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DEPARTMENT OF STATE LANDS

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RULES:

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AMEND: 141-085-0510

RULE TITLE: Definitions

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

The following definitions are used in addition to those in ORS 196.600 to 196.990.

- (1) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal or fill activity, or a person that proposes a removal or fill activity for construction or maintenance of a linear facility.
- (2) "Aquatic Life and Habitats" means the aquatic environment including all fish, wildlife, amphibians, plants and other biota dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.
- (3) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.
- (4) "Authorization" means an individual permit, general authorization, general permit or emergency authorization.
- (5) "Bankfull Stage" means the two-year recurrence interval flood elevation.
- (6) "Baseline Conditions" means the ecological conditions, wetland functions and values and the soils and hydrological characteristics present at a site before any change by the applicant is made.
- (7) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.
- (8) "Beds" means:
 - (a) For the purpose of OAR 141-089, the land within the wet perimeter and any adjacent non-vegetated dry gravel bar; and
 - (b) For all other purposes, "beds" means that portion of a waterway that carries water when water is present.
- (9) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the ordinary high water line or bankfull stage, and in tidal bays and estuaries by the limits of the highest measured tide. The "bed" is typically the horizontal section and includes non-vegetated gravel bars. The "bank" is typically the vertical portion.
- (10) "Buffer" means an upland or wetland area immediately adjacent to or surrounding a wetland or other water that is set aside to protect the wetland or other waters from conflicting adjacent land uses and to support ecological functions.
- (11) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway that periodically or continuously contains moving water and has a defined bed and bank that serve to confine the water.
- (12) "Channel Relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel.
- (13) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of this state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:
 - (a) The Umpqua River basin, where the coastal zone extends to Scottsburg;
 - (b) The Rogue River basin, where the coastal zone extends to Agness; and
 - (c) The Columbia River basin, where the coastal zone extends to the downstream end of Puget Island.
- (14) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project will be undertaken in a manner consistent with the applicable enforceable policies

of the Oregon Coastal Management Program.

(15) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(16) "Compensatory Mitigation" means activities conducted by a permittee or third party to create, restore, enhance or preserve the functions and values of the waters of this state to compensate for the removal-fill related adverse impacts of project development to waters of this state or to resolve violations of ORS 196.600 to 196.905. Compensatory mitigation for removal-fill activities does not affect permit requirements of other state departments.

(17) "Compensatory Non-Wetland Mitigation (CNWM)" means activities conducted by a permittee or third party to replace non-wetland water functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.

(18) "Compensatory Wetland Mitigation (CWM)" means activities conducted by a permittee or third party to create, restore or enhance wetland and tidal waters functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.

(19) "Comprehensive Plan" means a generalized, coordinated land use map and associated regulations and ordinances of the governing body of a local government.

(20) "Condition" refers to the state of a water's naturalness or ecological integrity.

(21) "Converted Wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes. "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

(22) "Cowardin" means Cowardin, L. M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of wetlands and deepwater habitats of the United States, U. S. Department of the Interior, Fish and Wildlife Service, Washington, D.C.

(23) "Credit" means the measure of the increase in the functions and values of the water resources of this state achieved at a mitigation site.

(24) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the Removal-Fill Law, ORS 196.600 through 196.990, or rules adopted by the Department, or any order or authorization issued by the Department.

(25) "Deep Ripping, Tiling and Moling" refers to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(26) "Degraded Wetland" refers to a wetland in poor condition with diminished functions and values resulting from hydrologic manipulation (such as diking, draining and filling) and other disturbance factors that demonstrably interfere with the normal functioning of wetland processes.

(27) "Department" means the Oregon Department of State Lands and the Director or designee.

(28) "Ditch" means a manmade water conveyance channel. Channels that are manipulated streams are not considered ditches.

(29) "Dredging" means removal of bed material using other than hand-held tools.

(30) "Ecologically or Environmentally Preferable" means compensatory mitigation that has a higher likelihood of replacing functions and values or improving water resources of this state.

(31) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(32) "Enhancement" means to improve the condition and increase the functions and values of an existing degraded wetland or other water of this state.

(33) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to protect existing facilities and land from flood and high stream flows, in accordance with these regulations.

(34) "Essential Indigenous Anadromous Salmonid Habitat (ESH)" means the streams designated pursuant to ORS 196.810 that are necessary to prevent the depletion of indigenous anadromous salmonid species during their life

history stages of spawning and rearing, and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to an ESH stream.

(35) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(36) "Extreme Low Tide" means the lowest estimated tide.

(37) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) "fill" means any amount of deposit by artificial means.

(38) "Food and Game Fish" means those species identified under ORS 506.011, 506.036 or 496.009.

(39) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992); land which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(40) "Functions and Values" are those ecological characteristics or processes associated with a water of this state and the societal benefits derived from those characteristics. The ecological characteristics are "functions," whereas the associated societal benefits are "values."

(41) "Highest Measured Tide" means the highest tide projected from actual observations within an estuary or tidal bay (see OAR 141-085-0515).

(42) "Hydrogeomorphic Method (HGM)" means the method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and characteristics of water flow.

(43) "Independent Utility" as used in the definition of "project," means that the project accomplishes its intended purpose without the need for additional phases or other projects requiring further removal-fill activities.

(44) "In-Lieu Fee Mitigation" means the federally approved compensatory mitigation program used to compensate for reasonably expected adverse impacts of project development on waters of the United States and waters of this state with fees paid by the applicant to the Department or other sponsor, as approved by the Department.

(45) "Interagency Review Team (IRT)" is an advisory committee to the Department on mitigation banks and other compensatory mitigation projects.

(46) "Intermittent Stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(47) "Large Woody Debris" means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.

(48) "Legally Protected Interest" means a claim, right, share or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(49) "Linear Facility" means any railway, highway, road, pipeline, water or sewer line, communication line, overhead or underground electrical transmission or distribution line, or similar facility.

(50) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered or threatened by the State of Oregon.

(51) "Location" means the entire area where the project is located.

(52) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original use.

"Maintenance" includes a structure being widened by no more than twenty percent of its original footprint at any specific location in waters of this state if necessary to maintain its serviceability. "Maintenance" also includes removal of the minimum amount of sediment either within, on top of or immediately adjacent to a structure that is necessary to restore its serviceability, provided that the spoil is placed on upland.

- (53) "Material" means rock, gravel, sand, silt and other inorganic substances and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.
- (54) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
- (a) Avoiding the effect altogether by not taking a certain action or parts of an action;
 - (b) Minimizing effects by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.
- (55) "Mitigation Bank" or "Bank" means a site created, restored, enhanced or preserved in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this state due to activities which otherwise comply with the requirements of ORS 196.600 to 196.905.
- (56) "Mitigation Bank Instrument (MBI)" means the legally binding and enforceable agreement between the Department and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's construction, operation and long-term management.
- (57) "Mitigation Bank Prospectus" or "Prospectus" means the preliminary proposal prepared by a mitigation bank sponsor describing a proposed bank.
- (58) "Mitigation Bank Sponsor" or "Sponsor" means a person or single legal entity that has the authority and responsibility to fully execute the terms and conditions of a mitigation bank instrument.
- (59) "Navigational Servitude" means activities of the federal government that directly result in the construction or maintenance of congressionally authorized navigation channels.
- (60) "Non-Motorized Methods or Activities" are those removal-fill activities within ESH that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and manually operated cable winches are examples of common non-motorized methods.
- (61) "Non-Water Dependent Uses" means uses that do not require location on or near a waterway to fulfill their basic purpose.
- (62) "Non-Wetland Waters" means waters of this state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.
- (63) "Ocean Renewable Energy" means electricity that is generated through the conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and, ocean offshore wind power.
- (64) "Ocean Renewable Energy Facility" means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.
- (65) "Office of Administrative Hearings" means the state agency unit that provides Administrative Law Judges to conduct contested case proceedings.
- (66) "Ordinary High Water Line (OHWL)" means the line on the bank or shore to which the high water ordinarily rises. The OHWL excludes exceptionally high water levels caused by large flood events (e.g., 100-year events).
- (67) "Oregon Rapid Wetland Assessment Protocol (ORWAP)" is a method for rapidly assessing wetland functions and values (as well as other attributes) in all wetland types throughout Oregon.
- (68) "Payment In-Lieu Mitigation" means compensatory mitigation for waters of this state that is fulfilled by using funds paid to the Department. The payment in-lieu program is not approved to compensate for impacts to waters of the United States.
- (69) "Perennial Stream" means a stream that has continuous flow in parts of its bed all year long during years of normal

precipitation.

(70) "Person" means a person or a public body, as defined in ORS 174.109; the federal government, when operating in any capacity other than navigational servitude or any other legal entity.

(71) "Plowing" means all forms of tillage and similar physical means for the breaking up, cutting, turning over and stirring of soil to prepare it for planting crops. Plowing does not include deep ripping or redistribution of materials in a manner that changes any waters of this state to upland.

(72) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology and logistics with respect to the overall project purpose.

(73) "Preservation" means to permanently protect waters of this state having exceptional ecological features.

(74) "Private Operator" means any person undertaking a project for an exclusively non-income-producing and nonprofit purpose.

(75) "Project" means the primary development or use, having independent utility, proposed by one person. A project may include more than one removal-fill activity.

(76) "Project Site" means the geographic area upon which the project is being proposed.

(77) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using non-motorized methods; by filling, removing or moving by artificial means less than one cubic yard of material at any one individual site; and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single ESH stream in a single year.

(78) "Public Body" as used in the statutes of this state means state government bodies, local government bodies and special government bodies (ORS 174.109).

(79) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(80) "Push-Up Dam" means a berm of streambed material that is excavated or bulldozed (i.e., pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream. The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are reconstructed each water-use season; high water usually flattens or breaches them; and equipment is used to breach or flatten them at the close of the water-use season.

(81) "Reasonably Expected Adverse Effect" and "Adverse Impact" means the direct or indirect, reasonably expected or predictable results of project development upon waters of this state including water resources, navigation, fishing and public recreation uses.

(82) "Reconstruction" means to rebuild or to replace the existing structure in-kind. "Reconstruction" includes a structure being widened by no more than twenty percent of its original footprint at any specific location in waters of this state.

(83) "Recreational Placer Mining" means to search or explore for samples of gold, silver or other precious minerals by removing, filling or moving material from or within the bed of a stream, using non-motorized equipment or a motorized surface dredge having an intake nozzle with an inside diameter not exceeding four inches and a muffler meeting or exceeding factory-installed noise reduction standards.

(84) "Reference Site" means a site or sites that represent the desired future characteristics and condition to be achieved by a compensatory mitigation plan.

(85) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated ESH areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(86) "Removal-Fill Site" means the specific point where a person removes material from and/or fills any waters of this state. A project may include more than one removal-fill site.

(87) "Riprap" means facing a bank with rock or similar substance to control erosion.

(88) "Serviceable" means capable of being used for its intended purpose.

(89) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map - 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project developments to waters of this state. Service areas for mitigation banks are not mutually exclusive.

(90) "State Scenic Waterway (SSW)" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law (ORS 390.805 to 390.995).

(91) "Temporal Loss" means the loss of the functions and values of waters of this state that occurs between the time of the impact and the time of their replacement through compensatory mitigation.

(92) "Temporary Impacts" are adverse impacts to waters of this state that are rectified within 24 months from the date of the initiation of the impact.

(93) "Territorial Sea" means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

(94) "Territorial Sea Plan" means the plan for Oregon's territorial sea.

(95) "Tidal Waters" are the areas in estuaries, tidal bays and tidal rivers located between the highest measured tide and extreme low tide (or to the elevation of any eelgrass beds, whichever is lower), that is flooded with surface water at least annually during most years. Tidal waters include those areas of land such as tidal swamps, tidal marshes, mudflats, algal and eelgrass beds and are included in the Estuarine System and Riverine Tidal Subsystem as classified by Cowardin.

(96) "Violation" means removing material from or placing fill in any of the waters of this state in a manner that is inconsistent with any provision of the Removal-Fill Law (ORS 196.600 through 196.990), rules adopted by the Department, or any order or authorization issued by the Department.

(97) "Water Quality" means the measure of physical, chemical and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(98) "Water Resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(99) "Waters of This State" means all natural waterways, tidal and non-tidal 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 non-navigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(100) "Wet Perimeter", as used in OAR 141-089, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time a removal-fill activity occurs.

(101) "Wetland Creation" means to convert an area that has never been a wetland to a wetland.

(102) "Wetland Enhancement" means to improve the condition and increase the functions and/or values of an existing degraded wetland.

(103) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytes.

(104) "Wetland Restoration" means to reestablish a former wetland.

(105) "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.

STATUTES/OTHER IMPLEMENTED: ORS 196.600-196.692, ORS 196.800-196.990

AMEND: 141-085-0520

RULE TITLE: Removal-Fill Jurisdiction by Volume of Material

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

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- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

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RULE TEXT:

The following criteria are used to determine jurisdictional volume thresholds that trigger the requirement for an authorization.

- (1) Oregon State Scenic Waterways (SSWs). The threshold volume is any amount greater than zero.
- (2) Essential Indigenous Anadromous Salmonid Habitat (ESH). The threshold volume is any amount greater than zero.
- (3) Compensatory Mitigation Sites. The threshold volume is any amount greater than zero for compensatory mitigation sites referenced in an authorization.
- (4) Ocean Renewable Energy Facilities. The threshold volume for removal-fill in Oregon's territorial sea that is related to an ocean renewable energy facility is any amount greater than zero.
- (5) All Other Waters of This State.
 - (a) For fill activities, any combination of either organic or inorganic material deposited by artificial means at any one location in waters of this state equal to or exceeding 50 cubic yards or the equivalent weight in tons; and
 - (b) For removal activities, the taking or movement by artificial means of more than 50 cubic yards of inorganic material or large woody debris, or the equivalent weight in tons in any calendar year.

STATUTORY/OTHER AUTHORITY: ORS 196.825, ORS 196.600 - 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.600 - 196.692, ORS 196.800 - 196.990

AMEND: 141-085-0550

RULE TITLE: Application Requirements for Individual Permits

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

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RULE TEXT:

- (1) Written Application Required. A person who is required to have an individual permit to remove material from the bed or banks, or fill any waters of this state, must file a written application with the Department for each individual project. A permit must be issued by the Department before performing any regulated removal-fill activity.
- (2) Complete and Accurate Information Required. Failure to provide complete and accurate information in the application may be grounds for administrative closure of the application file or denial, suspension or revocation of the authorization.
- (3) Fee Required for a Complete Application. For an application to be determined complete, the Department must have received the appropriate fee.
- (4) Level of Detail Required May Vary. The applicant is responsible for providing sufficient detail in the application to enable the Department to render the necessary determinations and decisions. The level of documentation may vary depending on the degree of adverse impacts, the level of public interest and other factors that increase the complexity of the project.
- (5) Required Information: A completed and signed application on current forms provided by the Department, including any maps, necessary photos and drawings, is required. The information must be entered in the appropriate blocks on the application form. The Department may require the applicant to submit any or all application materials electronically. The application must include all of the following:
 - (a) Applicant information including name, mailing address, phone number and e-mail address. When the applicant is a

business entity, the business must be registered with the Oregon Secretary of State Corporate Division. The exact name of the business entity, as listed with Secretary of State Corporate Division, must be entered on the application.

(b) Landowner information including name and mailing address where any removal-fill activity is proposed, and if applicable, where permittee-responsible compensatory mitigation is proposed.

(A) For the construction of a new linear facility, the applicant must provide a complete list of landowner names and mailing addresses for all landowners whose land is identified in the permit application within the alignment of the new linear facility. Mailing labels must be provided when there are more than five landowners listed in the application.

(B) For the purpose of this rule, a condemner is the landowner when:

(i) If using state condemnation authority, the condemner has complied with ORS Chapter 35, filed an eminent domain action in court and deposited the condemner's estimate of just compensation with the court for the use and benefit of the defendants, or it has a court's order authorizing its possession of the land; or

(ii) If using federal authority, the condemner has complied with Federal Rules of Civil Procedure 71.1 and, if other than the United States, has a court's order authorizing its possession of the land.

(c) Project site location information including Township, Range, Quarter-quarter Section and Tax Lot(s), latitude and longitude, street location if any, and location maps with site location indicated.

(d) The location of any off-site disposal or borrow sites, if these sites contain waters of this state.

(e) Project information including:

(A) Description of all removal-fill activities associated with the project;

(B) Demonstration of independent utility to include all phases, projects or elements of the proposed project which will require removal-fill activities;

(C) Volumes of fill and removal within jurisdictional areas expressed in cubic yards;

(D) Area of removal and fill within jurisdictional areas expressed in acres to the nearest 0.01-acre for impacts greater than 0.01 of an acre or expressed in acres to the nearest 0.001-acre for impacts less than 0.01 of an acre; and

(E) Description of how the project will be accomplished including construction methods, site access and staging areas.

(f) A description of the project purpose and need for the removal or fill. All projects must have a defined purpose or purposes and the need for removal or fill activity to accomplish the project purpose must be documented. The project purpose statements and need for the removal or fill documentation must be specific enough to allow the Department to determine whether the applicant has considered a reasonable range of alternatives.

(g) Project plan views and cross-sectional views drawn to scale that clearly identify the jurisdictional boundaries of the waters of this state (e.g., wetland delineation or ordinary high water determination). Project details, such as work area footprint, impact area and approximate property boundaries must also be included so that the amount and extent of the impact to jurisdictional areas can be readily determined.

(h) A written analysis of potential changes that the project may make to the hydrologic characteristics of the waters of this state, and an explanation of measures taken to avoid or minimize any adverse impacts of those changes, such as:

(A) Impeding, restricting or increasing flows;

(B) Relocating or redirecting flow; and

(C) Potential flooding or erosion downstream of the project.

(i) A description of the existing biological and physical characteristics of the water resources, along with the identification of the adverse impacts that will result from the project.

(j) A description of the navigation, fishing and public recreation uses, when the project is proposed on state-owned land.

(k) If the proposed activity involves wetland impacts, a wetland determination or delineation report that meets the requirements in OAR 141-090 must be submitted, unless otherwise approved in writing by the Department. A wetland delineation is usually required to determine the precise acreage of wetland impact and compensatory wetland mitigation requirements. Whenever possible, wetland determination and delineation reports should be submitted for review well in advance of the permit application. Although an approved wetland delineation report is not required for application completeness, a jurisdictional determination must be obtained prior to the permit decision.

(l) A functions and values assessment that meets the requirements in OAR 141-085-0685 when permanent impacts to

wetlands are proposed.

(m) Any information known by the applicant concerning the presence of any federal or state listed species.

(n) Any information known by the applicant concerning historical, cultural and archeological resources. Information may include but is not limited to a statement on the results of consultation with impacted tribal governments and/or the Oregon State Historic Preservation Office of the Oregon Parks and Recreation Department.

(o) An analysis of alternatives to derive the practicable alternative that has the least reasonably expected adverse impacts on waters of this state. The alternatives analysis must provide the Department all the underlying information to support its considerations enumerated in OAR 141-085-0565, such as:

(A) A description of alternative project sites and designs that would avoid impacts to waters of this state altogether, with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need for the fill or removal;

(B) A description of alternative project sites and designs that would minimize adverse impacts to waters of this state with an explanation of why each alternative is, or is not practicable, in light of the project purpose and need;

(C) A description of methods to repair, rehabilitate or restore the impact area to rectify the adverse impacts; and

(D) A description of methods to further reduce or eliminate the impacts over time through monitoring and implementation of corrective measures.

(p) If applicable, a complete compensatory mitigation plan that meets the requirements listed in OAR 141-085-0680 through 141-085-0715 and OAR 141-085-0765 to compensate for unavoidable permanent impacts to waters of this state and a complete rehabilitation plan if unavoidable temporary impacts to waters of this state are proposed.

(q) For each proposed removal-fill activity and physical mitigation site applied for in the application, a list of the names and addresses of the adjacent landowners, including those properties located across a street or stream from the proposed project.

(A) For a new linear facility, the applicant must provide a list of the names and mailing addresses of the adjacent landowners for the new linear facility.

(B) Mailing labels must be provided by the applicant, when there are more than five names and addresses of adjacent landowners listed.

(r) A signed local government land use affidavit.

(s) A signed Coastal Zone Certification statement, if the project is in the coastal zone.

(t) Applicant Signature. Signature of the applicant must be provided. If the application is on behalf of a business entity, a certificate of incumbency must be provided to certify that the individual signing the application is authorized to do so.

(u) Landowner Signature. If the applicant is not the landowner upon which the removal-fill activity (including mitigation) is to occur and does not hold an easement allowing the activity on that land, a written authorization from the owner of the land consenting to the application must be provided.

(A) Notwithstanding the requirement set forth under Subsection (u) above, a landowner signature is not required for applications for the construction and maintenance of linear facilities; and

(B) The condemner may sign as landowner when the requirements of OAR 141-085-0550(5)(b)(B) have been met.

(v) Mitigation Site Landowner Signature. If the applicant is not the owner of the land upon which the mitigation is to occur and does not hold an easement allowing the activity on that land, a written authorization from the owner of the land consenting to the application must be provided.

(w) Inventory and Evaluation if Related to Marine Resources or Removal-Fill in Oregon's Territorial Sea. An application for a permit related to marine resources or removal-fill in the territorial sea must include all of the information required by the applicable Part of the Territorial Sea Plan. The resource inventory and effects evaluation must be provided as a stand-alone attachment to the applicant's Joint Permit Application.

(6) Additional Requirements for Estuarine Fill. If the activity is proposed in an estuary for a non-water-dependent use, a complete application must also include a written statement that describes the following:

(a) The public use of the proposed project;

(b) The public need for the proposed project; and

(c) The availability of alternative, non-estuarine sites for the proposed use.

(7) Additional Information as Requested. The Department may request additional information as necessary to make an informed decision on whether or not to issue the authorization.

(8) Waiver of Required Information. At its discretion, the Department may waive any of the information requirements listed in Section (5) of this rule for voluntary restoration projects.

(9) Permit Application Modifications. A modification to a permit application may be submitted at any time prior to the permit decision. If the modification is received after the public review period, the Department may circulate the revised application again for public review. Modifications proposing significantly different or additional adverse impacts will generally be resubmitted for public review. The Department may set an expedited time frame for public review.

(10) Pre-Application Conference. An applicant may request the Department to hold a pre-application meeting. In considering whether to grant the request, the Department will consider the complexity of the project and the availability of Department staff.

STATUTORY/OTHER AUTHORITY: ORS 196.825, ORS 196.600-196.665, ORS 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.600-196.692, ORS 196.800-196.990

AMEND: 141-085-0560

RULE TITLE: Public Review Process for Individual Removal - Fill Permit Applications

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) Circulation of the Application for Public Review. Once the application has been deemed complete and sufficient, the Department will provide notification of the availability of the application for review either by U.S. mail or electronically (e.g., facsimile, e-mail, posting on the Internet) to adjacent property owners, watershed councils, public interest groups, affected local government land use planning departments, state agencies, federal agencies and tribal governments in the geographic area affected by the permit. For construction and maintenance of linear facilities, landowners identified in the application will be notified by U.S. mail or electronically that the application is available for review. Upon request the Department may make a copy of the application available at the public library closest to the proposed project.

(2) Copies of the Application by Request. The Department will furnish to any member of the public, upon written request and at the expense of the member of the public, a printed copy of any application.

(3) Submitting Public Comments. To be considered by the Department and to become part of the permit record, all comments must be sent to the destination specified in the notification or submitted through the Web site. All recommendations and comments regarding the application must be submitted in writing to the Department within the period established by the Department, but not more than 30 calendar days from the date of the notice, except as noted under Subsection (a), below:

(a) The Department will grant an extension of up to 75 calendar days to the Department of Environmental Quality if the application requires Section 401 certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended.

(b) If a commenter fails to comment on the application within the comment period, the Department will assume the

commenter has no objection to the project.

(4) Department Review of Public Comments and Public Hearing. The Department will review and consider substantive comments received during the public review period, and may conduct any necessary investigations to develop a factual basis for a permit decision. Necessary investigations may include but are not limited to the following:

(a) The Department may, as a result of the public review process or the Department's investigations, request that the applicant submit supplemental information and answer additional questions prior to the Department making the permit decision.

(b) The Department may schedule a permit review coordination meeting with interested agencies or groups and the applicant to provide the applicant an opportunity to explain the project and to resolve issues; and

(c) At the Department's discretion, the Department may hold a public hearing to gather necessary information that may not otherwise be available to make a decision.

(5) Applicant Response to Comments.

(a) Comments resulting from the public review process will be forwarded to the applicant after the comment period deadline.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of additional information to support the application and/or revisions to the project that address the comments.

(c) If no response is received from the applicant by the date specified by the Department, the Department will presume that the applicant does not intend to provide additional supporting information or revisions to the application.

(6) Final Review

(a) Unless the timeline is extended as provided below in Subsection (b) or (c), the Department will make a final permit decision within 90 calendar days after determining an application is complete;

(b) The permit decision deadline may be extended beyond 90 calendar days when the applicant and the Department agree to an extension.

(c) The permit decision deadline may be extended beyond 90 calendar days when the director determines that an extension is necessary to coordinate the issuance of a proprietary authorization decision for an ocean renewable energy facility and a removal-fill permit decision.

(d) If the Department does not approve an extension, the Department will make a final permit decision based upon the record as it existed within:

(A) The original 90-day time period; or

(B) The extension period approved immediately prior to the applicant's most recent request for an extension.

(7) Application Withdrawal. An applicant may withdraw an application at any time prior to the permit decision. In the event the applicant fails to respond to the Department's requests for information or otherwise fails to reasonably proceed with the application process, the Department may administratively withdraw the application with at least 30 calendar days' notice to the applicant. There will be no refund of the application fee in either case.

STATUTORY/OTHER AUTHORITY: ORS 196.825, ORS 196.600 - 196. 692

STATUTES/OTHER IMPLEMENTED: ORS 196.600 - 196.692, ORS 196.800 - 196.990

AMEND: 141-085-0565

RULE TITLE: Department Determinations and Considerations in Evaluating Individual Permit Applications

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) Departmental Final Review. The Department will evaluate the information provided in the application, conduct its own investigation, and consider the comments submitted during the public review process to determine whether or not to issue an individual removal-fill permit.
- (2) Effective Date of Review Standards. The Department may consider only standards and criteria in effect on the date the Department receives the complete application or renewal request.
- (3) Department Determinations. The Department will issue a permit if it determines the project described in the application:
 - (a) Has independent utility;
 - (b) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.990; and
 - (c) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation, when the project is on state-owned lands.
- (4) Department Considerations. In determining whether to issue a permit, the Department will consider all of the following:
 - (a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the Department may accept and rely upon the public body's findings as to local public need and local public benefit;

- (b) The economic cost to the public if the proposed fill or removal is not accomplished;
 - (c) The availability of alternatives to the project for which the fill or removal is proposed;
 - (d) The availability of alternative sites for the proposed fill or removal;
 - (e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety;
 - (f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations;
 - (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion;
 - (h) Whether the proposed fill or removal is for stream bank protection; and
 - (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800.
- (5) Alternatives Analysis. The Department will issue a permit only upon the Department's determination that a fill or removal project is consistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the preservation of the use of the waters of this state for navigation, fishing and public recreation. The Department will analyze a proposed project using the criteria set forth in the determinations and considerations in Sections (3) and (4) above (OAR 141-085-0565). The applicant bears the burden of providing the Department with all information necessary to make this determination.
- (6) Fills in an Estuary for Non-Water Dependent Use. A "substantial fill" in an estuary is any amount of fill regulated by the Department. No authorizations will be issued for a substantial fill in an estuary for a non-water dependent use unless all of the following apply:
- (a) The fill is for a public use;
 - (b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fisheries and recreation; and
 - (c) The removal-fill meets all other review standards.
- (7) Written Findings. In the following cases, the Department will prepare written findings to document an individual removal-fill permit decision:
- (a) Permit denial;
 - (b) Permanent fill of two acres or more in wetlands;
 - (c) Fill in estuaries (except cable crossings, pipelines, or bridge construction);
 - (d) Removal from estuaries of more than 10,000 cubic yards of material (except for maintenance dredging);
 - (e) Placement of greater than 2,500 cubic yards of riprap in coastal streams or estuaries;
 - (f) Removal-fill in the Oregon Territorial Sea in accordance with Statewide Planning Goal 19-Ocean Resources; and
 - (g) Any permit decision that is contrary to the final decision recommendation of a state agency.
- (8) Marine Reserves and Marine Protected Areas. The Department will only authorize a removal-fill activity within an area designated by the State Land Board as a marine reserve or a marine protected area if the removal-fill activity is necessary to study, monitor, evaluate, enforce or protect or otherwise further the studying, monitoring, enforcement and protection of the reserve or marine protected area.
- (9) Ocean Renewable Energy Facilities. The Department will only authorize a removal-fill activity for an ocean renewable energy facility that complies with the criteria described in applicable parts of the Territorial Sea Plan.

STATUTORY/OTHER AUTHORITY: ORS 196.825, ORS 196.600 – 196.692

STATUTES/OTHER IMPLEMENTED: ORS 196.600 - 196.692, ORS 196.795 - 196.990

ADOPT: 141-093-0285

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Purpose

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease

- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

This General Permit authorizes the placement and removal of certain ocean renewable energy facilities for research or demonstration projects in the territorial sea for a limited duration as defined by these Rules.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.600-692, ORS 196.795-990

ADOPT: 141-093-0290

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Definitions

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

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RULE TEXT:

The following definitions are used in this General Permit, in addition to those contained in OAR 141-085:

- (1) "Commercial Operation", as defined in ORS 274.870, means a project undertaken to generate ocean renewable energy for a purposes other than research, demonstration or personal use and that has financial profit as a goal.
- (2) "Demonstration Project", means a limited duration, non-commercial activity in the territorial sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.
- (3) "Educational/Research Institution", as defined in OAR 141-140-0020, means any accredited public or private university or college, or non-profit research organization.
- (4) Joint Agency Review Team (JART) has the meaning described in OAR 141-140-0020.
- (5) "Ocean Renewable Energy", as defined in ORS 274.870, means electricity that is generated through:
 - (a) The conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and,
 - (b) Ocean offshore wind power.
- (7) "Ocean Renewable Energy Facility", as defined in ORS 274.870, means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.

(5) "Research Project", means a limited duration, non-commercial activity by an educational/research institution for the placement of ocean renewable energy facility in the territorial sea. The purpose of a research project is to test the technology used in, or functionality of an experimental ocean renewable energy device.

(9) "Territorial Sea" means the waters and seabed extending three geographical miles seaward from the coastline in conformance with federal law.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 274.870-879, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.600-692, ORS 196.795-990, ORS 274.870-879

ADOPT: 141-093-0295

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Eligibility Requirements

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

Activities authorized by this General Permit must meet all of the following requirements:

- (1) Research project or demonstration project only.
- (2) Project must have completed a JART pre-application meeting pursuant to OAR 141-140 and have a recommendation from the JART for processing under this General Permit.
- (3) Projects must be wholly located within one of the following zones as designated in the Territorial Sea Plan, Part 5, Appendix B:
 - (a) Renewable Energy Facility Suitability Study Area (REFSSA);
 - (b) Renewable Energy Permit Areas (REPA); or,
 - (c) Resources and Uses Management Areas (RUMA).
- (4) Notwithstanding the definition of "Ocean Renewable Energy" contained in ORS 274.870(3), the project cannot involve ocean offshore wind power generation.
- (5) Removal and fill is limited to that part of the territorial sea between extreme low tide elevation and the three geographic mile limit only. No removal or fill in wetlands or other waters of this state is authorized by this General Permit.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.795-990, ORS 196.600-692

ADOPT: 141-093-0300

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Specific Application Requirements

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

In addition to application requirements pursuant to 141-093-0105, the applicant must provide the following information in an application:

- (1) A JART recommendation for processing the proposed project under this General Permit.
- (2) Map clearly illustrating location of the proposed ocean renewable energy facility placement relative to a REFSSA, REPA or RUMA.
- (3) A completed Resource Inventory and Effects Evaluation pursuant to Part Five of the Territorial Sea Plan. For proposed projects within a RUMA, the Resource Inventory and Effects Evaluation must clearly demonstrate no significant adverse effects on inventoried marine resources and uses. Pursuant to the Territorial Sea Plan, Part Five D., a Resource Inventory and Effects Evaluation is not required for proposed projects located at the NW National Marine Renewable Energy Center- Mobile Ocean Test Berth.
- (4) Description of how project meets the definition of "demonstration project" or "research project" as defined in this Rule.
- (5) Project description including:
 - (a) Description and quantity of all project components including anchoring system and other fixed components, tethering and floating components.
 - (b) Area of ocean floor to be covered by anchors and any other equipment to be affixed to the ocean floor.
 - (c) Methods and timing for facility deployment and recovery.

- (d) Identification of any project components expected to be decommissioned in-place.
- (e) Scaled plan view and cross-section drawings including the maximum ocean surface area that the facility will occupy considering drift area of floating components.
- (f) Facility inspection and contingency plan describing nature and timing of inspections and contingency plans for events including but not limited to: sinking or disconnection of floating components, substantive movement of anchors from the point of placement, entanglement of fishing gear, any release of fluids or any exposure of any buried components.
- (6) If project includes cables, pipes or conduit from device(s) to the ocean shore, application must describe method for placement consistent with Part Four of the Territorial Sea Plan. On-shore terminus of pipes, cables other conduit must be clearly identified. Any on-shore project components must be authorized by a state Ocean Shore Permit as administered by Oregon Parks and Recreation Department.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.600-692, ORS 196.795-990

ADOPT: 141-093-0305

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Authorized Activities

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

This General Permit authorizes the placement and removal of ocean renewable energy facilities in the territorial sea for the purpose of research or demonstration in an area not to exceed 53 contiguous acres per project, measured as the surface expression of a vertical column between the ocean surface and the ocean floor. Cables, pipes or conduit extending from the facility to the ocean shore are not included in the 53-acre limitation.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.600-692, ORS 196.795-990

ADOPT: 141-093-0310

RULE TITLE: GP Certain Ocean Renewable Energy Facilities - Specific Conditions

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) All requirements, procedures and conditions set forth in OAR 141-093-135 (General Conditions) apply to this General Permit, except as follows:

- (a) General Condition (5) ODFW Fish Passage Requirement;
- (b) General Condition (8) Pre-Construction Resource Area Fencing or Flagging;
- (c) General Condition (9) Erosion Control Methods; and
- (d) General Condition (11) Raising or Redirecting Water

(2) Notwithstanding the provisions of ORS 274.879(8), the authorization holder must complete the removal of all equipment related to the ocean renewable energy facility within the term of the authorization, not to exceed five years, unless an individual removal-fill permit, pursuant to 141-085 has been issued for extended or expanded ocean renewable energy facility placement.

(3) Anchors, cables or any other equipment that lies at least one (1) meter beneath the ocean floor may be decommissioned in-place if:

- (a) There is a recommendation from the JART to allow specified equipment to be decommissioned in-place; and,
- (b) The authorization expressly allows specified equipment to be decommissioned in-place.

(3) Authorized facilities must contain fish screens as required by ODFW on any water intake or discharge devices associated with the ocean renewable energy facility.

(4) Any cables, pipes or other conduit extending to the ocean shore must be placed consistent with Part Four of the

Territorial Sea Plan.

(5) Required notifications. The authorization holder must submit to the Department:

(a) For any approved decommissioning of equipment in-place, a letter verifying that the equipment is buried at least one (1) meter beneath the ocean floor. The letter must include a description of methods used to verify the burial depth of the equipment. This verification letter is due to the Department no later than 90 days prior to the initiation of facility decommissioning.

(b) A letter verifying the removal of all ocean renewable energy facility components (excluding any equipment authorized to be decommissioned in-place. This verification letter is due to the Department within 30 days of completing the removal.

(c) Notification of any observed sinking or disconnection of floating components, substantive movement of anchors from the point of placement, entanglement of fishing gear, any release of fluids or any exposure of any buried components. Notification is required within 24 hours of observance and must include a corrective action plan.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 196.810, ORS 196.817, ORS 196.485(3), ORS 197.180, ORS 196.405-583

STATUTES/OTHER IMPLEMENTED: ORS 196.600-692, ORS 196.795-990

AMEND: 141-140-0010

RULE TITLE: Applicability and Purpose

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) These rules apply to the construction and operation of ocean renewable energy facilities placed on, in or over state-owned submerged and submersible land in the territorial sea. This includes infrastructure physically connected to an ocean renewable energy facility that crosses state-owned submerged and submersible lands adjacent to the territorial sea.

(2) These rules do not apply to:

(a) Docks, infrastructure, facilities or structures on, in or over state-owned submerged and submersible land in the territorial sea that are not part of an ocean renewable energy facility. Proprietary authorizations for such docks, infrastructure, facilities or structures which are not defined as related or supporting structures are governed by the provisions of OAR 141-082;

(b) Scientific experiments and scientific equipment that are not part of an ocean renewable energy facility placed on, in or over state-owned submerged and submersible land in the territorial sea. Proprietary authorizations for such uses are governed by the provisions of OAR 141-125;

(c) The granting and renewal of easements for electricity transmission, telecommunication and other cables in the territorial sea that are not related to an ocean renewable energy facility authorized under these rules. These cables are governed by the provisions of OAR 141-083.

(3) The issuance of a temporary use authorization or an ocean renewable energy facility lease provides the holder with the State of Oregon's proprietary authorization for the ocean renewable energy facility to occupy the authorized area

specified in the authorization. Other federal, state or local authorizations may also be required.

(4) Construction and operation shall not commence until the holder has received a Removal-Fill Authorization under ORS 196.800 to 196.990, and other required authorizations from local, state (such as an Ocean Shores Permit from the Oregon Department of Parks and Recreation), and federal entities (such as a preliminary permit or similar authorization from the Federal Energy Regulatory Commission).

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0020

RULE TITLE: Definitions

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) "Applicant" is any person applying for a temporary use authorization or ocean renewable energy facility lease.
- (2) "Authorized Area" is the maximum area of state-owned land on, in or over which the Department will allow a person to construct and operate an ocean renewable energy facility under the terms and conditions of a temporary use authorization or ocean renewable energy facility lease. Included within the authorized area are:
 - (a) Any corridors on state-owned submerged and submersible land within, and adjacent to, the territorial sea for a related or supporting structure, including but not limited to electricity transmission or other cables necessary to connect the ocean renewable energy facility to land-based facilities; and
 - (b) Any required buffers, exclusionary or safety zones.
- (3) "Closure" means the permanent cessation of operation of all or part of an ocean renewable energy facility and the subsequent removal of ocean renewable energy equipment authorized by a temporary use authorization or an ocean renewable energy facility lease granted by the Department.
- (4) "Commercial Operation" as defined in ORS 274.870(1), means a project undertaken to generate ocean renewable energy for a purpose other than research, demonstration or personal use and that has financial profit as a goal.
- (5) "Corrective Action" is an activity performed by the holder of a temporary use authorization or an ocean renewable energy facility lease, or their agent, to comply with the terms and conditions of their temporary use authorization or ocean renewable energy facility lease, or to correct a violation or threatened violation, or meet a requirement of applicable local, state or federal law.

- (6) "Demonstration Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to a person for the construction and operation of an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the territorial sea to test the economic and/or technological viability of establishing a commercial operation. A demonstration project may be temporarily connected to the regional power grid for testing purposes without being a commercial operation.
- (7) "Department" means the Department of State Lands.
- (8) "Director" means the Director of the Department of State Lands or designee.
- (9) "Educational/Research Institution" is any accredited public or private university or college, or non-profit research organization.
- (10) "Holder" is a person who has been issued an authorization under these rules.
- (11) "Holder in good standing" is a holder of an authorization by the Department that is not currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department.
- (12) "Joint Agency Review Team" or "JART" is a team of representatives from agencies, jurisdictions and organizations that will review the adequacy of applications with respect to the applicable standards and screening criteria of the Territorial Sea Plan, and make recommendations to the Department on the approval of authorizations. The Department shall invite representatives from the following agencies, jurisdictions and organizations to be members of the JART:
- (a) Oregon Departments of Fish and Wildlife, Oregon Parks and Recreation, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Water Resources Department, Energy, and Oregon Department of Geology and Mineral Industries;
- (b) Federal agencies, as invited, with regulatory or planning authority applicable to the proposed project and location;
- (c) Local jurisdictions including representatives from affected cities, counties, and their affected communities, and affected port districts;
- (d) Statewide and local organizations and advisory committees, as invited, to participate in the JART application of specific standards, including but not limited to those addressing areas important to fisheries, ecological resources, recreation and visual impacts; and,
- (e) Federally recognized Coastal Tribes in Oregon.
- (13) "Northwest National Marine Renewable Energy Center" or "NNMREC", as described in Part Five of the Territorial Sea Plan, is an established ocean test site to conduct experimental marine renewable energy device testing. References to NNMREC in this rule pertain to the Mobile Ocean Test Berth, as described in Part Five of the Territorial Sea Plan.
- (14) "Ocean Renewable Energy" as defined in ORS 274.870(2), means electricity that is generated through:
- (a) The conversion of energy contained in the natural properties of the ocean, including but not limited to energy contained in waves and swells, the tides and currents, ocean temperature and salinity gradients; and
- (b) Ocean offshore wind power.
- (15) "Ocean Renewable Energy Facility" as defined in ORS 274.870(3), means any energy conversion technology or device that is used as a necessary component of a research project, demonstration project or commercial operation to generate ocean renewable energy, including but not limited to all buoys, anchors, energy collectors, cables, control and transmission lines, and other equipment necessary or useful to the project or operation.
- (16) "Ocean Renewable Energy Facility Lease" is a written authorization issued by the Department to a person to occupy an authorized area for one or more ocean renewable energy facilities comprising a commercial operation.
- (17) "Ocean Users" include, but are not limited to persons using the territorial sea for commerce, navigation, fishing or recreation as well as for the conservation of resources and the provision of ecological services.
- (18) "Operating Fees" means compensation due to the Department for the commercial generation of power authorized by an ocean renewable energy facility lease.

(19) "Person" as defined in ORS 274.870(4), means a person as defined in ORS 174.100, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(20) "Permanent Cessation" means the permanent closure of the facility by the expiration or termination of the temporary use authorization or ocean renewable energy facility lease, or a final legally effective order to permanently cease operation(s) has come into effect.

(21) "Public Trust Use(s)" means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses.

(22) "Research Project" is a limited duration, non-commercial activity authorized under a temporary use authorization granted by the Department to an educational/research institution for the construction and operation an ocean renewable energy facility on, in or over state-owned submerged and submersible land in the territorial sea. The purpose of a research project is to obtain scientific data relating to ocean renewable energy and to test the technology used in, or functionality of, an experimental ocean energy conversion device.

(23) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law. The Department is the administrative arm of the State Land Board.

(24) "Statewide Planning Goal 19" or "Goal 19" is the Statewide Planning Goal of the Oregon Land Conservation and Development Commission to conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

(25) "Structure" means anything placed, constructed, or erected on, in, or over state-owned submerged and submersible land that is associated with a use that requires an authorization under these rules.

(26) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(27) "Submersible Land" means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(28) "Temporary Use Authorization" is a written authorization issued by the Department to a person to use an authorized area for an ocean renewable energy facility comprising a research project or demonstration project.

(29) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from coastline in conformance with federal law.

(30) "Territorial Sea Plan" has the same meaning as provided in ORS 196.405(6). It is the plan for managing Oregon's territorial sea and ocean shore as required under ORS 196.405 through 196.580.

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0030

RULE TITLE: Policies

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, manages all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."
- (2) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.
- (3) State-owned submerged and submersible lands are managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as "public trust rights."
- (4) The Department will follow the guiding principles and resource-specific management prescriptions contained in its Real Estate Asset Management Plan, and consider the comments received from various local, state and federal agencies, other interested persons including, but not limited to tribal governments, port districts, business and community organizations, and fisher, recreationist and conservation groups, and the holders of Department-issued authorizations within or immediately adjacent to the requested area when determining whether to authorize or condition a temporary use authorization or ocean renewable energy facility lease.
- (5) Pursuant to Part Five of the Territorial Sea Plan, "Oregon prefers to develop renewable energy through a precautionary approach that supports the use of pilot projects and phased development in the initial stages of

commercial development.”

(6) Pursuant to ORS 274.873:

(a) A person may not construct or operate an ocean renewable energy facility within Oregon’s territorial sea without a proprietary authorization issued by the Department of State Lands and as provided by the Department by rule, or in a manner contrary to the conditions set out in the authorization;

(b) An application for a proprietary authorization under this section must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea;

(c) The Department may not issue a proprietary authorization for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea; and

(d) The department shall incorporate the terms and conditions of the removal or fill permit required for the ocean renewable energy facility into the proprietary authorization.

(7) The Department shall not grant a temporary use authorization or an ocean renewable energy facility lease if it determines that the proposed use or development:

(a) Does not meet the requirements of Statewide Planning Goal 19 and the Oregon Ocean Resources Management Plan and the Territorial Sea Plan; or

(b) Substantively impairs lawful uses or developments already occurring within the proposed authorized area. This determination will be made by the Department after consulting with holders of leases, authorizations, permits and easements in, and immediately adjacent to the requested area, and other interested persons.

(8) Any transmission line or other cable authorized as part of a facility under these rules is subject to the implementation requirements of Part Four of the Territorial Sea Plan.

(9) All administrative fees delineated in these rules shall be adjusted on January 1 of every year based on Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by Labor Statistics of the US Department of Labor. The calculated adjustment shall be rounded up to the nearest dollar.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0040

RULE TITLE: Pre-Application Requirements

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) Prospective applicants shall meet with Department staff to discuss the proposed project and use before submitting a preliminary application to the Department. This meeting may be in person or through other means acceptable to the Department. The Department may invite other government entities and affected stakeholders to take part in this meeting. Common invitees include city and county representation, the Oregon Department of Fish and Wildlife, the Department of Land Conservation and Development and the Oregon Parks and Recreation Department.
- (2) A person wanting to attain a temporary use authorization or ocean renewable energy facility lease must submit a preliminary application on a form provided by the Department.
- (3) A preliminary application shall be accompanied by a non-refundable fee payable to the Department in the amount of \$1,000.
- (4) A person applying to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0040(2) through (3), and may submit an application for a temporary use authorization upon completion of OAR 141-140-0040(1).
- (5) Upon receipt of a preliminary application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete shall be returned to the applicant with an explanation of the reason(s) for rejection.
- (6) If a rejected application is resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no

additional preliminary application fee will be assessed.

(7) If more than one application for a proposed area is received by the Department for the same or conflicting uses, the Department reserves the right to determine which proposed use(s) best fulfills the policies specified in OAR 141-140-0030, and accept and proceed with that application and deny the other(s).

(8) Upon acceptance by the Department of a preliminary application as complete, the Department will convene the JART as described in Part Five of the Territorial Sea Plan.

(9) The JART will review the preliminary application, and comment on the adequacy of the preliminary application, areas of concern, and areas where more information is needed.

(10) The Department and the JART will meet with the applicant to discuss the preliminary application:

(a) The Department and the JART will provide input to the applicant on how to complete the Resource and Use Inventory and Effects Evaluation and the Special Resource and Use Review Standards as described in Part Five of the Territorial Sea Plan.

(b) The Department and the JART will provide input to the applicant on the development of the Operation Plan, if required, as described in Part Five of the Territorial Sea Plan.

(11) The Department, with review of the JART, may waive inventory content when items are deemed non-applicable.

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

ADOPT: 141-140-0045

RULE TITLE: First Right to Apply

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) A holder in good standing of a special use license administered under OAR 141-125 to collect scientific data on ocean renewable energy resources in the territorial sea shall be given a first right to apply for a temporary use authorization for a demonstration project under these rules. This first right applies to one contiguous authorized area per licensee, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the special use license:

(a) Upon receipt of a preliminary application from the licensee, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the preliminary application is complete and the use conforms to the provisions of these rules, the licensee's application will be deemed accepted by the Department.

(b) If the licensee's preliminary application is incomplete, then the application must be resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete preliminary application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the special use license, the Department shall provide written notice to the licensee of the existing authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the licensee must provide the Department written notice of the licensee's intent to exercise the first right

to apply, and submit a preliminary application for a temporary use authorization to the Department. Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply

(2) A holder in good standing of a temporary use authorization to conduct a demonstration project shall be given a first right to apply for an ocean renewable energy facility lease under these rules. This first right applies to one contiguous authorized area per holder, and for no larger of an area than 53 acres. For example, an area of 0.25 nautical miles by 0.25 nautical miles. The first right shall terminate if not exercised within 60 calendar days of the expiration date of the temporary use authorization:

(a) Upon receipt of a preliminary application for an ocean renewable energy facility lease from the holder of a temporary use authorization, the Department will review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application will be deemed accepted by the Department.

(b) If the holder of a temporary use authorization's preliminary application is incomplete, then, the application must be resubmitted within 60 calendar days from the date that the Department returned it (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected. Failure to resubmit a complete application within the allotted 60 calendar days shall result in the termination of the first right to apply.

(c) If the Department receives a complete preliminary application from another person for an area covered under the temporary use authorization, the Department shall provide written notice to the holder of the existing temporary use authorization that an application has been received by the Department. Within 60 calendar days from the date of written notice from the Department, the holder of a temporary use authorization must provide the Department written notice of their intent to exercise the first right to apply, and submit a preliminary application for a lease to the Department. Failure to provide written notice and a preliminary application within 60 calendar days from the date of the Department's written notice shall result in the termination of the first right to apply.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 274.870-879, ORS 196.485(3), ORS 196.405-583

STATUTES/OTHER IMPLEMENTED:

AMEND: 141-140-0050

RULE TITLE: Application Requirements

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) A person wanting to attain a temporary use authorization or ocean renewable energy facility lease under these rules shall:

- (a) Comply with the provisions of OAR 141-140-0040;
- (b) Apply in writing to the Department for either a temporary use authorization or an ocean renewable energy facility lease using a form provided by the Department; and
- (c) Submit an application processing fee payable to the Department to cover the administrative costs of processing the application and issuing the authorization.

(A) The non-refundable application processing fee for a temporary use authorization is \$5,000.

(B) The application processing fee for an ocean renewable energy lease includes:

- (i) A non-refundable application processing fee of \$5,000; and
- (ii) \$1,000 per megawatt for each megawatt capacity in excess of five megawatts. A portion of this fee may be refundable upon written consent between the applicant and the Director.

(C) Considerations for a partial refund under OAR 141-140-0050(1)(c)(B) may include:

- (i) The estimated expenditures accrued by the Department in processing all phases of the application;
- (ii) The reason for the withdrawal of the application; and
- (iii) Any other foreseeable expenditure that may be associated with the Department's administration of the proposed action.

- (2) Pursuant to Part Five of the Territorial Sea Plan, an applicant shall include with their application a(n):
- (a) Resource and Use Inventory and Effects Evaluation, and;
 - (b) Special Resource and Use Review Standards, and;
 - (c) Operation Plan, if required.
- (3) An applicant shall include with their application an analysis of, and any relevant supporting documents or studies, that were used to address the requirements of the Territorial Sea Plan and other applicable state policies.
- (4) Any person holding a temporary use authorization for a research project or demonstration project is required to submit a new application and the required application processing fee to the Department pursuant to the provisions of these rules if they want to:
- (a) Apply for a new temporary use authorization;
 - (b) Apply for an ocean renewable energy facility lease to install, construct, operate, maintain or remove a commercial operation; or
 - (c) Substantially change the scope of a research or demonstration project that has been previously authorized by the Department.
- (5) Unless otherwise allowed by the Director, a fully completed application for:
- (a) A temporary use authorization and an ocean renewable energy facility lease shall be submitted to the Department at least 180 calendar days prior to the proposed construction and operation of the ocean renewable energy facility.
 - (b) A temporary use authorization to test at NNMREC shall be submitted to the Department at least 150 calendar days prior to the proposed construction and operation of the ocean renewable energy facility.
 - (c) The Department and the JART shall discuss a proposed timeline for attaining an ocean renewable energy facility lease with the applicant during the preliminary application process.
 - (6) An applicant wanting to attain a temporary use authorization to test at the NNMREC is exempt from the provisions of OAR 141-140-0050(2).

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0060

RULE TITLE: Application Review Process

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) Upon receipt of an application for a temporary use authorization or ocean renewable energy facility lease, the Department will determine if it is complete. Applications determined by the Department to be incomplete may be returned to the applicant with an explanation of the reason(s) for rejection.
- (2) If a rejected application is resubmitted within 60 calendar days from the date that the Department returned it to the applicant (as indicated by the date of the postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.
- (3) The Department may deny an application for a temporary use authorization or ocean renewable energy facility lease if the applicant is currently in default or non-compliance with any proprietary or regulatory authorization that has been issued by the Department; or if the applicant's financial status or past business or management practices indicate that the applicant may not:
 - (a) Fully meet the terms and conditions of the authorization or lease; or
 - (b) Use the authorized area applied for in a way that meets the provisions of these rules.
- (4) Upon acceptance by the Department as complete, the application will be circulated to various local, state and federal agencies, other interested persons including, but not limited to federally recognized tribes, port districts, business and community organizations, ocean users, and the holders of Department-issued authorizations within or immediately adjacent to the requested area for review and comment. As part of this review, the Department will specifically request comments concerning:

- (a) Conformance of the proposed use with:
 - (A) The provisions of these rules;
 - (B) Other local, state, and federal laws;
 - (C) The requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan; and
- (b) Potential conflicts between the proposed use and existing uses that occur within the requested authorized area.
- (5) The Department may post a notice of an application and opportunity to comment at local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed action. The Department shall make paper copies of an application available to any person upon request.
- (6) The Department shall reconvene the JART to evaluate the:
 - (a) Submitted application, and;
 - (b) Resource and Use Inventory and Effects Evaluation, and;
 - (c) Special Resource and Use Review Standards, and;
 - (d) Operation Plan, if required.
- (7) The JART shall make recommendations to the Department on:
 - (a) If the information provided by the applicant for the proposed project meets the requirements of the Territorial Sea Plan, and;
 - (b) If the Department should approve the request for a temporary use authorization or ocean renewable energy facility lease, and;
 - (c) Any additional conditions or stipulations that the Department should consider upon issuance of a temporary use authorization or ocean renewable energy facility lease.
- (8) Nothing in these rules prohibits or limits a JART member's ability to provide their individual comment on an application to the Department or the State Land Board through the public comment process. All comments received during the public comment period become part of the permanent record.
- (9) After receipt of a JART recommendation, in addition to agency and public comment concerning the application, the Department will advise the applicant in writing:
 - (a) If changes in the requested area are necessary to respond to agency or public comment; and
 - (b) If additional information is required from the applicant.
- (10) The Department shall not grant a temporary use authorization or an ocean renewable energy facility lease until it has received:
 - (a) All fees and compensation specified in these rules;
 - (b) Evidence of decommissioning financial assurance as required under OAR 141-140-0095; and
 - (c) Evidence of any required insurance and/or surety bond under OAR 141-140-0090.
- (11) Should the Department, in consultation with the applicant, the JART and other interested parties, determine that it is necessary to conduct environmental or other studies necessary to assist in evaluating the project's compliance with the requirements of Statewide Planning Goal 19, the Oregon Ocean Resources Management Plan, and the Territorial Sea Plan, the applicant shall be directly responsible for retaining and paying for the consultants and completing the required research.

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0070

RULE TITLE: Compensation

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) The holder of a temporary use authorization to conduct a research project or demonstration project shall annually remit to the Department a payment in the greater amount of \$500 or \$5.00 per acre of land within the authorized area. This annual payment shall be due to the Department until such time that the:

- (a) Research project or demonstration project is completed and the ocean renewable energy facility is removed from the authorized area pursuant to the terms and conditions of the temporary use authorization and these rules;
- (b) The temporary use authorization expires or is terminated by either the holder of the authorization or the Department and the ocean renewable energy facility is removed pursuant to the terms and conditions of the temporary use authorization and these rules; or
- (c) Placement of an ocean renewable energy facility for commercial operation is authorized by an ocean renewable energy facility lease issued by the Department.

(2) The amount of annual compensation owed to the Department for an ocean renewable energy facility lease shall be the greater amount of \$500 or the sum of:

- (a) \$3.00 per acre of land within the authorized area per year, and;
 - (b) Operating fees as calculated in subsection (3).
- (3) The operating fees are determined by the following formula:

$F = M * H * c * P * r$, where:

- (a) F is the dollar amount of the annual operating fee;

(b) M is the nameplate capacity expressed in megawatts;

(c) H is the number of hours in a year, equal to 8,760, used to calculate an annual payment;

(d) c is the "capacity factor" representing the anticipated efficiency of the facility's operation expressed as a decimal between zero and one;

(e) P is a measure of the annual average wholesale electric power price expressed in dollars per megawatt hour, as discussed below; and

(f) r is the operating fee rate expressed as a decimal between zero and one. Unless the Director specifies otherwise, the operating fee rate (r) is 0.02. The Director may use discretion to set a different operating fee rate. For example, a reduced rate may be established for new, smaller project. Conversely, an increased rate may be established for a larger, mature project.

(4) Compensation is not owed to the Department for electricity generated when an ocean renewable energy facility is connected to the regional power grid for testing purposes during a demonstration project if the holder of the temporary use authorization does not receive any revenue from the sale of that electricity. However, if the holder of the temporary use authorization does receive revenue from the sale of that electricity, the electricity produced shall be subject to payment of compensation at a rate to be determined by the Director.

(5) Data concerning the amount of generation will be recorded and reported by the holder to the Department on a basis to be determined by the Department.

STATUTORY/OTHER AUTHORITY: ORS 273, ORS 274, ORS 183, ORS 274.870-879

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0080

RULE TITLE: General Terms and Conditions

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) The Department shall only offer a standard form of temporary use authorization or ocean renewable energy lease that has been approved by the Department of Justice.
- (2) An ocean renewable energy facility lease issued under these rules shall require approval by the State Land Board.
- (3) Unless otherwise approved by the Director, the term of a temporary use authorization shall not be more than five calendar years.
- (4) Unless otherwise approved by the State Land Board, the term of an ocean renewable energy facility lease shall not be more than 30 years.
- (5) Temporary use authorizations and ocean renewable energy facility leases shall be offered by the Department for an authorized area that is the minimum amount of area determined by the Department to be required for the proposed ocean renewable energy facility.
- (6) The applicant shall have 60 calendar days from the date of offer to execute a temporary use authorization or ocean renewable energy facility lease with the Department. The Department may revoke the offer after 60 calendar days, at which time the applicant may re-apply for an authorization in accordance with the provisions of these rules.
- (7) The holder shall:
 - (a) Take all reasonable precautions to protect persons, property and equipment from harm; and
 - (b) Dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waters of the state; and

- (c) Conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat and protects marine water and air quality pursuant to the requirements of Statewide Planning Goal 19; and
- (d) Maintain all structures and improvements located within the authorized area in a good state of repair.
- (8) A holder may request the Department to temporarily close all or portions of the authorized area to the public, or to cooperate with other state and federal agencies to accomplish such a closure. However, the issuance of a temporary use authorization or an ocean renewable energy facility lease does not, by itself, grant the holder the right to use the authorized area to the exclusion of other public uses. A regulated navigation area, or safety and security zone established by the United States Coast Guard does not require a closure or restriction to be established through the Department.
- (9) The Department and its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for any purpose.
- (10) The Department shall require that an applicant for a temporary use authorization or an ocean renewable energy facility lease present evidence to the Department prior to commencing the use that they have obtained:
- (a) All authorizations required by applicable local, state and federal entities to undertake the proposed use; and
- (b) Any authorization that may be required to obtain access to, or cross land belonging to a person other than that managed by the Department to undertake the use.
- (11) Pursuant to ORS 274.873, the Department shall incorporate the terms and conditions of a removal or fill state permit required for the ocean renewable energy facility into any temporary use authorization or ocean renewable energy facility lease issued.
- (12) A holder shall share any geologic and geophysical data, including bathymetry, backscatter, seismic reflection and sample data, generated by the holder regarding Oregon's Territorial Sea Floor with the State of Oregon.
- (13) A holder shall initiate removal of all structures, excluding qualifying structures that lie at least one meter beneath submerged lands in the territorial sea, within 12 months after the permanent cessation of use of the facility. An authorization from the Department must remain in place until all required structures are removed.
- (14) A holder shall complete removal of all structures, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in the territorial sea, within 24 months after the permanent cessation of use of the facility; or
- (a) In limited instances, the Director may extend this deadline if the holder can show good cause and has undertaken a good faith effort to remove the required structures.
- (15) A holder may be required to remove all structures that lie at least one meter beneath submerged lands in the territorial sea, if removal is deemed necessary by the Director, in consultation with the holder, and is permitted by the applicable requirements of federal regulatory agencies.
- (16) The Department has the right to audit the records of a holder to ensure compliance with these rules and the terms and conditions of an authorization granted under the provisions of these rules. Additionally, a holder shall make their records available to Department staff or agents for such audit following receipt of a written request by the Department.
- (17) The Department may terminate a temporary use authorization or lease if the development granted by the authorization has not commenced within two years of the date the authorization was granted. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.
- (18) The Department may terminate a temporary use authorization or lease if the applicant has withdrawn their application, or been denied, authorizations required by applicable local, state and federal entities to undertake the proposed use. The Department shall notify the holder at least 30 calendar days prior to terminating the authorization.
- (19) The holder shall indemnify the State of Oregon and the Department of State Lands against any claim, liability or costs arising from or related to an action by the holder. Such indemnification shall specifically include any release of a hazardous substance on or from the ocean renewable energy facility or physical damage caused by any part of the ocean renewable energy facility to persons or coastal structures.

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0090

RULE TITLE: Insurance and Bond

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) The Department may require the holder of a temporary use authorization or lessees to obtain liability insurance in specified amounts if the use, in the opinion of the Department, constitutes a risk to other uses of the ocean or the ocean shore, to public safety or to the State of Oregon, or if required by Oregon state law. The Department may require that the State of Oregon be named as an additional insured party in any such policy.

(2) The Department:

(a) Shall determine the coverages and amounts of the insurance the holder of a temporary use authorization and lessees must obtain based on the nature and location of the use, any requirements of law, and any other unique factors of the proposed use determined to be relevant by the Department, and

(b) May consult with the Risk Management Division of the Oregon Department of Administrative Services to determine the amount of insurance coverage required.

(3) The Department may, at its discretion, require that the holder of a temporary use authorization or lessee obtain a surety or bid bond in an amount specified by the Department (or a cash deposit which has the equivalent face or cash-in value as the surety bond and which names the State of Oregon as co-owner) or as required by Oregon state law to secure performance of all terms and conditions of a temporary use authorization or an ocean energy facility lease.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

ADOPT: 141-140-0095

RULE TITLE: Financial Assurance

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) A holder must maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate to the Department evidence that the holder has in effect the amount and form of required financial assurance for:
 - (a) The costs of closure and post-closure maintenance of the facility or device, excluding the removal of anchors, cables or any other equipment that lies at least one meter beneath submerged lands in the territorial sea; and
 - (b) Any corrective action, required by the Department or any other local, state or federal government agency with jurisdiction over the site, to be taken at the site of the ocean renewable energy monitoring equipment or ocean renewable energy facility.
- (2) Such cost estimates must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.
- (3) Such cost estimates and evidence of the required financial assurance must be provided in writing to the Department prior to the granting of the temporary use authorization or ocean renewable energy facility lease.
- (4) The required financial assurance may be satisfied by any one, or a combination of the following:
 - (a) Insurance specific to the development, operation, and decommissioning of ocean renewable energy projects; or
 - (b) Establishment of a trust fund with cash to the required dollar amount; or
 - (c) Surety bond; or,
 - (d) Letter of credit.
- (5) The State of Oregon, Department of State Lands shall be named as the beneficiary of any approved financial

assurance instrument.

(6) The holder shall update the information required under OAR 141-140-0095, and provide to the Department an updated form of financial assurance, by January 31st of each calendar year or on a more frequent basis as required by the Department.

(7) The Department:

(a) Shall determine the amount of and terms of financial assurance required based on the cost estimates of the holder, and consider the nature and location of the use in relation to other uses and resources, any requirements of law, and any other unique factors of the proposed use or holder determined to be relevant by the Department; and

(b) May consult with the Oregon Department of Justice, Risk Management Division of the Oregon Department of Administrative Services, the JART, or other qualified persons in determining the amount of and terms of financial assurance required.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0100

RULE TITLE: Termination of a Temporary Use Authorization or Energy Facility Lease

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) The failure of a holder to comply with these rules or the terms and conditions of a temporary use authorization or an ocean renewable energy facility lease, or violation of other laws covering the use of their authorized area, shall constitute a default.
- (2) The Department shall notify the holder in writing of the default and demand correction within 30 calendar days from the date of notice.
- (3) The Director may extend the time period allowed to correct a default. An extension by the Director must be in writing.
- (4) If the holder fails to correct the default within the time frame specified, the Department may:
 - (a) Modify or terminate the temporary use authorization or an ocean renewable energy facility lease; and/or
 - (b) Request the Attorney General to take or cause to be taken appropriate legal action against the lessee or holder of the temporary use authorization.
- (5) The Department may require the holder to remove all or a part of the ocean renewable energy facility to cure a default, or if the authorization is terminated. If the holder fails or refuses to remove such equipment, facility or other material, substance or related or supporting structure, the Department may remove them or cause them to be removed, and the holder of the authorization shall be liable for all costs incurred by the State of Oregon for such removal.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

ADOPT: 141-140-0105

RULE TITLE: Renewal of Authorization

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) A temporary use authorization is not renewable. A holder of an expiring temporary use authorization may apply for a new authorization under the provisions of these rules.
- (2) A holder in good standing of an ocean renewable energy facility lease may renew for an additional term.
- (a) A holder in good standing must exercise a right to renew no less than 12 months prior to the expiration of the ocean renewable energy lease.
- (b) To exercise the right to renew, a holder in good standing must:
- (A) Notify the Department of the holder's intent to renew on a form provided by the Department;
- (B) Submit a non-refundable renewal fee of \$1,000 payable to the Department.
- (C) Certify that the uses or structures that are the subject of the existing authorization are consistent with local, state, and federal law; and
- (D) Certify that the existing uses and structures are consistent with the existing authorization. The Department will not approve a renewal request that involves development of a type of ocean renewable energy not originally authorized in the lease or a subsequent modification.
- (c) Upon receipt of the required information and renewal fee, the Department shall determine, in its sole discretion, whether:
- (A) The right to renew was exercised not less than 12 months prior to the expiration of the then current term of the

authorization;

(B) The holder has fully complied with the terms of the current authorization, the applicable statutes, or Oregon Administrative Rules; and

(C) The holder has fully complied with any other authorizations granted to them by the Department.

(d) The holder must provide any additional information that is requested by the Department in order to further evaluate the proposed renewal.

(e) If the Department determines that the renewal complies with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization has been renewed for the additional term stated in the notice.

(f) Compensation for the use of state-owned land shall be re-calculated upon renewal in accordance with the rules in place at the time of renewal. Compensation shall be due prior to the issuance of the renewal.

(g) As a condition of renewal, the Department may amend the terms and conditions of the authorization at the time of renewal. Amendments made through this process may be subject to JART and public review.

(h) If the Department determines that the renewal does not comply with the requirements of OAR 141-140-0105, the Department will provide written notice to the holder that the authorization will not be renewed. In that event, the authorization will terminate at the expiration of the current term. A holder of an expiring ocean renewable energy facility lease may apply for a new authorization under the provisions of these rules.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED:

AMEND: 141-140-0110

RULE TITLE: Assignment

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) A temporary use authorization is not assignable.
- (2) An ocean renewable energy facility lease in good standing is assignable with prior written consent of the Department.
 - (a) To assign an ocean renewable energy facility lease, the lessee shall submit to the Department a:
 - (A) Notice of proposed assignment on a form provided by the Department at least 90 calendar days (unless otherwise approved by the Director in writing) prior to the date that the assignment is to occur; and
 - (B) Non-refundable assignment processing fee of \$1,000 payable to the Department.
 - (b) The holder must provide any additional information that is requested by the Department concerning the proposed assignment.
 - (c) The Department may request comment from the local, state, or federal agencies, the JART, or other affected persons.
 - (d) The Department may condition the assignment on the assignor retaining responsibility for some or all of the terms and conditions in the lease or guaranteeing the performance of the assignee.
 - (e) An assignment does not take effect until the Department authorizes it in writing.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED:

ADOPT: 141-140-0115

RULE TITLE: Modification for Use or Size

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

- (1) A holder shall not change the number, location or types of structures or make any use of the authorized area that is not specifically authorized by a prior written authorization issued by the Department.
- (2) In order to modify an authorization, the holder shall submit to the Department a:
 - (a) Notice of proposed modification on a form provided by the Department at least 90 calendar days (unless otherwise approved by the Director in writing) prior to the date that the modification is to occur; and
 - (b) Non-refundable processing fee of \$1,000 payable to the Department.
- (3) The Department shall request comment from the local, state, or federal agencies, the JART, or other affected persons.
- (4) The Department will evaluate the proposed modification and comments in order to determine if:
 - (a) The proposed modification is consistent with Part Five of the Territorial Sea Plan; and
 - (b) Is consistent with other applicable laws; and
 - (c) Is consistent with the other provisions of these rules;
- (5) Upon evaluation, the Department may:
 - (a) Approve the proposed modification;
 - (b) Approve the proposed modification with conditions;
 - (c) Request additional information in order to further evaluate the proposed modification;
 - (d) Deny the proposed modification; or

(e) Determine that the proposed modification is a significant variation from the authorized use, and require the holder to complete a new application pursuant to OAR 141-140-0050.

(6) Compensation for the use of state-owned land may be re-calculated upon modification of the authorization in accordance with the rules in place at the time of the modification. Any additional compensation shall be due prior to the issuance of the modification.

STATUTORY/OTHER AUTHORITY: ORS Chapter 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0120

RULE TITLE: Reconsideration of Decision

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) An applicant for a temporary use authorization or ocean renewable energy facility lease, or any other person adversely affected by the issuance or denial of temporary use authorization or an ocean renewable energy facility lease may request that the Director or the State Land Board, depending on which entity made the decision, reconsider the decision. A request for reconsideration must be filed within 30 days of the issuance or denial, consistent with the authority in ORS 183.480.

(2) When an applicant for an authorization under these rules or any other person adversely affected by a decision of the Department concerning an authorization under these rules has exhausted the appeal process before the Director, s/he may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879

AMEND: 141-140-0130

RULE TITLE: Enforcement Actions; Civil Penalties; and Other Remedies

NOTICE FILED DATE: 05/12/2017

RULE SUMMARY: DSL completed a multifaceted rulemaking effort to update the ocean renewable energy rules to accurately reflect the requirements of Part 5 of the Territorial Sea Plan, SB 606 (2013), HB 2694 (2013) and SB 319 (2015).

- DSL updated the application fees to ensure they are adequately covering the costs of administrating the Joint Agency Review Team and other statutory requirements. DSL also reviewed the compensation section for an ocean energy facility lease
- SB 319 required a removal-fill permit for any ground disturbance in the territorial sea for ocean renewable energy projects. Any permit terms and conditions become applicable in the lease. The bill directed DSL to convene a committee to see if a General Permit or General Authorization can be established for research or demonstration projects. The advisory committee deliberated on this issue and recommended a General Permit for certain types of research and demonstration projects. SB 319 also allows DSL to charge a higher removal-fill permit application fee for the review of ocean renewable energy projects. DSL did not raise removal-fill permit fees because they adjusted the leasing fees to cover agency costs.

DSL convened a Rules Advisory Committee (RAC) to assist with this rulemaking effort. The RAC met eight times between June 2016 and April 2017. The RAC had a consensus agreement that the draft rules were ready for public review and comment. DSL held three public hearings in Coos Bay (June 20, 2017), Newport (June 21, 2017) and Astoria (June 28, 2017). DSL held a subsequent open house public meeting in Portland on July 6. The public comment period was open from June 1, 2017 to July 14, 2017. The State Land Board reviewed and approved the draft rules at their October 17, 2017 meeting.

RULE TEXT:

(1) The Department may:

(a) Conduct field inspections to determine if uses of, and developments on, in or over state-owned submerged and submersible land are authorized by, or conform with the terms and conditions of a temporary use authorization or an ocean renewable energy facility lease and, if not,

(b) Pursue whatever remedies are available under law to ensure that any use that is in violation of the terms or conditions of a temporary use authorization, an ocean renewable energy facility lease, or other Department issued authorizations is either brought into compliance with the requirements of these rules or other applicable law, or removed.

(2) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not more than \$1,000 per day of violation for the following:

(a) Violations of any provision of OAR 141-140 or ORS 273 or 274 in connection with an ocean renewable energy facility; or

(b) Violations of any term or condition of a written authorization granted by the Department under ORS 273 and 274, or rules promulgated under these statutes.

(3) The Director shall give written notice of a civil penalty by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to the following:

(a) The particular section of the statute, rule, or written authorization involved;

- (b) A short and clear statement of the matter asserted or charged;
 - (c) A statement of the party's right to request a hearing within 20 calendar days of the notice;
 - (d) The time allowed to correct a violation; and
 - (e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.
- (4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-140-0130(3). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, or if the party requesting a hearing withdraws their request, the Director may make a final order by default imposing the penalty.
- (5) In imposing a penalty under OAR 141-140-0130 of these rules, the Director shall consider the following factors as specified in ORS 274.994:
- (a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
 - (b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible land;
 - (c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and
 - (d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.
- (6) Pursuant to ORS 183.745, a civil penalty imposed under OAR 141-140-0130 shall become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.
- (7) If a civil penalty is not paid as required by OAR 141-140-0130, interest shall accrue at the maximum rate allowed by law from the date first due.

STATUTORY/OTHER AUTHORITY: ORS 183, ORS 274.870-879, ORS 273, ORS 274, ORS 274.992-994

STATUTES/OTHER IMPLEMENTED: ORS 274.870-879, ORS 274.992-994