



Oregon

John A. Kitzhaber, MD, Governor

Department of State Lands

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CERTIFIED MAIL

May 30, 2013

CLL600/7363ENF

CITY OF NEWPORT PUBLIC WORKS

ATTN TIM GROSS

169 SW COAST HIGHWAY

NEWPORT OR 97365

State Land Board

John A. Kitzhaber, MD

Governor

Kate Brown

Secretary of State

RE: Consent Agreement - DSL Enforcement File No. 7363-ENF

Dear Mr. Gross:

Ted Wheeler

State Treasurer

On May 9, 2013, Lori Warner-Dickason and I met with Ted Jones to discuss the above referenced compliance matter. As we discussed, the fill activities constitute a violation of Oregon's Removal-Fill Law. During the site visit, we agreed to resolve the violation through a Consent Agreement, the objective of which is to create a legally binding agreement that is cooperative in nature.

Enclosed is a Consent Agreement that sets out the measures to be accomplished by September 15, 2013. Please read this document carefully. If you agree to the course of action, please (1) sign, (2) make a copy for your records, and (3) return it to my attention by June 14, 2013. If there is anything in the Consent Agreement that you do not understand, or that you cannot agree to, please call me by June 7, 2013 to discuss. Completion of the requirements set forth in the Consent Agreement will resolve the violation.

By signing the Consent Agreement, you also agree to waive your right to contest this Agreement and waive any and all claims against the Department of State Lands, the State of Oregon or any of its agencies arising from this Agreement or the application of the Removal-Fill Law to the situation described in this Agreement.

Thank you for your cooperation in dealing with this matter. I appreciate your willingness to bring the work into compliance with Oregon's Removal-Fill Law.

Please feel free to call me at 503-986-5285 if you have any questions or concerns.

Sincerely,

Carrie Landrum

Resource Coordinator

Wetlands and Waterways Conservation Division

Oregon Department of State Lands

Enclosure

cc: Jason Kirchner, Oregon Dept. of Fish and Wildlife
Kristen Hafer, US Army Corps of Engineers, Portland District

BEFORE THE DIRECTOR OF THE DEPARTMENT OF STATE LANDS
OF THE STATE OF OREGON

In the Matter of an Alleged Violation)
of ORS 196.810(1) by City of Newport) CONSENT AGREEMENT
Enforcement File No. 7363-ENF)

I. BACKGROUND

This matter is before the Director of the Department of State Lands pursuant to the State Removal-Fill Law, ORS 196.800 et seq. Under the Oregon Removal-Fill Law (ORS 196.800 - 196.990), removal, filling, or alteration of 50 cubic yards or more of material within the bed or banks of the waters of this state or any amount of material within waters designated Essential Salmonid Habitat or State Scenic Waterway requires a permit from the Department of State Lands. Waters of the state include the Pacific Ocean, rivers, lakes, most ponds and wetlands, and other natural water bodies.

The City of Newport has agreed to the entry of this Consent Agreement to resolve the violations alleged under the Removal-Fill Law.

Based upon the following stipulated facts and the existing file of the Department in this matter, the Director makes the following findings of fact, conclusions of law, and Consent Agreement.

II. STIPULATED FACTS

1. City of Newport owns property located at Township 11S, Range 11W, Section 5, Tax Lot 400 in Lincoln County, Oregon.
2. The property contains Jeffries Creek and wetlands, both "waters of the state" within the meaning of ORS 196.800(14).
3. Jeffries Creek and associated wetlands are designated as Essential Salmonid Habitat.
4. City of Newport filled material within waters of the state without a permit or other authorization from the Department.
5. City of Newport has:
 - a. Stipulated to the facts recited in this Agreement;
 - b. Agreed to the imposition of the requirements set forth in this Agreement; and
 - c. Waived their rights to appeal or contest this Agreement.

III. ULTIMATE FACTS AND CONCLUSIONS OF LAW

By failing to comply with the Oregon Removal Fill Law, the City of Newport violated ORS 196.810(1)(a), stated below:

"Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person

may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.”

IV. AGREEMENT

1. A civil penalty of \$6,000 is assessed against City of Newport. However, the Department agrees to waive the civil penalty contingent upon satisfaction of the terms by the dates specified in this agreement. If the requirements of this agreement are not met by the dates indicated in this agreement, the assessed civil penalty shall become immediately due and payable (in addition to any other enforcement action that DSL may take based upon default of this agreement).
2. The City of Newport shall obtain an approved fish passage plan from ODFW for the road crossing Jeffries Creek. The necessary corrective action to provide fish passage shall be completed by September 15, 2013.
3. When the City of Newport satisfies the requirements by deadlines required in paragraph 2, DSL will close the enforcement file on this violation.

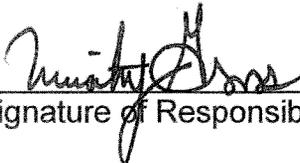


Lori Warner-Dickason
Northern Region Manager,
Removal-Fill Program
Department of State Lands

5/30/13

Date

Stipulated and Agreed to:



Director of PW/CE

Signature of Responsible Party

6/4/13

Date

NOTICE: Statute permits judicial review of Final Orders. However, pursuant to this Consent Agreement, the parties have agreed to waive their right to appeal.