

Oregon Department of State Lands

Removal-Fill Report Fiscal years 2007 and 2008



Wetlands and Waterways Conservation Division



Executive Summary

The Department of State Lands (DSL) protects the state's waterways and wetlands through administration of Oregon's Removal-Fill Law, enacted in 1967, to conserve, restore and protect water resources for their contribution to aquatic life and habitats, fisheries, aquatic-based economies, tourism, public recreation, navigation, water quality, floodwater storage and other natural resource functions.

This report for fiscal years 2006-2007 and 2007-2008 fulfills the annual report requirement in the state's Removal-Fill Law. Following is a summary of some the notable items DSL has accomplished over these two fiscal years:

- A significant rewrite of Division 85 removal-fill rules to better track the program and promote public understanding of and compliance with the law.
- Authorization over the past two fiscal years of 2,452 removal-fill activities throughout the state with more than 96 percent of these authorizations being granted within statutory timelines.
- Elimination of a backlog in wetland delineation reviews and reduction in initial determinations on such reviews to an average of 49 days.
- Coordination with the US Army Corps of Engineers in developing joint state and federal permits for certain removal-fill activities.
- Creation of an expedited general authorization for stream restoration projects to encourage recovery efforts for salmon and other species.
- Movement towards a more outcome-based and less prescriptive regulatory process.
- Increased compliance and enforcement efforts to protect waters of the state.
- Approval of six new mitigation banks increasing to 19 the number of such banks providing compensation for wetland impacts from authorized activities.
- Leadership on a gravel task force consisting of federal, state and local regulatory agencies and the gravel industry to work through issues related to gravel extraction in Oregon coastal rivers.
- Continued efforts to streamline agency processes including development of an electronic application process and other Web-based improvements.
- Recording a net gain of 182.64 acres of freshwater wetlands, 5.97 acres of estuarine wetlands, and 2,871.73 acres of enhancement due to permit actions.
- Leadership on the DSL/Oregon Trout Oregon Solutions project related to supporting and expediting stream restoration projects and significant contributions to other Oregon Solutions projects including those related to resolving the Tillamook flooding problem and wave energy.
- Receiving a total of \$742,886 as payment-in-lieu mitigation into the Oregon Wetland Mitigation Bank Revolving Fund and supporting four wetland restoration projects with a total of approximately \$500,000 from the Fund.

Introduction

This document has been prepared by the Oregon Department of State Lands (DSL) to fulfill the annual report requirement in the state's Removal-Fill Law (ORS 196.885) and covers the fiscal years of 2007 and 2008. This report and previous reports present summary statistics for important aspects of the Removal-Fill Program for the past 15 fiscal years (July 1, 1993 to June 30, 2008), including the following topics:

- Authorizations
- Essential Indigenous Anadromous Salmonid Habitat Program
- Compliance Monitoring
- Enforcement Activities
- Contested Case Hearings
- Removal-Fill Rulemaking
- Removal-Fill Permit Streamlining
- Public Information and Outreach
- Wetlands Conservation and Planning Program
- Industrial Site and Wetland Planning Assistance
- Compensatory Wetland Mitigation

Permit, compliance monitoring, and enforcement data collected for this report were drawn from DSL's Land Administration System (LAS) unless specified otherwise. Authorizations are categorized by issue date and activity. Civil penalties received and payment-in-lieu (PIL) amounts are derived from DSL's cash receipts system unless stated otherwise. Additional information and supporting data is available upon request from DSL.

Section 1 - Oregon's Removal-Fill Program

Oregon's Removal-Fill Law (ORS 196.795-990), enacted in 1967, generally requires people who plan to remove or fill material in waters of the state, including wetlands, to obtain an authorization from the Department of State Lands.

The purpose of the law is to protect public navigation, fishery, and recreational uses of the waters. "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and non-navigable bodies of water in this state, and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended. "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

The law applies to all landowners, including private individuals, businesses and public agencies. The law contains exemptions for activities customarily associated with agriculture and has a general 50 cubic-yard volume exemption except for proposed activities in Essential Indigenous Anadromous Salmonid Habitat. DSL issues authorizations in the form of Individual Permits, General Permits, General Authorizations, and Emergency Authorizations.

Removal-Fill Program Activities

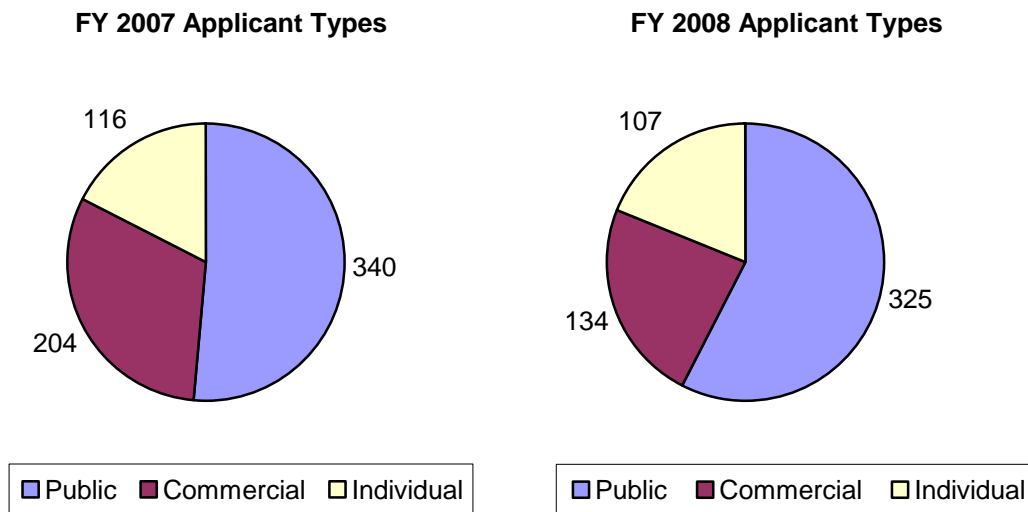
DSL issued 2,452 permits and authorizations over the last two fiscal years (FY 2006-2007 and FY 2007-2008). Table 1 shows, by category and fiscal year, the total number of each type of permit or authorization issued. With the passage of HB 2105 in the 2007 legislative session, DSL was granted authority to issue general permits for activities that are substantially similar in nature, recurrent or ongoing, and have predictable effects and outcomes. DSL is currently in the process of developing several of the first general permits that will be issued in 2009.

Table 1 - Authorizations	2007	2008
Individual Permits		
Boat Ramp	11	10
Channel Relocation	5	2
Dam Related	11	10
Dock	6	6
Erosion Control	19	5
Fish Habitat	7	8
Commercial Gravel Removal	2	3
Maintenance Dredging	11	9
Marina/Moorage	3	0
Pilings	8	10
Pipeline/Cable/Utility	30	26
Ponds	3	5
Roads/Bridges	48	29
Sediment Removal Behind Tidegates	1	0
Wetland Enhancement	8	4
Wetland Fill	48	70
Other In-Water Work	72	25
Sub Total	293	222
General Authorizations		
Fish Habitat Enhancement	119	139
Wetland Enhancement/Restoration	22	14
Fish & Wetland Enhancement and Restoration (combined)	9	11
Streambank Stabilization	44	39
Transportation-Related	86	68
Recreational Placer Mining	482	746
Sediment Removal Behind Tidegates	0	0
Minimal Disturbance (<2.0 CY)	21	29
Minor Impacts (<0.1 acre)	2	4
Piling Placement	21	20
Sub Total	806	1070
Emergency Authorizations		
Erosion	19	12
Roads/Bridges	7	2
Sediment Removal Behind Tidegates	0	0
Pilings	0	0
Dam Related	0	1
Channel Relocation	0	1
Pipeline/Cable/Utility	8	3
Other In-Water Work	7	1
Sub Total	41	20
Grand Total	1140	1312

Type of Applicant

DSL tracks three principal applicant types: public (e.g., cities, counties, state and federal agencies); commercial (e.g., residential developers, retailers and manufacturers); and individual (individual homeowners, farmers and ranchers). The charts in Figure 1 show the relative proportion of the three categories of applicants receiving authorizations from DSL in fiscal years 2007 and 2008. Note that since recreational placer mining applicants are so numerous (see Table 1 above), those applicants are not included in Figure 1. Recreational placer miners are considered to be “individual” applicants. When placer miners are removed from the totals, a more representative statewide distribution of applicant types can be seen. Public applicants are the most numerous, followed by commercial and individual.

Figure 1



Essential Indigenous Anadromous Salmonid Habitat (ESH)

DSL and other state agencies in Oregon operate under the Oregon Plan for Salmon and Watersheds (the “Oregon Plan”). The purpose of the Oregon Plan is to restore Oregon’s wild salmon and trout populations and fisheries to sustainable and productive levels that will provide substantial environmental, cultural and economic benefits.

DSL’s ESH identification program pre-dates the Oregon Plan. It was established by the 1993 Legislative Assembly and fully implemented by DSL in 1996. The program requires review of projects smaller than the normal 50 cubic-yard removal-fill threshold for activities occurring within stream reaches used for spawning or rearing of state and federally listed anadromous fish species. Permits or authorizations are required for any amount of fill or removal, unless otherwise exempted. DSL is currently working with the Oregon Department of Fish and Wildlife to update the mapping layer for ESH to reflect

the miles of habitat reopened to salmonids and other species through recovery and restoration efforts.

Under the ESH program, the Department issued a total of 804 authorizations in FY 2007 of which 482 were for recreational placer mining, and 1,041 authorizations in FY 2008 of which 746 were for recreational placer mining. Most of the authorizations issued were general authorizations (GAs) for small-scale recreational placer mining. The GAs contain best management practices for avoiding or minimizing adverse effects in riparian and aquatic habitat areas. Note – due to action by the 2001 Oregon legislature (Oregon Laws 2001, Chapter 499, section 4), the Department is no longer authorized to issue permits for dredging related to recreational placer mining on scenic waterways, effective January 1, 2006.

Compliance Monitoring

DSL conducts permit compliance monitoring and enforcement of its Removal-Fill Program and documents the results. DSL's compliance monitoring program is designed to measure whether permitted projects are carried out in compliance with permit conditions. DSL's enforcement program (discussed below) prohibits unauthorized projects from proceeding. DSL may require remediation of any damage to jurisdictional resources and may impose civil penalties of up to \$10,000 per day against violators.

Each permit or authorization issued by DSL contains standard and site-specific operating conditions intended to protect the state's water resources, navigation, fishing, and public recreation uses. DSL's compliance monitoring program measures the rate of compliance with certain conditions. Wetland fill sites are also monitored for compliance with wetland compensatory mitigation requirements. These permits are usually for commercial and residential development within a delineated wetland area. Non-wetland fill sites (river, stream, etc.) include all other authorizations issued by DSL, such as streambank stabilization and fish habitat enhancement.

If during any given site visit, DSL staff finds that a permit condition is not fulfilled, the project is considered to be out of compliance. Note that some wetland mitigation projects require a monitoring period of five or more years to achieve full compliance. DSL reviews the mitigation monitoring reports submitted for these projects over the monitoring period. If full compliance is not achieved within that standard timeframe, the agency may extend the monitoring period until full compliance is achieved – or alternatively, require another method of compensatory mitigation if it is apparent that a mitigation site will not be successful. If an out-of-compliance project is detected, the Department works with the applicant to bring the project into compliance. Only when voluntary efforts prove to be ineffective does DSL seek to compel compliance through formal administrative and legal procedures.

DSL conducts compliance monitoring on approximately 15 percent of authorized projects in any given year. We would like to see this number increase but the current program emphasis, as directed by statutory deadlines for making permit decisions, is on

the permit process, not compliance and enforcement. For authorizations with wetland conditions, the compliance rate for FY 2007 and 2008 respectively is 63 percent and 84 percent. For non-wetland authorizations, the compliance rate for FY 2007 and FY 2008 respectively is 79 percent and 77 percent. Under a grant from the U.S. Environmental Protection Agency (EPA), DSL is currently completing a detailed study of compliance for approximately 250 randomly selected authorizations. The results of the study will be used to inform future agency efforts addressing compliance issues.

Enforcement Activities

DSL investigates complaints and makes inspections to determine whether violations of the Removal-Fill Law have occurred. Alleged or suspected violations are usually reported to DSL by telephone or in writing.

Removal-fill work that is actively occurring within waters of the state and that is likely to have adverse environmental effects is assigned a high priority for investigation. In such cases, the alleged violation is usually investigated within a day or two of receipt of the complaint either by DSL, the Oregon State Police (OSP) or both. Activities that are completed or ongoing, but are determined to have a low risk of having adverse environmental effects, are assigned a lower priority for response. For routine complaints, after DSL fills out a complaint/violation form and opens a file, a written notice is sent to the landowner advising that the Removal-Fill Law may apply to the activity and site in question. Complaints may take several months to resolve. DSL keeps records on the outcome of all of its enforcement cases in the LAS database.

Table 2 summarizes enforcement activities for the past two fiscal years. Once a complaint is opened, it must be investigated to determine whether a violation exists. An enforcement file is opened only for confirmed violations. Cases that are not resolved during any given fiscal year are carried over into the next fiscal year. Some cases are adjudicated either through contested case hearings or court actions. Tables 3 and 4 list the civil penalties that were assessed, paid and uncollected during FY 2007 and FY 2008.

Table 2 - Status of Enforcement Activities FYs 07 and 08

	2007	2008
Status of Complaints		
New Complaints Opened	213	167
Confirmed Violations	55	50
Status of Violation Cases		
Closed - Mitigation performed by violator	10	4
Closed - Payment in lieu accepted	6	3
Closed - Other reason	38	38
Closed - Site restored by violator	22	19
Closed - Permit granted	5	0
Closed - Activity exempt or under 50 Cubic Yard (CY) threshold	5	1

Closed - Non-jurisdictional water	4	0
Closed - Inconclusive facts	13	8
Violation Cases Closed	103	73

**Table 3 - Civil Penalties Assessed and Collected
Fiscal Year 2007**

Case ENF #	County	Assessed	Paid	Uncollected
3509	Linn	\$600.00	\$600.00	0
5087	Lane	\$500.00	\$500.00	0
5469	Clackamas	\$300.00	\$300.00	0
5786	Multnomah	\$3,600.00	\$3,600.00	0
6115	Lincoln	\$3,300.00	\$3,300.00	0
6165	Lincoln	\$3,600.00	\$3,600.00	0
6168	Yamhill	\$600.00	\$600.00	0
6176	Josephine	\$3,600.00	\$3,600.00	0
6191	Lane	\$600.00	\$600.00	0
6202	Clackamas	\$600.00	\$600.00	0
6206	Lincoln	\$1,800.00	\$1,800.00	0
6217	Tillamook	\$600.00	\$600.00	0
6276	Coos	\$600.00	\$600.00	0
6293	Tillamook	\$600.00	\$600.00	0
6296	Washington	\$600.00	\$600.00	0
6338	Lincoln	\$3,000.00	\$3,000.00	0
6339	Lincoln	\$600.00	\$600.00	0
6339	Lincoln	\$900.00	\$900.00	0
6360	Douglas	\$1,200.00	\$1,200.00	0
6372	Lane	\$600.00	\$600.00	0
6390	Linn	\$600.00	\$600.00	0
6394	Clackamas	\$1,800.00	\$1,800.00	0
6395	Benton	\$1,800.00	\$1,800.00	0
6402	Linn	\$3,600.00	\$3,600.00	0
6405	Marion	\$600.00	\$600.00	0
6443	Marion	\$600.00	\$600.00	0
6444	Marion	\$600.00	\$600.00	0
6450	Lane	\$600.00	0	\$600.00
6482	Coos	\$1,200.00	\$1,200.00	0
6487	Jackson	\$1,800.00	\$1,800.00	0
6490	Marion	\$3,600.00	\$3,600.00	0
6501	Lane	\$600.00	\$600.00	0
6515	Clatsop	\$300.00	\$300.00	0
6529	Jefferson	\$150.00	\$150.00	0
Totals		\$46,250	\$45,650	\$600.00

**Table 4 - Civil Penalties Assessed and Collected
Fiscal Year 2008**

Case ENF #	County	Assessed	Paid	Uncollected
5962	Lincoln	\$1,800.00	\$1,800.00	0
6207	Clackamas	\$600.00	\$600.00	
6227	Marion	\$1,800.00	\$1,800.00	0
6307	Clatsop	\$350.00	\$350.00	0
6319	Clackamas	\$1,800.00	\$1,800.00	0
6392	Linn	\$3,600.00	\$3,600.00	0
6437	Clatsop	\$1,000.00	\$1,000.00	0
6523	Union	\$3,600.00	\$3,600.00	0
6570	Tillamook	\$1,000.00	\$1,000.00	0
6593	Lincoln	\$3,000.00	\$3,000.00	0
6593	Lincoln	\$600.00	\$600.00	0
6681	Lane	\$1,000.00	\$1,000.00	0
6690	Marion	\$3,600.00	\$3,600.00	0
6705	Wasco	\$250.00	\$250.00	0
6713	Jackson	\$3,600.00	\$3,600.00	0
6719	Douglas	\$150.00	\$150.00	0
6727	Lincoln	\$1,000.00	\$1,000.00	0
6729	Yamhill	\$250.00	\$250.00	0
Totals		\$29,000	\$29,000	0

The agency strives to increase the public's awareness of program requirements through the statewide wetlands inventory, education and training programs for wetland consultants and stakeholders, and other outreach efforts. In general, these activities may increase compliance by making the public more aware of program requirements, answering questions, and clearing up areas of confusion.

Contested Case Hearings

Of the 19 contested cases closed or pending during FYs 2007 and 2008, 15 are enforcement cases and four are challenges to issued permits (see Table 5). As of November 2008, there are nine contested case hearings pending, including three cases at the Court of Appeals.

Table 5 - Contested Cases Closed or Pending (FY 2007 and FY 2008)

	DSL Action Upheld	Case Settled	Case Dropped by Challenger	Case Pending
Permit Challenges	0	1	0	3
Enforcement Cases	1	8	0	6

Only a few enforcement cases reach the hearing stage, and only do so if all other administrative remedies have failed. DSL resolves most cases with voluntary compliance because most landowners are cooperative.

Removal-Fill Rule Revisions

The Department is currently undertaking a major revision of Division 85 – the primary collection of rules that govern the removal-fill application and decision-making process. The proposed new rules are in the public rulemaking process and should be ready for final adoption early in 2009. The new rules are significantly shorter, flow better with the actual operation of the program, have undergone a “plain language” review, are less prescriptive and more outcome-based, and will be accompanied by a guidance document that further explains – in an interactive Web-based format – the requirements of the program. It is anticipated the new rules and guidance materials, in addition to other streamlining initiatives the agency is engaged in (as discussed below), will result in improved applications from project proponents, thereby reducing agency review time and improving customer satisfaction.

Section 2 - Removal-Fill Permit Streamlining

On January 3, 2006, DSL launched the State Programmatic General Permit (SPGP). The purpose of the SPGP was to reduce regulatory duplication while enhancing natural resource protection throughout Oregon. However, in response to customer feedback and implementation challenges, DSL requested that the U.S. Army Corps of Engineers (Corps) first suspend and then terminate the SPGP. The Corps terminated the SPGP effective October 1, 2007. Prior to termination, DSL authorized 97 projects under the SPGP.

DSL is now engaged in alternative state/federal permit streamlining efforts including development of state general permits – authorized through the passage of HB 2105 in 2007 – that will allow an applicant to apply jointly for authorization from DSL and the Corps for activities that are substantially similar in nature, recurrent or ongoing, and have predictable effects and outcomes. DSL is currently in the process of working with the Corps to develop several of the first such joint state/federal general permits to be issued in 2009.

Strategy for E-permitting and Process Improvements

With grant funds from the U.S. Environmental Protection Agency, DSL is working on several initiatives to create a more applicant-friendly permit process by:

- Using clear language.
- Identifying what is needed from, and expected of, applicants.
- Providing resources to explain the permitting process and regulations.
- Making the process commensurate with the size and scope of the project.
- Minimizing hurdles, duplication and bureaucracy.

The initial efforts will be focused on improving processes for restoration-related efforts, while also providing benefits for other types of projects. DSL has determined that taking small steps and keeping each element in a stand-alone package will reduce the possibility of having problems compound during development. It will also allow for testing and refinement of each key element during each phase.

Based on customer input and process evaluation, the following are being developed as the core of our e-permitting and process improvement efforts:

- Wizard for Common In-Water Projects – <http://licenseinfo.oregon.gov/>
- New Application (E-forms)
- On-Line Permitting Assistance/Resource Library (available as HTML or PDF)
- On-Line File/Application Management Tool

Expedited General Authorization for Voluntary Restoration Projects

DSL is making a special effort to expedite the review and approval process for restoration projects requiring removal-fill authorizations. DSL believes reducing the regulatory burden and expediting the authorization of restoration projects will result in gains for habitat, including restoration projects that reopen miles of lost Salmonid habitat. During the summer of 2007, DSL introduced a new general authorization (GA) for stream restoration projects involving the placement of large wood and boulders. This authorization has a 15-day review and decision turnaround, and was developed in coordination with the Corps of Engineers and the federal services. The authorization has been popular with watershed and other restoration proponents with DSL approving over 35 of such expedited authorizations over the last two seasons. In addition, as co-project leader along with Oregon Trout of a Governor's Oregon Solutions project, DSL is working closely with members of the team to find ways to facilitate the permitting and funding of restoration projects.

Section 3 - Wetland Planning and Conservation Program

The Wetlands Program was established by the legislature in 1989. Senate Bill 3 articulated several state wetland policy directives, including a no-net-loss-of-wetland goal, and established key program elements aimed at implementing those policies. Activities based on those elements are summarized below.

Statewide Wetlands Inventory

DSL is responsible for developing, maintaining and distributing the statewide wetlands inventory (SWI). The SWI is based upon the National Wetlands Inventory (NWI) developed by the U.S. Fish and Wildlife Service and includes Local Wetlands Inventories (LWI) covering many urban areas. NWI paper maps are available for the entire state, and digital NWI data is available for much of the state. DSL houses the state distribution center for paper NWI maps, which are sold at cost.

The NWI is superseded in approximately 62 cities by LWIs that are developed according to standards established in rule by DSL. LWIs have much more detailed and accurate wetland inventory information than the NWI. DSL approves all LWIs before they become part of the SWI. LWIs are used by cities and counties for planning purposes; they also provide good wetland location information for landowners and developers. DSL assists cities and their consultants with LWI development. Table 6 provides a list of LWIs approved by DSL during the biennium and a list of cities that received technical assistance with LWI development and approval.

Table 6 - Local Wetlands Inventories

LWIs approved in FY 2007 and 2008			
Ashland			
Cascade Locks			
Technical & Planning Assistance for Cities Considering or Initiating an LWI			
Damascus	Depoe Bay	Happy Valley	Harrisburg
Hillsboro	Junction City		

Digital map products available to the public over the Internet are increasingly important. DSL has been involved in several efforts to make wetlands inventory information more readily available and usable, which has required cooperative efforts. The Oregon Watershed Enhancement Board has provided significant funding for digitizing the remaining NWI maps for Oregon; that work is in progress. DSL has scanned all approved LWIs to make them available as pdf files on DSL's Web site. The Department of Land Conservation and Development Coastal Program provided funding to digitize several coastal LWIs, and the Institute for Natural Resources (housed at Oregon State University) obtained funding to digitize more LWIs. (Note: These digitizing efforts are for LWIs that were developed and approved before LWI standards requiring GIS products.) As part of this effort, DSL initiated revisions and updates to the LWI administrative rules (OAR 141-086). These revisions will be effective in January 2009.

Wetland Land Use Notification

The wetland land use notification process was initiated in 1989 as part of the wetlands program legislation. All counties and cities are required to notify DSL of certain development activities proposed in wetlands that are mapped on the National Wetlands Inventory (NWI) or, if completed, the Local Wetlands Inventory (LWI). DSL reviews the notice and provides a written response within 30 days to the applicant and local government as to whether or not the proposed action requires a removal-fill permit and/or a more precise wetland boundary location (delineation). DSL has been largely successful in responding within 30 days.

The objective of the notification process is to provide coordination between local (city or county) development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval.

Table 7 - DSL Response Time for Wetland Land Use Notices FY 2007 and 2008

Response Time	2007	2008
30 Days or Less	197	383
31-59 Days	59	66
60+ Days	170	2
Total	426	451

Note: Most responses >30 days are due to periods where the position of handling notices is temporarily vacant.

Wetland/Jurisdictional Determinations and Wetland Delineation Report Review and Approval

In addition to wetlands inventory assistance and the wetland land use notice process, DSL Wetlands Program staff provides a one-page form to the public for requesting an agency determination of whether wetlands or other waters of the state may be present on a particular parcel of land. DSL staff will conduct an “offsite” determination using maps and other available information and follow up with a field investigation, if needed and as time allows. A wetland determination identifies whether or not wetlands or other waters of the state are present on a site that may be subject to state permit requirements. If wetlands are present, a wetland boundary delineation and report by a wetland consultant may be needed to accurately locate and map the wetlands (a wetland delineation report). Wetlands Program staff review wetland delineation reports submitted to DSL. Landowners, developers and local governments use the approved delineation report and maps to avoid or minimize wetland impacts, or to determine the impacts that will require a state permit.

Table 8 shows the number of wetland determinations and delineation report reviews conducted for FY 2007 and 2008. Numerous reports were submitted in December 2007 prior to initiation of the new delineation report review fee on January 1, 2008, and the stagnant economy has also reduced the number of delineation reports submitted.

Table 8 - Wetland Determinations & Delineation Report Reviews for FY 07 and 08

Determinations/ Delineations	2007	2008
Delineations	439	477
Determinations	257	226
Total	696	703

The substantial increase in determination requests and delineation report submittals from 1991 through 2007 resulted in an unacceptably long timeline for agency review and persistent backlogs. To help remedy the situation, the 2007 Legislative Assembly passed HB 2106, which established a new fee for review of wetland delineation reports to support two new wetland specialists to handle the workload. The legislation included a timeline of up to 120 days for completing the initial review of delineation reports. HB 2106 was implemented on January 1, 2008. In addition to hiring and training new staff, database changes and administrative rule changes (OAR 141-090 governing wetland delineation reports) were required and completed. The report review timeline data from January 1, 2008 to September 30, 2008 is provided as follows.

Table 9 - Days from receipt of wetland delineation and fee to completion of initial agency review

Days	Number of Reports Reviewed Within Timeframe	Percent of Total Reports Reviewed Within Timeframe
0 - 30	50	27 %
31- 60	74	40 %
61 – 90	51	27 %
91 – 120	8	4 %
> 120	3	2%

The mean number of days for completion of initial report review was 49 days.

Wetland Delineation Manual Regional Supplement Development and Training

DSL requires that wetland determinations and delineations be conducted using the U.S. Army Corps of Engineers 1987 Wetlands Delineation Manual (Manual) or subsequent federal manual and applicable guidance (ORS 196.805). During this reporting period, the Corps initiated a major effort to develop regional supplements to the Manual that would update the scientific basis and provide improved regional field indicators for

identifying and delineating wetlands. Two regional supplements pertain to Oregon—the Arid West supplement and the Western Mountains, Valleys and Coast supplement.

Due to the importance of this effort to Oregon’s Removal-Fill Law and wetlands inventory and planning efforts, two of DSL wetlands specialists were fully involved in the development of these two supplements. Staff involvement included:

- Participation in two interagency working groups assembled to develop the recommendations and supplements.
- Participation in the interagency field-testing of the draft supplements.
- Chairing the peer review committee for one of the supplements.
- Providing information about the regionalization effort and status, including opportunities for review and field-testing to private consultants in Oregon.
- Providing training workshops for agencies and the private sector (February 13, 2007; February 14, 2007; September 27, 2007; June 24, 2008 for a total of approximately 280 persons).
- Developing new technical documents and materials, including the training lectures, and providing this information along with both new supplements and related technical wetland delineation resources on the DSL Web site.

Wetland Conservation Plans

Wetland Conservation Plans (WCPs) are an optional wetland planning mechanism that provide an alternative means of wetland protection to the standard Goal 5 (Natural Resources) or Goal 17 (Coastal Shorelands) requirements of the statewide land use planning program. A WCP provides more certainty for developers and the city by designating certain wetlands or portions of wetlands for development and some wetlands for protection. When DSL approves the plan, which includes a compensatory mitigation plan for the plan area, state removal-fill permits are issued according to designations in the plan. One WCP has been approved by DSL – the West Eugene Wetlands Plan – which was approved in 1994 and has been amended since then. A few additional cities have expressed an interest in developing a WCP for a portion of their jurisdiction where there are significant wetland/development conflicts, but the planning effort required to meet all of the requirements and deliver both state and federal permitting certainty has proven to be daunting.

Wetland Scientist Certification Program Investigation

Senate Bill 544 (2007) required DSL to investigate the feasibility of a wetland scientist certification program for Oregon, and report back to the Legislative Assembly by November 1, 2008. During this report period, DSL staff investigated existing certification programs nationally and in other states, provided updates at Removal-Fill Technical Advisory Committee (TAC) meetings and on the Web site as the investigation continued, and met with stakeholders to discuss initial draft recommendations.

In its report to the Legislative Assembly the Department recommended that a voluntary Oregon Professional Wetland Delineator Certification Program be implemented if a reasonable fee level could cover program costs and if a stakeholder involvement process developed a legislative concept resulting in a meaningful certification program with a sufficient level of support. Under such a voluntary program, only those persons certified under the program would be permitted to use the title "Oregon Certified Professional Wetland Delineator" or similar titles. The certification program would set minimum standards for education, training, and experience; require a passing score on an examination; require signing a code of ethics and professional practice; and require periodic renewal that includes continuing professional experience and education.

This recommendation is based upon the finding that a voluntary wetland delineator certification program would promote consumer protection by providing standards for the profession and a means for the public to easily determine whether a private consultant is likely to provide competent professional services. Such a program would also foster the knowledgeable application of wetland science in implementing the state Removal-Fill Law and land use decisions that would better protect, manage, and conserve the waters of this state.

Oregon Rapid Wetland Assessment Protocol

During the 2003 legislative session, DSL committed to develop a wetland assessment methodology that could be applied statewide to assess the functions, values and condition of wetlands for permitting purposes. DSL assembled a technical advisory committee (TAC) that worked to develop detailed recommendations for what became the Oregon Rapid Wetland Assessment Protocol (ORWAP). DSL subsequently obtained a federal grant to fund development of ORWAP, assembled a new TAC (including representatives from state and federal agencies and the private sector), and contracted with a wetland assessment expert to develop ORWAP with guidance from the TAC. That effort has been ongoing throughout the biennium with final completion set for the Spring of 2009.

Oregon Stream-Flow Identification Method

Because there are many non-perennial streams in Oregon for which there are no reliable flow records, the U.S. Army Corps of Engineers Portland District, the EPA Oregon Operations Office and DSL are cooperatively developing a field assessment method that can be used to distinguish between perennial, intermittent and ephemeral streams in Oregon. These stream-flow distinctions can be crucial to determining state and federal jurisdiction. The method, based on an approach developed by the North Carolina Division of Water Quality, uses a suite of readily observed indicators representing a stream process or feature including: geomorphic (e.g., channel structure, erosional and depositional features), hydrologic (e.g., groundwater discharge and hydric soils), and biologic (e.g., wetland plants, macro invertebrates and amphibians). Each indicator is assigned a numeric score using a weighted scale, and the flow duration is predicted based on the cumulative score for a given stream reach. To verify the method, the EPA,

the Corps and DSL are applying the method to stream reaches in multiple hydrologic regions across the state. An interim version of the Oregon Stream-Flow Identification Method should be available for use by early 2009.

Wetland and Land Use Change Mapping

Oregon has a no net loss of freshwater wetlands and net gain of tidal wetlands benchmark goal, but there is no comprehensive state program for tracking all wetland change. To help provide information on wetland trends, DSL has worked with other agencies to conduct wetland status and trend studies in two target areas – the Willamette Valley and the coast. The coastal wetland change mapping was initially scheduled for completion in 2007, but new technology that allowed for much-improved wetland mapping resulted in the need to update the baseline mapping (1982-era mapping) and has delayed project completion.

The EPA provided funding for an update for the second target area – the Willamette Valley. The initial wetland change study (*Wetland and Land Use Change in the Willamette Valley, Oregon: 1982 to 1994*) was published in 1998. DSL entered into a cooperative agreement with the U.S. Fish and Wildlife Service, National Wetlands Inventory, to update the study to 2005. The wetland change mapping for the 1994 to 2005 period has been completed and the data compiled. The data analysis and report preparation is scheduled for completion by summer 2009.

Voluntary Wetland Restoration Program Pilot Project

In May 2005, DSL was awarded a multi-year grant from the EPA that funded positions to assist the state in implementing strategies in the report *Recommendations for a Nonregulatory Wetland Restoration Program for Oregon* (1998) by laying the groundwork for developing and implementing a voluntary wetland restoration program. Objectives included providing assistance to landowners and other agencies, obtaining more reliable and consistent baseline information, permitting and monitoring wetland restoration and enhancement projects, and also identifying improvements necessary to accurately track the wetland gains and other environmental improvements that result from these projects. Because voluntary restoration and enhancement projects are typically very large compared to other permitted wetland changes, accurate accounting is important for evaluating how the state is doing in meeting wetland conservation goals. The wetland restoration specialist hired to work on this program is working closely with Oregon Watershed Enhancement Board and other agencies that provide funding and technical assistance for projects.

Section 4 - Public Information/Outreach

DSL regularly provides information to the public, permit applicants, private consultants and other groups on wetlands and regulations. Information is provided through e-mail updates, the DSL e-newsletter and Web site, meetings with consultants (during this period, in July 2007 and May 2008), the Removal-Fill TAC, and in other forums as the opportunity presents itself. For example, wetlands program staff attended coastal planners network meetings to discuss wetland land use notification requirements, provided similar information at a CZM 201 training organized by the Department of Land Conservation and Development, and gave presentations to the Douglas County Real Estate Association and at the Environmental Symposium for Appraisers. The wetland delineation supplement trainings, described above, were also a major outreach effort during the biennium.

Wetland Planning Training

DSL staff distributed the guidebook described above and conducted training sessions. DSL staff provide ongoing assistance and guidance to cities developing Local Wetlands Inventories, and wetland staff frequently attend meetings with city and county planners and elected officials to help cities understand wetland regulations and the relationship between local and state requirements and responsibilities.

Wetland Functions Workshops

Wetland staff conduct trainings for other agency staff and private consultants in how to use the wetland function assessment guidebooks, such as the tidal wetland function assessment guidebook described above. Workshops also were conducted at professional meetings in the region.

Watershed Stewardship Training Materials and Workshops

DSL wetland specialists helped Oregon State University Extension develop the wetland portions of the watershed stewardship curricula and provided several of the trainings for watershed council members and others.

Land Board Awards

Another example of DSL outreach is the State Land Board Awards program with awards presented in three categories, two of which relate to the Removal-Fill and Wetland Planning Programs: 1) Stream Project Award; and 2) Wetland Project Award.

The 2007 Stream Project Award was presented to the Calapooia Watershed Council for a project involving removing a dam that was originally built in 1859 to divert water from the Calapooia River for operating several mills in the area. After almost 150 years, more than 40 miles of habitat is now open to cutthroat trout, Pacific lamprey, winter steelhead and spring Chinook.

The 2007 Wetland Project Award went to two recipients. The first award went to the Nature Conservancy for bringing together more than 15 funding and technical partners to remove levees on 3,500 acres of a 7,000-acre project in order to restore the hydrologic connection among the wetlands, Upper Klamath Lake, and the Williamson River. The project's goals were to provide habitat for endangered larval and juvenile shortnose sucker and Lost River sucker species, and to improve nutrient delivery from surface waters to the lake.

The second award went to grass seed growers Marvin and Cindy Gilmour for developing a native wetland on their property near Adair, north of Corvallis on land that had been manipulated and drained for agricultural purposes for the past 60 years. The Gilmour's Mid Valley Bank serves multiple purposes, including mitigation options for developers in the Willamette Valley, improved wetland functions for the Luckiamute Watershed, and habitat for thousands of wintering waterfowl, shorebirds, and songbirds.

One of two 2006 Stream Project Awards went to the City of Wilsonville for removing an old metal culvert in Boeckman Creek and replacing it with a timber pedestrian bridge that spans the creek, a tributary of the Willamette River. The second stream project award went to a project on land owned by the City of Lincoln City where a variety of agencies came together to modify a 70-year-old dam in the Devils Lake Basin to allow for better migration of Coho salmon, steelhead, and cutthroat trout in Rock Creek.

The 2006 Wetland Project Award recognized the City of Eugene's Dragonfly Bend Habitat Restoration Project. This 77-acre project is part of the City of Eugene's long-term vision for nearly 3,000 acres in the West Eugene Partnership lands. The city developed the Dragonfly Bend project to further improve the site's overall ecological function. Project participants include the City of Eugene, Bureau of Land Management, Lane Council of Governments, and The Nature Conservancy.

Section 5 - Industrial Site and Wetland Planning Assistance to Cities and Counties

DSL's role in the effort to prepare industrial lands for development was strengthened under HB 2011 passed by the 2003 Legislature, which contained the following provisions:

- DSL became a member agency of the state and nine regional Economic Revitalization Teams (ERT).
- DSL received authority to create an economic revitalization liaison position. Originally created as a limited duration position; the position was subsequently made permanent in 2005.
- DSL was directed to create an expedited process for identifying and mitigating the loss of wetlands on industrial sites.

Accomplishments

DSL adopted new rules in 2004 for an expedited planning and authorization process for industrial sites. Since that time, expedited services delivered by the DSL-ERT Liaison to date have included:

- Rapid assessment of approximately 130 candidate sites for potential wetland issues: all wetland determinations completed in 14 days or less, and all wetland delineation reviews completed in less than 120 days with most completed in less than 90 days. Includes 14 new sites for FY 2007-2008 totaling 1,000 acres.
- Updated wetland assessments conducted by liaison for 26 sites seeking re-certification.
- Coordination of contracts for professional wetland consulting services on candidate industrial certification sites.
- Technical assistance provided to 18 industrial sites for the development of wetland mitigation plans and/or removal-fill application documents.
- Coordination with U.S. Army Corps of Engineers on federal wetland permit issues for various sites.
- Participation in nine regional Economic Revitalization Teams to facilitate the development of projects with significant opportunities for job creation. DSL lead staff served as chairpersons for two of the nine teams.

Examples of Successes

Examples of industrial projects in the planning, permitting, development or operations phase that have benefited from DSL services provided for the certification program include:

- Lowe's warehouse/distribution facility, Lebanon: 350 new family-wage jobs.
- Google industrial park, Port of the Dalles: 75 new high-wage jobs.
- John Day Airport Industrial Park: 12 companies investing \$24 million.

- La Grande Technology Park: \$2.1 million infrastructure investment currently underway.
- Jefferson Business Park, Madras: 20 new jobs created and 40 jobs retained for this community.
- Southport Lumber Company, Coos Bay: New mill created 82 new family-wage jobs.
- Canby Industrial Park: Six projects equaling a \$19 million investment and 243 jobs to be created.
- Townsend Industrial Park, Fairview: Three completed projects resulting in 582 new and retained jobs.
- Umpqua Dairy distribution facility, Central Point: 15 new jobs created.
- Avenue G, White City: 22 acres developed for manufacturing.
- South Umpqua Industrial Park, Myrtle Creek: Three projects to result in approximately 280 new jobs.
- Shute Road site, Hillsboro: \$250 million bioscience development.

Section 6 - Compensatory Wetland Mitigation

OAR 141-085-0006(3)) defines compensatory mitigation as follows:

“Compensatory mitigation” means replacement of water resources that are damaged or destroyed by an authorized activity.

In addition to on-site or off-site compensatory wetland mitigation (CWM) involving the creation, restoration and/or enhancement of wetlands by the applicant, DSL also accepts, subject to certain conditions, CWM involving approved Wetland Mitigation Banks and payments into the Wetlands Mitigation Bank Revolving Fund under the Payment-in-Lieu-of-Mitigation Program.

Mitigation Banking

At the beginning of the biennium, there were 10 active mitigation banks, and seven had completed a prospectus to begin the establishment process. As of June 30, 2008, DSL had 16 active banks, with 12 in process (four of these banks were approved in July 08).

New Banks in FYs 2007 and 2008:

<u>Bank</u>	<u>County</u>	<u>Prospectus date</u>	<u>Bank Approval date</u>
Crooked River (ODOT)	Crook	10-06	5-07
Evergreen Creek	Benton	11-05	11-06
Foster Creek	Clackamas	2-05	7-06
Lost River (ODOT)	Klamath	8-05	6-08
Mid Valley	Benton	7-04	9-05
Muddy Creek	Benton	1-06	3-07

One hundred percent of mitigation banks received an on-site compliance inspection annually. Two banks are in remediation due to weed invasion and/or insufficient hydrology.

Table 10 – List of Mitigation Banks

Mitigation Bank	Credits Withdrawn FY 2007	Credits Withdrawn FY 2008
Amazon Creek	4.12	4.08
Cow Hollow	0.60	3.01
Crooked River ODOT	0.00	0.00
Evergreen	6.40	1.62
Fernhill	0.00	0.00
Foster Creek	0.32	0.44
Frazier Creek	0.00	0.00
Lost River ODOT	0.00	0.00
Marion	0.00	0.00
Mid-Valley	5.95	4.16

Mud Slough	2.76	19.37
Muddy Creek	0.00	0.00
Oak Creek	0.05	0.00
One Horse	11.10	0.71
Weathers	1.38	1.05
West Eugene	4.03	9.74
**Agate Desert Vernal Pool ODOT	0.00	0.00
**Camas Swale Creek	0.00	0.00
**Garret Creek	0.00	0.00
**Johnson Farm	0.00	0.00
**Mud Slough-Phase 3	0.00	0.00
**Long Tom	0.00	0.00
**Oregon Trail Heritage	0.00	0.00
**Quamash/Short Mountain Landfill	0.00	0.00
**Riverbend Landfill Co	0.00	0.00
**Rogue Valley	0.00	0.00
**Rood Ranch	0.00	0.00
**Wilbur Island	0.00	0.00
Totals	36.71	44.18
**Bank status in process as of 6-30-08		

Total bank credit sales increased over the previous biennium as follows:

Fiscal Years 2005, 2006	63.6
Fiscal Years 2007, 2008	80.9

Compensatory Wetland Mitigation – Payment-in-Lieu Program

Payment in lieu (PIL, formerly payment to provide) is a form of compensatory wetland mitigation allowed by DSL through the removal-fill permit process when other methods of providing compensatory wetland mitigation are not available or will not produce adequate wetland mitigation. The PIL program allows applicants to pay the costs equivalent to completing the required wetland mitigation into DSL's Wetland Mitigation Bank Revolving Fund (WMBRF). This option is available only to applicants who cannot accomplish their own mitigation, and who have no access to an appropriate wetland mitigation bank with credits available.

The Department accepted \$329,573 in payment in-lieu in FY 2007, and \$413,313 in FY 2008 (Table 11).

Table 11 - Compensatory Mitigation Payment In-Lieu (PIL) Deposits

	FY 2007	FY 2008
Number of Permittees	49	46
PIL Totals	\$329,573	\$413,313

DSL uses deposits into the PIL fund to grant wetland restoration, creation, and enhancement projects, and may purchase credits from appropriate wetland mitigation banks if they become established. In FY 2008, a total of \$497,056 grant agreements were awarded (Table 12), and \$377,944 was paid to mitigation banks (Table 13).

Table 12 - PIL Funds Awarded to Recipients in FY 2007-2008

Recipient	Amount	Project Description
Mid Coast Watershed Council	\$31,640	Restore estuarine habitat and fish passage at Lint Slough in Waldport through removal of infrastructure associated with an inactive salmon rearing facility.
Tualatin Riverkeepers	\$89,361	Additional funding to restore wetland prairie on 120 acres along the Tualatin River in Washington County. Phase 2 funding provides for native vegetation planting and maintenance at the site.
The Wetlands Conservancy	\$200,000	Native vegetation planting and maintenance in Hedges Creek, a tributary of the Tualatin River in Washington County.
Tualatin Riverkeepers	\$176,055	Restore and enhance 30 acres of wetlands along the Tualatin River in Washington County.

Table 13 PIL Funds Paid to Mitigation Banks in FYs 2007-2008

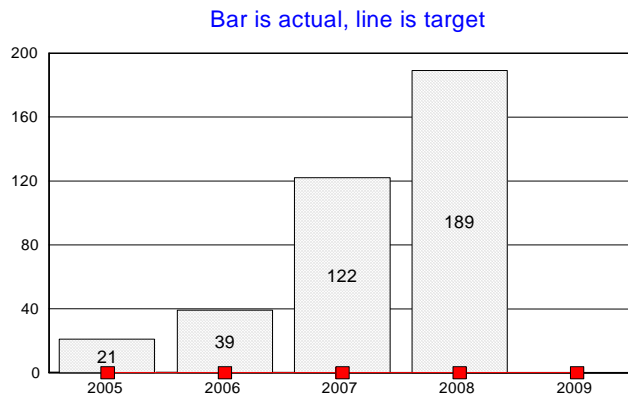
Mitigation Bank Name	Amount	Number of Credits Purchased
West Eugene	\$174,609	1.83
Mid Valley	\$170,979	3.10
Mud Slough	\$25,728	0.36
Amazon Creek	\$6,628	0.11

No Net Loss of Wetlands – Compensatory Wetlands Mitigation

Figure 2 accounts for DSL's performance in meeting the state's goal of no net loss of wetlands due to authorized impacts. During the period shown on the graph, DSL has met and exceeded this goal showing a net gain of freshwater and estuarine wetlands every year. Requiring appropriate compensatory mitigation ensures that authorized

impacts to wetland functions and services are replaced at another location, which is critical to the integrity of the permitting program. The agency also has a full-time staff position, funded by a grant from the U.S. Environmental Protection Agency, dedicated to encouraging voluntary wetland restoration projects. For FY 2008, the numbers show a gain of 182.64 acres for freshwater wetlands and for estuarine wetlands a gain of 5.97 acres. Furthermore, although not reflected in the acreage gains, the agency also authorized enhancement of 2,871.73 acres of existing wetland acreage during FY 2008. The agency now accounts for the data for this measure in a more accurate manner than in previous years.

Figure 2



**DSL does not include compensatory wetland enhancement in no-net-loss calculations.*