Wetland Permits and Regulations

- Brad Livingston – Geo-Environmental
- Ken Sargent - Region 1

Water Resources Regulations

FEDERAL

Clean Water Act (CWA)

- Section 404
- Section 401

STATE

Oregon Removal-Fill Law

LOCAL

County Code

FEDERAL

Section 404 CWA

- Implemented by the US Army Corps of Engineers (USACE)
- Regulatory oversight by the US Environmental Protection Agency (EPA)

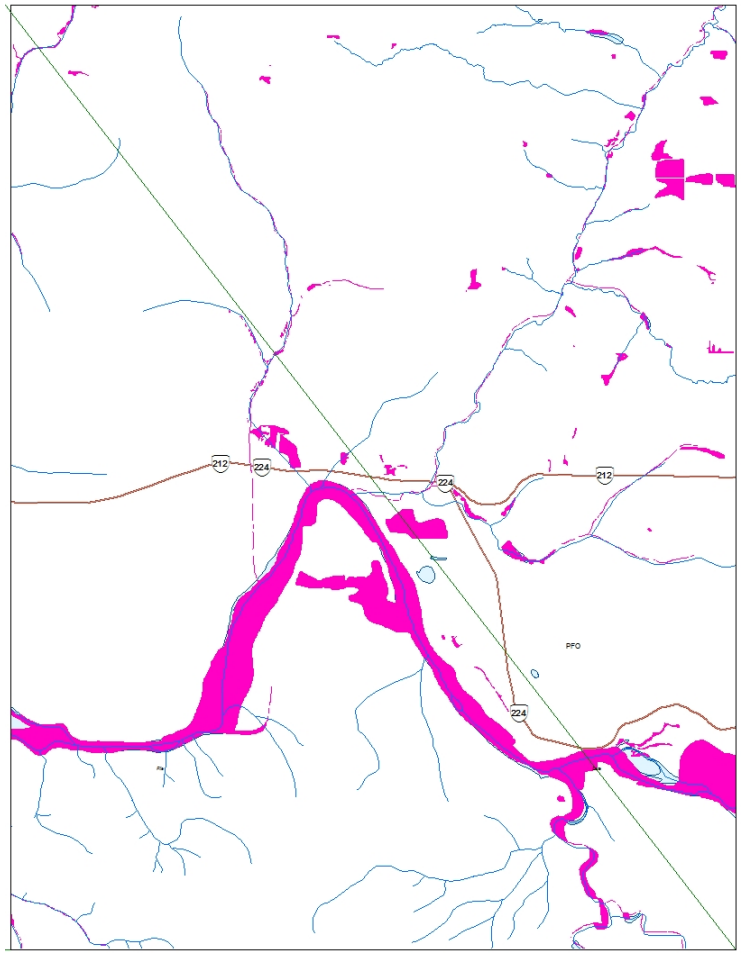
Section 401 CWA

- Implemented by the Oregon Department of Environmental Quality (DEQ)
- Regulatory Oversight by the USACE

WATERS OF THE US (2008)

1. Traditional Navigable Waters & adjacent wetlands
2. Interstate Waters
3. Relatively permanent tributaries (3 months flow) & abutting wetlands
4. Nexus Tributaries (not relatively permanent) & adjacent wetlands
5. Isolated Wetlands?

USACE NEXUS TRIBS and WETLANDS



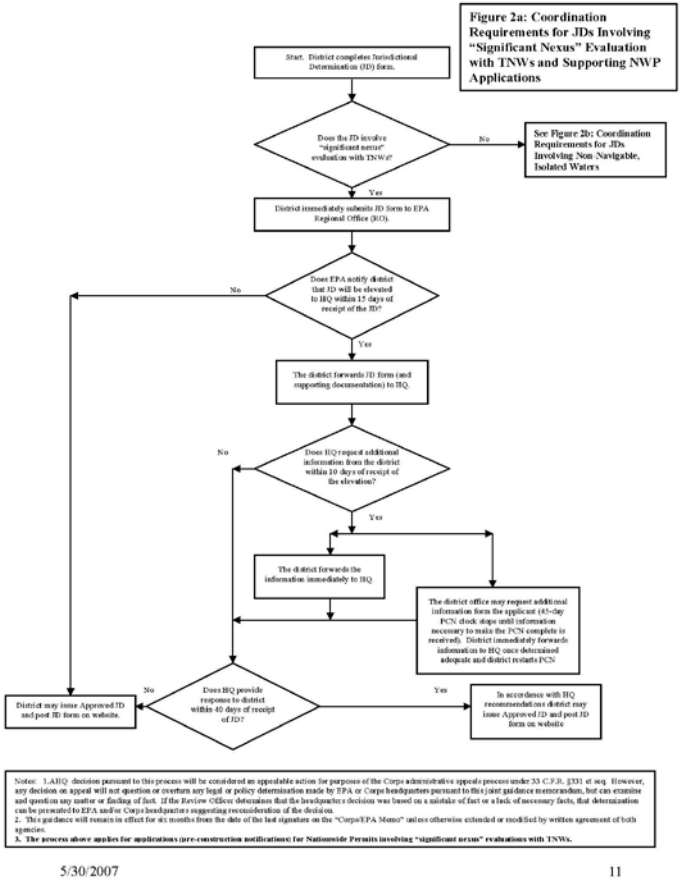
Nexus analysis will assess the flow characteristics and functions of the tributaries and (similarly situated) adjacent wetlands to determine if they significantly affect the chemical, physical or biological integrity of the downstream traditionally navigable waters.

USACE NEXUS PROCESS KILLS SCHEDULES

- Delineation Report
- NEXUS Analysis
- USACE District Office Review (Case by Case Basis)
- EPA/USACE

NEXUS Jurisdictional Determination

- Just don't go there
- All wetlands are regulated by the state
- Slows project delivery
- Adds cost



***Not* Waters of the US**

- Ditches in upland that drain uplands
- Artificially irrigated wetlands
- Prior Converted Croplands

Not Waters of the US (continued)

- Artificial pools created in uplands
- Water filled depressions incidental to construction
- Wastewater Treatment Systems
- Isolated Wetlands?

USACE Types of Permits

- Nationwide
  - Nationwide 14 Linear Transportation
  - Projects < 0.5 acre
- Individual
  - > 0.5 acre
  - Alternatives Analysis
  - Public Comment Period

USACE Triggers

Fill in Waters of the US including wetlands

Joint Permit Application (JPA)

- Impact Analysis
- Alternatives Analysis - Avoidance and Minimization
- Compensatory Mitigation

USACE EXEMPTIONS

- Maintenance
- Farming
- Silviculture

Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, cause-ways, bridge abutments or approaches, and transportation structures. **Maintenance** does **not** include any modification that changes the character, scope, or size of the original fill design.

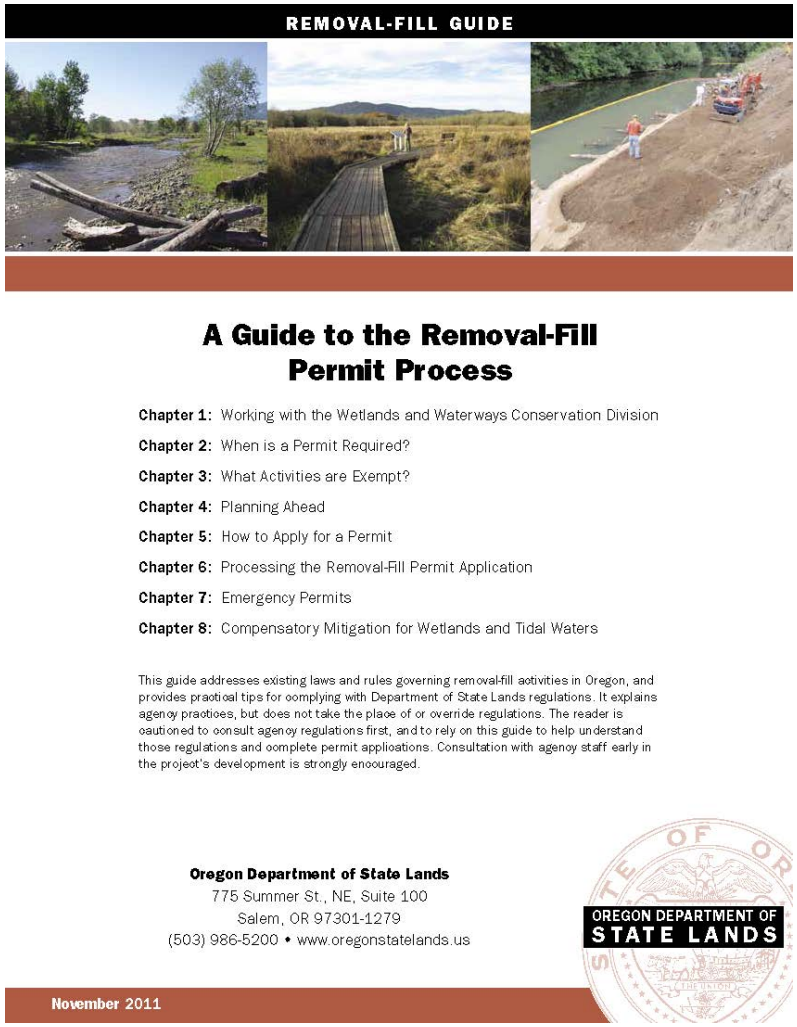
USACE Timelines

- 30 day completeness review
- 45 days to issue permit
- Add time for complex projects with major impacts

Section 401 CWA

- Water Quality Management Plan (WQMP)
- DEQ review for Individual Permit
- ODOT (William Fletcher) review for Nationwide Permit

STATE REGULATIONS



REMOVAL-FILL GUIDE

A Guide to the Removal-Fill Permit Process

Chapter 1: Working with the Wetlands and Waterways Conservation Division
Chapter 2: When is a Permit Required?
Chapter 3: What Activities are Exempt?
Chapter 4: Planning Ahead
Chapter 5: How to Apply for a Permit
Chapter 6: Processing the Removal-Fill Permit Application
Chapter 7: Emergency Permits
Chapter 8: Compensatory Mitigation for Wetlands and Tidal Waters

This guide addresses existing laws and rules governing removal-fill activities in Oregon, and provides practical tips for complying with Department of State Lands regulations. It explains agency practices, but does not take the place of or override regulations. The reader is cautioned to consult agency regulations first, and to rely on this guide to help understand those regulations and complete permit applications. Consultation with agency staff early in the project's development is strongly encouraged.

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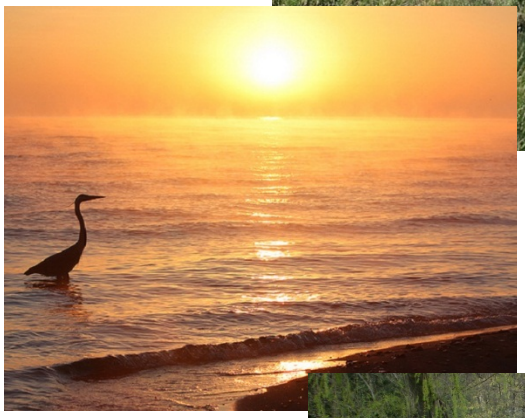
OREGON DEPARTMENT OF STATE LANDS

November 2011

- Oregon Department of State Lands Removal Fill Law
- OAR 141-085

Waters of the State

- Pacific Ocean
- Estuaries
- Rivers/Reservoirs
- Intermittent and perennial streams
- Lakes
- Ponds
- Wetlands



Water of the State Continued

Artificially created Wetlands and Ponds are jurisdictional if

1) >1 acre
2) created <u>in part</u> in waters of the state <u>or</u>
3) mitigation

Exempt artificially created wetlands

If created in upland and constructed for

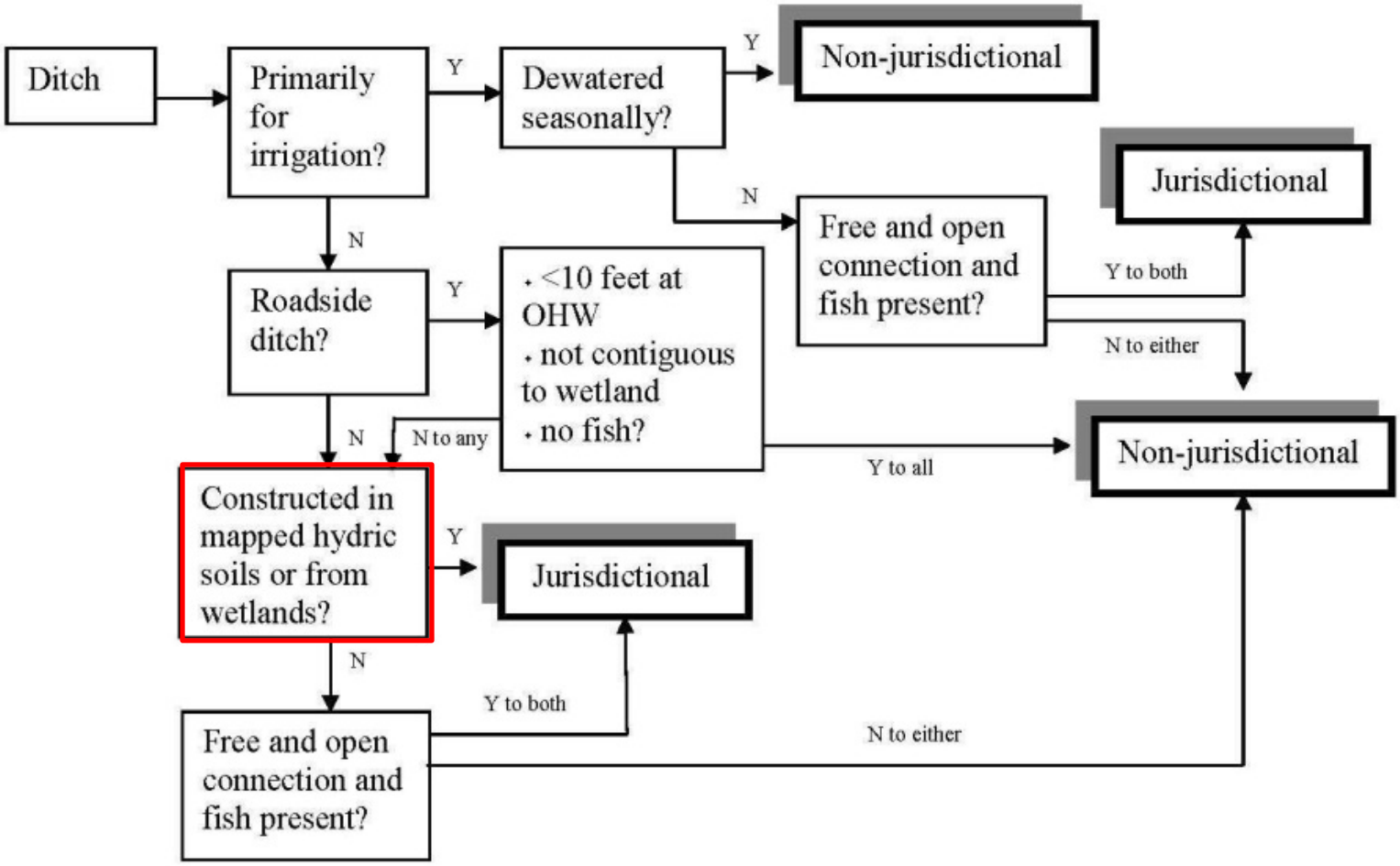
- Settling sediment
- Stormwater detention and treatment
- Irrigation or stock watering
- Fire suppression
- Mining
- Log storage
- Aesthetic purposes

DSL Ditches

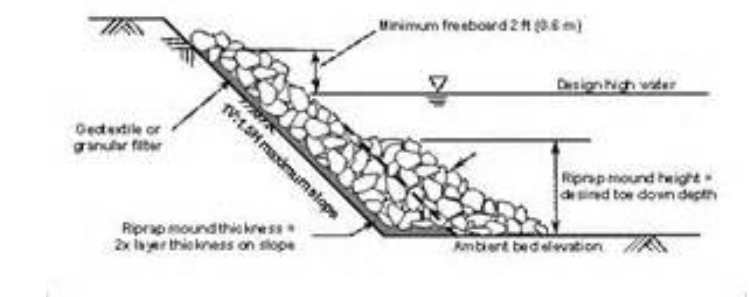
Roadside Ditches

- >10 ft. wide
- Contiguous with “other” wetlands
- Contains food or game fish

DSL Ditches


Ditch
Primarily for irrigation?
Y
Dewatered seasonally?
Y
Non-jurisdictional
N
Free and open connection and fish present?
Y to both
Jurisdictional
N to either
N
Roadside ditch?
Y
• <10 feet at OHW
• not contiguous to wetland
• no fish?
Y to all
Non-jurisdictional
N
N to any
Constructed in mapped hydric soils or from wetlands?
Y
Jurisdictional
N
Y to both
Free and open connection and fish present?
N to either

Triggers for DSL Permits

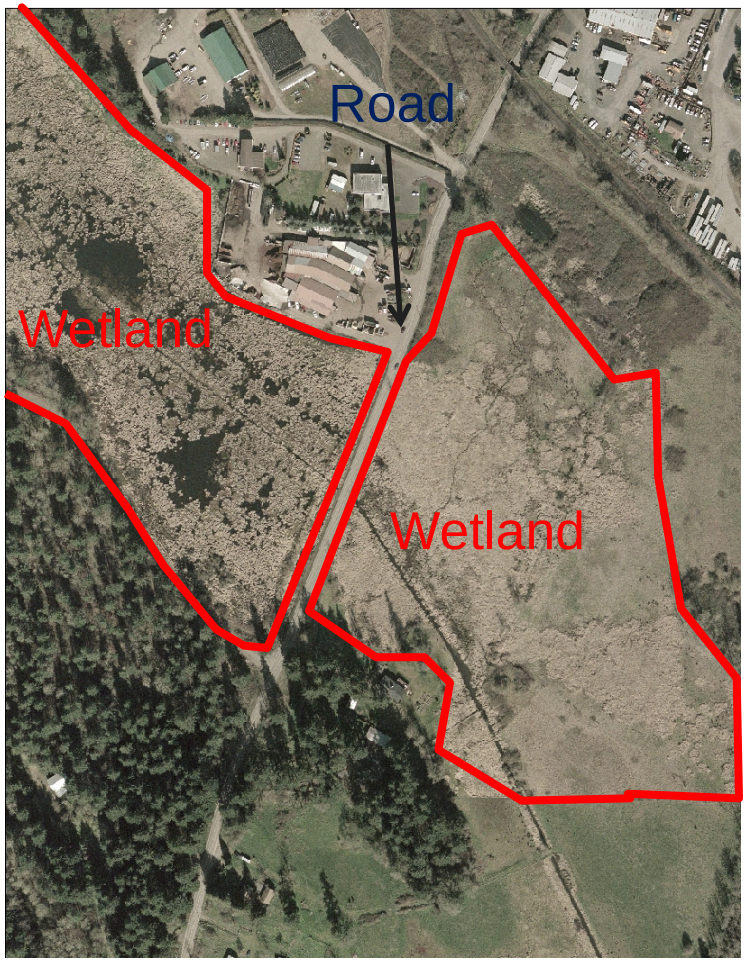


- Fill or removal of more than 50 cubic yards
- Essential Salmon Habitat
- State Scenic Waterway
- Mitigation Site

DSL Permits

- **General Authorizations** are an expedited process for 9 specific types of removal/fill activities that have minimal adverse effects.
- **General Permits** can authorize a group of activities that are substantially similar in nature, recurring or ongoing; and have predictable effects and outcomes.
- **Emergency permits** provide rapid approval in certain situations where there is an emergency that poses a direct threat to human health, safety or substantial property.
- **Individual permits** are issued for projects that do not qualify for a General Authorization

DSL Transportation General Permit



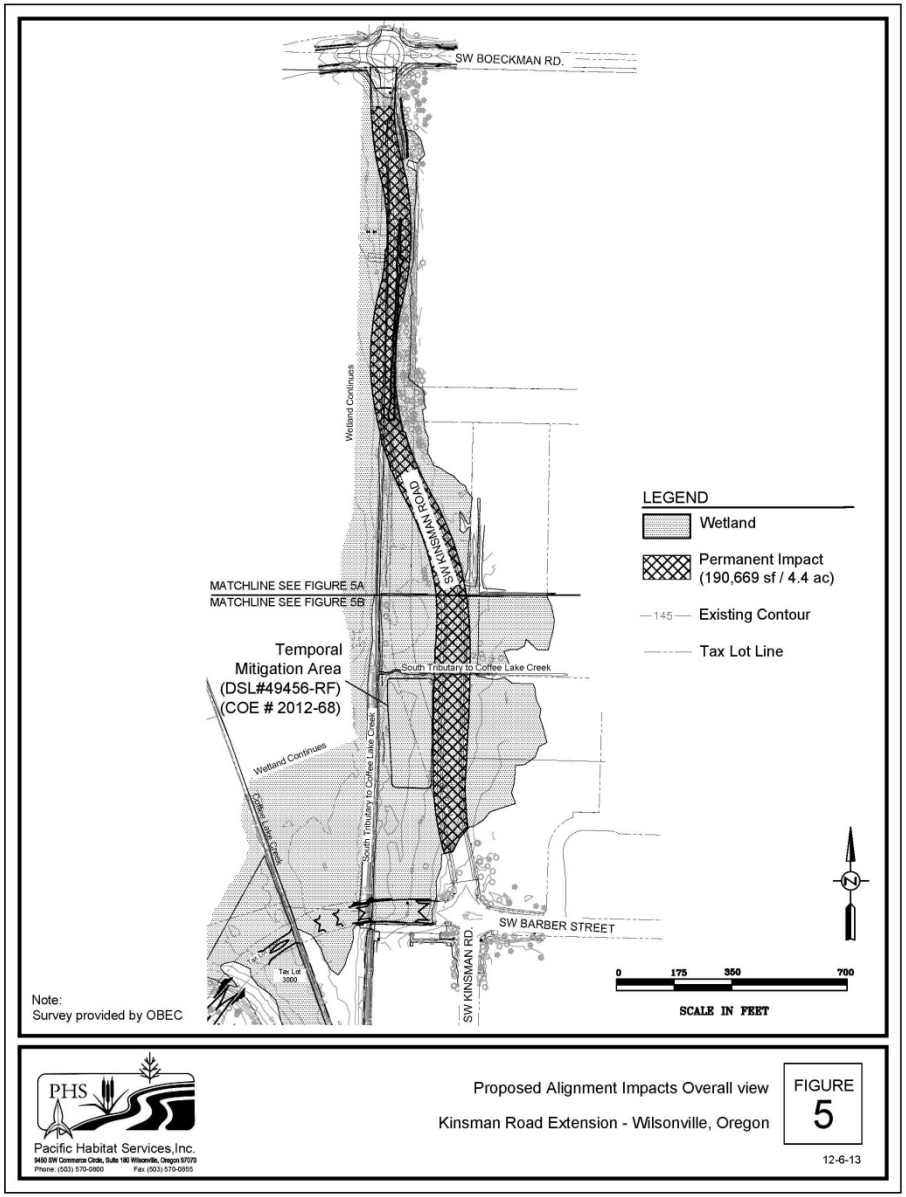
- <5,000 cy w/only 1,000 cy stream bank stabilization
- <0.5 acre wetland impact
- Not bogs, fens, playas, salt flats, alkaline lakes, hot springs, native wet prairies, vernal pools, inter-dunal wetlands, mature forested wetlands, ultramafic soil wetlands, wooded tidal wetlands, and undiked tidal wetlands

DSL Emergency Permits

- Threat to public health or safety or substantial property
- Urgent - not enough time to go through regular permitting process
- Minimal impact – smallest feasible impact

DSL Individual Permit

The anything else permit.



DSL Timeline

IPs 120 days/GPs 60 days includes

- Completeness Review
- Public Review
- Final Review

DSL Exemptions

- Maintenance
- Forestry
- Agriculture

DSL Maintenance Exemption

Fill or removal for maintenance of recently damaged currently serviceable transportation structures, including groins and riprap protecting roads and bridges.

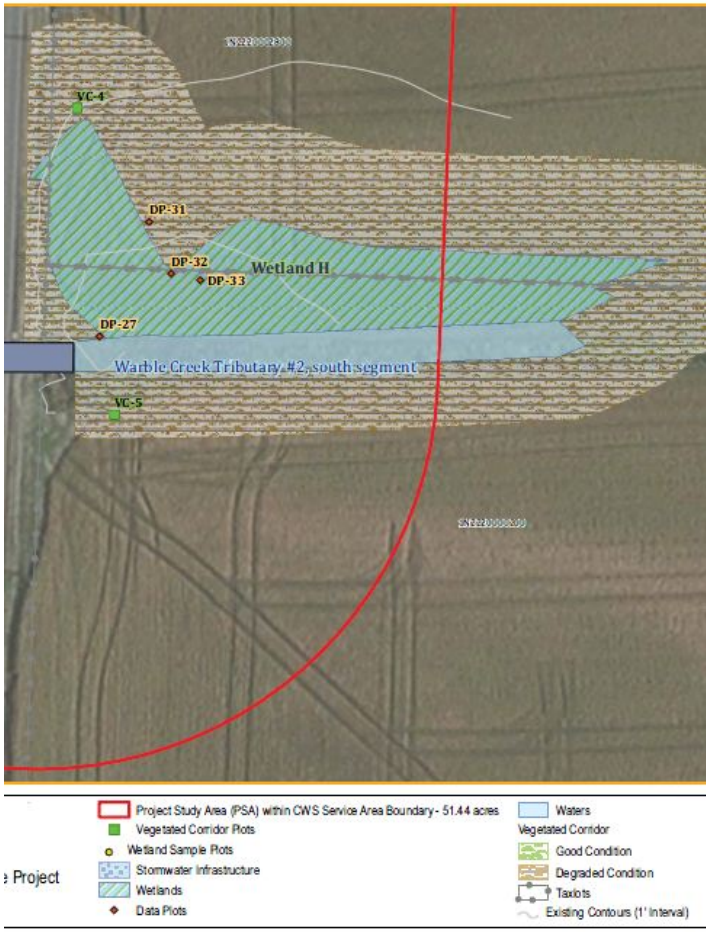
DSL Maintenance Exemption

"Maintenance" includes

- widening a structure <20% necessary to maintain its serviceability
- removal of the minimum amount of sediment/soil

Local Agency Regulations

- Clean Water Services (Washington County)
- Water Environment Services (Clackamas County)
- City of Eugene



Jurisdictional Ditch?

Permit Needed For Maintenance?

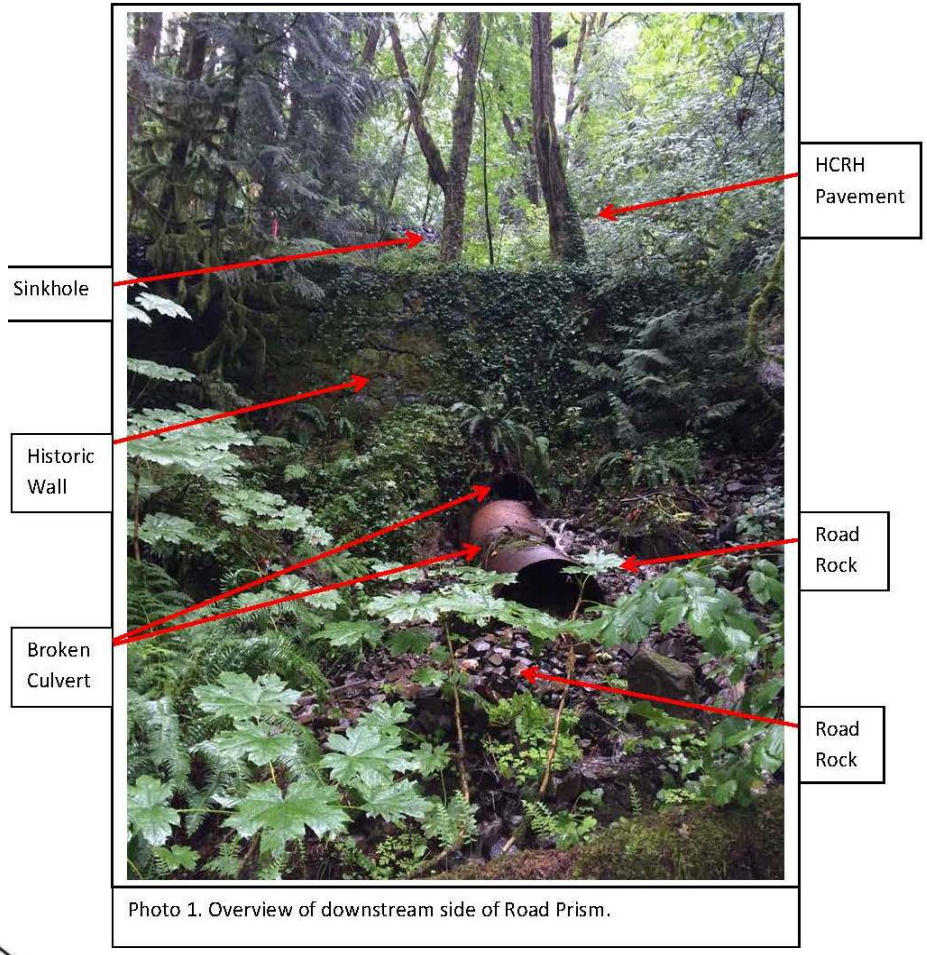
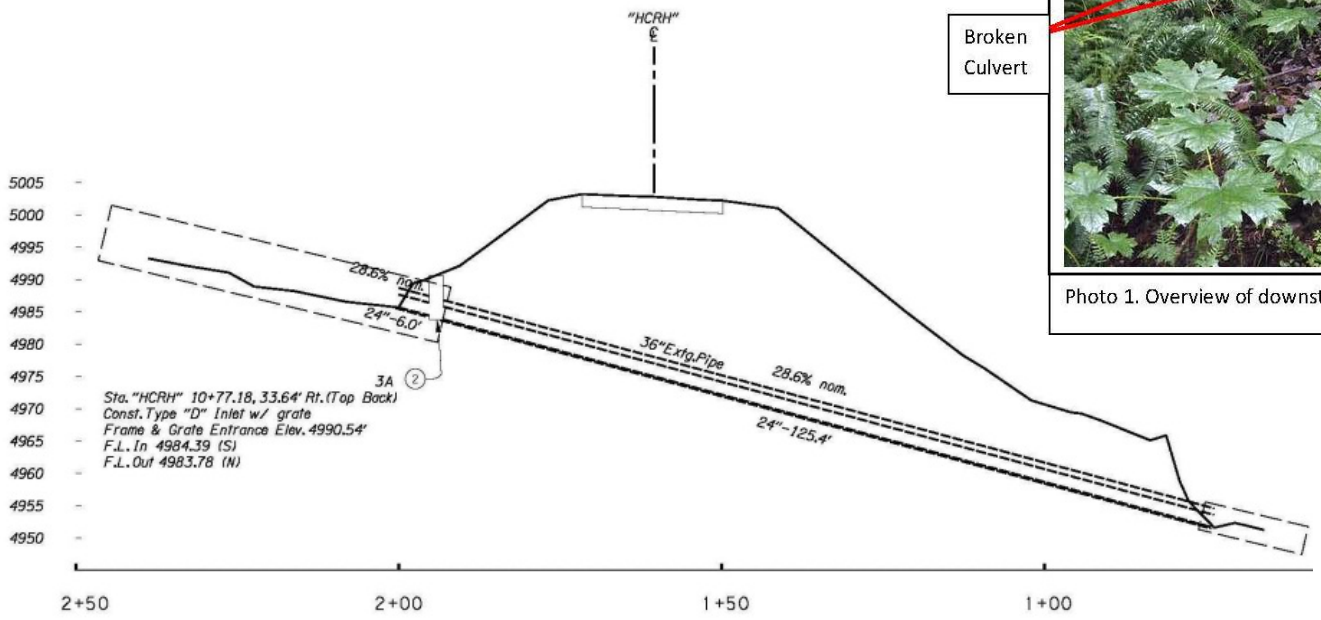
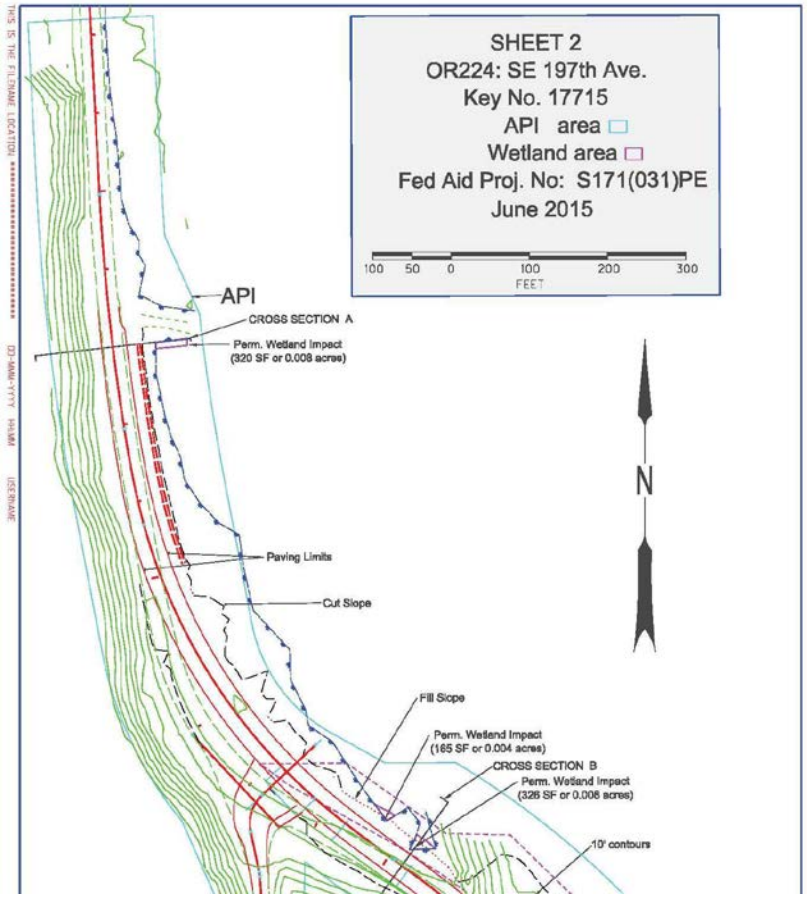


Photo 1. Overview of downstream side of Road Prism.

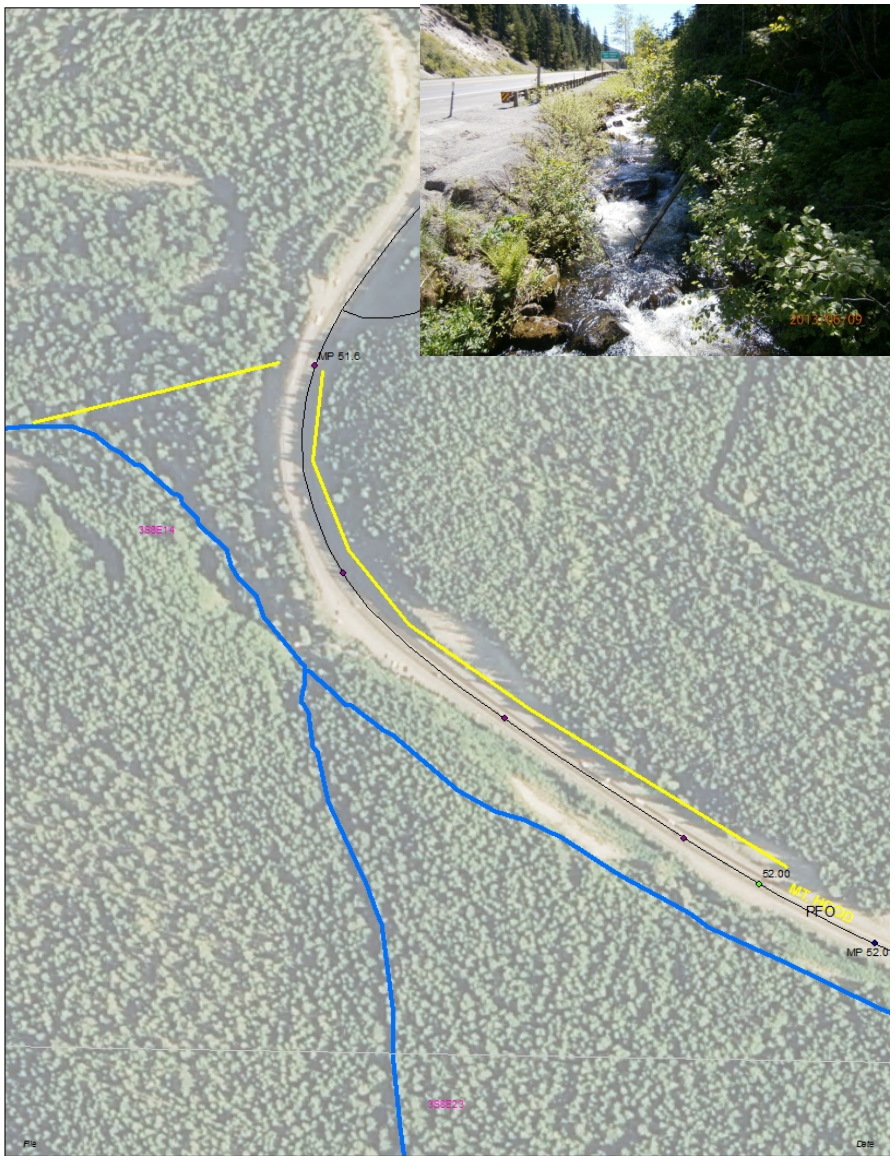
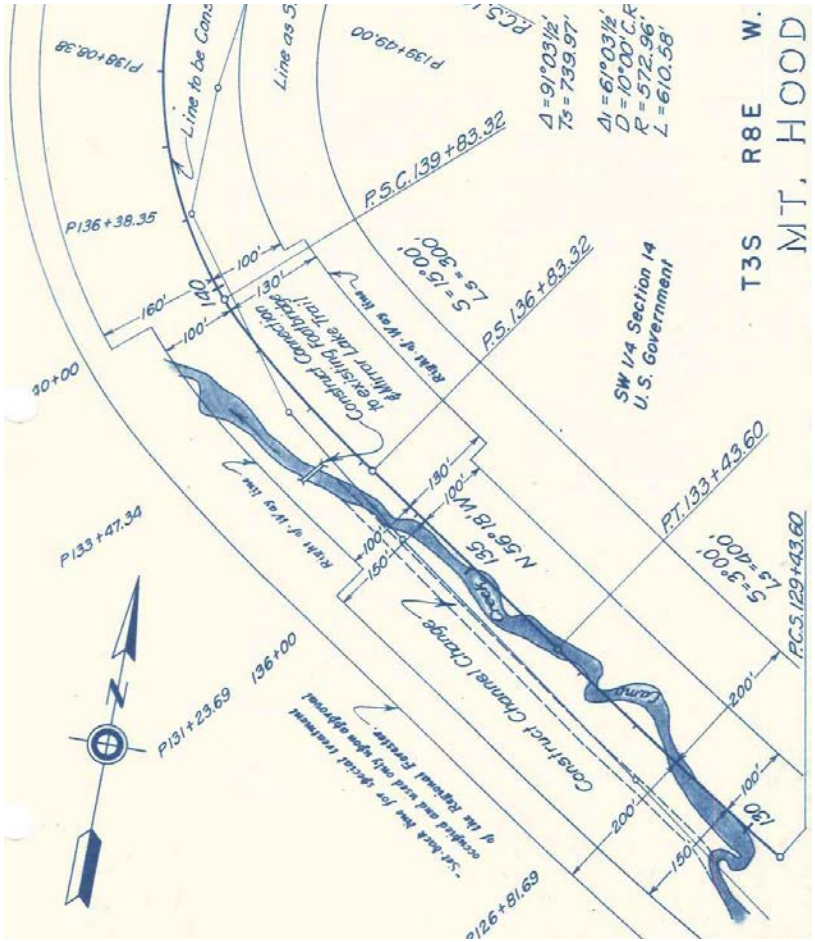


What permits are needed?



- 800 sf of impact
- 21 cubic yards of fill/removal

Jurisdictional?



Jurisdictional?