more complicated for landowners, city and county governments also have jurisdiction over developments that involve impacts to water resources.

DSL, as manager of the Removal-Fill permit process since 1967, seeks input from other natural resource agencies and the public regarding Removal-Fill permit requests. During this public review process, other agencies may:

- Request additional information to evaluate the project,
- Suggest design changes to meet their agency standards,
- Indicate that additional separate approvals are required, and/or
- Recommend permit conditions to implement the project.

Under ideal circumstances, an issue raised by another resource agency would be resolved during the Removal-Fill permit process. However, because of relatively new timelines mandated by legislation, DSL has 90 days from the time an application is deemed complete to issue a permit. In 2001, the Legislature imposed

a maximum time window of 90 days from the time a permit application is accepted by DSL to the time a DSL permit decision is reached. This time limit has often led DSL to issue a “permit with conditions,” stipulating subsequent approval requirements from other state agencies that must be obtained by the applicant prior to beginning construction of the Removal-Fill project. These subsequent approvals can come from other state and local agencies as well as federal agencies.

Rather than providing a green light for a Removal-Fill project, the DSL permit often requires other approvals from other local, state, and federal agencies. Applicants are concerned about the time and cost that can be involved to comply with permit conditions and to obtain subsequent approvals. Though not the norm, the opportunity exists for high consequence surprises and conflicting requirements after the Removal-Fill permit is issued. The impact of these requirements can be project delays, substantial cost increases, and even project postponement and failure.

Recognizing a major concern is coordination of the DSL permit process with the 401 Water Quality Certification (WQC) process administered by DEQ, the Leadership Team instructed the Water-Related Permit Process Improvement Team to identify what the state can do within its own authority to improve its own processes, as well as improve its linkage with federal and local processes. The scope of this project is not to assume changes to federal and local processes.

II. The ‘As-Is’ DSL Removal-Fill Permit Process

A. **‘As-is’ Process Purpose** - The Removal-Fill Permit Process was established by the legislature nearly four decades ago for the following purpose:

To centrally manage removals and fills in state waterways and wetlands in order to:

- ***Protect, conserve, and make the best use of water resources.***
- ***Protect public navigation, fisheries, and public recreational uses.***
- ***Ensure that the actions of one land owner do not adversely affect another.***
- ***Minimize flooding, improve water quality, and provide fish and wildlife habitat.***

B. **Steps in the Process** - The Water-Related Permit Process Improvement Team was able to develop a high level map of steps involved in a Removal-Fill process permit. The process consists of twelve distinct steps and in addition to the applicant and his or her consultant, depending on the nature of the project, involves at least nine state agencies. A brief listing of the major steps involved is provided below:

Step 1 - Jurisdictional Determination

Step 2 - Applicant Pre-Application Meeting (optional)

Step 3 - Joint application to DSL and ACOE

Step 4 - DSL Review for completeness

Step 5 - Public Review (includes notice to state agencies)

Step 6 - DSL Analysis of public comments which are forwarded to the applicant for response

Step 7 - Applicant Response to public comments

- Step 8 - Permit Decision (a permit is issued with conditions or denied)
- Step 9 - Appeal (optional)
- Step 10 - Other Authorizations from other state agencies and federal agencies
- Step 11 - Removal or Fill Construction
- Step 12 - Compliance and Enforcement

A detailed process flow-chart prepared by Removal-Fill Process Improvement Team showing the actions required of all participants at these various steps is provided in Appendix A.

Oregon state agencies that can be involved in the Removal-Fill Permit Process, depending on the nature of the project, include:

- Department of State Lands (Lead)
- Department of Environmental Quality
- Department of Fish and Wildlife
- Department of Agriculture
- Department of Land Conservation and Development
- Department of Parks and Recreation
- State Historic Preservation Office
- State Marine Board
- Water Resources Department

The Water-Related Process Improvement Team estimates that almost all Removal-Fill permits are appropriate for **DEQ** and **ODFW** to review and that they comment on at least 90% of them.

DEQ 401 Certification of the Federal USACE Permit - Nearly every project that requires a Removal-Fill permit from DSL also requires a permit from the USACE. While applicants file a joint application to DSL and USACE, the process and timelines that follow are vastly different. DEQ certifies that activities permitted through the federal process meet water quality standards through the issuance of a 401 Water Quality Certification (WQC). Though DEQ provides comments during the DSL permit process, the actual WQC is not issued until the USACE permit is issued. DEQ's public notices, fee schedules, and formal review of proposed projects all begin once a project is proposed by the USACE. DEQ's WQCs are issued on final project proposals for the USACE permit, which occurs after the project has been reviewed and conditioned by other federal agencies (usually National Marine Fisheries Service and/or the US Fish and Wildlife Service). The timing of DEQ's issuance of WQCs is thus significantly different than the timing of the DSL permit, and any water quality issues associated with the project may not be resolved in the DSL permits. Additionally, the final project may be very different than the project permitted by DSL by the time all of the federal agencies complete their reviews and evaluations. The varying timelines for input by the federal agencies and the 401 program frustrate applicants and cause DSL to issue permits conditional on the 401 WQC.

Other requirements connected to the Removal-Fill permit application can happen on a much less frequent basis. Each requirement, however, has its own process and timelines:

☰ ***ODFW – Fish Passage Waiver or Exemption, In Water Blasting Permit, and ESA Incidental Take Permit/ Scientific Taking Permit***

ODFW regulates fish passage requirements. Fish passage plan decisions typically require one month. Approximately 10-12 fish passage waivers and exemptions are issued each year. These typically require 2-3 months after an application is submitted. In-water blasting permits are required for any in-water blasting. There are approximately one of these permits per year. Scientific taking/salvage permits may also be required for some Removal-Fill projects.

☰ ***DLCD Coastal Zone Management Consistency Review***

DLCD provides comment on a small number (approximately 10) applications each year, generally related to land use planning issues. These comments are often related to high profile or large coastal projects proposed within estuaries or in sensitive resource areas outlined within the statewide planning goals. Within the state's coastal zone, projects requiring a federal license or permit also require DLCD coastal zone management review and concurrence. This process is governed by requirements of federal law and begins with notice from the federal agency. While applicants file a joint permit application with DSL and the Corps, the process and timelines for Corps review and DLCD coastal management review are vastly different. DLCD's notice and public review process are focused on requirements of the federally approved Oregon Coastal Management Program (OCMP).

The OCMP is a networked program that integrates requirements of the statewide planning goals; provisions of the "acknowledged" comprehensive plans and land use regulations adopted by local government; and requirements of state agency regulatory programs (e.g. Removal-Fill, Water Quality, Fish and Wildlife, Energy Siting and Water Rights).

Since coastal zone concurrence is the state's single state voice for coastal management issues in the Federal permit process, the timing is different than that for the Removal-Fill program. Additionally, as stated above, the final project resulting from the federal permit process may be very different from the project approved by DSL by the time all of the federal agencies complete their reviews. The varying timelines for input and overlapping federal requirements may frustrate applicants and result in issuance of a "conditional" concurrence determination for coastal issues.

☰ ***Department of Agriculture***

The Department of Agriculture through soil and water conservation districts, provides input during the public review process. Input is usually related to agricultural uses of water and erosion control.

☰ ***Department of Parks and Recreation (OPRD)***

The Department of Parks and Recreation is responsible for managing all development in State Scenic Waterways and provides input that relates to project design in these areas.

☰ ***Historic Preservation Office (Part of OPRD)***

The Historic Preservation Office manages the state's cultural resources and may required an archeological survey of the project site in approximately 20% of all projects.

☰ **State Marine Board**

The State Marine Board issues permits for encapsulated polystyrene foam flotation; registers floating homes, boat houses and house boats; issues permits for water-ski courses and ski jumps; provides comments on Removal-Fill applications assessing the impacts of structures and proposed Removal-Fill activities on recreational boating safety and navigation; and has the authority to institute proceedings to enjoin unlawful obstructions injuring free navigation on the waters of the state.

☰ **Water Resources Department**

The Water Resources Department issues processes water right applications and transfers for projects that involve impoundment or use of water.

☰ **City and County Agencies**

Various approvals.

- C. **Customers = Applicants** - The customer of a Removal-Fill permit is anyone who applies to remove or place fill material into a waterway or wetland on public or private land within Oregon to achieve some overall project purpose like a building or road. Throughout this report we will report to the customers as applicants. The majority of applicants are city and county public works departments, the Oregon State Department of Transportation, utilities, and owners of complex private sector developments. Many applicants will hire a consultant to assist them with a Removal-Fill permit to act on their behalf.

During the past five years, DSL has issued an average of 1000 permits a year. Approximately 40% of the permits are individual permits and 60% are "General Authorizations." A General Authorization is a streamlined permit available for smaller projects.

- D. **Process Stakeholders** - In addition to the actual applicants seeking a Removal-Fill permit, wide array of groups are considered stakeholders of the Removal-Fill Permit process, that is, groups or individuals who have some stake in the outcome of the Removal-Fill permit request. Typical stakeholders of the removal fill process include citizens, environmental advocacy groups, business advocacy groups, watershed councils, federal agencies, cities, counties, neighbors, utilities, and local business organizations.
- E. **Current Process Performance** - To assess the effectiveness of a business process one can examine:
- *Customer Feedback* - How well the product is meeting the expectations of the product customers.
 - *Process Gaps* - How efficiently and effectively the process works – are there a lot of handoffs, is there duplication of work, delays, rework, non-value added work, information gaps, resource gaps, decision gaps, work location issues, or equipment deficiencies?
 - *Producer Feedback*. How well is the process working for those who are producing the product – the staff?

Each of the performance aspects of the Removal-Fill Permit process is discussed below.

Customer Measures - Standard expectations of customers include:

- Timeliness
- Cost
- Accuracy
- Helpfulness
- Expertise
- Availability of information

A Summary of Customers' Feedback - The Removal-Fill Process

Improvement Team did not undertake original customer survey work to assess primary customer concerns, however, the team did compile existing customer feedback from all of the agencies represented on the team. Water-Related Process Improvement Team also reviewed the recent 2011 report. The Water-related Process Improvement Team's analysis summarized the following significant factors that are important to Removal-Fill Permit customers:

1. Lack of a single coordinated voice and process

- state agencies need to speak with one voice at one time
- no single agency with project management responsibility
- [lack of willingness to] accept opinion/expertise of other agencies
- too many cooks in the kitchen
- permit approval vs. project
- number of agencies involved
- late and conflicting input
- "bring me a rock" multiple iterations problem
- multiple agency input (not coordinated)

Don't have a way to reconcile concerns:

- no way to know how one change in the project affects other approvals
- need clear path to resolve issues
- unclear process/times for dispute resolution

Different Federal Process:

- different requirements and timelines for DSL & USACE permit
- process and timelines for DSL/DEQ coordination
- conflict between fed/state requirements (also w/in state)

2. What gets you to Yes at the beginning is unclear

- unclear requirements and thresholds
- interpretation of agricultural exemptions
- need clear decision thresholds
- need clear requirements/standards
- no clear “roadmap” up front of what is needed for project
- unclear requirements
- unclear agency expectations
- requirements unclear
- not knowing application requirements – for ALL agencies
- not knowing approval criteria in the beginning

The Team sought agency performance measures regarding the processing of permits, authorizations, etc. Other than DSL, no other agency currently compiles such measures. The Team agreed that data regarding authorization processes managed by other agencies would be useful. Existing DSL measures that speak to these customer concerns include the following: (Source: http://www.oregonstatelands.us/pm_2004.pdf)

Measure 23 – Percent of permits issued within 90 days after completed application is received

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Target	Not available	Not available	Not available	Not available	99%	100%	100%	100%	100%
Data	Not available	98.6%							

Measure 24 – Average number of days to issue completed permits after completed application is received

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Target	Not available	Not available	Not available	Not available	90	77	75	65	65
Data	Not available	66							

Measure 25 – Percent of agency permit applications accepted after being returned one or fewer times as unacceptable before processing

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Target	Not available	Not available	Not available	Not available	51%	60%	50%	70%	80%
Data	Not available	76.3%							

Measure 26 – Percent of agency permit applications accepted after being returned more than one time before processing

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Target	Not available	Not available	Not available	Not available	7.13%	6%			
Data	Not available	4.17%							

Measures 28 – Percent of customers or stakeholders who rate their satisfaction with agency services or products as good to excellent. (Note this is not just customers of a Removal-Fill permit.)

	1999	2000	2001	2002	2003	2004	2005	2006	2007
Target	Not available	90%	90%	90%					
Data	Not available	50%	Not available	Not available	83%	79%			

The data show the Removal-Fill Program to be meeting or exceeding its Performance Measures in many categories; while it is performing below the standard in a few others. Notable is the high performance in meeting the statutory deadlines for permit issuance and the high satisfaction level of stakeholders.

The Team explored possible causes of the top customer concerns. Ideas considered by the Team included the following:

Possible causes of not having a single voice and process:

- We have a separate federal process until 404 assumption. (Note: Section 10 navigable waters are not assumable).
- Multiple approvals are required involving multiple expertise. Expertise can't exist in one person. Water is interdisciplinary.
- Agencies don't delegate easily. Turf issues exist.
- Complete resolution of issues raised during the public review process of the Removal-Fill permit isn't done effectively. Statutory deadlines make it difficult to resolve inter-agency issues collaboratively.
- Lack of resources – no time to coordinate.
- Some applicants don't want one voice – allows them to leverage parts of the process against each other.
- Deadlines for the various approval processes are not synchronized.
- Evolution of agencies and their missions.
- Presumption: such a voice or process would take too long.
- Part of yes is better than none.
- Lack of authority to require input – but see ORS 196.
- Despite statutory direction there is a lack of consensus among the agencies on who should coordinate a single answer.

Possible causes of lack of clarity about what gets an applicant to yes:

- Multiple application processes. Processes are not coordinated. Processes are not known. Lots of places to go.
- Yes-No Decision is subjective.
- Unclear application – incomplete, unclear expectations from agencies, DSL can't convey DEQ requirements, no user guide, no one place to go to get information required for specific projects, no one's job to do that.
- Pre-Application conferences are not always held.
- No one's job to help the applicant get to yes (except ODOT hires staff); some applicants hire consultants, no one has over-arching authority.
- Some projects are designed before all issues are known. This is especially true for projects involving wetlands. In many cases, wetlands are not identified and their boundaries not confirmed early enough in the process.

Wetland boundaries are adjusted in roughly 30% of the delineation reports reviewed and approved by DSL.

- **And, probably most significantly, the applicant doesn't have the comprehensive information they need early enough.**

Process Gaps - As the Water-Related Process Improvement Team reviewed the "as-is" process, the team identified several causes for the gap between applicants expectations of the process and what they actually experience. Overall gaps that span all of the authorizations related to Removal-Fill permits include the following:

- Applicants can seek several authorizations in parallel or sequentially. An applicant does not have to start with one particular authorization (process).
- 80% of applicants must obtain a USACE permit and certification, land use approval, and Removal-Fill permit. Each are separate processes.
- Removal-Fill permit applications received by DSL are often incomplete. The application instructions and checklists do not go far enough to inform applicants of the requirements.
- Applicants can be required to complete several iterations of their application in multiple venues.
- Public notice and comment opportunities occur for each distinct authorization.
- ORS 196.825 provides that authorizations of agencies cannot differ from DSL Removal-Fill decisions and allows DSL to issue permits in lieu of water quality permits. Clarification is needed regarding the actual application of these provisions.

The Team also identified the following concerns regarding the REMOVAL-FILL process specifically:

- The product an applicant receives from DSL's Removal-Fill Permit process is a permit with conditions. Applicants, however, are looking for authority to proceed with a project that involves a Removal-Fill project, in a manner consistent with Oregon's objectives for use and protection of its waters. Permit conditions requiring further approvals, changes, and compliance can take many more months to complete.
- DSL deadlines can necessitate a permit with conditions because there isn't sufficient time to resolve other permit issues. This can be particularly true in complex projects.
- The role of participating agencies is not clear. A DSL permit can be issued without protections a participating agency might consider necessary (e.g. – water quality).
- DEQ is not required to participate in DSL/state process but is required to do participate in the federal process.
- DSL does not provide feedback to agencies that submit recommendations. A dispute resolution process may exist between DSL and one or two agencies. A process is needed to address disagreements between DSL staff and another agency's staff. It is unclear whether DSL trumps other state agencies regarding conditions. It is also unclear whether the product of participating agencies is "comments", "recommendations", or actual conditions that must be added to the permit.
- DSL's role regarding the following is unclear:

- o To provide assistance to applicants to help them reach state and applicant goals.
- o To balance the competing interests of participating agencies.
- o To ensure a coordinated, speedy, consistent, non-redundant process.
- o To facilitate the authorization for the applicant?
- o Public can comment until the permit is issued.
- o Step #2 –Pre-Application Meeting: single list of all potential materials that may be required to process the permit does not presently exist. In addition, each item that is prepared may go through several iterations. A consistent role of agencies in the pre-application process is also not clear.
- o Step #3 - Joint Application: 60% of applications are returned as incomplete.
- o Step #5 - Public Review: Not every applicant prepares information required for agency to assess application. Applications can be sent back to DSL to obtain these items, DSL requests information from applicant, applicant supplies information, and then agency review can begin. If all of the information required by an agency was provided with the application, this loop could be eliminated. Agencies don't respond to all notices. If an agency doesn't comment on a notice, it doesn't preclude an agency from imposing its requirements at a later time. A requested revision by an agency may or may not be required by DSL for permit – but comes into play for subsequent permits.
- o Step #6 - DSL Analysis of comments: DSL does not send its analysis to other agencies.
- o DSL's analysis could be web-posted but the website is not currently set up to accommodate this.
- o Step #7 - Applicant Response to DSL Analysis and attached comments. The products at step 7 are unclear, undefined, iterative, and varied.

Agency Staff Feedback - A very limited survey by Water-Related Process Improvement Team members of Permit-Fill Permit process staff indicated the following improvements listed in Table 1 are desired by process staff.

Table 1. Desired Process Improvements by Agency Staff

- Wetland delineation coordination takes a lot of time – as parallel info delays decision on delineation and permit decision
- Application is confusing for General Authorizations
- Later comments delay decisions
- Various levels of consultant expertise (no certification)
- Exacting approach to application
- Different timelines: USACE/401 process vs. DSL process
- ODFW – wants DSL involved in issue resolution
- Not sure how comments will be handled – communication loop lacking
- DSL different standard of “complete” than USACE - less change possible with DSL
- DSL lacks resources
- Fees cover 15% of program costs so requires school funds
- Expect lack of ability to grow program
- Staff turn over – difficult job, burnout, training investment high, inexperience, lower productivity
- Reduced ability to communicate to public, less outreach to regulated public

III. Imminent Process Changes

DSL has consistently been taking steps to improve the Removal-Fill Process over the past several years. These include:

- ☐ New General Authorizations for small wetland fills within UGB's and UUC's.
- ☐ New General Authorizations for ODOT Bridge Projects.
 - This program recently was awarded a National Award by the Federal Highway Administration for Environmental Excellence.
- ☐ Small scale and recreational placer mining permits are available via on-line issuance.
- ☐ All removal-fill permit applications and wetland delineation reports are posted on the DSL Web site and status is project status is 'real-time.'
- ☐ All permit public notices and commenting is handled via Web-based interaction.
- ☐ Applicants can check public and agency project review comments on line at any time.
- ☐ State Programmatic General Permit (SPGP). Once issued by the Corps to the DSL, minimal impact projects authorized by DSL that qualify for the SPGP will automatically fulfill all their federal permitting requirements (i.e., "one stop shopping"). Issuance is expected in July 2005.
- ☐ Over 50 training sessions held throughout the State for permit applicants.
- ☐ Quarterly meetings with Wetland Consultants.
- ☐ Checklists available on-line for applicants to use for wetland mitigation and applications.
- ☐ Enforcement Manual adopted to guide staff.
- ☐ Industrial Site Certification assistance.
- ☐ Advance site planning, wetland identification and mitigation planning for certain industrial sites.

Some significant improvements are about to be implemented that will help address applicant concerns.

New Application Form - First of all, DSL in March of 2005 implemented a new Removal-Fill permit application form. This application is submitted simultaneously to DSL and the Army Corps of Engineers and therefore must meet the needs of both agencies. The primary change to the application is to list the information DSL requires in order to effectively evaluate a Removal-Fill permit application. This is expected to reduce the number of requests for supplemental information and resulting time delays experienced by applicants significantly. However, not all of the other state agency information requirements are listed on the new application and more work could be done to further improve the application for streamlining.

SPGP - Secondly, DSL is anticipating obtaining a Statewide Programmatic General Permit from the U.S. Army Corps of Engineers for certain types of projects that have been determined to have minimal impact (including site development permits with less than 0.5 acres of wetland impact and certain transportation related projects.) This will allow DSL to issue one permit that will also cover the federal requirements, including the 401 Water Quality Certification issued by DEQ, and the Coastal Zone Management Consistency Statement issued by DLCD.

DSL has basically two types of authorizations: an individual permit (IP) for more complex projects and an expedited General Authorization (GA) for projects that have minimal impacts. During the past five years, DSL has issued an average of 670 permits a year (excluding placer mining). Approximately 40% of the permits are individual permits and 60% are "General Authorizations." It is anticipated that most of the SPGP eligible permits will fall under the General Authorization category. Given the potential of the SPGP to effectively address many of the concerns raised by applicants, the Water-Related Permit Process Improvement Team focused its recommendations on the Individual Permits that will not be benefiting from implementation of the SPGP. An historical record of the types of permits issued by DSL is provided in Table 2. Individual Permits that are the focus of the recommendations contained in this report are shaded on this table. The Process Improvement Team recommends that successful improvements to the Individual Permit process be subsequently considered for General Authorization permits.

Stormwater Management Plans - DEQ is in the process of formalizing stormwater plan submission guidelines that will be distributed to all removal/fill applicants for projects that involve impervious surfaces. The guidelines will assist applicants to identify, properly implement and maintain commonly accepted post construction stormwater controls which have been shown to be effective for treating pollutants expected based on project type and location variables. The guidelines will be available to applicants in hard copy and electronic format on DEQ, DSL, and USACE Web sites.

Fish Passage Rules - The Oregon Department of Fish and Wildlife is in the process of updating its fish passage rules. The amendments should provide better clarity to applicants on what is required to meet fish passage requirements. The revised rules will clarify what is a trigger for fish passage requirements, what fish are "native migratory" fish, what standards need to be met for fish passage, and criteria for mitigation if fish passage will not be done. The department anticipates that the revised rules will be in place by this fall.

Table 2 - REMOVAL-FILL PERMITS THAT ARE THE FOCUS OF THE WATER-RELATED PROCESS IMPROVEMENT TEAM (See Shaded Rows)

April 2005

FISCAL YEAR:	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
INDIVIDUAL PERMITS					
Boat Ramp	11	7	7	7	18
Channel Relocation	3	9	3	3	1
Dam Related	6	6	5	2	8
Dock	6	6	5	11	9
Dredging	14	14	13	11	5
Erosion	44	27	8	11	12
Fiber Optic	6	3	3	1	0
Miscellaneous Fill	113	60	53	64	71
Fish Habitat	1	3	2	5	6
Gold Mining	0	1	0	0	0
Commercial Gravel Removal	9	2	1	6	5
Log Salvage	0	0	1	0	0
Pipeline/Cable/Utility	47	40	26	30	32

FISCAL YEAR:	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004
Ponds	0	2	2	0	0
Roads/Bridges	28	22	24	42	29
Miscellaneous Removal/RF	45	81	37	74	8
Resource Enhancement	3	2	1	0	3
Wetland Enhancement	0	0	3	2	1
SUBTOTAL	336	285	194	269	208

GENERAL AUTHORIZATIONS					
Tidegate	2	5	1	0	0
Fish Habitat Enhancement	219	184	173	172	136
Erosion Control	98	95	33	53	51
Road Construction	129	123	86	138	104
Wetland Enhancement	42	39	23	32	26
Unknown	13	10	3		
Wetland Fill					1
Piling					17
Minimal Disturbance				6	26
SUBTOTAL	503	456	319	401	361
EMERGENCY AUTHORIZATIONS					
Dam-Related	0	3	0		
Erosion	18	7	14	10	13
Miscellaneous Fill	12	2	0		
Pipeline/Cable/Utility	0	7	0	1	2
Roads/Bridges	3	9	10	3	3
Miscellaneous Removal/RF	12	7	1	2	12
SUBTOTAL	45	35	25	16	30
TOTAL TO THIS POINT	884	776	538	686	599
Recreational Small Scale Placer Mining	126	126	270	497	782
GRAND TOTAL	1010	902	808	1183	1381

IV. Some Good Ideas from Other Processes

Team members were asked to identify other permit processes that might offer ideas worthy of implementation in Oregon. The processes discussed briefly by the team are listed in Table 3.

Table 3. Other Processes Considered by the Removal-Fill Team
<ul style="list-style-type: none"> ▪ State Programmatic General Permit (SPGP) – 15 states have adopted a state programmatic general permit which provides a single voice synced with federal pre-certification. Under this approach the applicant gets a permit as long as they met specified design standards. ▪ Web portals ▪ User Guide ▪ Permit Guidance document/handbook. Includes information on expectations and helpful hints to applicant. ▪ Consultant scorecard. ▪ Training for applicants and regulatory staff ▪ DSL web-based placer-mining permit application. Obtain permit on-line. ▪ Super application. ▪ Forest Practices Act – defined authority, supercedes local authority, inter-

relationships defined.

- Economic Revitalization Team (ERT) – “Project Shepherding”, convener with Governor’s authority.
- Quick Response Help (e.g., stormwater management planning assistance and transportation growth management project design assistance)
- Hydroelectric Application Review Team (HART): Water Resources Division is lead, project based, state positions on federal actions, dispute resolution process.
- Michigan Timely Application Permit Service (MITAPS) – “permit angel” – information generalist, interactive questions on web with staff support.
- PARIT – a multi-agency collaboration on a regular basis to review policy issues
- CETAS – state/federal collaboration with an inter-agency team

V. Team Recommendations

The Team brainstormed a variety of recommendations to forward to the Leadership Team to address the top two applicant concerns regarding the existing Removal-Fill Permit Process:

Concern #1: to provide a single state voice and process, and

Concern #2: to provide clarity at the beginning of the process about what gets the applicant to Yes.

The Team found that the improvements it considered fell into one of two categories: 1) actions that could be implemented within the framework of the existing Removal-Fill Permit System, and 2) a recommendation to fundamentally modify the existing Removal-Fill Permit System. The Team offers both types of recommendations below:

A. Recommendations To Improve The Existing System

The Team unanimously agreed on 32 recommendations that could be implemented without changing the framework of the Removal-Fill Permit Process. Some of these recommendations can be implemented within six months, others within a year, and still others within the 05-07 biennium. A few other ideas are suggested for further study and evaluation.

The Water-Related Permit Process Improvement Team believes the following actions will have an impact on applicant concerns and should be **implemented by October 31, 2005** (within six months):

1.	Develop an SPGP applicant education program and DSL Implementation Plan.
2.	Develop checklists for applicants to assist them in identifying the suite of state approvals that may be required for their project and the information that should be supplied to obtain those approvals. The checklists will become part of the broad guidance document planned for development by April 30, 2006.
3.	Provide training to commenting agencies about the purpose and conditions of the General Authorization process to streamline their participation in the public review process.
4.	Revise the removal/fill public notice format to facilitate thorough and

	consistent review and comment by other natural resource agencies.
5.	Create a document that defines the regulatory and advisory roles of each agency involved in the removal/fill permit process. Include a list of potential approvals that may be required, evaluation criteria and agency expectations. This document will become a part of the broad guidance document planned for development by April 30, 2006.
6.	Provide, links to other agency permit/approvals processes and application information on resource agency Web sites.
7.	Develop an effective process measurement system. Consider tracking the number of permits denied; the number of permits issued contingent upon other state agency approvals/permits; and, the number of permits issued that are not contingent upon other state agency approvals/permits.
8.	Provide interagency customer service training with an emphasis on the overall removal/fill authorization process, needs and expectations to natural resource agency staff involved in the removal/fill process.
9.	Provide regular interagency trainings to applicants and consultants to keep them informed of each agency's requirements and processes.
10.	Increase the use of pre-application meetings.
11.	Allow applicants to call for consecutive interagency meetings to discuss larger, more complex projects (much like the former "SWIM" meetings).

The Water-Related Permit Process Improvement Team believes the following actions will have an impact on applicant concerns and should be **implemented by April 30, 2006** (within one year):

12.	Define/clarify decision thresholds so they are consistent within and between agencies.
13.	Assess the best approach to inter-agency involvement in the process. Consider: <ul style="list-style-type: none"> ▪ An ongoing policy team that brings expertise of each agency together, including adaptive management, to evaluate interagency coordination issues. ▪ Improved feedback loops. ▪ Regional interagency teams (not project based) that meet on a regular basis to discuss proposed removal/fill projects. ▪ An interagency team that meets as necessary during the permit process to assist applicants with complex, removal/fill projects (SWIM concept).
14.	Develop a multi-agency memorandum of understanding that addresses coordination, process (including provisions for early identification of project concerns), timeframes, and dispute resolution.
15.	Develop a super-application to assist applicants in providing all of the information required for all potential state approvals that may be required for a removal/fill project. Applications will be available on-line and in hard copy formats. An option would be to provide an interactive (question and answer) type of application that is web based, where information is automatically inserted into multiple applications.
16.	Consolidate waterway and wetland related permit information from all agencies on a single Web site/link. Develop a guidance manual that is

	<p>available in hard-copy format and on-line that:</p> <ol style="list-style-type: none"> a. Outlines the process/roadmap for all state approvals required for frequent removal/fill project scenarios. b. Clarifies decision thresholds for all state approvals (must be consistent within and between agencies). c. Provides a list of removal/fill project evaluation criteria for all state approvals. d. Describes each agency's expectation in regard to information requirements and project design/construction criteria for removal/fill projects.
17.	Evaluate wetland delineation report and removal fill permit application requirements for level of difficulty and user friendliness.
18.	Develop a proposal to allow for flexible timelines for large complex projects which may require more interagency collaboration.
19.	Develop a legislative package to be presented during the 05-07 Legislative session that may include statutory, rule and resource revisions to set up the framework to move towards a consolidated permit system process for removal/fill activities. (See further discussion in Section E-2 of this report.)

The Water-Related Permit Process Improvement Team believes the following actions will have an impact on applicant concerns and should be **implemented by June 30, 2007** (within the 05-07 biennium):

20.	<p>Consider adopting a multi-agency rule to create clarity and certainty, that may include:</p> <ol style="list-style-type: none"> a. Adoption of ODFW mitigation policies as DSL rule. b. DSL adopts other agency requirements. c. Develop multi-agency permit conditions/thresholds like OTIA III Bridge Program. d. Include federal requirements.
21.	Develop a master list of permit conditions that meet the requirements of all guidelines and approvals.
22.	Create a Liaison/connection to the federal process so that project changes are consistent with state approvals.
23.	Develop a Web based Comprehensive Project Tracking System that would track the progress of all state approvals for a removal/fill project.

The Water-Related Permit Process Improvement Team believes the following actions could have an impact on applicant concerns and should be **studied further**:

24.	Move the focus from process to performance and compliance to allow more flexibility for the applicant and their contractors.
25.	Provide more assistance to applicants in the early identification of waterway and wetland jurisdictional boundaries so that application re-submittal and project re-design is minimized. †
26.	Establish a position responsible for removal/fill training and outreach. †
27.	Provide regulatory information clearinghouse – staff who provide

	information on all state approval requirements. †
28.	Establish an external Ombudsman position to assist applicants. †
28.	Establish an external Ombudsman position to assist applicants. †
29.	Develop a consultant certification program or other vehicle to assist applicants in choosing consultants that have an appropriate level of expertise and experience in Oregon’s waterway related permitting processes. †
30.	Create more General Authorizations to address frequent activities that may have minimal impact. (Caveat: in connection with other process improvements).
31.	Explore ways for applicants to purchase enhanced service for a fee. (Caveat: balance with the need for equal access of all applicants.) †
32.	Provide a list of external consultants, contracted by the State to provide project design/redesign assistance to applicants (loosely patterned after the Transportation Growth Management Quick Response Teams at DLCD).

† = Will require dedicated FTE

B. A Recommendation to Fundamentally Modify the Existing System

As the Team reviewed the existing Removal-Fill Permit System it found a fundamental gap between the product applicants currently receive at the end of the DSL Removal-Fill Permit process (i.e. DSL permit with requirement to obtain other permits, authorizations and certifications prior to starting the project) and the product they actually want to receive (i.e. single state permit or simultaneous authorization to begin work).

The current system provides an applicant a “Permit with Conditions.” The permit is often just the first of several other state authorizations that are required to proceed with a Removal-Fill project. Applicants, however, are looking for authority to proceed with the Removal-Fill project; they are not looking for a list of additional authorizations necessary to proceed.

The team also identified a gap in the service level of the agencies compared to the expectations of many applicants. Due to fiscal constraints, most agencies are not able to offer applicants a high level of assistance or project management. Much is left to the applicant or the applicant’s paid consultant to marshal the application through the permit process and to coordinate review, respond to comments, and make plan adjustments to satisfy the various agencies. A notable exception is the work of the ERT Liaison at DSL and ODOT’s funding of staff at DSL, ODFW, and DEQ.

In order to examine this issue, the Team developed a continuum view of these two aspects of the process: a continuum of potential products and a continuum of customer service. Both are displayed below:

PRODUCT CONTINUUM

Loosely Connected Permits/Authorizations	“Packaged” Permits	One State Permit (all water related activity connected to Removal-Fill projects)
--	--------------------	--

Today’s product (i.e. the DSL removal-fill permit) that gets an applicant to Yes is a set of loosely connected permits. A more unified end product could be a “package of permits” or several distinct permits that are authorized together. An even more unified end product could be a consolidated permit system that authorizes all water related activity connected to a Removal-Fill project.

SERVICE CONTINUUM (Assistance Provided to Applicant)

Gathering of Comments	Referral Service	Ombudsman	Shepherd	Project Manager
-----------------------	------------------	-----------	----------	-----------------

Various levels of service can also be provided to applicants to assist them in obtaining the authorizations they need. At one end of the continuum, is today’s level of service – simply a gathering of comments from affected agencies regarding a Removal-Fill application. The next level of customer service could involve identifying all possible authorizations that are required and providing a referral service to the necessary contacts and processes. A next level of customer service could be to provide an ombudsman, or person to contact to help resolve issues the applicant encounters in the permitting process. A higher level of service could be to assign state staff whose job it would be to assist applicants in obtaining the permits they need. An even greater level of service could be to assign a project manager to work with the applicant to get the application to yes.

The Team recommends that the State of Oregon pursue the higher end of both continuums. First and foremost, the Team recommends that the product of the Removal-Fill Permit process be fundamentally changed so that all state requirements associated with the Removal-Fill project happen at one time. This would look like one **state** permit for all water related activities connected to Removal-Fill projects. The Team believes the State of Oregon should offer a Removal-Fill permitting process that consolidates permitting requirements and processes into a single seamless and coordinated program that is transparent to the applicant and public interests while meeting Oregon’s resource protection goals for waterways and wetlands. This would be a “single state voice.” Hallmarks of the program would be the ease with which the applicant:

- Determines whether a permit is required;
- Identifies what is needed in an application; and
- Fulfills the requirements for state approval of the Removal-Fill project.

This would mean that all water-related requirements from state agencies would be identified in this consolidated permit system for a Removal-Fill project.

The Team emphasized that this policy direction should be evaluated separate and apart from any decision as to which agency would be given responsibility for administering the new consolidated permit system.

In addition, the Team believes the level of service provided to Removal-Fill applicants should move to the “shepherd” or “project manager” end of the service level continuum.

In order to move the state in these directions, the Team recommends that work be initiated immediately to develop a management, budget, and legislative package for the 2007 Legislative session to implement a consolidated permit system. Any required legislation should be drafted by the April, 2006 deadline for the 2007 Legislative Session. The package should:

- Redesign the Removal-Fill Permit Process to accomplish a consolidated permit system. This would include developing a detailed optimum task flow. The processes of each agency will need to be modified so that the issues and conditions required by each agency are identified during a common process and timelines.
- Move the focus from the process to performance/compliance.
- Provide greater support and authority for permitting staff that enables them to fulfill a customer service role as shepherds/project managers.
- Consider mandating agencies to notify applicants of requirements early in the process and specifying consequences if such notification does not occur.
- Adjust existing permit timelines to accommodate a consolidated permit system.
- Evaluate redundant local Removal-Fill processes for streamlining opportunities.
- Evaluate staff competencies, resources, and authorities required to implement a consolidated permit system. This would include optimum job design including management duties, staffing requirements, equipment needs, physical space and location requirements and other necessary elements to produce an effective process.
- Clarify and strengthen statutory authorities as needed to implement a consolidated permit system.
- Explore rules revisions to create a single set of rules that govern Removal-Fill permitting.

VI. Criteria for a Successful Water-Related Permit Process Improvement Team Effort

At the start of its work the Water-Related Permit Process Improvement Team identified several criteria to evaluate the success of the Water-Related Permit Process Improvement Team project. The Team believes its recommendations meet the following success criteria:

- The team agrees on the recommendations.
- Clear actionable recommendations are presented.
- The process is streamlined and meets the protections for water resources.
- Changes are useful and obvious to applicants, their perspective on the changes will be “it will make things better.” Implementable/real outcomes and impact to the process are achieved.
- The process becomes simpler and provides greater certainty for applicants.
- Recommendations address state processes and define what we can do to be more adaptive/responsive to Federal uncertainties.
- Although DEQ is primarily involved in the USACE permit process, we will NOT use Federal requirements as an excuse to not do beneficial changes.
- Recommendations build on prior efforts.

VII. Implementation

To move forward with the recommendations offered by the Team, the Team proposes the Leadership Team take the following actions:

A. Leadership Team Commitment and Direction

→ Establish a clear Leadership Team mandate and consensus

1. To proceed with specific process improvement recommendations.
2. Regarding the product and customer service continuums and recommendations.
3. Communicate the priority of this work relative to other work.
4. Commit to meet throughout the implementation of its directives to ensure success.

B. Gubernatorial Direction

→ Secure the Governor's support and strong direction regarding the process improvement recommendations and product/customer service directions, as well as his involvement and support for Legislative directives.

C. Legislative Direction

→ Secure legislative endorsement of this work. Ultimately this will need to look like appropriate budget notes to indicate legislative support for the work to be done and possibly specific legislative allocation of FTE and resources for the project.

D. "State Water-Related Permit" Project Team

→ Direct the Office of Regulatory Streamlining to convene an inter-agency group to develop a preliminary work plan and budget for a "State Removal-Fill Permit" Project Team. This plan should propose the structure and membership of the Project Team and recommend new FTE and funds or reallocation of existing FTE and funds for the project, including consulting resources as needed.

The purpose of a "State Water-Related Permit" Project Team will be to:

- implement approved process changes,
- transition Oregon to a consolidated permit system, and
- transition Oregon to a shepherd/project manager level of customer service.

The Project Team should include the following activities early on in its work program:

1. Organize to validate and further develop the preliminary project work plan and manage the project budget to accomplish the team's purpose. Assign staff and timelines.
2. Develop an interagency Memorandum of Understanding to describe how agencies will collectively move forward to implement approved process changes and to transition to a consolidated permit system and changed level of customer service. Identify a dispute resolution process.
3. Validate the process improvement recommendations and the recommended product/customer service direction by APPLICANTS and stakeholders. This should include developing a schedule and plan to update and involve applicants and stakeholders throughout the life of the project.
4. Establish baseline process measurements and a measurement system to begin May, 2005 so that the following process improvement targets can be assessed by December, 2005:

- a. 80% of applicants received at the start of the process accurate and complete information about approvals required, and approval thresholds/possible conditions, i.e., clarity about what gets an applicant to yes.
- b. 80% of applicants feel the state was helpful in facilitating the permit
- c. The time to go through the process was reduced by countable steps and time intervals.
- d. The average number of revisions per applications was reduced.
- e. Develop a communications strategy for the project.

VIII. Close

The Water-Related Process Improvement Team appreciates the opportunity to forward these recommendations to address key concerns of Removal-Fill permit applicants. We believe the recommendations will enable a single state voice and process and provide clarity about what gets an applicant to YES.

Attachment 1: Detailed “As-Is” Process Flow-chart of the DSL Removal-Fill Process.

April 14, 2005

THE GA, OR GENERAL AUTHORIZATION, PROCESS IS SIMILAR BUT MOVES MORE QUICKLY

Key: ☺ - signifies potential for Applicant resubmission
PRODUCT OF THE PROCESS STEP

DSL Removal – Fill Permit

Who? What?	Applicant/ Applicants' Consultant(s)	Other Interested Parties	DSL	DEQ	ODFW	Water Resources	DLCD – Coastal Zones only	Parks & Rec	Marine Board	Agri- culture	Tribes
<p>Step 1. Jurisdictional Determination</p>	<p>1a. WETLAND DELINEATION ☺</p> <p>Appeal (optional)</p>		<p>1b. WETLAND DELINEATION CONCUR- RENCE</p> <p>1d.. JURISDIC- TIONAL DETERMI- NATION</p>		<p>1c. INPUT TO APPLI- CANT IF DSL ASKS</p>						
<p>Step 2. Applicant Pre- Application Meeting (OPTIONAL) Usually one meeting</p> <p>↓</p> <p>Note: DEQ is not required to participate in DSL/state process but are required to do federal process</p>	<p>2a. CONCEPTUAL PLANS and MITIGATION OPTIONS</p> <p>Convene pre-application meeting</p> <p>About 20% of applicants request this meeting.</p> <p>☺</p> <p>Note: The need for Items listed in Step 6 can be identified at this meeting.</p>		<p>2b. VERBAL OR WRITTEN NON- BINDING GUIDANCE</p> <p>DETERMINA- TION OF SPGP ELIGIBILITY?</p>	<p>2b. VERBAL OR WRIT- TEN NON- BINDING GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBAL OR WRIT- TEN NON- BINDING GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBAL OR WRIT- TEN NON- BINDING GUID-ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERB AL OR WRIT- TEN NON- BINDI NG GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBA L OR WRIT- TEN NON- BINDI NG GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBAL OR WRIT- TEN NON- BINDING GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBA L OR WRIT- TEN NON- BINDI NG GUID- ANCE IF APPLI- CANT ASKS</p>	<p>2b. VERBA L OR WRIT- TEN NON- BINDI NG GUID- ANCE IF APPLI- CANT ASKS</p>
<p>Step 3. Joint Application to DSL and ACOE</p>	<p>Initiate 3a. APPLICATION ☺ (mitigation plan required)</p>										

<p>Step 4. DSL Review (30 days to review original or subsequent submission; 15 days for GA's)</p>	<p>(C)</p>		<p>4b. ACCEPTED COMPLETE APPLICATION</p> <p>40% are usually accepted</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>	<p>4a. INPUT TO APPLICANT IF DSL ASKS</p>
<p>Step 5. Public Review (Note more than 30 days/15 for GA's. 75 days for DEQ if requested.)</p>	<p>(C)</p>	<p>5b. COMMENTS</p>	<p>5a. PUBLIC NOTICE AND REQUEST FOR COMMENT</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p> <p>Review for water right requirements, research water right records (if needed)</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>	<p>5b. WEB-BASED OR WRITTEN COMMENTS TO DSL</p> <p>Can be questions, suggested conditions, requests for additional information, or requests for revisions to the project..</p>
<p>NOTE: Agencies are not required to comment; DSL considers no comment to equal no objection</p>			<p>If 401 Certification Application is not in process, inform DSL of need for certification (30% of applications)</p> <p>*CZM concurrence only federal permit/license.</p>	<p>Receive Notice. Evaluate if project affects fish and wildlife habitat. Evaluate if any special permit must be obtained.</p>							

Note: public can comment until permit decision is made.

<p>Step 6. DSL Analysis 7 days</p> <p>Note: DSL: does not send this to agencies. Could be posted on web if staff time were available.</p> <p>Note: No deadline for this response.</p>			<p>6a. LETTER TO ASKING APPLICANT TO RESPOND TO NAMED SUBSTANTIVE REQUIREMENTS. RESPONSE TO GO TO AGENCY AND DSL. ALL COMMENTS RECEIVED ARE ATTACHED</p>							
<p>Step 7. Applicant Response to DSL Analysis and attached comments.</p> <p>No time limit for applicant. DSL request 25 day turn around for work load planning.</p> <p>Many applications stop here.</p>	<p>7a. RESPONSE TO DSL COMMENTS AND/OR APPLICATION MODIFICATIONS (with copy to affected agencies)</p> <p>EA/EIS/CE/BA/BO () STORMWATER PLAN () EROSION/ POLLUTION CONTROL PLAN () MITIGATION PLAN () (ODOT – later for</p>		<p>7b. ISSUE RESOLUTION AND CHANGED PERMIT CONDITION RECOMMENDATIONS IF APPLICANT ASKS</p>							

Note: Product of agencies at this step unclear. Could be concurrence that applicant has addressed concern. Unclear how to move from step 7 to step 8.
Note: if 401 cert required no guarantee up to this point.

	OSMB) CULTURAL RESOURCES ☞ FISH PASSAGE ☞ LAND USE COMPLIANCE PLAN IN COASTAL ZONES ☞										
Step 8. Permit Decision			PERMIT DECISION AND CONDITIONS (yes, no, yes-but)								
Step 9. Appeal *											
Step 10. Other Authorizations	Initiate ☞ - for each agency with conditions	See Other Processes		See Other Processes Note: 401 is needed on 85% of projects	See Other Processes						
Step 11. Removal or Fill	Initiate										
Step 12. Compliance and Enforcement*											

Notes:

Period from Step 3 through Step 8 cannot exceed 90 days. Applicant may however request that this limit be extended. Project revisions by Project Applicant can occur at any step in the process.

- This step of the process will not be examined as a part of this process improvement project.