



# Appendix F:

## Environmental Laws and Regulations

### (Basic State and Federal Environmental Regulations, Statutes, and Executive Orders applicable to ODOT)

This is not an exhaustive compendium of all environmental regulations; it is a listing of umbrella legislation and regulation for general guidance.

#### GENERAL PROCESS REGULATIONS

##### **National Environmental Policy Act 1969 (NEPA)**

*40 CFR 1500 et seq. and*

##### **Council on Environmental Quality Regulations for the Implementation of NEPA (1978)**

*40 CFR 1500-1508*

The basic national charter for protection of the environment. Requires federal agencies (and their designees) to consider environmental consequences in decision making. Requires the preparation of Environmental Impact Statements or Environmental Assessments.

##### **US DOT Order 5610.1C (1979)**

US Department of Transportation's procedures for consideration of NEPA requirements.

##### **FHWA Environmental Impact and Related Procedures (1987)**

*23 CFR 771*

The Federal Highway Administration's regulations for the compliance with NEPA.

##### **FHWA Technical Advisory (1987)**

*T6640.08*

Guidance for the preparation and processing of environmental and Section 4(f) documents. Includes guidance on content.

**Section 4(f) for the Department of Transportation Act of 1966***23 CFR 771.135*

Requires US DOT agencies to avoid impacts to parklands, recreation property, wildlife and waterfowl refuges, and historic property unless they can demonstrate there are no feasible and prudent alternatives and that all measures to minimize harm have been taken.

**Section 4(f) Policy Paper (1987)**

An extensive discussion of Section 4(f) (see above) and FHWA's policy on the applicability of Section 4(f) to various resources.

**FHWA Environmental Policy (1990, revised 1994)**

The FHWA's statement on environmental protection which guides approval and funding of state DOT actions.

**BIOLOGY, WATER RESOURCES, WETLANDS****Federal Endangered Species Act (1973)***50 CFR 402*

Requires the protection of federally-designated threatened and endangered animal and plant species. Avoidance of taking individuals or jeopardy to populations is required. Agencies are required under Section 7 to consult with appropriate federal resource agency before taking any action.

**Oregon Endangered Species Act (1987)***OAR 603-73...and 496 et seq.*

Establishes program for the protection and conservation of wildlife and plant species that are threatened or endangered. Requires state agencies to inventory populations on state lands and establish protection and conservation programs.

**Waterway Habitat Policies***OAR 496...506 and 635...*

Various Oregon statutes that charge Oregon Department of Fish and Wildlife to protect fish and wildlife habitat.

**Executive Order 11990 and US DOT Order 5660.1A (1977)***23 CFR 777*

Declares that it is the policy of the federal government, to the extent possible, to avoid new construction in wetlands and to minimize their destruction.

**Clean Water Act (1972, 1977, 1987)***33 USC 1251, 1342 & 1344 and 33 CFR 230 and 40 CFR 131*

This umbrella legislation covers the protection of waters of the United States to include wetlands. It establishes various programs such as the National Pollution Discharge Elimination System (NPDES) governing pollution point sources, an indirect source control program, and the 404 Process and permits controlling pollution and filling in wetlands and deep water habitat.

**Oregon Removal - Fill Law***ORS 196.800 - 196.990*

Regulates the removal of material from the beds and banks of, and the filling of, the waters of this state.

**Oregon Freshwater Wetland Compensatory Mitigation Rules***OAR 141-85-005 through 141-85-690*

Estuarine Mitigation in Oregon Estuaries

**OAR 141-85-240 through 141-85-264**

Controls the removal and filling of materials in the waters of the state, including wetlands. Requires a review for avoidance, need, and mitigation of effects of fills and removals, particularly in wetlands.

**Oregon Mitigation Law***ORS 541.626*

Requires mitigation of impacts as a condition of any permit for filling or the removal of material from freshwater, intertidal or tidal marsh area of an Oregon estuary.

**Executive Order 11988 and Location and Hydraulic Design of Encroachments on Floodplains***23 CFR 650 Subpart A (1984)*

Federal agencies must avoid adverse impacts associated with the occupancy and modification of floodplains. They must furthermore avoid support of floodplain development wherever there are practicable alternatives.

**Executive Memorandum on Environmentally Beneficial Landscaping (1977, 1979)****Oregon Standards and Criteria for Stream-road Crossings***ORS 498.351 and ORS 509.605***CULTURAL, SOCIAL, LAND USE, AESTHETICS****Executive Order 11593 and National Historic Preservation Act (1971)***36 CFR et seq. and 36 CFR 66*

Establishes national policy to identify and protect cultural resources, historic and archaeological sites. Requires agencies to inventory for significant properties and address impacts. Requires concurrence of State Historic Preservation Officer and the President's Advisory Council on Historic Places before commencing with actions which may impact significant properties.

**Oregon Scenic and Historic Highways Act (1983)**

*ORS 377, 100-105*

Requires ODOT to identify its most scenic and historic highways and features for purposes of preservation and avoid adversely affecting them unless there is no prudent or feasible alternative to meet transportation needs.

**Native American Graves Protection and Repatriation Act (1990)**

*43 CFR 10*

Gives lineal descendants and Indian tribes rights to human remains, funerary objects, sacred objects or objects of cultural patrimony with which they are affiliated. This and other legislation give a high degree of control to Native Americans over archaeological site mitigation and protection.

**Oregon Land Use Program and Statewide Planning Goals (1973)**

Establishes Oregon's land use planning program. Requires the identification of certain land use categories and natural resources and the development of mechanisms for their protection. Also requires the development of agency land use coordination agreements that spell out how state agencies will pursue their missions while fulfilling the goals of the land use program.

**Coastal Zone Management Act (1972)**

*15 CFR 923 et seq.*

Requires actions in the coastal zones to demonstrate consistency with the land use programs to protect coastal features and resource values.

**Uniform Relocation Assistance and Real Property Acquisition Act and Civil Rights Act (Title VI) (1970)**

*49 CFR 24 and 23 CFR 740 et seq.*

Identifies policies and procedures to insure that individuals and businesses being relocated as a result of federal actions are fairly and equitably compensated for their homes, businesses and relocation expenses.

**Wild and Scenic Rivers Acts (federal and state)**

*36 CFR 297*

Requires coordination with the federal land management agency or Oregon State Parks and identification of the compatibility of the proposed action with the river

management plan. Adverse actions may trigger the provisions of Section 4(f) (see above) and prevent the action unless minimized.

**6(f)(3) of Land Water Conservation Act**

*36 CFR 297*

Requires National Park approval of lands acquired with Land Water and Conservation Funds if converted to another use.

**Farmland Protection Policy Act (1981)**

*7 USC 4201*

Programs are to minimize the extent to which they contribute to the unnecessary, irreversible and avoidable conversion of farmland to non-agricultural use.

**Executive Order 12898 (Environmental Justice)**

Agencies are to evaluate and eliminate programs and actions which disproportionately adversely impact or negatively affect minority and other protected classes, and identify methods to better communicate with these groups on proposed actions.

**NOISE, AIR QUALITY AND HAZARDOUS MATERIAL**

**Procedures for the Abatement of Highway Traffic and Construction Noise**

*23 CFR 772*

Establishes FHWA policies on noise analysis, disclosure and mitigation. Supplies noise abatement criteria. Directs the sharing of their information with local government officials for use in planning and design.

**Clean Air Act (1970, last amended 1990), EPA/DOT Conformity Guidance, Air Quality Conformity and Priority Procedures for Use in Federal-Aid Highway and Federally Funded Transit Programs (1984), and Oregon Air Pollution Control laws**

*42 USC 7401 et seq., 23 USC 109 et seq., 49 USC 1601 et seq., and OAR 340-20-710 et seq.*

The Clean Air Act established a national policy on controlling air pollution. The 1990 Amendments to the Clean Air Act attempt to limit air pollution through changes to industrial operations, advanced control technologies and community action.

**Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation and Liability Act, and Guidance for Hazardous Waste Sites Affecting Highway Project Development**

*PL 94-580, PL 96-510*

RCRA and CERCLA set national policy on disposal and treatment of hazardous waste.