OTHER AGENCIES' PROGRAMS
TO CONSIDER WHEN PLANNING FOREST OPERATIONS

The purpose of Other Agencies’ Programs is to provide guidance about various jurisdictional programs that may require some level of coordination. The Oregon Forest Practices Act (FPA) is most often the exclusive authority for regulating forest practices. However, in some cases other state and federal agency regulatory programs apply to certain aspects of forest operations that require forest operators to consider other agency programs. Most of these other agency programs deal with the consequences of operations, rather than the practices to be used.

To ensure that the desired environmental consequences are achieved, the Board of Forestry (Board) and Oregon Department of Forestry (ODF) are required to coordinate the FPA program with other agency programs as may be required by the legislature or established by agreement, ORS 527.630(3), 527.710(5) and OAR 629-605-0120. Each agency program is divided into three sections: Purpose, Background and Coordination.

1. Archaeological and historic sites and objects – SHPO
2. Chemical spills and hazardous materials / - DEQ
4. Consumer Protection Program- DOJ
6. Federal lands or Native American lands - Federal Agencies, DOJ and LCIS
7. Fish passage – ODFW, NMFS and USFWS¹
8. Federal regulatory permits - USACE
9. Oregon State Scenic Waterways Act - OPRD and DSL
10. Pesticides labels, licensing, and complaints - ODA
11. Removal-Fill Law - DSL
12. Rock pits and quarries; Mined Land Reclamation Act - DOGAMI, DEQ, local govts.
13. Shallow, rapidly moving landslides and public safety - DOGAMI and local govts.¹
14. Statewide Land Use Planning Program - DLCD and local governments
15. Water use permits and impoundments - WRD
16. Wetlands - DSL and USACE
17. Willamette River Greenway Program- OPRD, DLCD, and local governments

¹ Placeholder until guidance is added in the future.
<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
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<tbody>
<tr>
<td>BIA</td>
<td>Bureau of Indian Affairs</td>
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<tr>
<td>BLM</td>
<td>Bureau of Land Management</td>
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<td>CRGC</td>
<td>Columbia River Gorge Commission</td>
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<td>CWA</td>
<td>Clean Water Act</td>
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<td>Department of Environmental Quality</td>
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<td>DLCD</td>
<td>Department of Land Conservation and Development</td>
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<td>DOGAMI</td>
<td>Department of Geology and Mineral Industries</td>
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<td>Integrated Resource Management Plan</td>
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<td>MOA</td>
<td>Memorandum of Agreement</td>
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<td>National Floodplain Insurance Program</td>
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<td>National Marine Fisheries Service</td>
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<td>NPDES</td>
<td>National Pollutant Discharge Elimination System</td>
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<td>OPRD</td>
<td>Oregon Parks and Recreation District</td>
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<td>Oregon Occupational Safety and Health</td>
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<td>Oregon Watershed Enhancement Board</td>
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1. **ARCHAEOLOGICAL AND HISTORIC SITES AND OBJECTS**  
- SHPO (OPRD)

**PURPOSE:**

The purpose of the archaeological and historic sites and objects (artifacts) is to protect an intrinsic part of the shared cultural heritage of the people of Oregon from neglect, destruction, and misappropriation. Cultural resources are finite and irreplaceable. Cultural resources help define our collective heritage and contribute to our sense of history. By understanding our past, we can better navigate the challenges of the present and future. The State Historic Preservation Office (SHPO) provides statewide agency leadership to protect cultural resources. ORS 358.905 to 358.961; ORS 390.235 to 390.240 and ORS 527.710.

**BACKGROUND:**

**National Historic Preservation Act.** Section 106 of the National Historic Preservation Act requires landowners with projects receiving federal funding, permitting or approval to consult on the potential effect to historic properties. Federal regulations define historic properties as any “prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion on, the National Register of Historic Places, including objects, records, and material remains related to such a property or resource" (54 U.S.C. § 300308).

**Legislative History.** The 1987 legislature in House Bill 3396 acknowledged that the cultural and other sensitive sites were a sub-set of the Goal 5 sites, under the Statewide Land Use Program. As such, archeological and historical sites were not included in the categories covered by the regulatory section of the FPA in ORS 527.710(3). Protection of cultural and sensitive sites were included in the categories covered by the coordination section in ORS 527.710(4).

The 1995 legislature approved a conditional exemption for an Archaeological Permit for forestry practice operations on private lands that have filed a notice of operation with the State Forester under ORS 527.670. The exemption requires that an archaeological site not contain human remains or funerary objects and objects of cultural patrimony as defined in ORS 358.905, or objects associated with the culture of a pre-contact native American Indian tribe, ORS 390.235(5). The exemption does not apply for a notification filed with the State Forester that is only a permit to operator power driven machinery or use of fire.

**Board of Forestry and Oregon Department of Forestry.** The Board has no specific legislative direction in ORS 527 to develop administrative rules to consider archaeological, historic, and cultural resources, but must consider other agencies' programs under their general coordination authority. SHPO duties under ORS 358.904 to 358.961 are considered "programs affected by forest operations" referenced under ORS 527.710(4). The Board’s duty under ORS 527.710(5) is to consult with SHPO to "...consider and accommodate the rules and programs of other agencies to the extent deemed by the Board to be appropriate and consistent with the purposes of ORS 527.630." **Note:** To address archaeological and historic site protection, the Board directed ODF to assist landowners and operators to comply with protection laws by sharing relevant site information. See also ODF’s 2020, Policy on Government-to-Government Relations. ODF’s
interagency coordination direction is also described in guidance for OAR 629-605-0120, which acknowledges other agencies’ jurisdiction and respects private landowner’s property rights.

**Interagency Agreement.** The 2006 MOA between the SHPO and ODF directs protection of cultural resource sites during forest activities under ODF’s jurisdiction, which emphasizes education to ODF employees, landowners, and operators about applicable protection regulations. In 2015, SHPO provided ODF a confidential GIS layer of sections that are within 30 meters of a SHPO recorded archeological site of below ground objects or historic ruins. SHPO has stated that most of Oregon’s archaeological sites recorded are located on federal lands, which includes some native Indians sites shared by some tribes. **Note:** The GIS layer of SHPO sections within 30 meters of recorded sites or associated information are considered confidential information.

**Tribal Governments.** Tribes have inherent sovereignty - they existed as governments before the United States of America existed. Oregon’s nine federally recognized tribal governments are separate and distinct from each other—just as the U.S. is separate from Canada and Oregon State is separate from Washington State. The Legislative Commission on Indian Services (LCIS) assist legislators, state agencies and other entities about Oregon’s nine federally recognized tribes, and the appropriate tribal(s) contact(s) for specific areas within Oregon. ORS 182.162 through 182.168 formalizes state agencies relationships with Oregon’s tribes, which requires state agencies to “make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110.”

**Archaeological and Historic Sites and Object.** Cultural Resources are the physical remains of a site, structure, building, network, or object (artifact) created or used by humans during pre-contact or historic times. Cultural resources can be found any place where people have been, including ridgelines and saddles; flat areas near confluences of streams; natural openings in forests; springs and old wells; and sources of extractable minerals. See also Archaeological Object, ORS 358.905(1); Archaeological Sites, ORS 358.905(1)(c); and Archaeological Site of Significance, ORS 358.905(1)(b).

Cultural resources are categorized by time before and after Euro-American contact with native American Indians.

1. **Pre-contact sites and objects** means a feature or one or more objects that predate Euro-American contact with native American Indians, which in Oregon is around 1805.
   a. **Pre-contact sites** means lithic scatters, rock images, peeled trees or culturally modified trees, stacked rocks (cairn), burial site, shell heaps or middens, Indian campsites, cached objects, fire hearths, house pits, or villages.
   b. **Pre-contact objects** means stone tools, chipped stone flakes from manufacturing stone tools, projectile points, bones, shells, ground stones, or fire cracked rock from fire hearth.
2. **Historic sites and objects** mean a feature or object that reflect cultural activity by Native Americans, Asians, and Euro-Americans. The age threshold on federal land or federally funded project is 50 years and 75 years on non-federal land in Oregon.
   a. **Historic sites** include trading posts, military forts, pioneer homesteads, logging, mine tailings, mining and railroad camps, religious centers, railroad grades, hard rock mine, wagon ruts, mining ditches, refuse scatter, and stacked rocks.
b. **Historic objects** include ceramics, pottery, cans, bottles, coins, building material, and metal.

**Archaeological Permit.** Under ORS 358.920, a person may not excavate, injure, destroy, or alter an archaeological site or object or remove an archaeological object located on public or private lands in Oregon, unless that activity is authorized by an archaeological permit issued under ORS 390.235. When a forest practice operation has been filed with the State Forester on private land, a SHPO Archaeological Permit is not required to disturb a site, provided there is no reasonable evidence of human remains or native Indian objects or feature, ORS 390.235(5).

**Inadvertent Discovery** means if a person accidentally disturbs a cultural resource site or Indian cairn / burial, they are not subject to any criminal penalties. However, that person must report and re-inter the human remains or Indian funerary objects at their own expenses, under supervision of the appropriate Indian tribe, ORS 97.745(1). Avoid further disturbance when human remains are discovered and report to the State Police (nearest office), SHPO, 503-986-1067, and LCIS, 503-986-1067, ORS 358.920(6). **Note:** Federal and state laws require protection of an archaeological site until otherwise stated by an archaeologist qualified by the SHPO.

**Willful Disturbance** to a known cultural resource site or removal of an archaeological object may be a violation, if the site is determined to have archaeological significance, ORS 97.745, and ORS 358.920(1). It is a Class B misdemeanor to excavate, injure, destroy, or alter an archaeological site or object, or remove an archaeological object located on either state, public, or private lands in Oregon, ORS 358.920(8). It is a Class C felony to remove, mutilate, deface, injure, or destroy any cairn, burial, human remains, funerary object, sacred object, or object of cultural patrimony of any native Indian. Cultural patrimony means an object having ongoing historical, traditional, or cultural importance central to the native Indian group or culture itself. ORS 97.745 and 97.990(5).

**Violations Reportable to the State Police and SHPO:**
1. A person willfully disturbed or removed an archaeological object from an archaeological site that contains human remains, funerary objects and objects of cultural patrimony as defined in ORS 358.905, or objects associated with a pre-contact native American Indian tribal culture, per ORS 390.235(5), ORS 97.745.
2. A person willfully disturbed or removed an archaeological object from an archaeological site on public and private lands, without an Archaeological Permit issued by SHPO or written permission from the landowner, per ORS 358.920(1), (2) and (5).

**Public records laws.** ORS 192.501(11), provide conditionally exempt from disclosure information concerning the location of archaeological sites or objects, defined in ORS 358.905, except if the governing body of an Indian tribe requests the information and the need for the information is related to that Indian tribe’s cultural or religious activities. This exemption does not include information relating to a site that is all or part of an existing, commonly known, and publicized tourist facility or attraction. The GIS layer of SHPO sections within 30 meters of recorded sites or associated information are considered confidential information, not available for public disclosure.
COORDINATION:

SHPO:
The SHPO archaeologists provide cultural resources information to state agencies and the public. They encourage operators and landowners to survey all forestlands prior to conducting ground disturbance activities, especially if there are suspected archaeological sites. **Note:** See SHPO’s website for Archaeological Bulletins: “Archaeological Sites on Private Lands;” “Archaeological Sites on Public Lands;” “Archaeological Permits;” and “Hiring an Archaeologist.”

Tribal Governments:
Effective tribal relations depend on appropriate dialogue with authorized a tribal government representatives, with are likely including staff representatives from the tribe’s natural resources and cultural resources. The tribal representatives may not have decision making authority. See also the Federal Lands and Native American Indian Lands, in this document.

Tribal representatives are encouraged to register as an E-Notification subscriber to notifications of forest operations. The free webpage notification service provides current information based on the subscriber’s interest by activity type and geographic area. Tribal representatives are encouraged to request the notification database that allows the tribe to review their confidential cultural site information with forest operations, which is coordinated with the ODF GIS Unit. Tribes may seek SF assistance or may directly contact the landowner and operator listed in the notification about operational concerns that could impact cultural resources.

ODF:
**Notification of Operation Review.** The SF informs landowners and operators when a ground disturbance operation is within a SHPO section of recorded sites. Ground disturbance means mechanical equipment ground disturbance, excluding tree falling, chemical application or use of fire. The SF educational outreach can be done through email, using the landowner’s template letter on SharePoint and the link to the ODF’s Forest Fact Sheet, *Protecting Cultural and Historic Sites.* The letter recommends the landowner contact SHPO to determine if the operation may impact a nearby cultural resource site and to learn about their rights and responsibilities.

ODF informs the landowner and operator when federal funds are associated with a forest activity, that historic sites at least 50 years old are regulated under Section 106 of the 1966 National Historic Preservation Act. The SF informs the private landowner planning to develop in the Columbia Gorge Scenic Management Area, that the development permit requires an archaeological survey by a qualified archaeologist, which is usually done by the USFS.

The SF may document communication with the landowner and operator about ground disturbance operations located within a confidential SHPO section or suspected sites using E-Notification Internal Notes, but do not use Formal Comments or Inspection Reports.

For suspected cultural resource sites, the SF advises the landowner and operator to further avoid disturbance within 100 feet of the visible site. If the operation cannot avoid disturbance within 100 feet of the visible site, the SF recommends the landowner and operator contact SHPO, to assess ways to minimize site impact. The SF recommends the landowner and operator refrain
from drawing attention to the discovered site by not posting on social media or other communication methods. The SF may have a minor role facilitating communication with Tribes and SHPO. The SF should provide the landowner and operator the ODF Forest Fact Sheet, Protecting Cultural and Historic Sites. See also ODF’s procedures for handling inadvertent discoveries of cultural resources and human remains on ODF’s SharePoint.

For suspected human remains, the SF must immediately direct the operator to stop further site disturbance and secure the site with a flagged 100-foot buffer. The SF must inform his or her supervisor and the landowner. The supervisor then contacts the ODF Tribal Liaison, State Police, SHPO, and LCIS, ORS 97.745(4). The SF informs the ODF Tribal Liaison when there are suspected cultural resources or human remains located on a tribal reservation or land owned by the tribe or a native American Indian. The SF advises the landowner to avoid the disturbing the site and contact the tribe’s cultural resources staff.

Do not report suspected archaeological sites or objects on private lands unless human remains or funerary objects are suspected. The SF should report looting, willful ground disturbance of a known archaeological site, or discovery of human remains to the Oregon State Police, SHPO, LCIS and the Forest Resources Division staff. The SF may document communication with the landowner and operator about confidential suspected cultural resource sites using E-Notification Internal Notes, but not Formal Comments or Inspection Reports.

County Comprehensive Plan Review. When requested by local governments, the district will review county comprehensive plans to identify sites that are inventoried under Goal 5 of the Statewide Land Use Program. Local governments are required under Goal 5 to inventory and evaluate resources including historic areas, sites, structures, objects and cultural areas. ODF also encourages the preservation of historic sites, such as railroad trestles, logging camps, and donkey engines in the Goal 5 planning process, for sites less than 75 years old.

Landowners:
Private Landowners. Avoid further disturbance within 100 feet of the suspected cultural resource site. If the operation cannot avoid disturbance within 100 feet of the visible site, the landowner and operator are recommended to contact SHPO, to assess ways to minimize site impact. The landowner and operator are encouraged to refrain from drawing attention to the discovered site by not posting on social media or other communication methods. The landowner may be contacted by one of Oregon’s nine federally recognized tribes to discuss protection measures for a cultural resource site of tribal interests that may be located on the landowner’s property.

Landowners control access to their lands regardless of the presence of cultural resources. All archaeological materials located on the landowner’s property belong to the landowner, except objects taken from a native American Indian cairn or burial site, ORS 97.745(2). Landowners are not obligated to contact SHPO or hire an archaeologist if there are suspected cultural resource site discovered within the operation. An archaeological survey is required for operations within the Columbia River Gorge Scenic Management Area before developing private land, coordinated by the USFS.

Landowners are strongly recommended to contact SHPO and the appropriate tribe to determine whether archaeological sites and objects are in the proposed operational areas, OAR 736-015-
0090. If a SHPO qualified archaeologist has determined a suspected cultural resource site does not have archaeological significance, an archaeological permit is not required. The private landowner, with a forest practices notification filed under ORS 527.670, is required to have an Archaeological Permit to disturb a known cultural resource site, when there are suspected or known human remains and ceremonial burial artifacts or objects associated with pre-contact Indian tribal culture, ORS 390.235(5).

Landowners using federal funding, permitting or approval for a forest project should consult with the funding agency to determine the project requirements prior to consulting with SHPO.

Public, Non-federal Landowners. Public landowners should follow the same guidance as private landowner with the following exceptions:

- Public landowners are required to have a SHPO archaeological permit to explore a cultural resource site, unless the site is determined by a SHPO qualified archaeologist to not be an archaeologically significant site, ORS 390.235.
- Public landowner must report suspected archaeological sites or objects on public lands to the landowner’s leadership, SHPO and to the SF. Depending on the site, outreach to the appropriate tribe may be necessary, as advised by LCIS.
2. **CHEMICAL SPILLS AND HAZARDOUS MATERIALS**

- DEQ

**PURPOSE:**

The purpose of the Hazardous Waste Management Program, as administered by Oregon DEQ and authorized by the EPA, is to protect public health and Oregon's land, air, and water systems. DEQ strives to enforce existing environmental regulations; identify effective management strategies; and partner with private industry and governmental groups to provide assistance and regulatory flexibility, while reducing pollution. Administrative rules, OAR 340-100 to 135, specify the reporting requirements, disposal, cleanup standards, and liability for actual or potential spill or release of petroleum products or hazardous materials. See also, ORS 465 and 466, Hazardous Waste and Hazardous Waste Materials.

**BACKGROUND:**

The Hazardous Waste Management Program applies to any person, including forest operators, "owning or having control over any petroleum products or hazardous material spilled or released, or threatening to spill or release."

Hazardous waste is a solid waste (which includes solids, liquids, and compressed gases) that possesses at least one of four characteristics (ignitibility, corrosivity, reactivity, or toxicity), or that appears on federal or state official lists of hazardous wastes. Examples include fuel, oil, pesticides, and batteries. DEQ provides technical assistance to businesses to understand the application of hazardous waste regulations.

Pesticides are any substance or combination of substances intended for the purpose of defoliating plants or for preventing, destroying, repelling, or mitigating insects, fungi, weeds, rodents, or predatory animals; including but not limited to defoliants, desiccants, fungicides, herbicides, insecticides, and nematicides. Pesticide residue is a hazardous waste that is generated from pesticide operations and pesticide management, such as, from pesticide use (except household use), manufacturing, repackaging, formulation, bulking and mixing, and spills. Pesticide residue includes, but is not limited to:

1) Unused commercial pesticides,
2) Tank or container bottoms or sludges,
3) Pesticide spray mixture, container rinsing’s and pesticide equipment washings, and
4) Substances generated from pesticide treatment, recycling, disposal, and rinsing spray and pesticide equipment.

Pesticide residue does not include pesticide-containing materials used according to label instructions, and substances such as, but not limited to treated soil, treated wood, water, vegetation, and treated seeds where pesticides were applied according to label instructions.

Reportable quantities that are likely to be applicable to forest operations include:
1. Any quantity of petroleum products spilled into or likely to enter waters of the state that would produce a visible oily slick, oily solids, or coat aquatic life, habitat or property with oil (excluding normal discharges from properly operating marine engines).

2. Any quantity of petroleum products over one barrel (42 gallons) spilled on the land.

3. One pound of hazardous materials equal to, or greater than, the quantity listed in the Code of Federal Regulations, 40 CFR Part 302 (List of Hazardous Substances and Reportable Quantities), and amendments adopted before July 1, 2002.

COORDINATION:

ODF:
The SF administers the FPA, including enforcement action, such as written statements and corrective actions to control and cleanup spills. Additionally, the SF must follow the coordination actions related to control and cleanup for chemical spills on forestland, consistent with Directive 6-3-0-002, Hazardous Materials Incident Reporting and Control:

“Trained department employees may only take direct action to control incidental releases or spills. Such action shall only occur if the spilled substance is identified and it is determined that it can be safely absorbed, neutralized, or otherwise controlled in a safe manner with available personnel and equipment.”

Whenever SFs are made aware of a spill, they should immediately inform the operator of the requirement to report spills as required by the Hazardous Waste Management Program. If actual spills or threatened spills exceed the "reportable quantity," then the operator is required to report the spill or threatened spill to the Oregon Emergency Management Division.

- The Oregon Emergency Response System: 1-800-452-0311, and
- The National Response Center: 1-800-424-8802

DEQ:
The principal and final authority for clean-up of chemical spills in Oregon is DEQ. However, when there are chemical spills on forestland, ODF personnel are responsible for administering the FPA and taking certain actions related to control and cleanup.

Operator:
The person who spills the product, as well as the person owning or having authority over the hazardous material are responsible to take every reasonable method to contain the petroleum products or hazardous material and to ensure immediate cleanup of the spill, regardless of the quantity involved. The operator or landowner must notify the local SF of a chemical spill, which does not relieve an operator of the responsibility to notify Oregon Emergency Management Division of a spill. OAR 629-620-0100.
3. **COLUMBIA RIVER GORGE NATIONAL SCENIC AREA ACT**  
- CRGC, USFS, and LOCAL GOVERNMENTS

**PURPOSE:**

The purpose of the Columbia River Gorge National Scenic Area Act, as administered by the Columbia River Gorge Commission (CRGC), is to protect the scenic, cultural, recreation, and natural resources of the Scenic Area. Reference: 16 U.S.C. 544.

**BACKGROUND:**

The Columbia River Gorge National Scenic Area Act was adopted by the United States Congress on November 17, 1986. As part of the Act, the Gorge was divided into two distinct planning units—the General Management Area (GMA) and the Special Management Area (SMA). Consistent with specific direction contained in the Act, the CRGC developed guidelines for the management of the GMA in coordination with the applicable county, and the U.S. Forest Service (USFS) developed guidelines for the management of the SMA. Ultimately, both sets of guidelines were adopted by the CRGC as part of the overall Scenic Area Management Plan.

The Gorge Act contains specific direction that within the GMA, if lands are designated and zoned as suitable for the production of forest products, forest practices on non-federal lands are only to be regulated by the relevant state's FPA (or any county regulations which under applicable state law supersede such acts). Therefore, in Oregon, ODF regulates forest practices in the GMA (if forest operations are allowed in the zone). There are some zones, such as "Open Space", that do not allow commercial forest operations.

The Gorge Act requires that, in the SMA, the USFS develop guidelines to ensure that "management, utilization, and disposal of timber ... on non-federal lands ... take place without adversely affecting scenic, cultural, recreation, and natural resources of the Scenic Area" (Section 8(f)). To achieve this standard, additional standards are applied to forest practices beyond the FPA requirements. The SMA standards for the management of non-federal forest lands are to be enforced by the CRGC. The Oregon forest practices regulations are enforced by ODF. See additional information on the USFS webpage.

**COORDINATION:**

**ODF:**

The SF notification should determine if the operation is located within the GMA on commercial or non-commercial forestland or within the SMA. The SF informs the operator/landowner about regulations with the GMA and SMA, if applicable. The SF informs the operator that the operation may not begin until 21-days after the written plan was submitted. The SF may waive the 15-day waiting period for operations located on commercial forestland within the GMA, but not for non-commercial forestland located with the GMA or on forestland located with the SMA. There is an exception to the 15-day waiting period for the SMA if the operator received plan approval by the CRGC prior to submitting the notification to ODF. The SF must email all
notification documents to the USFS, CRGC and the applicable county, indicating if GMA “open space” land is present within the operation.

Operators and Landowners:
The operator/landowner is responsible to comply with the Oregon FPA for commercial forestland within the GMA and SMA, but not for non-commercial forestland within the GMA. For operations within GMA non-commercial forestland, the operator/landowner must wait 21-days after submitting the written plan and comply with the regulations of the CRGC and applicable county. For operations within SMA forestlands, the operator/landowner must develop a plan with the USFS, wait 21-days after submitting the written plan for beginning the operation and comply with the regulations of the Oregon FPA and CRGC.

USFS:
The USFS must assist the landowner in developing a plan that complies with the SMA rules. The USFS must also conduct an archaeological survey as part of the plan. The USFS does not have any responsibilities for forestland located within the GMA.

See Table 1. Columbia River Gorge National Scenic Area for a summary of the standards for the GMA and SMA, and the associated responsibilities of the USFS, ODF and the operator/landowner for land management activities if the applicable areas.
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<td>• Special classification of non-federal lands that restricts forest operations</td>
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<td>• FPA</td>
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</tr>
<tr>
<td>Review process</td>
<td>Identify GMA (General Mgmt. Areas) and land zoned “open space” and identify SMA (Special Mgmt. Areas)</td>
<td></td>
</tr>
<tr>
<td>Inform operator</td>
<td>• Operation must comply with FPA</td>
<td>• Must wait until 21 days after submitting written plan</td>
</tr>
<tr>
<td></td>
<td>• Must comply with Gorge Commission and County</td>
<td>• Must comply with SMA rules</td>
</tr>
<tr>
<td>ODF</td>
<td>15-day waiting period</td>
<td>• May not waive 15-day waiting period</td>
</tr>
<tr>
<td>15-day waiting period</td>
<td>• May waive 15-day waiting period</td>
<td></td>
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<tr>
<td>Email Notification</td>
<td>• USFS</td>
<td>• USFS</td>
</tr>
<tr>
<td>documents and note if</td>
<td>• Columbia River Gorge Commission</td>
<td>• Columbia River Gorge Commission</td>
</tr>
<tr>
<td>GMA lands present</td>
<td>• Applicable local government (Multnomah, Hood River or Wasco Counties)</td>
<td>• Applicable county</td>
</tr>
<tr>
<td>Operator Responsibility</td>
<td>• Comply with FPA</td>
<td>• Wait 21 days after submitting written plan</td>
</tr>
<tr>
<td></td>
<td>• Wait 21 days after submitting written plan</td>
<td>• Comply with Gorge Commission and County standards</td>
</tr>
<tr>
<td></td>
<td>• Comply with Gorge Commission and County standards</td>
<td></td>
</tr>
<tr>
<td>USFS Responsibility</td>
<td>• None</td>
<td>• None</td>
</tr>
<tr>
<td></td>
<td>• None</td>
<td></td>
</tr>
</tbody>
</table>

Source: Other Agencies Program Guidance, Columbia River Gorge National Scenic Areas, updated May 12, 2021
4. CONSUMER PROTECTION PROGRAM
- DOJ

PURPOSE:

The purpose of Consumer Protection Program, as administered by the Department of Justice (DOJ), is to ensure a safe and fair marketplace in Oregon by helping consumers with complaints, preventing fraud, enforcing consumer protection laws and consumer education.

BACKGROUND:

ODF occasionally receives complaints about inappropriate business practices, which may be the result of unwritten or poorly written contracts. Some examples of common issues include: unauthorized operations; road easements agreements; changing extent of harvest; not using log load tickets or providing log mill receipts; extent and type of slash treatment; and expectations for reforestation. DOJ Consumer Protection Program provides a consumer hotline, 1-877-877-9392, for anyone who has concerns about being a victim of questionable business practices.

COORDINATION:

ODF:

- SFs should not get involved with issues about rights to harvest or timber trespass, which are civil matters between the landowner and whoever else is submitting a notification.
- SFs should clearly state that ODF’s authority is strictly limited to enforcement of the FPA and fire prevention regulations, not civil matters between individuals.
- Provide generic advice on selecting an operator. ODF’s enforcement database on ODF’s public webpage, under Forest Practices Compliance.
- When the SF is informed by the landowner of an unauthorized operations, the SF should make a Formal Comment on a notification, such as,
  - “The landowner has informed ODF that they have not authorized the notification for the forest operation.”
  - “The county sheriff informed ODF that the landowner did not provide the operator approval for the notification or the operation.”
- See also guidance for OAR 629-605-0150(6).
- Refer operators and landowners who believe they have been victims of questionable business practices to their attorney and the DOJ Consumer Protection Program.

Operators and Landowners:

- Contact the county sheriff if there is an unauthorized harvest notification.
- Contact the DOJ Consumer Protection Program, consumer hotline at 1-877-877-9392, if there are concerns about being a victim of questionable business practices.
5. CONVERSION OF FORESTLAND

-DEQ, DLDC, DSL, ODA, ODFW, OPRD and LOCAL GOVERNMENTS

PURPOSE:

The purpose of conversion of forestland is to explain the roles of state agencies and local governments where a land use change is not compatible with forest trees. Sometimes forestland conversions involve activities that do not comply with the resource protections required by the FPA or other agency regulations.

BACKGROUND:

Interagency Agreement. The department accepted the role of “gate keeper” in the 2006 interagency MOA between DEQ, DSL, DLCD, ODA, ODFW and OPRD. The intent is to ensure a smooth transition during the conversion process between agencies’ jurisdiction to protect water quality and other resources. When a conversion operation proceeds beyond forest management activities, ODF’s jurisdiction ends, and as ORS 527.730 reads, “Nothing in the FPA shall prevent the conversion of forestland to any other use.” The forestland conversion requires a PFAP to be exempted from the FPA reforestation requirements.

Local Governments. City and County governments must protect water quality during any forestland conversions within their city limits or UGB if they have assumed the responsibility of regulating forest operations. Conversion of forestland under county forest deferral tax programs will change the tax status of the property.

COORDINATION:

ODF: If the clearing forestland for LUC activity is not related to a forest products commercial activity, then no notification is required. The SF informs the landowner of state and local government signatures required to be exempted from FPA reforestation requirements. The SF should inform the county assessor when it is known that forestland is not being managed as forestland, per ORS 321.367(4) and per ORS 527.630(3), “…coordinate with other state agencies and local governments which are concerned with the forest environment.” See details in guidance for OAR 629-610-0090.

Landowner: The landowner must demonstrate the planned land use change is not compatible with forest tree cover. The landowner must provide the SF with the county planner and county assessor approval, as well as he appropriate state agencies’ approval that the SF has determined for the site.

County: All land use changes must obtain written approvals from the local jurisdiction (city and/or county planning department) and the county assessor, stating that the proposed land use change is authorized under local land use and zoning ordinance and all necessary state, federal, and local land use and construction permits and approvals.

Other Agencies: The appropriate state agencies, as indicated by the SF on the PFPA form, must approve the forestland conversion, through the lens of their resource protection jurisdiction.
6. **FEDERAL LANDS OR NATIVE AMERICAN LANDS**
   - Federal Agencies, DOJ and LCIS

**PURPOSE:**

The purpose of federal lands or Native American lands is to ensure the appropriate application of the FPA on federal lands or native American lands. ORS 527.610 to 527.992.

**BACKGROUND:**

The question of whether or not the FPA applies to federal lands or reservation lands is fairly straightforward for federal lands and more complex for Oregon’s nine federally recognized Indian tribal lands.

**Federal Lands.** Though federal forestlands fit under the FPA’s definition of forestland, the State Forester does not administer the FPA on federal lands. Nothing in the FPA indicates that there is any intent for the FPA to not apply to federal lands. The USFS and BLM lands have signed agreements with the state to be the designated management agencies to implement the state’s water quality program, specifically temperature (OAR 340-041-0028(12)(g) and other water quality criteria (OAR 340-041-0061(13)). The agreements require the USFS and BLM to have a program in place that will meet or exceed the standards of the FPA. Contact Salem staff to review FPA jurisdiction for operations on other federal lands, including Bonneville Power Administration, USACE, U.S. military agencies, Bureau of Reclamation, and national wildlife refuges. Since the necessary federal programs are in place, ODF does not directly administer the CWA on these lands.

**Tribal Lands.** The relationship of Oregon state agencies with Oregon Indian tribes is described in ORS 182.162 to 182.168. ODF’s 2020 policy on government-to-government relations can be found on ODF’s public page. How to implement the policy is described in the procedures document found on ODF’s SharePoint site. Under ORS 182.164(3), a state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110.

The applicability of the FPA to the tribal lands within and outside tribal reservations is a very sensitive and complex issue. Questions pertaining to this issue should be referred to Salem staff, as legal counsel may be needed.

ODF acknowledges each of Oregon’s nine federally recognized tribes have sovereign rights unique to other Oregonians. Though tribal forestlands held in federal trust fit under the FPA’s definition of forestland, the FPA does not directly address federal trust lands, therefore, the FPA has no jurisdiction on tribal trust lands or on tribal lands in the process of being converted to federal trust status. Tribes may benefit by notifying ODF of forest operations, because the SF will provide a resource review, such as, landslide and public safety concerns.
Definitions:
- "Tribal lands" means land owned and managed by the tribe but held in federal trust. Tribal lands held in trust by the federal government or seeking federal trust status are exempt from state regulation, e.g., DOR and FPA.
- "Fee lands" means land, originally tribal reservation land, which is owned by a tribe, Indian or non-Indian and is not held in federal trust. The state and local governments have jurisdiction on fee lands but sometimes a tribe may exert jurisdiction when fee lands are inside a tribal reservation boundary. Tribal lands which are not held in trust by the federal government may or may not be exempt from the FPA. It may be necessary to contact the local tribe or the Bureau of Indian Affairs to establish the trust status of a parcel of tribal land.
- "Closed reservation" means the tribe has sole regulatory authority over all lands (Indian and non-Indian) within the reservation boundary. For example, the Confederated Tribes of the Warm Springs completed an Integrated Resource Management Plan (IRMP) in 1992. This plan contains a list of allowable forest practices and forest retention requirements for protected resources. The requirements of the IRMP are for the most part more restrictive than the FPA. With the completion of this plan, the Warm Springs tribal government has the authority to implement the IRMP on all lands within the Reservation boundary, including lands held in private ownership. The DOR has jurisdiction for harvest revenues, but the FPA does not apply.
- "Open reservation" means the tribe has limited regulatory authority on non-Indian land within the reservation boundary. If lands are privately owned by a member of the tribe within an "open reservation", these lands may or may not be subject to the FPA. Unless the tribe has some special relationship to the property through a deed that would make it more "tribal land" than "private land," the FPA applies to private lands within the reservation boundary. However, on privately owned lands, the tribe may apply more restrictive requirements than the FPA within the reservation boundaries. For example, the Confederated Tribes of the Umatilla Indian Reservation is an “open reservation” that requires non-Indian lands to comply with tribal regulations. Consult with Salem about the FPA jurisdiction. The DOR has jurisdiction for harvest revenues.

Note: Consult Forest Resources Division when forest operations involve new tribal lands outside a reservation, not seeking federal trust; tribal fee land within a reservation; or individual tribal member land outside reservation.

**COORDINATION:**

**ODF:**
Federal Lands-General. SF must report suspected or observed FPA violations on BLM or USFS to the appropriate local federal office. ODF will not take direct enforcement action against the federal landowner. Follow-up with the local office should be made to ensure that proper action to address the violation has been taken. Both the USFS and BLM are DEQ designated management agencies for compliance with the state water quality standards and unsatisfactory conditions on their lands can be referred by the SF to DEQ.

SF must regulate the resource-affecting activities on any road crossing federal land to access an operation on private forestland.
Federal Lands-Railway. The SF does not apply the FPA when forest practices take place within the right of way boundary of the existing railroad line, per the federal railway regulations (primarily the Interstate Commerce Commission Termination Act). However, other communications through the ODF’s E-Notification system are required for:

- A forest operation as defined under ORS 477.001, located on or within 1/8-mile of a forest protection district, is required to obtain a permit to use fire or operate power driven machinery and subject to the other requirements in ORS 477; and
- If harvesting occurs, the timber owner must notify DOR through E-Notification system.

Private Lands-Floodplain. The SF does not apply the FPA for instream enhancement or permanent stream crossing construction on Type F stream within the 100-year floodplain, where the county regulates the NFIP under the jurisdiction of FEMA. The county administration of the NFIP, through a land development permit, which provides more federally regulatory certainty than the FPA. The SF or anyone administering the FPA, when reviewing a notification that identifies any activity that will be placing a structure, logs, fill, materials which would include permanent stream crossing structures or stream enhancement/log placement within the 100-year SFHA – the landowner will need to consult and get permission from the county or local jurisdiction to complete these types of projects. See also the Statewide Land Use Planning Program.

Communication with Tribal Governments. District Foresters, in coordination with Area Directors, provide local communication with tribes about ODF’s programs and tribal issues that cross district lines, meeting annually or as often as needed. The LCIS assist legislators, state agencies and other entities about Tribes, contact information, and suggestions how to communicate with the appropriate Tribe(s). Tribal sovereign governments- like other governments- means at a minimum that each of Oregon’s nine federally recognized tribal governments have a distinctive legal and political status separate from other sovereigns including other tribal governments. Effective tribal relations depend on appropriate dialogue with a tribal government’s authorized representative on the subject at hand, which should include representatives from the tribe’s natural resource group and cultural resource group.

Encourage tribal governments to subscribe to E-Notification subscriber services for current notifications information being submitted to ODF. The ODF GIS Unit also provides a direct link to current notification information that may be used by a tribe to review with their confidential information.

Tribal Lands within and outside tribal reservations. Caution should be used when confronted with a forest resource issue pertaining to tribal trust or tribal fee lands or operations on non-Indian lands within tribal reservation boundaries. Consult Salem staff, who will discuss with the tribe, DOJ, and Bureau of Indian Affairs (BIA). These issues are very sensitive and complex, and generalization cannot be made between reservations or land classifications on the same reservation.

**Forest Resources Division:**
As needed, Salem staff with determine FPA jurisdiction with each tribe in consultation with DOJ, BIA, and the tribe.
- Tribal lands which remain independent of federal trust status (fee lands),
- Lands owned by individual tribal members located inside or outside the tribal reservation boundaries,
- Enforcement action when resources are damaged on tribal lands not under federal trust,
- Enforcement action on lands owned by individual tribal members, and
- Enforcement action when resources are damaged on non-Indian lands within a tribal reservation boundary.

**Note:** See also guidance for definitions of operation and forestland, Chapter 629, Division 600.

**Operators and Landowners:**

**Federal Lands.** An operator, harvesting on federal forestlands, must file a notification with ODF for DOR purposes. An operator conducting forest activities on BLM land in western Oregon must file a Permit to Use Fire or Power-Driven Machinery (PDM) to allow ODF to administer industrial fire prevention regulations, including forest operations inspections, per the 2018 BLM Western Oregon Suppression Agreement.

**Federal Road Easements to Access Private Lands.** Private operations that use federally controlled haul roads are responsible to maintain state water quality standards. This is analogous to compliance with state game laws on federal land. It is a fine point, legally, that the FPA will be applied to federally controlled lands and roads, but ODF will only inform federal agencies of unsatisfactory conditions on federally owned lands and roads. ODF will require operators to address unsatisfactory conditions on federally controlled lands and roads they are using, even if the conditions are due to inadequate road design, materials, or road maintenance by the federal agency. **Example:** A private operator is hauling on a federally controlled road and causes or contributes to a turbidity standard violation, they will be required by ODF to stop the damage by adequate road maintenance practices or by ceasing use of the road. Failure to comply will result in enforcement action by ODF against the operator. To correct the problems, the private operator may attempt to apply the terms of the road use agreement with the federal agency or otherwise negotiate with them to correct the unsatisfactory condition.

**Private or Non-Indian Lands within a tribal reservation.** Private lands within the Confederated Tribes of Warm Springs Reservation must comply with tribal regulations and notify the State Forester for DOR processing of harvest income, otherwise, the FPA has no jurisdiction. Non-Indian landowners within other tribal reservation boundaries very likely must comply with the FPA and may also be required to comply with the tribe’s regulations. Consult Salem.

**Federal Agency:**

**Federal Lands.** Observe federal agency regulations and interagency agreements for federal operations on federal forestland to ensure sufficient resource protection.

**Private Lands.** Comply with the FPA for activities conducted on private lands by federal agencies, as administered by the SF. For example, road construction to access federal lands through a private land’s easement.
7. **FISH PASSAGE**
- ODFW, NMFS and USFWS

**PURPOSE:**

*Placeholder, guidance to be added in the future.*

**BACKGROUND:**

**COORDINATION:**

ODF:

Operator and Landowner:
8. FEDERAL REGULATORY PERMITS

- RIVER AND HARBOUR ACT OF 1899, Sections 9 and 10
- CLEAN WATER ACT, SECTION 404, and
- MARINE PROTECTION, RESEARCH AND SANCTUARIES ACT, Section 103

USACE

PURPOSE:

The purposes of the federal regulatory permits, as administered by the U.S. Corps of Engineers (USACE), are to ensure the nation's water resources and wetlands are used in the best interest of the public, which includes consideration of environmental, cultural and other public interest concerns. The United States Congress has assigned the USACE responsibility for protection and development of the nation's water resources, including navigation, flood control, energy production through hydropower management, water supply storage, and recreation.

Congress has also given the USACE responsibilities for regulation of construction and other work in the waters of the United States. The USACE is charged with protecting our nation's harbors and navigation channels from destruction and encroachments, and with restoring and maintaining environmental quality. This is accomplished by regulating activities in three areas: 1) Discharge of dredged or fill material in coastal and inland waters and wetlands; 2) Construction and dredging in navigable waters of the United States; and 3) Transport of dredged material for dumping into ocean waters.

BACKGROUND:

Who Should Obtain a Permit? Any person, firm, or agency (including federal, state, and local governmental agencies) planning to work in waters of the United States may first need to obtain a permit from the USACE. In most cases, forest practice activities are exempt from the federal permit requirements. However, this may not be the case for all forest practices. For threatened or endangered species, protection standards beyond the FPA may be required by federal authorities under the Endangered Species Act (ESA). Example: An incidental take permit may be needed where an action could be considered a taking. See also OAR 629-605-0105.

The necessary permits are required even when land next to or under the water is privately owned. Both the property owner and contractor may be held liable for violation of federal law if work begins before permits have been obtained. Penalties for proceeding with work without a permit issued by the USACE may include: removal of work and restoration of area; fine of up to $50,000 per day for each violation; and up to two years in prison.

Note: Federal flood control regulations are administered through county permit requirements for communities that participate in the National Flood Insurance Program (NIFP). The NIFP requires an analysis to ensure a “no-rise” impact within the 100-year floodplain for proposed projects (e.g., fish enhancement projects and permanent stream crossing structures) that address flood risks to communities. See also Statewide Land Use Program. The Oregon FPA does not have jurisdiction...
for permanent stream crossing construction or reconstruction within the 100-year flood-plain where the county requires a permit for compliance with the NIFP.

**Typical Activities Requiring Permits.** The listed activities in waters of the United States that may require permits:
- Construction of such structures as piers, wharves, bulkheads, dolphins, marinas, ramps and floats.
- Placement of wires and cables over the water, pipes or cables under the water, and intake and outfall pipes.
- Dredging, excavation, and depositing of fill and dredged material.
- Transport of dredged material for the purpose of dumping into ocean waters.
- Any construction of revetments, groins, breakwaters, levees, dams, dikes and weirs.
- Placement of riprap and building site fills.

**Federal Clean Water Act-Section 401 Certification**
Section 401 of the federal Clean Water Act provides that an applicant for a federal permit to conduct an activity that may result in a discharge to waters of the state must provide the permitting agency with a water quality certification issued by the State from which the discharge originates. A water quality certification is the mechanism by which the State evaluates whether an activity may proceed and meet water quality standards. Certifications may be denied if there is no configuration by which the activity can proceed and meet standards. It may be approved if the activity may be conducted as proposed and meet standards, or it may be approved with conditions, which if met, will ensure that water quality standards are met.

Section 401 of the Clean Water Act is a direct delegation from Congress to the States to ensure that federally approved activities will meet water quality standards established by the State. In the State of Oregon, DEQ is the designated agency for issuing certifications.

**Applicable Laws.** USACE Regulatory Program and Permits is based on three acts of Congress:
- Sections 9 and 10 of the River and Harbor Act of 1899 prohibit unauthorized construction in navigable waters of the United States.
- Section 401 of the Clean Water Act requires water quality certification from DEQ if a proposed activity may result in a discharge to surface waters.
- Section 404 of the Clean Water Act Amendment of 1977 governs disposal of dredged or fill material in waters of the United States.
- Section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 regulates transportation of dredged material for the purpose of dumping into ocean waters.

**Other statutes which affect USACE regulatory policy are:**
- The National Environment Policy Act of 1969 defines the national policy for encouragement of productive harmony between man and his environment, as evaluated through Environmental Impact Statements.
- The Fish and Wildlife Act of 1956 requires the USACE to coordinate permit applications with state and federal fish and wildlife agencies.
- The National Historic Preservation Act of 1966 requires coordination on matters concerning historic and archaeological preservation, administered by SHPO.
• The Coastal Zone Management Act of 1972 national program requires activities comply with and be certified by Oregon's Coastal Management Program administered by DLCD.
• The ESA of 1973 requires coordination to protect endangered and threatened species.

**Waters of The United States Definitions change periodically.** Review the USACE website for definitions and jurisdiction:
• Territorial seas;
• "Navigable" (Note: "Navigable" has a specific meaning used under DSL programs);
• Interstate waters and their tributaries;
• Wetlands; and
• Isolated wetlands and lakes, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, the degradation or destruction of which could affect interstate commerce.

**Wetlands Defined.** Wetlands are those areas that are inundated or saturated by surface or groundwater (either fresh or salt) at a frequency and duration sufficient to support vegetation adapted for life in saturated soil conditions.

Wetlands associated with coastal and inland waters may be of considerable value to the public interest, even though they are not directly or actively used by the public. Examples of such values are: water retention to limit flooding; ground water recharge; filtering of contaminated surface water; nutrient source for aquatic organisms; and resting, breeding, cover, and feeding habitat for wildlife.

**Factors Considered in Issuing a Permit, Fees.** Overall, a permit must be found to be in the public interest. All factors which may be relevant to the proposal must be considered, such as: conservation, economics, aesthetics, general environmental concerns, wetlands, fish and wildlife values, navigation, shoreline erosion and accretion, historic properties, flood hazards, flood plain values, land use, mineral needs, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, consideration of property ownership, and, in general, the needs and welfare of the people. Some permits, such as nationwide permits, do not require a fee. Fees for other permits are assessed according to the proposed use.

**Major Federal Coordinating Agencies**
• U.S. Fish and Wildlife Service, USFWS
• National Marine Fisheries Service, NMFS
• Environmental Protection Agency, EPA

**Major State and Local Coordinating Agencies**
• Oregon Department of State Lands, DSL
• Oregon Department of Environmental Quality, DEQ
• Oregon Department of Land Conservation and Development, DLCD
• Oregon Department of Fish and Wildlife, ODFW
• City and county agencies in specific project areas
COORDINATION:

In most cases, forest practice activities are exempt from the federal permit requirements. However, this may not be the case for all forest practices, as noted in two examples: road fills in a wetland or an incidental take permit may be needed where an action could be considered a taking of a species protected under the ESA. Clarification about federal permit requirements is being sought. See also "Wetlands Coordination" and OAR 629-605-0105.

The 2006 interagency MOA for forestland conversions describes DEQ’s role in 401 Certification for all proposed projects that require a federal permit if the activity may result in a discharge into navigable waters. The certification ensures that any project or activity subject to federal permits or license requirements will not violate applicable water quality requirements, OAR 340-048-005. A 401 Certification is required for projects including, but not limited to, stream and wetland restoration, dredging, wetland fills, fish habitat enhancement and forest conversions when activities associated with the project may result in a discharge to surface waters.
9. **OREGON SCENIC WATERWAYS ACT**
   – OPRD and DSL

**PURPOSE:**

The purpose of the Oregon Scenic Waterways Program, as administered by the Oregon Parks and Recreation Department (OPRD), is to ensure wise individual and public use of designated rivers and adjacent lands remain unspoiled for present and future use. The program promotes cooperative protection and wise use of these rivers by all federal, state, and local agencies, individual property owners, and recreation users. It strives to achieve a balance between protecting the rivers' natural resources and the equally valuable lives and plans of the people who live along them. ORS 390.805 to 390.925.

**BACKGROUND:**

OPRD oversee the Oregon Scenic Waterways Act and Scenic Waterways Program through OAR 736-40-0005 to 736-40-0120. DSL has special responsibilities associated with the Act for any activity conducted within beds or banks of Scenic Waterways.

**The Act does not:**

1) Restrict the use of existing water rights along scenic waterways,
2) Allow public use of private property without consent of the landowner, or
3) Require the removal of existing development or private property uses.

**Scenic Waterway Boundary.** The jurisdiction of the Scenic Waterways Program and the Oregon Scenic Waterways Act is limited to the river, its shoreline and all land and tributaries within 1/4 mile of its banks. Specific rules exist for land management and new development for each designated river in the system, based on the river's unique character and the conditions found along its banks. Refer to OPRD’s website for the specific rules for each designated scenic waterway.

**Land Uses.** In addition to design standards that respond to scenic values, the rules include performance standards requiring certain conditions for activities such as tree cutting, mining, logging, road construction and utilities installation. For example, all new roads or utilities must be located "...to minimize impairment of the natural beauty of the scenic waterway." The rule further states "...it will be desirable to place electrical and telephone lines underground wherever reasonably practicable", OAR 736-40-0035(6)(b).

**Special Permits for River or Riverbank Work.** Any removal and fill activity or instream work within a state scenic waterway boundary requires a Removal–Fill Permit from DSL. Information on the approval process is available from DSL. The county planning office, local SWCD, or local ODFW representative may also be able to provide assistance. Questions concerning bed or bank work can be directed to contacts listed on DSL’s webpage. **Note:** Forest operations are not exempt from this requirement.
**COORDINATION:**

**ODF:**
- The SF informs the landowner when the proposed timber harvest or salvage operations is located within ¼ mile of a designated scenic waterway, which requires an OPRD application. The application requires the landowner to describe the harvest and reforestation efforts.
- By ODF policy, the SF does not grant waiver of the 15-day waiting period, if requested by the landowner or operator, to ensure OPRD time to review the application.
- The SF doesn’t need to send the notification information to OPRD, because OPRD is an E-Notification subscriber.
- The SF should inform OPRD if there is awareness that someone appears to be violating scenic waterways standards.
- ODF only enforces the FPA, not OPRD and other permitting agencies requirements.

**Landowners:**
- Complete the application to conduct a harvest or salvage operation, which describes the timber to be cut, road locations, logging methods, slash cleanup, soil stabilization, reforestation or other revegetation measures, OAR 736-40-0035(1).
- Direct questions about acceptability of projects to the OPRD before the activities are undertaken.

**OPRD:**
Generally, OPRD reviews the project application within 14 days. A staff person may call the landowner for information or arrange to visit the site. Other agencies may be asked to look at the project. The focus of the Scenic Waterways Program is management by negotiation and compromise. OPRD will take one of three actions on the proposal:

1. **Project approved:** OPRD notifies the landowner in writing the projects meets the specific management rules for the designated scenic waterway.

2. **Project not approved,** OPRD negotiates with the owner to find a mutually acceptable modification to the proposal, because the proposed project does not meet the specific management rules for the designated scenic waterway. Many times this will involve a modest change to the project. Once a solution is reached and confirmed in writing, the landowner may proceed with the project. The initial determination generally takes a week, but the negotiated project modifications may take several weeks.

3. **Project modifications are not approved,** If OPRD and the landowner fail to negotiate a project modification, OPRD may recommend that the OPRD Commission deny the application. If the Commission denies the project, OPRD can purchase the property outright, trade, or buy an easement from the landowner at fair market value.
Condemnation, though legal, is rarely used and fewer than one percent of applications are denied. If OPRD does not purchase the land or reach agreement with the landowner within one year of the original proposal, the landowner may proceed with the original proposal, unless the Commission has instituted proceedings to acquire the land.
**10. PESTICIDE LABELS, LICENSING AND COMPLAINTS**

- ODA

**PURPOSE:**

The purpose of the Pesticide and Fertilizer Programs, as administered by the Oregon Department of Agriculture (ODA), is to establish ODA as the lead state agency for regulation of pesticides and fertilizers and the enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in Oregon. ORS 634.005 to 634.992.

**BACKGROUND:**

Since 1976, ODA has annually entered into cooperative agreement with the United States EPA Region 10 regarding investigation, enforcement, applicator certification, groundwater protection, and worker protection in Oregon under FIFRA. Through these agreements, EPA has recognized ODA as the lead state agency for the regulation of pesticides in Oregon. Also through these agreements, EPA has authorized primacy to ODA for enforcement of FIFRA in Oregon.

The 1953 Oregon Legislature enacted the Oregon Pesticide Control Act (Act), codified in ORS Chapter 634, which authorizes the ODA to regulate the registration, distribution, and use of pesticides in Oregon. The Act and resulting administrative rules, provides the mechanism through which ODA carries out its responsibilities to enforce FIFRA. The Act is sometimes more strict in the regulation of pesticides than is FIFRA.

In addition to the process for registration of pesticides by EPA, the Oregon Pesticide Control Act requires: (1) registration of pesticides, (2) education and licensing of certain pesticide users (including commercial pesticide applicators, operators, and dealers), (3) record-keeping, and (4) application of pesticides in accordance with product labeling. ODA has authority to conduct investigations and take enforcement actions.

The Pesticide Analytical and Response Center (PARC) was created by executive order in 1978 and reauthorized in 1991 under ODA as ORS 634.550. PARC member agencies conduct most of the investigations and take any necessary enforcement action(s). The eight member agencies include the following: DEQ, ODA, ODF, ODFW, OHA, OR OSHA, Oregon Poison Center (OPC), and State Fire Marshal (SFM).

**COORDINATION:**

The 1995 MOA between ODF and ODA describes responsibilities for regulating pesticide use on forestland. The December 2005 MOA between PARC and ODF clarifies their respective responsibilities. Each PARC agency member has shared their standard operating procedures (SOP) for pesticides complaints or incidents that have suspected health or environmental effects. ODF’s SOP is below in Table 1. ODF - Pesticide Complaint Standard Operating Procedures, and it is also located on SharePoint. PARC’s website includes a document of all agencies’ SOPs.
Guidance for OAR 629-620-0000(5) describes other state agencies roles in regulating the use of certain aspects of chemical and petroleum products on forestland. Landowners and operators who have questions about the requirements of other state agencies are encouraged to contact those agencies directly.

- DEQ - Hazardous waste laws
- ODA - Pesticide control laws
- OHA - Maximum pesticide contaminant levels in drinking water
- OR OSHA - Hazard communication rules
- WRD - Water use laws

**ODF:**
Promptly respond to pesticide use complaints within ODF’s authority, which involve protecting natural resources on forest lands, and support the PARC members’ investigations by clearly communicating complaint information to PARC and collaborating on investigations. Follow the procedures described in Table 1. ODF - Pesticide Complaint Standard Operating Procedures and document findings on the Oregon Forest Practices Act Complaint Investigation Report form, located on SharePoint.

When a SF becomes aware of practices that are potentially inconsistent with the requirements on the applicable product label, the SF should inform the affected parties, gather information on such practices, and inform ODA. ODA may conduct an additional investigation and will determine if an enforcement action, under the authority of its statutes and rules, is appropriate.

The SF should seek clarity from ODA if there are uncertainties involving the interpretation of forest pesticide label requirements. SFs should be vigilant for chemical drift across a property line and promptly report them to ODA for investigation.

Under OAR 629-620-0700, ODF is directed to monitor compliance with, and the effectiveness of, the chemical and other petroleum product rules. SFs are not expected to conduct routine water or vegetation sampling, but they may be involved in prompt response and investigation of citizen and other state agency complaints, including support of cooperative investigations with other state agencies on incidents to report to the PARC.

The FPA does not have jurisdiction for the following herbicide applications, where the clear purpose of the activities is not to establish, manage, or harvest forest trees:

- “The establishment or management of trees intended to mitigate the effects of agricultural practices…” as defined under operation, ORS 527.620, and OAR 629-600-0100. For example, establishment and management of streamside forested buffers projects under the Conservation Reserve Enhancement Program, Natural Resources Conservation Service or Soil and Water Conservation District SWCD).
- Herbicide applications solely for agricultural purposes on mixed agricultural forestlands. For example, an herbicide application to maintain or improve livestock forage on open, grazed ponderosa pine lands in areas of eastern Oregon.
- Noxious weed control programs administered by an agency, nongovernmental group, or landowner consortium, and take place across multiple ownerships. For example, herbicide applications to control streamside infestations of knotweed species.
- Herbicide applications to control streamside infestations of knotweed species.
PARC:
When pesticide-related incidents in Oregon have suspected health or environmental effects, PARC coordinates the following: collect incident information, mobilize expertise for investigations, identify trends, recommends policy, report results of investigations, and reports to legislators. Investigation coordination includes collecting reports produced by member agencies and consultation as necessary with a toxicologist with Oregon State University. Other governmental bodies may also participate in the reporting or investigation of an incident. The eight member agencies include the following: DEQ, ODA, ODF, ODFW, OHA, OR OSHA, OPC, and SFM.

ODA:
ODA has sole state agency authority for interpreting and enforcing pesticide product label requirements, see also OAR 629-620-0400(1). ODA currently considers chemical drift across a property line to be an application outside the target area non-compliance with the product label.

EPA:
EPA has final authority for approving any changes in pesticide product labels. ODA will determine if recommendations to EPA for pesticide product label modifications are necessary.
Table 1. ODF - Pesticide Complaint Standard Operating Procedures

<table>
<thead>
<tr>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>To promptly respond to pesticide use complaints within the Department's authority, which involves protecting natural resources on forest lands, and support the Pesticide Analytic and Response Center (PARC) members' investigations by clearly communicating complaint information to PARC and collaborating on investigations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Scope</th>
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<tbody>
<tr>
<td>The Department will use the checklist and complaint form below for pesticide complaints to: gather information from the complainant; provide public information; complete due diligence; and communicate the complaint to PARC.</td>
</tr>
</tbody>
</table>

| ***Record the action date and the person's name who completed it in the boxes along the left.*** |

### Pre-complaint
- Designate the external pesticide complaint contact.
- Designate the external pesticide investigation contact.

### Receive Complaint (If referred to ODF, contact the complainant within one business day.)
- Emergency (medical or safety) - get name and phone number - have them call 9-1-1 or Oregon Poison Control (800) 222-1222 immediately. Call back 12-24 hours later to receive the complaint.
- Receive complaint. Listen, acknowledge, and record complaint information on the attached form and complete all fields. (Enter NA, if no information exists.)

### Provide Information
- Explain what will happen, when it will happen, who the contact person is and their phone number, and share background information. Use this checklist and these specifics:
  - Call health care provider for non-emergency health issues.
  - Confidential health information should only be given to the Pesticide Analytic and Response Center (PARC) (844) 688-7272 or your medical provider.
  - The Department of Forestry will investigate complaints within its authority, which is protecting natural resources on forest lands, and support the other agencies' investigations.
  - I will send your report to PARC within 1 business day which ensures the agencies responsible for investigating harm to people, property, or the environment receive the information.
  - If you would like more information about pesticide use and regulation, I can email you some helpful links:
    - National Pesticide Information Center (NPIC) - http://npic.orst.edu/

### Site visit
- Set a time to visit the person and site.

### Updates
- Set times to share initial and subsequent information updates.

### Investigate Complaint
- Forward complaint to PARC immediately or receive complaint.

### Does the Department have any regulatory authority? Circle one Y / N - IF yes, continue. If no, refer the complaint to and support PARC, and call or visit the person and provide them PARC's phone number.

### Open an investigation
- Depending on the complexity, obtaining accurate information and completing a thorough investigation may last six months. Department investigators will:
  - Maintain the investigation file.
  - Visit active operations within one business day of the complaint.
  - Visit completed operations as soon as feasible (target: within 3 business days).
  - Obtain daily application records.
  - Forward daily application records and other investigation information to PARC and others as appropriate.
  - Evaluate FPA compliance. Take enforcement action when warranted.
  - Document the investigation using the attached form.
  - Complete investigation.

### Report Results
- After completing the investigation or issuing the enforcement document, whichever is later, the Department will share the result(s) with PARC and interested parties within five business days.
11. REMOVAL - FILL LAW  
- DSL

PURPOSE:

The purpose of the Oregon Removal-Fill Law, as administered by the Department of State Lands (DSL), is to ensure that Oregon's water resources are conserved, protected and managed for the benefit of present and future generations. DSL administration of Removal-Fill Permit applications includes the views of affected property owners, agencies and interest groups. DSL's policy is to work with applicants to assist in designing worthwhile projects which will have a minimum effect on water resources and adjacent properties. ORS 196.795 to 196.990.

BACKGROUND:

Removal-Fill Permits are required for any activity not directly regulated by the FPA (directly connected to a forest operation) that proposes removal, filling or alteration of material within the beds and banks of waters of the state. In most cases the threshold for a permit is the removal or fill of 50 cubic yards. However, this threshold may be less depending upon other designations.

Typical examples of projects requiring a permit include gravel removal, dredging, gold mining, riprap placement, land reclamation, channel alteration or relocation, pipeline crossings, or construction of bulkheads. Organic material such as woody debris is not included within the definition of "removal" and therefore, removal of logs from streams is not regulated by DSL (unless embedded in a state-owned waterway).

Forest operations are mostly exempted by ORS 196.921(2) from the Removal-Fill Permit requirement except for removal or fill that would occur in navigable waters. There are additional DSL permit requirements for forest operations that may fill or remove materials within state scenic waterways.

ORS 196.921(2) states:

"Nothing in ORS 196.600 to 196.921 applies to removal of materials from the beds or banks, or filling of waters of a non-navigable natural waterway, or any portion thereof, in this state, if:
(a) Such waterway or portion is situated within forestland; and
(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992."

"Navigable waterways" are those streams and lakes determined to be navigable for title purposes by either a court or the State Land Board. Federal courts have established that all tidally influenced waters are navigable, and DSL has identified the heads of tide for coastal streams in Oregon. Federal courts have also developed a test by which ownership determinations are made for other waterways on a case-by-case basis.

Examples of court-declared navigable waterways are reaches of the McKenzie and Chetco Rivers. Other substantial rivers where historical use and common acceptance have generally
established public ownership are the Columbia, Snake, and Willamette Rivers. If you have questions about the potential navigability of any waterway, contact the DLS Natural Resource Coordinator for that county.

“Waters of the State of Oregon," for the purpose the Removal-Fill Laws, means all natural waterways including the Pacific Ocean, rivers, lakes, ponds and wetlands. Large lakes and perennial rivers of Oregon are clearly understood to be waters of the State of Oregon. However, less well-known waters such as small natural ponds, intermittent streams, overflow channels and wetlands are all subject to permit requirements of the Oregon Removal-Fill Law.

The Removal-Fill Permit requirements apply to the bankfull stage of rivers and lakes, the highest measured tide of tidelands and the line of non-aquatic vegetation of wetlands. Jurisdiction extends across that area typically reached by water during high water stage, but not across the floodplain unless wetlands are present. On the Pacific Ocean coast, the Removal-Fill Law controls removal and fill oceanward of the highest measured tide or the upland vegetation line, whichever is higher.

Permit applications are available from the DSL, as well as most city and county planning offices, Soil and Water Conservation District offices, and district and regional offices of the Oregon Department of Fish and Wildlife (ODFW). Fees have been established by the legislature to pay for the review of applications. Fees are not refundable if the permit is denied. Permits are generally issued for one year but DSL will contact permit holders before the permit expires to see if the permit needs to be renewed. If renewal is necessary, any project changes and the required application fee must be sent to DSL. If the project is still acceptable, a renewed permit is issued. Multi-year permits may be issued in some cases. For more information about multi-year permits, consult OAR 141-85-0545(8) for Oregon's Removal-Fill Permits.

DLS can arrange pre-application conferences with appropriate agencies to discuss design issues, mitigation requirements, and procedural matters. DSL can also provide assistance in identifying regulatory jurisdiction.

A completed application is circulated by DSL to the appropriate local governments, state and federal agencies, adjacent property owners, and interested citizens for review and comments. These comments help DSL evaluate the proposed project against the requirements in law and administrative rules and prepare operating conditions under which a project can be approved. DSL's decision time from receipt of a completed application is 45 days for removal projects and 90 days for fill projects. The permit is denied or issued with conditions.

Approval of the project by the appropriate local government planning office is necessary before a permit will be issued by DSL. An applicant is wise to initiate the local approval process before applying for a Removal-Fill Permit.

On occasion, DSL will deny an application. The reason for denial is stated in writing and acceptable alternatives, if known, are pointed out. An applicant whose application has been denied has the right to request a hearing before DSL. Also, if an applicant receives a permit but objects to the conditions, the law provides an opportunity for hearing. The process for requesting a hearing is stated on the denial letter or the front sheet of the permit.
Adjacent property owners and others who can show legal standing may request a hearing before DSL to challenge a permit that has been issued. In certain instances, a permit can be suspended by the director during the hearing process and any subsequent appeal to the Oregon Court of Appeals or the State Supreme Court.

There are both criminal and civil proceedings available to enforce the Removal-Fill Law. Removal or filling without a permit or contrary to the conditions of a permit is a criminal misdemeanor punishable by a fine of up to $2500 and one year in jail. Violations are also subject to a civil penalty of up to $10,000 per day of violation. Cease and desist orders and restoration orders may also be issued by DSL.

There is a streamlined process for the approval of Removal-Fill Permits associated with stream restoration projects. This process will likely be one of the key coordination points.

**COORDINATION:**

**Activities Directly Connected to a Forest Operation**

Coordination with DSL related to the Removal-Fill law is fully described in a Memorandum of Agreement (MOA) dated June 1, 2004. Activities directly connected to a forest operation include any forest management activity regulated under the FPA; stream restoration approved for basal area credit; other enhancement done directly as part of timber harvest or forest road building operations (for example, placing road right-of-way trees, stumps, or wood in a stream as part of a road construction operation); or work done to improve or maintain fish passage at a stream crossing structure on a forest road.

**Exceptions:** DSL permits are required if any of the following conditions exist:

- a) The project is within a state scenic waterway corridor.
- b) The project is in a navigable waterway and removal or fill exceeds 50 cubic yards;
- c) The project is in a navigable waterway and is also designated as "Essential Indigenous Salmonid Habitat" under OAR 141-102-0000 to -0230 (regardless of volume);
- d) The project is within a portion of a UGB for which local government has adopted forest practice regulations.

Since ODF no longer regulates forest practices in portions of UGBs within which local government has adopted forest practice regulations, the exemption for Removal-Fill Permits under ORS 196.921 does not apply. If a forest operation is in a navigable stream, a DSL permit is required for any forest operation removal-fill removal activity over 50 cubic yards (about 5-6 dump truck loads of material). "Fill" includes both inorganic and organic materials; "removal" does not include organic material. The 50 cubic yard threshold does not apply to navigable streams if the stream reach is also designated "essential indigenous salmonid habitat," (ESH).

DSL has historically updated the ESH map every five years through rulemaking, but 2020 rulemaking established an annual update process to allow more frequent and regular ESH map updates while ensuring a transparent process. ODFW is the steward of the Fish Habitat Distribution Database that is the basis for ESH Map designations, and that ODFW updates the
database continuously. **Note:** the ESH map is not presently available in Vantage, but can be view on DSL webpage, Essential Salmonid Habitat Map viewer

If a Removal-Fill Permit is required for the reasons listed above, the operator should be informed of the requirement and DSL should be informed of the proposed activity.

All other stream enhancement work connected to a forest operation requires that the activity be described in a written plan reviewed by ODF. Written plan must describe the standards contained in "Guide to Placement of Wood, Boulders and Gravel for Habitat Restoration" (ODF/ODFW 2010) and the consultation with ODFW. **Note:** See also guidance for OAR 629-642-0200, Placing Large Wood Key Pieces in Type F or Type SSBT Streams to Improve Fish Habitat.

While most enhancement activities directly connected to forest operations are exempt from DSL Removal-Fill Permit requirements, they are not exempt from the Oregon Scenic Waterways Program. To the extent that enhancement activities, including instream activities, affect "related adjacent lands" (above ordinary high water), review and "clearance" of a proposed enhancement project must be obtained from OPRD. Since nearly all enhancement activities will affect "related adjacent lands," OPRD review and clearance should be planned for all enhancement activities within or adjacent to State Scenic Waterways.

**Activities Not Directly Connected to a Forest Operation**

For activities not directly connected to a forest operation, DSL Removal-Fill Permits are required for any activity that will result in the removal or fill of more than 50 cubic yards of material (in aggregate) in any non-essential salmonid habitat (ESH) stream. A DSL Removal -Fill Permit is required for any activity that will result in the removal or fill of more than zero cubic yards of material (in aggregate) in an ESH stream.

However, OAR 141-085-0534: “Exemptions for Certain Voluntary Habitat Restoration Activities (7) Placement of Large Wood, Boulders and Spawning Gravels. A permit is not required for the placement of large wood, boulders and spawning gravels provided the material is placed consistent with the Guide to Placing Large Wood and Boulders (DSL/ODFW 2010). If the activity will exceed 50 cubic yards of removal-fill in waters of this state, or any amount in Essential Salmonid Habitat, notice of the activity must be provided to the Department [DSL]. Notification must be submitted on a form provided by the Department [DSL] at least 30 calendar days prior to commencing the activity.”

Specific conditions for project activities:

- Done during ODFW’s recommended in-water work periods,
- Meet Fish Passage Law,
- Not be a State Scenic Waterways,
- Not convert waters of this state to uplands,
- Not cause no more than minimal adverse impact on waters of this state including impacts related to navigation, fishing, and public recreation,
- Not cause the water to rise or be redirected resulting in flooding or other damage to structures or substantial property off the project site, and
- Obtained necessary permits for right of ways and local, state, and federal approvals.
Activities not directly connected to forest operations include any land use activities not regulated by the FPA; generally any stream enhancement projects carried out under the Oregon Watershed Enhancement Board (OWEB), Soil and Water Conservation District (SWCD) and local watershed councils or other cost-share programs.

A key point of coordination related to removal-fill permits occurs for stream enhancement or restoration projects. Both ODF and ODFW are committed to cooperation in identifying, facilitating and implementing stream restoration efforts on private lands. There is a streamlined process available for approval of stream restoration activities requiring Removal-Fill Permits.

The DSL permitting process is streamlined through the General Authorization for Waterway Habitat Restoration, established by OAR 141-089-0780 through 141-089-0795. The General Authorization Notification Packet form should be completed for projects using this process. Since these types of enhancement projects are usually cooperatively developed with ODFW, issues related to applying this process should be minor. The process requires consistency in writing with ODFW’s Fish Passage Law and coordination and notification with representatives of ODFW, a local planning department (generally the county), Soil and Water Conservation District, and DSL. The completion process normally two to three weeks, not more than 30 days.

ODFW review and approval of projects is necessary as a component of the streamlined Removal-Fill Permit process and to ensure compliance with ODFW’s Fish Passage Law. In general, ODFW will assist landowners to develop and implement enhancement projects. The concepts and standards contained in "Guide to Placement of Wood, Boulders and Gravel for Habitat Restoration" (ODF/ODFW 2010) is a useful reference for ODFW and landowners to develop project proposals. If the streamlined process has unanticipated barriers, please let staff know so we can work with you to help minimize or eliminate them.

Note: The SF should inform the operator and landowner, when operations (installation of permanent stream crossings, placement of large wood in streams, etc.) are within the 100-year flood, which could trigger county regulations to meet the NFIP. See also Statewide Land Use Planning Goals.
12. **ROCK PITS AND QUARRIES; MINED LAND RECLAMATION ACT**

- DOGAMI, DEQ, and LOCAL GOVERNMENTS

**PURPOSE:**

The purpose of rock pits and quarries and the Mined Land Reclamation Act, as administered by the Department of Geology and Mineral Industries (DOGAMI), is to ensure that during and after mining operations, environmental protection standards are met and the site meets beneficial uses compatible with local zoning and surrounding land use activities. ORS 517.005 to 517.992.

**BACKGROUND:**

The 2015 Oregon Legislature passed House Bill 3563, which requires small-scale mining operations to apply for an Exclusion Certificate from the DOGAMI. The Exclusion Certificate requirements apply to mining activity that removes less than 5,000 cubic yards and affects less than one acre of land within a 12-month period. DOGAMI operating Permits are required for mining activities above these thresholds, and for any mining operation that exceeds 5 acres of disturbance. **Note:** Exception to an Exclusion Certificate if the mining activity does not meet the definition of surface mining, a landowner’s pit excavation materials are used for construction and maintenance of the landowner’s forest roads, ORS 517.750(16)(b). To maintain this exception, the rock may not be sold or traded to another forest landowner. The landowner may still be required to obtain a permit form DEQ and other government agencies.

The DOGAMI operating permit includes plans for operation and reclamation, but does not exempt permit requirements from other agencies, e.g., permit for use of power-driven machinery on forestland under ORS 477.625. The DOGAMI website has information about geohazards and geoscience, including interactive web-based maps.

The Board has adopted administrative rules, OAR 629-625-0500, for the development, use, and abandonment of rock pits and quarries, which meet the objectives of the Act.

Where such “commercial” sales are solely for non-forestry purposes, only DOGAMI operating permit/exclusion certificate requirements apply. For “joint quarries,” i.e., rock pits on forestland where rock is used for both forestry and commercial purposes (for forestry or non-forestry purposes), forest practice rules and DOGAMI exclusion certificate/operating permit requirements both apply. DOGAMI is the lead regulatory agency for joint quarries where 5000 yards or more of rock is sold each year.

DEQ may require a permit for quarries which could discharge storm water into waters of the state. National Pollutant Discharge Elimination System (NPDES) permits are required for quarries that have a drainage ditch or culvert which discharges directly into any water of the state. Such direct discharges are point sources of pollution when associated with quarries.

Gravel and mineral resources require Goal 5 inventory by local government land use plans. Local government is required to zone land and establish land use ordinances related to mining uses. Quarry development may be a conditional permit. Approval of quarries that fall under the jurisdiction of DOGAMI requires compatibility with local government land use regulations.
Thus, if operators are siting a pit that is jointly regulated by ODF and DOGAMI, the siting of the quarry will be subject to local government zoning regulations (such regulations may include scenic, access, noise and dust abatement, and safety requirements).

**COORDINATION:**

**ODF:**
The SF is authorized under the FPA to regulate rock pits and quarries used for forest management for the purpose to maintain stable slopes and protect water quality, OAR 629-625-0500. If notifications are received for quarries that are or may be joint quarries, the SF should discuss with the operator the different permit and regulatory possibilities. The SF should then consult with the appropriate ODF Geotechnical Specialist for coordination assistance.

Advise operators of the possibility of local government land use planning regulations. Quarries regulated only under the FPA are exempt from land use planning compatibility requirements, that is, ODF does not need to get proof that the use is permitted by the local government plan. Operations regulated by both DOGAMI and ODF will have local government plan compatibility requirements, to receive a DOGAMI permit.

Advise operators an approved plan for alternate practices (PFAP) is required for approved commercial gravel mining operations that may conflict with sensitive resource site protection under the FPA, OAR 629-605-100(4). Advise the operator to contact DEQ about storm water drainage regulations. Advise the operators to consider access and road use requirements regulated by county, ODOT, and federal highway agencies.

**Operators and Landowners:**
Acquire the necessary road access and use permits required from the appropriate county, ODOT, and federal highway agencies. Contact the Regional DEQ office for specific permitting information, if a quarry has or could have a drainage ditch or culvert which discharges directly into any water of the state. If NPDES permits are applicable, operators will be required to both obtain a permit from the DEQ and still comply with FPA rules.

**Other Agencies:**
DOGAMI has jurisdiction if the mine operation is above the ordinary high water level, otherwise, DSL has jurisdiction for mine operations below the ordinary high water level. The DOGAMI requires an Exclusionary Certificate for mining activity that removes less than 5,000 cubic yards and affects less than one acre of land within a 12-month period; above these thresholds a DOGAMI operating Permit is required. See DOGAMI’s webpage for staff contact under the Surface Mining Program.

DEQ administers storm water permits for quarries to ensure that storm water discharges associated with industrial activities meet the standards established by the federal EPA.

Local government regulation ensure that the decision of whether or not to allow mining considers public values and inputs as expressed in land use plans and zoning ordinances.
13. **SHALLOW, RAPIDLY MOVING LANDSLIDES AND PUBLIC SAFETY**

- DOGAMI and LOCAL GOVERNMENTS

**PURPOSE:**

*Placeholder, guidance to be added in the future.*

**BACKGROUND:**

**COORDINATION:**

ODF:

Operator and Landowner:

DOGAMI:

Local Governments:
14. STATEWIDE LAND USE PLANNING PROGRAM  
- DLCD and LOCAL GOVERNMENTS

PURPOSE:

The foundation of Oregon’s Statewide Land Use Planning Program, as administered by the Department of Land Conservation and Development (DLCD), is a set of 19 statewide planning goals, the goals express the state’s policies on land use and related topics, such as citizen involvement, housing, and natural resources. The Goal 4 forest lands states:

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water, and fish and wildlife resources and to provide for recreational opportunities and agriculture.

"Forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources."

BACKGROUND:

Comprehensive plans and zoning developed under the Statewide Land Use Planning Program are to provide certainty that forest lands will be available now and in the future for the growing and harvesting of trees. Local governments are required to inventory, designate, and zone forest lands. Local governments adopt ordinances that contain provisions to address the uses allowed in those zones designated as forest lands. In addition to forest land zones, local governments may adopt other zones and ordinances related to other uses. Coordination requirements are designed to minimize and resolve conflicts among non-forest zone uses and forest uses.

In summary, ORS 527.722 provides allowances and limitations related to forest practice regulations enacted by local governments, which are described as three main elements:
1. As a baseline, the statute establishes that the Board has the exclusive authority to develop and enforce statewide and regional forest practice rules, ORS 527.630(3), ORS 527.722(1) and (5).
2. Under specific circumstances, the statute allows local governments to assume the regulation of forest practices within urban growth boundaries (UGB), with additional, but very limited, opportunities for counties to prohibit forest practices outside UGB.
3. The statute does not affect a local government’s jurisdiction over tree removal or associated activities involved with traditional urban development activities such as residential or commercial construction.

Within Urban Growth Boundaries. The FPA has jurisdiction within Urban Growth Boundaries (UGBs) unless local government has adopted regulations for forest practices, ORS 527.722. Local government standards of protection may differ from the FPA. Existence or adoption of “acknowledged” local government forest practice regulations within UGBs relieves ODF to
administer the FPA within the affected area. “Acknowledged” means the adopted regulations are following land use planning goals determined by the Department of Land Conservation and Development (DLCD), ORS 527.722(8). When acknowledged local government forest practices regulations exist, the local government is responsibility to enforce their regulations.

The purpose of ORS 527.722 is to ensure all forest operations within Oregon are regulated to protect soil, air, water and fish and wildlife resources. However, if FPA regulation do not provide the level of protection desired within UGBs, then local governments may zone forest land to prohibit or allow forest practices and to regulate commercial forest practices within an acknowledged UGB. The statute requires local government’s forest practice regulations within UGBs protect soil, air, water, and fish and wildlife resources and be acknowledged by DLCD, as being in compliance with land use planning goals. Adoption of such acknowledged local forest practices regulation, relieves the ODF of administering the FPA within the affected area.

Metro and Clackamas county have protection requirements for operations within 200 feet of streams within their Water Reserve Area, but if there are no development activities, their requirements do not supplant the FPA. The local governments have not finalized a comprehensive tree ordinance for areas within the UGB, as of April 2020.

**Outside Urban Growth Boundaries.** The FPA generally has jurisdiction outside UGBs. ORS 527.722 (1) prohibits local governments from adopting any rules, regulations, ordinances or taking "any other actions that prohibit, limit, regulate, subject to approval or in any way affect forest practices on forest land outside of acknowledged urban growth boundaries." However, ORS 527.722 (3) allows counties to prohibit forest practices on land for which an acknowledged exception to Goal 3 or Goal 4 has been taken.

The circumstances under which local governments may prohibit forest practices outside of UGBs are very limited. ORS 527.722(4) states that counties may prohibit forest practices on land if there is an acknowledged exception to statewide land use Goals 3 or 4. Under the statute, there is no option for local governments to regulate the FPA.

If forest practices are prohibited, local governments could then by ordinance allow trees to be cut and removed only for site development, fire safety, forest health, or other specified purposes. Such an ordinance would also need to prohibit the marketing (selling or barter) of the trees. Furthermore, such an ordinance would also need to prohibit any timber culturing practices (precommercial thinning, chemical application, etc.). [Since forest practices are any commercial activity relating to the growing and harvesting of forest tree species, all such practices must be prohibited.] Removed trees could be used only for personal use firewood or other personal use, or disposed of through burning or other such means. Local governments proposing to prohibit forest practices should be informed of the department's interpretation and the potential consequences of their actions.

It is also the department's opinion that the adoption of zoning ordinances prohibiting forest practices requires justifying the prohibition through a reasons exception. Based upon the expressed intent of the legislation (HB 3396) that contained ORS 527.722, the department does not believe the fact that a zone may have been approved under an "irrevocably committed" exception inherently supports the adoption of an ordinance prohibiting forest practices without
justification. Therefore, to be acceptable to the department, adoption of an ordinance prohibiting forest practices would require amending the Goal 2 element of the comprehensive plan to take a Goal 3 or 4 exception to justify the prohibition of forest operations pursuant to other resource Goals (such as Goals 5, 16, and 17).

**Within the Floodplain.** The FPA’s jurisdiction is limited within the 100-year floodplain. The Federal Emergency Management Act (FEMA) requires protection of biological species within the 100-year floodplain that are identified in the endangered species act (ESA). NFIP is a voluntary program that local communities can participate. Authority rests with the local communities to implement the NFIP while meeting minimum FEMA standards. In 2020, several of the 260 Oregon local communities have already implemented the NFIP, requiring land development permits to ensure a “no-rise” impact within the 100-year floodplain for proposed projects (e.g., fish enhancement projects and permanent stream crossing structures), thus addressing flood risk to communities while complying with the ESA.

The FPA does not have jurisdiction for any forest practices (e.g., fish enhancement projects and permanent stream crossing structures) within the 100-year floodplain, where the county regulates the NFIP, as noted in a Department of Justice (DOJ) review, May 20, 2014. The county administration of the NFIP, through a land use permit, which provides more regulatory certainty than the FPA for addressing flood risk to communities while complying with the ESA.

Identifying a regulatory floodway: Generally, regulatory floodways are mostly not in forestlands, but there are certainly are instances where they occur. The regulated floodways are not limited to large streams/wetlands and are most likely to be found in the forest/rural/urban interface. Small Type F streams are identified as SFHA’s in areas of the state that generally lower in the watershed in areas where they may impact developments or communities. Regulated floodways are mapped on a FEMA hazard map and are designated as Special Flood Hazard Areas (also known as 100-year flood areas). There are multiple map viewers available that display the Special Flood Hazard Area (SFHA) including DOGAMI Oregon HazVu: Statewide Geohazards Viewer and from FEMA directly [https://www.fema.gov/flood-maps/products-tools/national-flood-hazard-layer](https://www.fema.gov/flood-maps/products-tools/national-flood-hazard-layer). FEMA’s jurisdiction for administering the NFIP covers the entirety of the Special Flood Hazard Area (SFHA) where it has been mapped for each community/jurisdiction. Note: The entire state dataset has not been digitized yet, and there’s gaps mainly in Eastern Oregon. The floodway layer is subject to change and may be updated at anytime, so be sure to check directly with FEMA or DOGAMI maps if a notification is adjacent to the floodway.

**COORDINATION:**

**Within Urban Growth Boundaries:**
ODF will not administer the FPA when notified by a local government that it has adopted DLCD acknowledged forest practice regulations within a UGB, within the areas where the local government regulation applies. The local governments forest practices regulations that relieve ODF’s administration are listed on SharePoint and uploaded as ODF’s GIS layer in FERNS and Vantage.
To establish rural residential zoning in a previously forest or agricultural zone, a county must have obtained an approved exception to the land use goal (agriculture or forest). This means the county determined the land is not forest (or agricultural) land for land use planning purposes. There would be a legal record of the exception, and it would be in a comprehensive land use revision. Therefore, if there is rural residential zoning outside a UGB, the county has taken a DLCD acknowledged exception in such area.

DLCD will provide ODF copies of notices submitted pursuant to ORS 197.615, whenever such notices concern the adoption, amendment, or repeal by local government of land use regulation allowing, prohibiting or regulating forest practices. The DLCD notification allows ODF to determine the extent the FPA’s jurisdiction. Additionally, ODF may contact local governments to assist them in developing local forest practice regulations per ORS 527.722.

Local governments have the flexibility to regulate portions or all of the area within their UGB. If requested, the ODF will assist local governments in designing appropriate land use regulation to ensure that soil, air, water, and fish and wildlife resources are adequately protected. Model ordinances are available to assist local governments in this effort. It is ODF’s position that local government, not ODF, should regulate forest practices in UGBs. Therefore, local government efforts to develop appropriate ordinances should be encouraged.

**Outside Urban Growth Boundaries:**
Conflicts can occur with local governments about their authority to "regulate" forest practices outside UGBs. In some counties, local governments have claimed to "prohibit" forest practices through a zoning ordinance not expressly allowing forest operations. We do not believe this position is appropriate. ODF’s position is that forest practices should be considered prohibited only if an exception to Goal 3 or Goal 4 has been taken and forest practices have been specifically prohibited, with an understanding of the regulatory consequences.

ODF should encourage local governments to include language in their comprehensive plan and/or land use regulations affirming that outside UGBs, forest operations are a permitted use subject only to the requirements of the FPA and ODF administrative rules, although this is not specifically required by ORS 527.722. Such language may be added during a periodic review.

The SF should identify any zones in which a local government believes it has prohibited forest practices. If such zones are thought to exist, ODF should inform operators of the possibility of a local government prohibition when a notification is located within such a zone. Similarly, ODF should inform the county about subscriptions to E-Notifications, that alters the subscriber to forest activities in their area of interest. The SF should clarify to the operator and local government about FPA jurisdiction. It remains up to the local government to apply its prohibition if it is valid. If the local government requests that ODF “deny the permit,” the SF should respond that the existence of a possible local government prohibition is not a basis for ODF to not accept a notification of operation or a written plan.

If you have any additional questions about ODF's land use position on "prohibitions," contact ODF’s Land Use Planning Coordinator in the Partnership and Planning Division. **Note:** See additional discussion under Guidance for Selected Statutes.
Within the Floodplain:
The SF should inform the operator and landowner, when operations such as installation of permanent stream crossings, placement of large wood in streams for fish enhancement, etc. are proposed within the 100-year floodplain, which could trigger county regulations to meet the NFIP. Oregon Department of Geology and Mineral Industries (DOGAMI) has an Oregon Statewide Geohazards Viewer, called “HazVu”, which displays the 100-year floodplain. Note: The FPA does not have jurisdiction for forest practices (e.g., fish enhancement projects and permanent stream crossing structures) within the 100-year floodplain, where the county regulates the NFIP. The landowner must obtain a county development permit within the 100-year floodplain for proposed forestry stream enhancement or permanent stream crossing projects that could adversely impact people or compliance with the ESA.

The SF or anyone administering the FPA, when reviewing a notification that identifies any activity that will be placing a structure, logs, fill, materials which would include permanent stream crossing structures or stream enhancement/log placement within the 100-year SFHA – the landowner will need to consult and get permission from the county or local jurisdiction to complete these types of projects.
15. WATER USE PERMITS AND IMPOUNDMENTS
   – WRD

PURPOSE:

The purpose of the water use permits and impoundments, as administered by the Water Resources Department (WRD), is to regulate all surface and ground water in Oregon, which by statute belongs to the public. WRD administers water rights, water impoundments and downstream property for beneficial uses, consistent with the public's interest. ORS 536.007 to 536.935, ORS 537, and rules in Chapter 690.

BACKGROUND:

Because all water belongs to the public, any person wishing to take and use surface water or groundwater and to construct and store water in a reservoir, must first obtain a permit from WRD, few exceptions are allowed. In Oregon, landowners with water flowing past, through, or below their property do not automatically have a right to use that water. An exception is the use of a spring that rises on, but does not leave, a property. Common uses that require a permit to use surface water include: household use; a pond on, or that gets water from, a stream; and irrigation of a lawn, garden, pasture, or orchard. Reservoirs are constructed on forestland for forest management purposes, such as fire control purposes, but may also be constructed on forestland to support other land uses, such as grazing or irrigation.

Oregon’s water code contains four basic provisions:
   1. Beneficial. Surface or groundwater may be legally diverted only if it is used under the terms of a valid water right for a “beneficial purpose without waste.”
   2. Priority. The more senior the water right (based on the application date) the longer water is available in a time of shortage.
   3. Permanence. A water right certificate is attached to the land where it was established. If the land is sold, the water right goes with the land to the new owner.
   4. Use. A water right is valid if it is used at least once every five years, for its intended purpose. If the right is unused for five consecutive years, it is legally forfeited and subject to cancellation, with few exceptions. Review water right concerns with the local watermaster.

By law, the land use associated with water use must comply with the statewide land-use goals and local land-use plans. If state goals or local comprehensive plans prohibit the land use the water-use permit may not be exercised until land-use approval is obtained.

There are four main types of water right permit applications:
   1. Groundwater Application – required to use water from a well.
   2. Surface Water Application – required to use water from a river, reservoir, or pond.
   3. Reservoir Application (standard review process) – required to construct pond or reservoir that stores 9.2 acre-feet or greater and has a dam height of 10 feet or greater, which requires complete engineered plans and specifications.
4. Reservoir Application (alternate review process) – required to construct a reservoir storing less than 9.2 acre-feet or has a dam less than 10 feet high. Since most small dams are earth-fill structures, WRD recommends proper embankment construction and adequate spillway design to prevent failure by overtopping. Before an Alternate Reservoir application can be submitted, the applicant must contact ODFW to assess what fish passage, screening requirements and impact to existing fishery resources.

Developing your water use permit often entails grading, trenching, or other types of construction within waterways, riparian areas, and wetlands. Permits from local, state, or federal agencies may be required. A good first step is to check with your local city or county planning office.

Oregon law requires permits from WRD to construct reservoirs or ponds of nearly any size, and to use the stored water. Normally there are two permit applications, “primary” and “secondary”:

"Primary” permit application to construct a reservoir and storage of streamflow that is surplus to the needs of existing water rights. Terms of the primary permit include time limits to start and complete construction, then to fill the reservoir. Land clearing on forestland is not considered part of reservoir construction, but is regulated by the FPA as a land use change.

"Secondary" permit application to use the surface water in the reservoir. The secondary permit can also allow the use of stream flow, when available in excess of existing water rights, to maintain the reservoir by offsetting seepage and evaporation. A secondary permit is not needed if stored water is from an intermittent stream that is only intended for use in the reservoir area. An example is a small pond used for livestock, wildlife, or recreation.

Forestland Use of Water Exemptions. Forest landowners often use surface water for forest management purposes. ORS 537.141 allows forestland managers to use small quantities of water for activities conducted infrequently during the forest stand's rotation, such as pesticide applications, slash burning, or road watering, without an extended water right application or licensing process. Temporary uses of water are subordinate to all existing water rights and other authorized uses of the same source. Examples of expedited process are pesticide mixing, slash burning, road watering. Forest landowners or operator need to follow the “expedited process” for such temporary water use by notifying the WRD and ODFW before using surface water for these forest activities.

Fire Fighting Exemptions. Water use law allows unrestricted use of stream water for emergency firefighting. Stream channel widening and deepening to create a small, temporary "pump chance" is also exempt, but this activity must comply with all FPA stream and riparian management area rules. See also OAR 629-660-0040.

**COORDINATION:**

**ODF:**
When ODF receives a notification that indicates water is to be ponded or stored for either forest management or other land uses, the SF should inform the operator of the WRD’s permit requirements. ODF is not involved in notifying WRD or ODFW when an operator requests to
withdraw from waters of the state for use in mixing pesticides or for slash burning. Waiver of the 15-day waiting period by ODF does not apply to WRD’s requirements. ODF does not have an agreement with WRD to withhold waiver of the 15-day waiting period, like ODF has with OPRD for notifications within ¼ mile of Oregon scenic waters.

An ODF approved PFAP is required to modify OAR 629-660-0040(2) to create a fire pond in or adjacent to a stream. A statutory written plan would also be required for such activity impacting a Type F, Type SSBT or Type D stream. ODF may approved a PFAP when the SF determines that the PFAP is necessary to provide for public safety, OAR 629-605-0100(2)(d).

Operators and Landowners:
Operators must notify WRD and ODFW, when water is to be withdrawn from the waters of the state for use in mixing pesticides or for slash burning, as required by ORS 537.141. The ODF notification does not satisfy this requirement. OAR 629-620-0200 (2). Operators can send the local offices of WRD and ODFW copies of the ODF notification, with an explanatory note about their planned actions attached. Operators must identify the type of water use and the source on the ODF notification form as described in the instructions. If after fifteen days, WRD or ODFW have not informed the operator of water use restrictions, the operator may use the water and comply with the water law.

Operators or landowners need to contact WRD before constructing ponds or reservoirs. Small reservoirs constructed prior to January 1, 1995 are exempt from water right laws, but need to be registered with WRD. Reservoirs constructed after January 1, 1995, require a water right from WRD. Landowner’s water right certificate will continue to be valid as long as the water is used according to the provisions of the water right at least once every five years. See also guidance for OAR 629-635 water classification, which addresses protection of water quality and domestic use water rights.

Other Agencies:
WRD will issue a water right certificate for the permit holder has met the conditions of the permit. The WRD or ODFW must inform the operator, requesting to withdraw from waters of the state for use in mixing pesticides or for slash burning, within 15 days of water use restrictions, otherwise the operator may use the water and be in full compliance with water law. For use of water for mixing pesticides or slash burning, WRD does not have an annual fee, nor is there an annual limit on the period of the use. See also ORS 537.141, Uses of water not requiring water right application, permit, or certificate. If WRD or ODFW do not inform the operator of water use restrictions within 15 days of their receipt of the notification, the operator may withdraw the water for the planned use.
16. WETLANDS
- DSL and USACE

PURPOSE:

The purpose of the wetlands, as administered by the Department of State Lands (DSL) as the lead state agency, is to protect wetlands and take enforcement action when unauthorized alteration of wetlands or other waters of the state occurs. DSL administers Oregon's Removal-Fill Law (ORS 196.795 to 196.990) enacted in 1967, which regulates the placement of removal or fill of material from waters of the State of Oregon. The Removal-Fill Law requires protection, conservation, and best use of the water resources of the state. A mission of DSL is to ensure the long term protection and management of the state's wetlands and water resources. Note: The Removal-Fill Law exempts forest management activities in non-navigable waters that are conducted in accordance with the FPA.

BACKGROUND:

DSL and ODF have similar interests and responsibilities in protecting wetlands, other water resources and the quality of waters of the state. Some existing overlapping responsibilities for enforcement of state statutes exists.

COORDINATION:

Interagency Agreement
The May, 2004 MOA between DSL and ODF seeks to ensure that any rules proposed for Board adoption and any resulting rule guidance will be compatible with DLSs' rules and statutes.

- ODF will notify the local DSL representative of removal, fill, or alteration of more than 50 cubic yards of material in a wetland not located on forestland but conducted as part of an operation regulated under the FPA. An example would be building a road through a wetland in an agricultural field to access a logging operation.
- ODF will notify DSL of any proposed operation regulated under the FPA involving a proposed change to a non-forest land use where ODF is aware that removal, fill, or alteration of material in a wetland or stream is planned by the operator or landowner after completion of the forest operation.

Complaint Investigations Involving Wetlands

- DSL will contact the appropriate ODF field offices to clarify whether the activities in a DSL complaint investigate are being regulated under the FPA. DSL will forward information on the complaint or other situation to the appropriate SF if the activities are being regulated under the FPA. ODF will investigate and report the finding to DSL. This report will include information regarding violations of the FPA and any actions taken by ODF.
- ODF will inform the appropriate DSL field personnel when complaints are received or other situations are discovered where forestland wetland alteration activities not regulated by the FPA have, or are likely to, result in the discharge of fill into, or cause other physical alteration to such wetlands (example: stock pond construction).
Law Violations Involving Wetlands
For wetland alteration activities regulated by the FPA, ODF takes the state's lead role in developing compliance orders and other actions to achieve water quality protection and site restoration. DSL takes the state's lead role when activities are not regulated by the FPA.

ODF will take enforcement actions for non-compliance with the FPA. DSL will take enforcement action for non-compliance with the Removal-Fill Laws. Information regarding investigations, enforcement actions, civil penalty procedures, contested case hearings, penalty collection processes and historical enforcement actions will be available for review by both agencies.

Enforcement action taken by one agency will not preclude the taking of enforcement action by the other agency. DSL and ODF will coordinate enforcement actions for activities which violate both the Removal-Fill Law and the FPA. Violations of the FPA that involve major and extensive damage to wetlands or stream channels may be enforced jointly through both ODF and DSL. In these instances, compliance orders may be signed by both agencies, civil penalties from either or both ODF and DSL may be assessed, and joint contested hearings may be held.

Federal Agencies
Activities that violate the FPA and Removal-Fill Law involving the discharge of fill into waters of the state are often violations of the federal Clean Water Act (CWA). DSL coordinates with the CWA agencies (USACE and EPA) on a regular basis to eliminate duplication of efforts in law enforcement. For activities that involve joint DSL/ODF action, DSL will coordinate with the federal CWA agencies to ensure consistency of agency response. DSL will notify ODF if the federal CWA agencies have positions different from the coordinated positions of DSL and ODF.

Conflict Resolution
When the SF and local DSL resource coordinator cannot resolve disagreements on proposed enforcement actions, the technical staff shall notify their respective field administrator. For DSL the administrator is the regional manager and for ODF this should include the FP supervisor, district forester, and area director. Those administrators shall further attempt to attain resolution of the issue through consultation with additional technical experts and agency staff.

Failure to resolve technical issues by agency administrators shall result in a jointly prepared issue memorandum submitted to DSL’s assistant director for field operations and ODF’s deputy state forester for resolution.
17. **WILLAMETTE RIVER GREENWAY PROGRAM**  
- OPRD, DLCD, and LOCAL GOVERNMENT

**PURPOSE:**

The purpose of the Willamette Greenway Program, as administered by the OPRD, is to develop and maintain a natural, scenic, historical, and recreational greenways along the Willamette River. The Willamette River Greenway is a corridor of water and land in which development is planned and built with recognition of the unique qualities of the Willamette River. Goal 15 set tasks for both the state and local communities. The objective of the program is "to limit the intensification and change in the use of lands along the Willamette River so that such uses shall remain, to the greatest possible degree, compatible with the preservation of the natural, scenic, historical, and recreational qualities of such lands." ORS 390.310 to 390.368.

**BACKGROUND:**

The idea of a greenway along the Willamette River has its origin in legislation proposed by Governor Tom McCall in 1967. His goals were similar to those that resulted in the protection of Oregon beaches for public use.

The Willamette Greenway program is implemented through management plans developed by the various local governments with jurisdiction along the Willamette River in cooperation with OPRD. These plans are reviewed by the DLCD Commission. Cities and counties adopted local greenway plans, along with criteria for new development, new uses, and the increase of uses along the river. Goal 15 also called for the state plan and local plans to identify parcels that might be acquired for the purpose of increasing the amount of park land near the river. In the early days of the Greenway, state funding was dedicated to such acquisitions. This funding however, was not maintained. Today, Goal 15 is largely implemented through local comprehensive plans and codes. The state plays a part if local governments propose changes to their local greenway plans.

The plans include the boundaries of the greenway (which must include all islands, all state park lands and recreation lands, and all other lands within 150 feet of the ordinary low water line, plus any other land considered necessary for the development of such greenway, up to a maximum of 320 acres per river mile [not counting the islands and state park lands]). The plans are directed at preventing changes in the vegetative make-up and/or intensification of uses within the greenway. However, farm use is established by statute to be compatible with the purpose of the program.

The State Greenway Boundary is a composite of all the individual boundary segments identified in city and county comprehensive plans. The Greenway includes both the land and the water within the boundary. Any proposed change in the boundary must be reviewed by the DLCD Commission and approved by ODPR.
**COORDINATION:**

Much of the current implementation of Goal 15 rests with cities and counties along the Willamette River. Each jurisdiction has a Greenway section within their comprehensive plan, and local development code standards, which implement their greenway plan. These plan and code elements were reviewed and acknowledged by the DLCD Commission when the local jurisdictions adopted their original comprehensive plans. Any changes to local plans or codes have been either: reviewed and acknowledged by DLCD Commission during a subsequent periodic review of their comprehensive plan; or reviewed for consistency with Goal 15 by DLCD as part of a post acknowledgement plan amendment. For the most part however, cities and counties implement their greenway plans and codes without DLCD involvement.

Local greenway compatibility review is the most common action taken to implement Goal 15. For many jurisdictions greenway compatibility standards are applied to development anywhere within the State Greenway Boundary. New development, new uses along the river, and the increase of a use, must follow standards designed to maintain physical and visual access to the river, preserve habitat and vegetation near the river, and to direct development away from the river.

Directing development away from the river does not mean development is prohibited. It means that the site design needs to provide open space and access as appropriate to the situation. Local codes also have standards to preserve the visual experience of people recreating on the river and a specified structural setback distance to preserve access to the river's bank from the water.

The Willamette Greenway is administered by local government ordinances. There is no comprehensive map of the Willamette Greenway, as explained to ODF by OPRD.

Forest Resources Division staff should ensure local governments identified in OAR 660-020-0060 have awareness of ODF’s E-Notification subscription services, which would allow local governments to be alerted of proposed forest operations within the Willamette River Greenway Plan Segments. The DLCD Commission adopted through OAR 660-020-0060, ODOT’s Willamette River Greenway Plan Segments for the following: Cities of: Salem; Milwaukie; Gladstone; Corvallis; St. Helens; Dundee; Independence; Albany; Harrisburg; Millersburg; Eugene; Cottage Grove; Lake Oswego; Oregon City; West Linn; Wilsonville; Portland; and Springfield. Counties of Multnomah; Lane, Benton (left bank); Columbia; Yamhill; Marion; Polk; Linn; and Clackamas.

**Inside Urban Growth Boundaries:**
Forest Resources Division staff should check with local jurisdictions to determine if tree harvesting regulations that supplant the FPA have been adopted within greenway segments that are also within urban growth boundaries. If such regulations exist, the FPA would not be applied within those portions of the UGB. In these situations, operators should be informed that their activities are regulated by the local government and they should coordinate with the appropriate local (city or county) planning department for necessary permits and land use approvals.
Outside Urban Growth Boundaries:
For segments of the greenway outside of UGBs, local governments may prohibit forest practices, but not regulate them. For segments of the greenway within resource zones (Goal 3 or 4 zones), forest practices as regulated by the FPA have been determined to be compatible with the purpose of the greenway program.

For segments of the greenway within other zones, such as rural residential zones, it is possible that local governments may have adopted ordinances that "restrict" forest practices. Copies of the notification and related written plans should be provided to OPRD and the applicable local government. Issues continue to occur with local governments about their authority to "restrict" forest practices outside UGBs. In some counties, local government has claimed that they have "prohibited" forest practices through a zone ordinance not expressly allowing forest operations. If a local government raises concern about a planned operation in the greenway and regulations that may apply, notify the Forest Practices Field Coordinator. See Statewide Land Use Planning Program for additional background and direction for coordinating with local governments if there is a possibility of local government regulations and/or a prohibition being in place.