

DIVISION 90

ADMINISTRATIVE RULES FOR WETLAND DELINEATION REPORT REQUIREMENTS AND FOR JURISDICTIONAL DETERMINATIONS FOR THE PURPOSE OF REGULATING FILL AND REMOVAL WITHIN WATERS OF THIS STATE

141-090-0005

Purpose

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0010

Applicability

(1) These rules establish the standards and procedures used by the Department of State Lands to identify waters of this state that are subject to regulation and authorization requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

(2) These rules are supplemental to administrative rules for issuance and enforcement of removal and fill authorizations (OAR 141-085; OAR 141-0102); rules pertaining to wetland conservation plans and local wetlands inventories (OAR 141-086; OAR 141-120); rules pertaining to the identification of significant wetlands (OAR 141-086); rules pertaining to General Authorizations (OAR 141-089); rules pertaining to General Permits (OAR 141-093) and rules pertaining to Oregon Scenic Waterways (OAR 141-100).

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0015

Policy

(1) It is the policy of the State of Oregon that the protection, conservation and best use of the water resources of this state are matters of the utmost public concern (ORS 196.805) and that the state use a single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS 196.672).

(2) In accord with these policies the Department shall, to the greatest extent possible:

(a) Provide a clear process for making, modifying or reissuing jurisdictional determinations, including wetland boundary delineations;

- (b) Make jurisdictional determinations using the best available science, technical guidance and documents;
- (c) Use sound professional judgment in interpreting maps, aerial photographs, environmental data and other relevant documents;
- (d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners and developers and that help ensure that fill or removal of material in waters of this state does not occur without a required removal or fill permit; and
- (e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of site development planning in order to incorporate measures to avoid and minimize impacts to wetlands and other waters and thus prevent unnecessary regulatory delays.

(3) Because wetlands and other waters of this state can be affected over time by both natural changes and human activities, jurisdictional determinations are not valid for an indefinite period of time.

(4) The Director of the Department of State Lands shall designate employees responsible for making jurisdictional determinations as described in these rules.

(5) Final authority for determining the adequacy of the procedures, methods, application of technical documents, interpretation and analysis of maps and data, and conclusions regarding the identification of waters of this state and jurisdictional determinations rests with the Department except as described in Oregon Laws 2012, c. 108, § 2, and except when the Department's determination is reviewed by a court of competent jurisdiction.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279

141-090-0020

Definitions

For the purpose of these rules:

- (1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.
- (2) "Applicant" means a person who has applied to the Department for a wetland delineation report approval, a jurisdictional determination and a removal or fill authorization.
- (3) "Authorization Application" means the written application for an authorization to place fill in or remove material from waters of this state as required by OAR 141-085, OAR 141-089, OAR 141-0100 and OAR 141-0102.
- (4) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Department 's jurisdictional determination.
- (5) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology or substrate to the extent that the "normal circumstances" of waters of this state are changed. The change in circumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

- (6) "Consultant" means a private individual or firm whose business is to provide professional services to the public.
- (7) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and on a detailed map prepared by professional land survey or similar accurate methods.
- (8) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of this state, including wetlands. A determination does not include the precise location or boundaries of any wetlands or waterways determined to be present.
- (9) "Director" means the Director of the Department of State Lands or his or her designate.
- (10) "Department" means the Oregon Department of State Lands, including the Director.
- (11) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.
- (12) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a receiver, their respective position in latitude, longitude, and altitude.
- (13) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of this state.
- (14) "Jurisdictional Determination" (JD) means a written decision by the Department that waters of this state subject to regulation and authorization requirements of OAR 141-085, OAR 141-089, OAR 141-0100 and OAR 141-0102 are present or not present on a land parcel. The JD may include a delineation of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the ordinary high water line of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to authorization requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in OAR 141-090-0050.
- (15) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.
- (16) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086 and has been approved by the Department.
- (17) "Manual" means the 1987 U.S. Army *Corps of Engineers Wetlands Delineation Manual* including the two regional supplements that cover Oregon: Arid West and Western Mountains, Valleys, and Coast, and applicable guidance (see OAR 141-090-0030) all of which is hereby incorporated by reference. The public may obtain a copy of the manual from the Department's website.
- (18) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(19) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Department after the Department has issued a jurisdictional determination or issued an authorization.

(20) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(21) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Department may determine if the placement of fill material required a fill permit.

(22) "Offsite Determination" means a determination by the Department or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, or interviews with persons familiar with the site. An offsite determination is considered to be a Preliminary Jurisdictional Determination (PJD) unless otherwise stated in writing by the Department.

(23) "Onsite Determination" means a determination by the Department or any other person that includes a site visit to collect relevant data. An onsite determination may be either a PJD or a JD.

(24) "Other Waters" means waters of this state other than wetlands.

(25) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(26) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of this state are present or not present on a parcel of land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Department, and also include wetlands mapped on the NWI or on an LWI.

(27) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Department's contact for the purpose of the review and approval of a wetland delineation report.

(28) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of this state.

(29) "Report" means a wetland delineation report.

(30) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area and documented on a wetland determination data form.

(31) "Site-specific methods" means what the field investigator actually did in order to conduct the wetland determination or delineation and prepare the wetland delineation report; for example, the offsite resources actually consulted, why certain portions of a study area were or were not selected for field sampling, actual plot sizes for vegetation sampling, and explanation of best professional judgment relied upon. A generic description of methods the field investigator generally employs is not site-specific.

(32) "Study Area" means the area that was investigated for the presence of waters of this state (e.g., usually a portion of a tax lot(s), parcel or other legally defined geographic area).

(33) "Waters of this state" means all natural waterways, all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605. (ORS 196.800(14) and OAR 141-085-0010 and OAR 141-085-0015).

(34) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(16) and OAR 141-085-0010).

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

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

(37) "Wetland Map" means a map included in a Wetland Delineation Report or provided with a JD by the Department that shows the parcel(s) and/or study area(s) investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0025

Procedures for Determinations Conducted Entirely by the Department

(1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

(2) The Department may make a determination for a number of reasons, including but not limited to:

(a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a particular parcel or parcels;

(b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

(c) A site development notice from a local government;

(d) A request from a local government or other government entity acting in its capacity to conduct site assessments for project or planning purposes;

(e) A removal-fill authorization application, request for a pre-application meeting or a compliance investigation;

(f) A request to review and approve a wetland delineation report (see additional requirements and procedures in OAR 141-090-0030, OAR 141-090-0032 and OAR 141-090-0035); or

(g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, ORS 196.800 to 196.990 and any applicable rules of the Department.

- (3) The Department may prioritize the completion of determinations based upon the availability of staff and budget resources.
- (4) A request to the Department to provide a wetland determination apart from an authorization application, wetland delineation report submittal or local government notice shall include:
 - (a) A written request on a form provided by the Department;
 - (b) Landowner/agent permission to conduct a site visit if an onsite determination is desired;
 - (c) Landowner or agent name, company or agency, mailing address and phone number;
 - (d) A location map such as a city map showing the precise parcel location with respect to nearest streets and parcel address, if any;
 - (e) A detailed site map such as a tax map or hand drawn parcel map showing, as appropriate, such features as the location of streets, roads, buildings, streams, and area of any planned development or fill or excavation, if known; and
 - (f) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers).
- (5) A request for a determination may include additional helpful information, such as:
 - (a) A large scale topographic map of the site (e.g., 1 inch = 50 feet);
 - (b) A large scale aerial photograph of the site; or
 - (c) Photographs of the site.
- (6) A wetland determination request as described in section (4) and (5) of this rule may not be used to obtain agency review and approval of a wetland delineation report (see OAR 141-090-0032 and OAR 141-090-0040).
- (7) The Department will review the information provided with the request along with other available maps and information and provide a PJD or a JD.
- (8) The Department may request additional information and may conduct a site visit to ensure an accurate determination. The Department shall contact the applicant or primary contact prior to conducting a site visit.
- (9) An onsite determination conducted by the Department to make a JD or PJD shall include at a minimum:
 - (a) A location map showing the location of the parcel(s) with respect to major roads;
 - (b) A parcel map showing property boundaries;
 - (c) The legal location from the tax map (Township, Range, Section, Quarter Quarter Section and Tax Lot numbers);
 - (d) The NWI map or, if available, the LWI map with the site located;
 - (e) The county soil survey map with site located and soil type(s) mapped on the site identified;
 - (f) A sketch map showing the approximate location of any waters of this state on the parcel(s);
 - (g) At least one data form (or equivalent notes) documenting any wetlands identified or possible wetlands determined not to meet wetland criteria; and
 - (h) Conclusions and recommendations regarding additional requirements (e.g., the need for a delineation or permit), as appropriate to the determination request and the situation.
- (10) After review of the information and the site visit, if conducted, the Department may:
 - (a) Provide a written PJD or JD in accordance with section (11) of this rule; or

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

(11) A written PJD or JD by the Department shall include at a minimum:

(a) A letter or form addressed to the applicant, landowner or agent that includes the location of the parcel(s) investigated, a file number for future reference, and the expiration date of the JD, or a response on or attached to a wetland land use notice form or other site development notice submitted by a local government;

(b) Comments regarding the precision or use of the PJD or JD, as appropriate;

(c) Additional requirements or recommendations, such as the need for a wetland delineation;

(d) A determination of the requirements or exemptions in accordance with OAR 141-085, OAR 141-089, OAR 141-093, OAR 141-0100 and OAR 141-0102 that apply to any waters of this state identified on the parcel(s) and/or the proposed activity, if the information provided to or obtained by the Department is sufficient to make such determination; and

(e) A map or reference to a map showing the parcel(s) investigated and the approximate location of any waters of this state identified on the parcel(s), unless the information provided to or obtained by the Department is not sufficient to make or refer to such a map.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0030

Technical Requirements

(1) Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army *Corps of Engineers Wetlands Delineation Manual* ("the manual"), including regional supplements and applicable guidance, and any supporting technical or guidance documents issued by the Department.

(2) The jurisdictional limits of other waters (e.g., streams, estuaries) are described in OAR 141-085-0515.

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0032

Fees for Wetland Delineation Report Review

(1) Any person submitting a wetland delineation report to the Department for review and approval must pay to the Department a nonrefundable fee in the amount as determined under ORS 196.818(4). A request for reissuance of an expiring report is not subject to an additional fee.

(2) If the person submitting a report withdraws the report from agency review after it has been submitted and the fee paid, or if the Department withdraws the report according to OAR 141-090-0040(3)(d), any resubmittal is subject to a new fee.

(3) If a person wishes to change information in or expand the geographic area covered by a report that is pending initial review by the Department, a revised report may replace the previous report in its entirety, without incurring an additional fee. This provision does not apply to changes requested by the Department.

(4) A report that has been rejected by the Department per OAR 141-090-0040(3)(f) may be revised and resubmitted along with an additional nonrefundable fee of \$100.00.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0035

Standards and Requirements for Wetland Delineation Reports Submitted to the Department

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

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

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

(4) Reports must be submitted as:

(a) Paper hard copies, reproduced in color as applicable, unbound and, with the exception of photographs, must copy legibly on a black and white copier; or

(b) Digital single PDF files with minimum resolution of 300 dpi and searchable text for the text portion of the report.

(5) Submitting Geographic Information System (GIS) data is optional but recommended for reports covering large study areas and must conform to the GIS format provided by the Department.

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

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

(a) The entire parcel (tax lot) or study area must be investigated during a field investigation. If only a portion of a parcel is investigated, the study area with respect to parcel boundaries must be made clear in the report text and shown on the wetland maps.

(b) All waters of this state in addition to wetlands must be identified, described, supported by data as appropriate, and mapped.

(c) Sufficient data and additional information shall be collected for any wetlands and other waters of this state to enable the Department to make a JD and also to determine if removal-fill permit requirements apply or if the feature identified may be specifically exempt from permit requirements.

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

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

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

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

(8) Study area boundaries, wetland and other water boundaries, and sample plots shall be identified on the ground. For actively managed sites, such as agricultural fields, golf courses, or recreational fields, where it may be impractical to leave the boundary and plot markers on the ground until the JD is issued, their precise location must be readily relocated in the field by the applicant or consultant during a site visit by the Department.

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

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

(a) Wetland determination and delineation on farmed sites shall follow procedures outlined in the Difficult Wetland Situations Chapter of the appropriate regional supplement.

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

(11) Wetland boundaries, samples plots, and study area boundaries must be mapped to the standards described in subsection (a) and (b) of this section.

(a) Except as provided in subsection (b) of this section, the map precision standard (precision of transferring boundaries of features located on the ground to a map) for wetland boundaries, data plots and study area boundaries is within one meter (3.28 feet);

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

(c) Mapping procedures may include professional land survey, GPS, measurements made from permanent features identified on the map or on an aerial photo included with the report, or approximated. For most intensive development activities, such as subdivision planning or commercial development, a professional land survey may be necessary. The appropriate map precision for removal-fill permitting is subject to the judgment of the Department.

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

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

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

(c) Precipitation for the day(s) of and 2 week period preceding the field investigation(s), observed and percent of normal rainfall for the water year to date, and for the observed rainfall compared to the NRCS WETS table 30% and 70% chance exceedance values for each of the three months preceding the field investigation;

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

(e) A description of any wetlands and other waters, including whether or not they extend offsite, and the characteristics of the wetland and other water boundaries on the site;

(f) Deviation from NWI mapping, LWI mapping, or previous DSL-approved delineations, supported by wetland determination data or explanation of development in area mapped previously as wetland;

(g) An explanation of how the location of the parcel boundaries, data plots, wetlands, and other features depicted on the delineation map(s) were mapped. A statement of precision must be included with each method used to generate the map.

(h) All preliminary jurisdictional determinations shall be supported with information and rationale sufficient to demonstrate jurisdiction based on OAR 141-085-0515 criteria.

This information can include, but is not limited to:

(A) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff);

(B) Information sufficient to determine whether or not an identified water feature is artificially created entirely from upland and the purpose for which it was created.

(C) Information about the water feature's wetland status, size, average water depth at ordinary high water, topographic and geomorphological location, mapped soil series and hydric status, and evidence of drainage (e.g., drain tiles or ditching).

(D) Hydrology monitoring data;

(E) Historical aerial photographs;

(F) Data or other information on pre-disturbance conditions, such as excavation to an original (formed insitu) soil surface or identification of a former stream course;

(G) A detailed topographic survey;

- (H) Data collected at a certain time of year;
 - (I) Additional plant species identification; or
 - (J) Documentation from a Removal-fill permit including permit number.
 - (i) The results and conclusions of the investigation;
 - (j) The following disclaimer: "This report documents the investigation, best professional judgment and conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands in accordance with OAR 141-090-0005 through 141-090-0055." and
 - (k) Appendices, as needed.
- (13) Report Figures and Maps: All reports shall include the figures and maps listed in (13)(a) through (13)(g). All maps must include an outline of the study area boundary, a north arrow, a scale bar, and legend of all map elements.
- (a) A location map, such as a city map,
 - (b) Assessors tax lot map(s), which include the entire study area, downloaded as PDFs from the Oregon Department of Revenue's "ORMAP" website.
 - (c) The appropriate LWI map(s) or if no LWI has been completed, the NWI map(s),
 - (d) The county soil survey map including the map unit symbol, name, and hydric status for all soil series mapped within the study area;
 - (e) At least one recent aerial photograph, preferably taken early in the growing season that includes the month and year of the photo (include at least three aerial photos from three different years for farmed sites).
 - (f) One or more wetland and other waters maps comprising the wetland and water determination or delineation, as appropriate, that meets the requirements in sections (14) through (16) of this rule.
 - (g) Ground level color photographs of the site.
- (14) The wetland and other waters map(s) must include:
- (a) The boundaries of the entire parcel(s) subject to investigation; or
 - (b) The study area boundary in relation to the parcel boundaries, if only a portion of the parcel(s) was investigated. For large parcels with small study areas, a map in addition to the wetland map may be required to show the relationship between the study area and parcel boundaries.
 - (c) An index map if a large project study area needs to be divided into more than one detail map for clarity or map scale issues. The index map shall show the precise location and extent of the areas shown on the detail maps in relationship to the larger study area.
 - (d) Locations of existing structures (unless visible on a current aerial photo included in the report), such as culverts, bridges, tidegates, fencelines, powerlines, and roads, where practicable.
 - (e) Locations of fill, water diversions, or other major alterations;
 - (f) The boundaries of all wetlands and other waters and where they extend offsite;
 - (g) Numbered sample plots corresponding to data forms (see section (17) of this rule);
 - (h) Photograph locations and direction of view.

(i) A statement of the mapping method and estimated mapping precision for the study area boundary, wetland and non-wetland water boundaries, and data plot points, for example the GPS post-processing error estimate.

(15) The wetlands and other waters identified must be accurately transferred to a linework basemap, legible on a black-and-white photocopy. An aerial photo base layer may be used but the image shall be lightened to maintain map legibility.

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

(17) Data Form Requirements: All reports shall include a wetland determination data form for each sample plot. The data form used must be that provided with the appropriate regional supplement to the manual, or other form provided by the Department. All wetland determination data forms must:

(a) Be fully completed;

(b) Include only data collected from a single sample plot on a single date (additional dates of hydrology data may be reported in the comments section or provided in a table);

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

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

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

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279

141-090-0040

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

(1) When a wetland delineation report is submitted to the Department for review, approval and a JD, the Department shall review the report (according to its established priorities) to ensure that:

(a) The work meets the technical requirements in OAR 141-090-0030;

(b) The report meets the standards and requirements in OAR 141-090-0035;

(c) There is sufficient information for the Department to make a JD, including the geographic extent of any waters identified, as appropriate; and

(d) There is sufficient information for the Department to determine the removal-fill authorization requirements or exemptions that apply to the wetlands or other waters identified and/or the activities proposed.

(2) The Department shall complete an initial review of the report within 120 calendar days from receipt of the report and the fee.

(3) During or upon completion of the Department's review, the Department may take the following actions:

- (a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent or applicant and the consultant, if any, in accordance with OAR 141-090-0025(10).
- (b) Request missing information (report incomplete), clarification or additional data (see OAR 141-090-0035(9),(10), and (12h)).
 - (A) The request will be made to the primary contact orally by telephone or in writing by, e-mail or regular U.S. Mail.
 - (B) If the Department makes a written request to the primary contact, the Department will copy the request to the consultant, landowner and applicant, as appropriate.
 - (C) The primary contact shall be responsible for promptly informing the Department of any change in the primary contact during the Department's review process.
- (c) Conduct a site visit to confirm the report findings or obtain additional information;
- (d) Withdraw the report from further review if missing payment, additional or clarifying information, or requested revisions, are not provided within 60 calendar days of the Department's written request;
- (e) Require revisions of the wetland map and the PJD based upon the report review, any additional information requested, and a site visit, if conducted, and provide a JD accordingly after consulting with the primary contact and report author, if different; or
- (f) Reject the report, along with a written explanation to the applicant, consultant, landowner and agent, as appropriate. Examples of reasons for rejecting a report include, but are not limited to:
 - (A) The work has not been completed according to the technical requirements in OAR 141-090-0030.
 - (B) The report does not, in the judgment of the Department, accurately reflect site conditions or provide sufficient information for a JD;
 - (C) The report contains major errors, omissions or inconsistencies according to the standards and requirements in OAR 141-090-0035, such as but not limited to:
 - (i) Onsite data is not collected (e.g., offsite or reconnaissance level report);
 - (ii) No paired plots or number of paired plots is clearly inadequate for length and complexity of wetland boundaries;
 - (iii) Data forms with major gaps (e.g., no soils data collected);
 - (iv) Wrong data form used;
 - (v) Clearly erroneous data or conclusions;
 - (vi) All water features are not mapped;
 - (vii) Permission for a requested site visit is not granted;
 - (viii) Standard report format is not followed (OAR 141-090-0035(1));
 - (ix) Report cannot be field-verified because site preparation or construction has already commenced;
 - (x) The Department requests and conducts a site visit and the wetland boundaries and sample plots are not identified on the ground or cannot be accurately relocated by the consultant or applicant (see OAR 141-090-0035(8)); or
 - (xi) After the second written request for information or revisions, the resubmitted information does not address all of the Department's comments or requests, or introduces new errors.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0045

Duration, Expiration, and Reissuance of Reports and Jurisdictional Determinations

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

(a) A field investigation or new information reveals that site conditions or the geographic extent of waters of this state are not consistent with the information in a report or permit application submitted to the Department;

(b) Additional site information or data is provided voluntarily by an applicant or landowner to the Department;

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

(d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S. Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331); or

(e) New information obtained by or provided to the Department shows a change in circumstances resulting in a change in the jurisdictional area.

(2) JDs that are issued in the form of a removal-fill authorization or those made for an enforcement action are not subject to the five-year expiration.

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

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

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

A new fully completed wetland delineation/determination report cover form referencing the recently expired wetland delineation number.

Date of the field inspection and the name of the person conducting the field inspection.

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

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

A description of the method used to relocate the wetland boundary(ies) in the field and a summary of the supporting evidence used to conclude that the location and extent of wetlands is the same.

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

A recent aerial photograph with the study area boundary identified.

Any figures that may have changed from the recently expired wetland delineation report, such as a smaller study area.

Completed data sheets from representative data plots illustrating the unchanged wetland conditions.

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

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

(b) Request missing information, clarification, or additional information;

(c) Conduct a site visit to confirm the report's findings or to collect additional information;

(d) Withdraw the request for reissuance from further review if missing additional or clarifying information, or requested information is not provided within 60 calendar days of the Department's written request; or

(e) Disagree with the conclusion that the wetland boundaries have not changed and require a new report that satisfies the requirements of OAR 141-090-0035 and payment of the fee described in OAR 141-090-0032 for review of a new delineation report.

(7) At the discretion of the Department and within staffing ability, a landowner can request the Department to conduct a site visit to determine if a recently expired JD can be reissued or if a new report is required. If only minor boundary changes have occurred, new boundaries may be flagged at the discretion of staff during a site visit and the landowner shall produce and submit a new map that reflects the changes and meets the mapping requirements in OAR 141-090-0035.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

141-090-0050

Request for Reconsideration, Contested Case, and Independent Review

(1) A JD by the Department may be reconsidered upon written request to the Department by the landowner, agent, or applicant with landowner approval within six months of the date of the JD (date the letter or form was signed by the Department). The request for reconsideration initiates an informal review process.

(2) New information may be provided by the applicant, landowner, agent or the Department, or may be requested by the Department, as part of the reconsideration process.

(3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

(4) In the event that the landowner, agent, or applicant with landowner permission disagrees with the reconsideration decision, the applicant, landowner or agent may:

(a) Request a contested case proceeding pursuant to ORS 183.413 through 183.470 by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision; or

(b) Request an independent review per Oregon Laws 2012, c. 108, § 2 by submitting a written request so that it is received by the Department within 21 calendar days of the reconsideration decision. The independent review option is available only when the disagreement is over a wetland determination or delineation that has been the subject of reconsideration by the Department. The independent review option is not available for ordinary high water or highest measured tide determinations and does not involve a review of whether the wetland or other water is subject to state regulation.

(5) The Department will maintain a list of persons that are qualified under Oregon Laws 2012, c. 108, § 2 to be independent reviewers and that have qualified through a contract solicitation. If there are no such persons, the list shall be blank.

(6) Upon receipt of the written request for an independent review, the Department will contact all of the persons on the list maintained by the Department under section (5) of this rule and request that they either disclose all prior knowledge of the land parcel that is the subject of the review and any potential or actual conflicts of interests, or state that they will not serve as an independent reviewer in the review. The person shall sign the disclosure to certify that the disclosure is accurate. The Department will develop a list of persons that made the required disclosures and that have not identified any interest in the land parcel that is the subject of the review. The Department shall provide the list and the signed disclosures to the requestor of the request for an independent review.

(7) The requestor and the Department shall each select one person from the list developed by the Department under section (6) of this rule.

(8) The two selected independent reviewers shall select a third person from the list developed by the Department under section (6) of this rule. If the two selected reviewers do not jointly agree on the selection of a third reviewer, the Department shall request the US Army Corps of Engineers to provide a reviewer who has at least five years of experience with wetland delineation per the manual.

(9) The panel of independent reviewers shall submit to the Department and the requestor a written itemized estimate of the costs of the independent review, including all expenses and fees.

(10) Upon selection of three independent reviewers, the Department shall enter agreements with each of the independent reviewers, except for an independent reviewer provided by the U.S. Corps of Engineers. The agreements shall include but not be limited to the following:

(a) A maximum compensation amount not to exceed 120% of the sum of the written itemized estimates of the costs of the independent review provided to the Department by the panel of independent reviewers under section (9) of this rule;

(b) A maximum term for performance of the independent review of 60 calendar days from the date on which all three independent reviewers were selected; and

(c) A requirement that the panel of independent reviewers shall determine the cost of the review, subject to the maximum compensation amount.

(11) The Department will enter into a written agreement with the requestor which includes the following:

(a) The list of the three independent reviewers selected;

(b) A promise by the requestor to deliver a deposit to the Department within 5 calendar days in the amount of 60% of the sum of the written itemized estimate;

- (c) A provision stating that the determination of the panel of independent reviewers shall be final and binding, with no opportunity for a contested case or any judicial review;
 - (d) A provision that the panel of independent reviewers will review the record, conduct a site visit and gather additional information if needed, write a decision that includes findings of fact, and a conclusion that either affirms or modifies the wetland determination or delineation issued by the Department after reconsideration; and
 - (e) A promise by the requestor to pay 60% of the cost of the independent review, including all expenses and fees, regardless of the outcome of the review. If the amount exceeds the deposit provided under section 9, the requestor shall pay the excess amount to the Department within 15 calendar days of the issuance of the decision by the panel of independent reviewers. If the amount is less than the deposit provided under section 9, the Department will return the excess deposit to the requestor within 15 calendar days of the issuance of the decision by the panel of independent reviewers.
- (12) The criteria by which the panel of independent reviewers will evaluate the wetland delineation or determination shall include only the following:
- (a) OAR 141-090-0005 through OAR 141-090-0020, OAR 141-090-0030, and OAR 141-090-0035;
 - (b) OAR 141-090-0045, if the wetland delineation was reissued by the Department; and
 - (c) The manual, as defined in OAR 141-090-0020(17).
- (13) The record for the independent review consists of the following:
- (a) The original report submitted per OAR 141-090-0035;
 - (b) All documents related to the JD per OAR 141-090-0025 or OAR 141-090-0040; and
 - (c) All documents related to the Department's reconsideration per OAR 141-090-0050.
- (14) The panel will take the following actions:
- (a) Review the record;
 - (b) Gather additional information and conduct a site visit, if needed; and
 - (c) Draft findings of fact and a conclusion that either affirms or modifies the wetland determination or delineation that the Department issued after reconsideration.
- (15) Within 60 days of the date on which all three independent reviewers were selected, the panel will submit a decision in writing to the Department and to the Requestor that includes findings of fact, a conclusion, and a decision that either affirms or modifies the wetland determination or delineation that the Department issued after reconsideration.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279; Oregon Laws 2012, c. 108.

141-090-0055

Effective Date

These rules become effective on January 1, 2013.

Stat. Auth.: ORS 196.845 & 196.692

Stats. Implemented: ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279