

**FOCUS: Statutes/rules/ordinances/practice limits and mandates on local projects and permits from state and local jurisdictions.**

**TOPIC**

Water-related permits

**TOPIC WORK GROUP LEAD**

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**PROBLEM/OPPORTUNITY STATEMENT**

The regulation of water quantity and quality is divided up among a number of different agencies. These divisions make it difficult for a legislator, or an applicant, to know which agency has jurisdiction over what piece and how the various pieces interrelate. The multiplicity of jurisdictions, unclear jurisdictional boundaries and the re-design process create uncertainty, time delays and cost overruns in the development process.

**SITUATIONAL ANALYSIS**

Jon Chandler, Tom Gallagher and Frank Flynn, talked about public perception and some of their clients' experiences in regard to environmental permitting. The following comments characterized the discussion of the problem with environmental permitting as currently practiced:

- Attitude –agency staff often treat developers/applicants as people who are engaged in doing things that shouldn't be done
- The “fetch me another rock” way of dealing with design changes is frustrating, time consuming and costly. In some instances the re-designs suggested by agencies are not “practicable.”
- Sequential permitting and late commenting can result in a "round-robin" effect.
- Liability issues often drive agency actions rather than awareness of business realities such as loan deadlines and cost containment.
- The role of non-regulators, like ODFW in the permitting process, is unclear.
- A project can get hung up on ‘dueling expertise.’
- Agencies are reluctant/unwilling to accept work already reviewed/approved by other agencies at local, other state, or federal level.
- Applicants feel that agencies gang up on them. In addition, applicants who need to deal with agencies on an ongoing basis don't elevate problems because they are afraid of recrimination.
- 401/404 nexus between DEQ/DSL/Corps needs to be fixed.
- There needs to be better coordination between the land use goals and the permitting agencies

Department of State Lands (DSL) took the initiative and prepared a list of all the water related permits applicable within the state (attached). In addition, agency participants shared flow charts on their processes.

## **OTIA III Bridge Partnership Approach to Environmental Permitting**

Bill Ryan, Statewide Permitting & Mitigation Manager for the OTIA III Bridge Delivery Unit, talked to the work group about ODOT's new approach to the environmental permitting process for repairing and replacing the state's bridges. The following elements of ODOT's approach may have transferability for expediting and streamlining the water-related permit process for more generalized applications.

- Specialized staff within agencies whose job it is to assist applicants - could be funded through receipts authority or more likely through general funds
- Make sure that projects address the applicable environmental concern in the project specifications by developing standards and expectations that can be made available to project applicants early in the design process.
- Performance standard approach (i.e. goes sort of like this - you can build whatever kind of bridge you want, but in the building of it and in its final functioning it cannot harm fish passage.)

## **POTENTIAL SOLUTIONS:**

The work group agreed to the following goals in their search for solutions:

1. Increase level of efficient and responsive public service;
2. Maintain open permit processes with clear and timely "on- and off-ramps" for affected agencies' and other parties input;
3. Maintain permit processes that clearly communicate the criteria and standards by which projects will be evaluated;
4. Maintain permit processes that support the return of economic vibrancy to Oregon; and,
5. Maintain permit processes that serve the public interest of water resources conservation and protection.

## **Proposed solutions the group discussed included:**

- Ombudsman/guardian angel concept
- De minimus thresholds below which certain small projects could be exempt from regulation.
- 'Raise it or waive it' – hold state agencies to timelines and increase clarity of who has to respond to whom by when.
- Floating permit teams or "water ERTs"
- Process-oriented "one-stop"

**Proposed next steps for a coordinated process for water related permits should explore the viability of the following:**

1. Identify where statutes and policies overlap and amend rules to avoid duplication.
2. Decide which state agency is the primary agency for each different type of permit (i.e. DSL for wetland permits) and delegate authority to the primary agency.
3. Omnibus permit process that aligns all permit timelines and permit data gathering.
4. Pre-application meetings on water related permits
5. Make a list of pre-qualified consultants available to applicants - could be done through an RFP process
6. Develop a “user guide” that provides information on cost effective “green” designs for certain categories of development that minimizes the impact to water resources and reduces the likelihood of redesign

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The following natural resource agencies were represented on the water-related permits work group:

- Department of State Lands (DSL)
- Department of Environmental Quality (DEQ)
- Oregon Department of Fish and Wildlife (ODFW)
- Oregon Water Resources (OWR)