

City of Portland Streamlining Agreement

A Government to Government Agreement Between the City of Portland, U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of State Lands, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife and the Bureau of Development Services

Five Year Status Report (2003 – 2008)

Approved by the Streamlining Team
December 12, 2008



**US Army Corps
of Engineers**®
Portland District



**Oregon
Department
of State Lands**



Prepared by Mike Reed
Streamlining Team Chair
City of Portland

Table of Contents

Executive Summary	3
Section 1. Introduction	8
Section 2. Overview – The Streamlining Agreement and the Portland River Trust	9
Goals of the federal ESA Section 7 Streamlining Agreement	10
Creating the Process – Standard Operating Procedures	10
Expanding the Agreement to include State Agencies and BDS	10
Standard Review Procedure Guidance for Multiple Agencies	11
Section 3. Process and Progress – The Streamlining Team Experience	12
Integration of Multiple Permits	13
Streamlining Team Meeting History	13
Project Permit History	13
Time Taken from Submittal of Applications to Receiving Permits	14
City Bureau Use of the Streamlining Team	16
Section 4. Discussion	16
City Coordination of the Agreement	17
The Permits Compliance Manager Role	17
Conflict Resolution and Elevation Procedures	18
Achieving Decision-Making Consistency between the Agencies	19
Selecting the Preferred Project Design - Alternative Analysis and Mitigation	20
Internal Agency Guidance – Opportunities and Challenges	22
Jurisdictional Coverage – Opportunities and Challenges	24
Streamlined Permit/Review Pathways – Opportunities and Challenges	26
Ability to Coordinate with Other Agencies	27
The Public Review	27
Consolidated Agency Reviews	29
Section 5. The Next Five Years	32
Expanding Streamlining Team Opportunities for the Private Sector	32
Recommendations for the Next Five Years	33
Appendices A – E	37

Executive Summary

Introduction

On February 14, 2003 the City and Federal agencies signed an Agreement establishing a cooperative streamlining process for federal ESA consultations. An invitation was later extended to the City's Bureau of Development Services and state agencies in November 2006 to join the trust partnership and streamlining team. This status report summarizes the progress that has been made on the Streamlining Agreement since its signing five years ago.

Process and Progress – The Streamlining Team/City Project Permitting Experience

The Streamlining Agreement has created a unified multi-agency review process involving multiple laws administered by seven agencies representing three levels of government. This has been accomplished primarily by creating standard operating protocols whose purpose is to facilitate the sharing of information needed by federal, state and city agencies for their review and approval of the proposed activity.

The protocols identify the structure, content and management of the Team meetings including the role of the City's liaison to the Streamlining Team (commonly referred to as the permits compliance manager). The Team meetings give multiple agencies with regulatory responsibilities over proposed City activities a forum to work in a unified manner to deliver timely, responsive and non-conflicting decisions. Progress that has been made over the last five years includes:

- Ninety-three permits were issued to twenty-three City-sponsored projects from the Streamlining Team's participating agencies between September 2003 and April 2008.
- Thirty-nine project concepts and designs were presented at 44 Team meetings for a total of 77 presentations.
- Number of permits received from each of the agencies include (The term permit is used to imply not only Corps and DSL permits, but City/BDS Greenway and Environmental review decisions, NMFS biological opinions and DEQ Water Quality Certifications):

- 22 Corps permits
 - 20 DSL Removal Fill permits
 - 17 Greenway and Environmental Review decisions
 - 10 Biological Opinions issued by the National Marine Fisheries Service
 - 18 DEQ Water Quality Certifications (includes pre-certified as well as issued certifications)
- Average time it has taken to receive a permit from each of the agencies (Corps, DSL and the City's Bureau of Development Services) includes:
- Corps – 6.16 months
 - DSL – 3.24 months
 - City's Bureau of Development Services – 2.45 months

City Coordination of the Agreement – Permits Compliance Manager

The City created a permits compliance manager to centralize contacts with the agencies regarding permitting and consultation questions in order to avoid confusion and to ensure that the individual working with the regulatory agencies possesses sufficient knowledge of the laws and agency permitting requirements. The permits compliance manager serves as chair of the Streamlining Team and manages the goals and objectives of the Agreement.

Conflict Resolution and Elevation Procedures

The Streamlining Team recognizes that there may be times when disagreements need to be resolved through conflict resolution and elevation procedures. When conflicts occur, elevation procedures have been designed to allow the agency staff to resolve emerging problems. The procedures stress the importance of allowing the Streamlining Team to resolve problems before they are elevated to a level 2 team consisting of managers. Processes have been developed to ensure the conflict is addressed in a timely and efficient manner. The City's permits manager (referred to as Team Coordinator in the federal interagency procedures) coordinates the elevation procedures.

Achieving Decision-Making Consistency between the Agencies

In addition to assisting City project teams, the standard operating procedures are designed to improve coordination and communication among the agencies. Through this approach, the hoped for outcome is *consistent decisions between the agencies and that agency decisions will occur within the same time period whenever possible.*

While all of the laws administered by the Streamlining Team's participating agencies share similar environmental protection goals, they also share many of the same application review procedures. In order to carry out an effective and efficient coordination of multiple governments and agencies, it is important to understand how each law's decision-making requirements compare. The following topics are examined: (a) the alternatives analysis or project impact evaluation, (b) mitigation requirements for unavoidable impacts, (c) internal agency decision-making guidance, (d) jurisdictional (geographic) coverage, (e) streamlined or expedited approval, and (f) the agencies' ability to coordinate with other agencies during the review of the proposed activity. Opportunities and challenges to achieving unified decisions between the agencies are discussed in this report.

Recommendations for the Next Five Years

Based on the experience and progress made over the last 5 years, the Streamlining Team has agreed to the following recommendations for ensuring a successful next five years (See Appendix E for agency support letters):

1. Reaffirm a commitment by all the members of the Streamlining Team and River Trust Partners to the Streamlining Agreement.
2. Follow the agreed upon standard operating procedures and pre-application guidance.
3. Support the use of a Permits Compliance Manager position for coordinating communications between the City and the Streamlining Team including:
 - a. Acting as the contact person between the agencies and city project teams,
 - b. Chairing the team meetings,
 - c. Ensuring issued permit requirements are understood and followed through.
4. Continue to strive towards more consistent decisions between the participating agencies on the Streamlining Team including:

- a. Agreement on the selection of the preferred option through the alternatives analysis;
 - b. Agreement on mitigation requirements including on-site and off-site mitigation.
5. Where applicable look to updating the City’s Greenway Code to:
- a. Require an impact evaluation/alternatives analysis for all Greenway Reviews;
 - b. Develop a two-track system that allows applicants to receive a streamlined review for activities that meet measurable and objective development standards (e.g., similar to an Environmental Plan Check) in addition to a full review for those activities that do not meet the standards.
 - c. Develop standard operating procedures and/or other types of guidance for assisting the City and applicant with more consistent interpretations of the Greenway Code’s goals and purpose statements.

The following includes recommendations for increasing opportunities for Streamlining Team review of private sector applications:

6. Aid private applicants with coordinated interagency reviews:
- a. Create an optional “Enhanced Permit Coordination” process for projects in the Portland Harbor that require approval from city, state and federal resource agencies. This would involve a City/State/Federal coordination process that provides private applicants with the option of participating in a facilitated multi-jurisdictional pre-application meeting and permit coordination process. This pilot process will provide a venue for early information sharing and collaborative problem-solving between the applicant and regulatory agencies.
 - b. It is recommended that meetings be scheduled on the same day that the city-sponsored projects are being heard by the agencies. Furthermore, it is recommended that the Team’s standard operating procedures be used as a model for organizing the meetings. The process as currently proposed will be separate from the Streamlining Team process.

- c. For private sector applications outside of the Portland Harbor area that are not participating in the enhanced permit coordination process, time will be set aside at the end of the regularly scheduled Streamlining Team meetings for regulators to discuss applications that require reviews by all three participating governments. The discussions will occur at the request of any of the participating agency members of the Streamlining Team. The time for this process will be coordinated with the City's Permits Compliance manager so that the meeting room space will be available at the end of the regularly scheduled Streamlining Team meetings.

Section 1 – Introduction

On February 14, 2003, the City and Federal agencies signed an *Endangered Species Act Section 7 Streamlining Agreement* establishing a cooperative streamlining process for federal ESA consultations (See Appendix A – *Endangered Species Act Section 7 Streamlining Agreement*). An invitation was extended to state agencies in November 2006 to join the trust partnership and streamlining team.¹ The City’s Bureau of Development Services was also invited to participate. This five year status report summarizes the progress that has been made on the Streamlining Agreement since its signing between the City of Portland and the members of the *River Trust Partners*.² At the time of this writing, this is the only government to government permit streamlining agreement in the United States between a local municipality and federal and state agencies.

The Streamlining Team consists of representatives from each of the agencies and has been meeting since September 2003 to develop innovative ways to integrate federal, state and City laws that apply to proposed city activities.³ The purpose of this document is to highlight the Streamlining Team’s progress including the challenges and opportunities that have been faced over the last five years. This status report describes the history behind the agreement with the federal agencies, expansion of the agreement to include Oregon State environmental permitting and certifying agencies and the City’s Bureau of Development Services, the goals of the Agreement and what the Agreement has achieved. Lastly, recommendations for the next five years are presented in order to further the City’s permit streamlining and environmental stewardship objectives of the Agreement.

1 State agencies with permitting and consultation authority over surface water related activities were invited to participate including the Oregon Department of State Lands, Oregon Department of Environmental Quality and the Oregon Department of Fish and Wildlife.

2 Members of the River Trust Partners include: City of Portland, U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Oregon Department of State Lands, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife and the City of Portland’s Bureau of Development Services.

3 Agency representatives that have served on the Streamlining Team since its inception in 2003 include: Mike Reed (City of Portland Streamlining Team liaison); Nancy Munn, Ben Meyer and Christy Fellas (NMFS); Greg Smith, Joe Ziza, Kathy Roberts (USFWS); Mary Headley, Tina Teed, Karla Ellis, Don Borda, John Barco, Kathryn Harris, Shawn Zinszer, James Holm (Corps); Jim Grimes, Devin Simmons, Todd Alsbury, Mischa Connine, Tom Murtagh (ODFW); Kirk Jarvie, Dan Cary, Joy Friebaum, Melinda Woods, Lori Warner-Dickason, Jevra Brown, Mike McCabe (DSL); Tom Melville, Christina Svetkovich, Alex Cyril, Corrie Saxon (DEQ); Kate Green, Stacey Castleberry, Kathy Harnden (Bureau of Development Services, City of Portland).

Section 2 - Overview - The Streamlining Agreement and the Portland River Trust Partners

The idea for developing a streamlined review process for surface water related permits began with the federal River Trust Partners consisting of federal agencies and the City of Portland. This City partnership with the regulatory agencies was envisioned by Portland's former Mayor Vera Katz for establishing a new and more effective relationship among federal, state, and local government agencies that have jurisdiction over activities in the lower Willamette River.⁴ The partnership with the regulatory agencies was part of a larger goal to integrate watershed health and environmental needs of the Willamette River with economic and social goals of Portland called for by several City Council resolutions and related implementing programs.⁵

The first meeting of the Portland River Trust Partners was held on April 4, 2002. Federal agency leaders in attendance included Michael Tehan, Oregon State Director, NOAA Fisheries; Kemper McMaster, Oregon State Supervisor, U.S. Fish and Wildlife Service; Colonel Richard Hobernicht, District Engineer for the Portland District of the U.S. Army Corps of Engineers; and Dan Opalski, Director of Oregon Operations Office, U.S. Environmental Protection Agency. Members of the Oregon Federal delegation in attendance included Representative's Blumenauer and Wu. City Council representatives included former Mayor Vera Katz, former Commissioner Erik Sten and Commissioner Dan Saltzman.

One of the products of the meeting was a recommendation to develop a process for streamlining federal ESA Section 7 consultations with the federal agencies.

⁴ The idea for creating a Portland River Trust was originally presented to the Portland City Club on January 26, 2001 as part of former Mayor Vera Katz' "State of the City 2001" speech. The form and content of the Trust was to be determined through consultation with relevant federal and state agencies.

⁵ Several examples include: (1) The Portland City Council adopted Resolution 35715 in July 1998 to guide the City's response to the Endangered Species Act. The resolution called for supporting the recovery of native salmonids and working proactively with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service; (2) In July 2000, the Council adopted a Framework for an Endangered Species Recovery Plan in Resolution 35894; (3) In March of 2001, City Council endorsed the River Renaissance Vision (Resolution 35978) as a general guide for creating and integrating future plans and actions related to the lower Willamette River. (The creation of the Portland River Trust is mentioned in this resolution); (4) In March 2006, the Council passed Resolution 36384 adopting the Portland Watershed Management Plan for implementing the River Renaissance goal to ensure a clean and healthy river system for fish, wildlife and people.

Goals of the federal ESA Section 7 Streamlining Agreement

The purpose of the federal Agreement is to create a process to meet the following goals:

- To ensure that City project and program timeframes are met in a timely manner;
- To improve coordination, communication and agreement on formal and informal consultations and conferencing on ESA listed and proposed species prior to and during project/program proposal development;
- To ensure that ongoing activities do not jeopardize ESA listed and proposed species or result in the destruction/adverse modification of designated critical habitat; and
- To support conservation and recovery of listed and proposed species.

Creating the Process - Standard Operating Procedures between the City and Federal Agencies (See Appendix B – *Level 1 Team Standard Operating Procedures Streamlining Consultation*)

Standard Operating Procedures were created to clarify roles and responsibilities between City project teams and the Streamlining Team including:⁶

- Organization of monthly meetings
- Interagency review of projects and plans at the early conceptual design stages
- A process for agreeing on Biological Assessment affects determination prior to submission and initiation of consultation
- An elevation process to handle any procedural or substantive disagreements that may occur

Expanding the Streamlining Agreement to include Oregon State Agencies and the City of Portland's Bureau of Development Services

Due to the multiple federal, state and city laws that can be triggered by surface water-related activities, it became clear that focusing solely on ESA Section 7 consultations would not achieve

⁶ The protocols borrowed extensively from a successful federal streamlining process between the National Marine Fisheries Service, U.S. Fish and Wildlife Service, Forest Service and the Bureau of Land Management (See footnote number 9 for more details). City and agency staff assisting in the development of the protocols include: Mike Reed (City of Portland), Mary Headley (Corps), Nancy Munn (NMFS) and Greg Smith (U.S. Fish and Wildlife Service). Additional assistance was provided by the Bureau of Land Management through a Memorandum of Agreement (April 2002) between Barbara Hill, Special Status Species Biologist for the Bureau of Land Management's Oregon State Office and Mike Reed with the City of Portland's Endangered Species Act Program.

the overall goal of streamlining City-sponsored activities. Due to their key role in surface water-related activities, Oregon State agencies with permitting and consultation responsibilities were formally invited to join the Portland River Trust Partners and Streamlining Team at the November 2006 River Trust meeting. To ensure coordination with all applicable agencies, the City's Bureau of Development Services was invited as well.

The invited agencies and regulatory responsibilities they bring to the Streamlining Team include:

- *Oregon Department of Environmental Quality*: Section 401 Water Quality Certification for Corps Individual and Nationwide permits as well as reviewing/commenting on DSL Removal Fill permit applications
- *Oregon Department of State Lands*: Removal Fill Law and Wetlands Conservation Program
- *Oregon Department of Fish and Wildlife*: in-water work period approvals, fish passage plan decisions, DSL General Authorization approvals for fish habitat enhancement and streambank stabilization, habitat mitigation recommendations for activities receiving DSL Removal Fill permits
- *City of Portland's Bureau of Development Services*: Greenway Review and Environmental Review

In a letter addressed to Mayor Tom Potter (dated Feb. 13, 2006), Governor Ted Kulongoski urged the Portland River Trust and the Permit Streamlining Team to work with the relevant state agencies and partner federal agencies to find new and better ways to implement environmental laws. The state agency directors were encouraged to participate in the Agreement (See Appendix C – letter dated February 13, 2006).

Standard Review Procedure Guidance for Multiple Agencies

An added challenge to the addition of multiple state and City regulatory agencies to the Streamlining Team was to find ways to *integrate multiple decision-making criteria and approval timeframes into a predictable and consistent framework*. Standard operating procedures were adopted that include coordinating the preferred project option selection using an alternatives analysis required by the U.S. Army Corps of Engineers, Oregon Department of State Lands and the City of Portland's Environmental and Greenway Review Code for reviewing and approving

proposed activities. In order to coordinate consistent decisions between the multiple agencies, the protocols encourage city project teams to meet with the Streamlining Team at crucial phases of the project's planning and predesign so that agency input can be incorporated into the designs (Appendix D – *Pre-Application Procedure Guidance for Meeting with the City of Portland Streamlining Agency Team*).

The protocols identify the structure, content and management of the Team meetings including the role of the City's liaison to the Streamlining Team (commonly referred to as the permits compliance manager). The Team meetings give the multiple agencies with regulatory responsibilities over the proposed activity an opportunity to work in *a more unified manner to deliver timely, responsive and non-conflicting decisions*.

The pre-application communication protocols have a number of benefits:

- Early project design reviews give agencies a chance to provide input before a lot of time and money has been put into the designs,
- The preferred project option can be agreed upon or a process can be identified for coming to an agreement,
- Multiple agency requirements and concerns are identified,
- Conservation measures are identified and agreed upon,
- The Streamlining Team's Federal partners work to reach consensus on ESA Section 7 effects determination,
- Application review and approval timeframes can be discussed and agreed upon.

Section 3 - Process and Progress – The Streamlining Team/City Project Permitting Experience

The Streamlining Agreement has created a unified multi-agency review process involving multiple laws administered by seven agencies representing three levels of government. This has been accomplished primarily by agreed upon standard operating protocols whose purpose is to facilitate the sharing of information needed by the agencies for their review and approval of the proposed activity. The following information summarizes the progress that has been made between the City and regulatory agencies over the last 5 years.

Integration of Multiple Permits for City-Sponsored Projects since 2003

- Ninety-three permits were issued to twenty-three City-sponsored projects from the Streamlining Team’s participating agencies.
- Sixteen of these projects received permits from all three branches of government including five or more agencies.
- Five projects received permits from two levels of government.
- Two projects needed only one agency authorization e.g., concurrence letters from NMFS under an informal ESA Section 7 consultation

Streamlining Team Meeting History

Table 1 shows the number of Streamlining Team meetings and projects presented at the meetings from the time period covering September 2003 through April 2008. There were 39 projects presented at 44 Team meetings for a total of 77 presentations.

Table 1. Streamlining Team meeting and project permit history

	Sept. 2003– Sept. 2004	Oct. 2004–Sept. 2005	Oct. 2005–Sept. 2006	Oct. 2006–Sept. 2007	Oct. 2007- April 2008	Total
# of Streamlining Team meetings	11	11	8	8	6	44
# of Projects Presented	14	25	18	12	8	77*

* Most projects presented at two or more team meetings (A total of 39 city-sponsored projects were presented)

Project Permit History

Table 2 shows the number of agency permits that have been issued annually to the City since 2003. There were 93 permits issued to the City from the Streamlining Team member agencies. Permits were received from the Corps, NMFS, DSL, DEQ, and the City’s Bureau of Development Services (The use of “permit” implies Corps and DSL permits, City/BDS Greenway and Environmental review decisions, NMFS biological opinions and DEQ Water Quality Certifications).

Table 2. Project Permit History

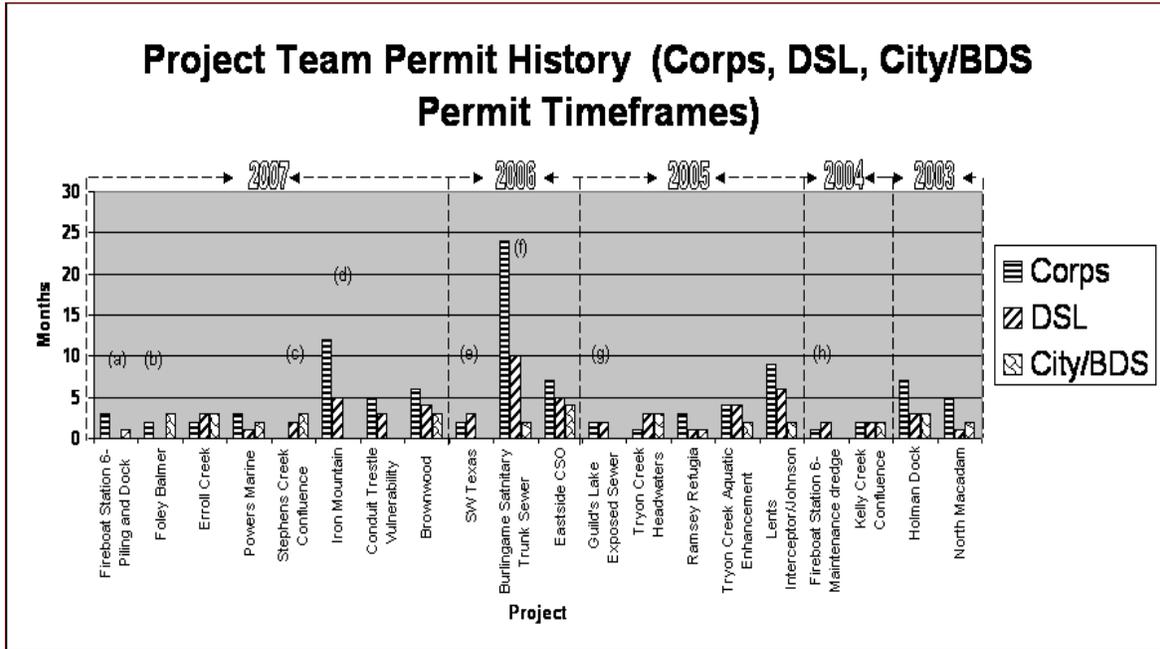
	2003 (includes Sept. – Dec.)	2004	2005	2006	2007	2008 (includes Jan. – April)	Total
No. of Corps Permits issued	2	3	4	2	5	6	22 ^a
No. of DSL Permits	2	2	4	3	6	3	20 ^b
No. of City/BDS Environmental Review decisions	1	3	2	3	1	0	10 ^c
No. of Greenway Review decisions	2	0	0	3	1	1	7
No. of Biological Opinions	0	2	4	0	4	0	10 ^d
No. of SLOPES Authorizations	2	0	0	1	1	2	6
No. of DEQ Water Quality Certifications	2	2	5	0	5	4	18 ^e
TOTAL	11	12	19	12	23	16	93

- a. Twelve Nationwide permits and 10 Individual permits
- b. Six General Authorizations and 14 Individual permits
- c. Four Type I and Six Type II Reviews
- d. In addition, there were three informal (“Not Likely to Adversely Affect”) determinations resulting in concurrence letters
- e. Includes pre-certified as well as issued water quality certifications

Time Taken from Submittal of Applications to Receiving Permits

Figure 2 presents the time it has taken for each City sponsored project to receive approval from the permitting agencies on the Streamlining Team once the application was submitted.

Figure 2. Time taken for each project to receive approval after permit applications are submitted



- a. DSL permit not required
- b. DSL permit not required
- c. Corps permit and Biological Opinion pending
- d. Note: Corps allowed the City to stabilize an exposed sewer manhole during the summer of 2007 under Nationwide permit numbers 18 (Minor Discharges) and 33 (Temporary Construction, Access, and Dewatering)
- e. City/BDS permit not required
- f. Note: Corps allowed the City to repair (line) the leaking pipe under a Nationwide 12 (Utility Line Activities) authorization during the summer of 2006.
- g. City/BDS permit not required
- h. City/BDS permit not required

Table 3 shows the average time it has taken to receive a permit from the Corps, DSL and the City's Bureau of Development Services each year since 2003.

Table 3. Average time taken to receive a Corps, DSL and City/BDS permit by year

Year	Average time to receive a permit		
	Corps (Review times ranged from 1-24 months)	DSL (Review times ranged from 1-18 months)	City/BDS (Review times ranged from 1-4 months)
2003	6.5 mo.	2 mo.	2.5 mo.
2004	4 mo.	2 mo.	2 mo.
2005	2.5 mo.	3.2 mo.	2.25 mo.
2006	4.5 mo.	6 mo.	3 mo.

2007	3.8 mo.	3 mo.	2.5 mo.
2008	15.66 mo.**	***	***
Six Year Average	6.16 mo.	3.24 mo.	2.45 mo.

* Seventeen separate federal, state and city project applications were submitted at the same time. The remaining four project applications were submitted within one month of each other.

** Two projects with lengthy federal agency reviews contributed to the longer average time e.g., the Burlingame Sanitary Trunk Sewer Rehabilitation project (BES) (24 months; (Corps # 2005-00735)) and the Iron Mountain Sewer Repair Streambank Restoration project (BES) (18 months; (Corps # NWP-2006-579)) .

*** DSL and City/BDS approvals for the 2008 Corps approved activity were received in 2007.

City Bureau use of the Streamlining Team

Table 3 shows the number of times city bureaus presented at the Streamlining Team meetings. Nine City Bureaus have used the Streamlining Team meetings to receive input from the agencies.

Table 4. City Bureau Contacts with the Streamlining Agency Team between 2003 and 2008

	Sept. 2003-Sept. 2004	Oct. 2004-Sept. 2005	Oct. 2005-Sept. 2006	Oct. 2006-Sept. 2007	Oct. 2007-April 2008
BES	8	20	14	8	2
PDOT/BOM	3	1	1	0	0
Parks	1	1	1	2	3
Water	0	1	1	1	2
PCD/BHCD	0	1	0	0	1
Fire	2	0	0	0	0
BOP	0	1	1	1	0
TOTAL	14	25	18	12	8

BES – Bureau of Environmental Services; PDOT/BOM – Portland Department of Transportation/Bureau of Maintenance; Parks – Portland Parks and Recreation; Water – Bureau of Water Works; PDC – Portland Development Commission; Fire – Fire Bureau; BOP – Bureau of Planning

Section 4 - Discussion

The City’s Streamlining Team approach shares many similar elements to existing state and federal streamlining models⁷ such as, encouraging early involvement with the permitting agencies, identifying agencies and permits that will be involved with the proposed activity as well as agency concerns/suggestions that can be wrapped into the project design. The use of a permits compliance manager is an emerging tool used by the City and other governmental streamlining processes for increasing the effectiveness of communications between agency representatives and the applicant, ensuring standard operating procedures are followed and permit conditions are followed through.

The following section discusses the Streamlining Team’s protocols and their effectiveness with facilitating consistent decisions among multiple agencies. Opportunities and challenges are also identified. The use of the term “challenge” is defined as the difficulty or inability to achieve consistent decisions between the multiple agencies. Challenges can occur when one or more agencies have different review procedures or lack similar decision-making criteria. The **Next Five Years** section presents recommendations that address some of these challenges in order to continue to improve this unique government to government partnership between the City of Portland and state and federal agencies.

City Coordination of the Agreement

The Permits Compliance Manager Role

The City created a liaison position to centralize contacts with the agencies regarding permitting and consultation questions in order to avoid confusion and to ensure that the individual working with the regulatory agencies possessed sufficient knowledge, skills and abilities of the laws and agency permitting requirements. After the signing of the Agreement, the permits compliance manager began serving as chair of the Streamlining Team and managing the goals and objectives

⁷ The Streamlining Team protocols share similar review and decision-making elements with state and federal permit streamlining efforts including: (1) Oregon Department of Transportation’s Charter Agreement for “A Vision for Joint Environmental and Transportation System Stewardship in Oregon: Collaborative Environmental Agreement” (CEA) (Participating agencies include; the Oregon Department of Transportation, Federal Highway Administration, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Army Corps of Engineers and five other state and federal agencies) and, (2) A Memorandum of Agreement for “Endangered Species Act Section 7 Programmatic Consultations and Coordination” between the Bureau of Land Management, U.S. Forest Service, National Marine Fisheries Service and U.S. Fish and Wildlife Service.

of the Agreement. The permits compliance manager's responsibilities continue to evolve but have included three related types of services:

- Assisting project managers and teams with early identification of potential agency permits required for the proposed activity. Depending on the level of assistance needs, the manager acts as the point of contact between the agencies and project teams for guidance throughout the project design, ensuring permitting issues are identified early in the planning and predesign.
- Ensuring the Streamlining Team roles and standard operating meeting procedures are understood and followed including:
 - Determining when project teams are ready to be scheduled for the Team meetings.
 - Scheduling and chairing monthly interagency Streamlining Team meetings.
 - Ensuring Team meeting notes are recorded.
 - Facilitating discussions between project teams and agency representatives.⁸
 - Determining when an issue needs to be resolved through an internal conflict resolution and elevation process.
- Ensuring permit requirements are clarified, roles and responsibilities are documented, and progress is tracked.⁹

A permit compliance manager can assist the project team through the multiple agency reviews by helping the team to understand and address many of the agency and permit application requirements and issues before they become problematic.

Conflict Resolution and Elevation Procedures

⁸ A City Council Memo (dated August 1, 2003) directed all bureaus, staff and consultants who might be involved with federal or state agencies on ESA-related issues to contact the Permits Compliance Manager in order to ensure consistent communication between the federal and state agencies.

⁹ The permits compliance manager role was identified in various documents to be the City's designated person responsible for tracking current and future permit monitoring requirements. These sources include: the Army Corps of Engineers (letter from Larry Evans, Chief, Regulatory Branch, April 18, 2007); City Attorney's Office (Jan Betz, personal communication), Bureau of Environmental Services' *Permitting Roles and Responsibilities* (July 25, 2007); Memo from City Council, *Coordination of state and federal permits related to the Endangered Species Act* (August 1, 2003).

The Streamlining Team recognizes that there may be times when disagreements need to be resolved through conflict resolution and elevation procedures.¹⁰ The most common elevated issue has involved longer agency review timeframes than originally expected due to the following:

- The project team has not allowed enough time to meet the agency review timeframes
- The agency review has been delayed for a variety of reasons.

When conflicts occur, elevation procedures have been designed to allow the agency staff to resolve emerging problems (See standard operating procedures in Appendices B and D). The procedures stress the importance of allowing the Streamlining Team to resolve problems before they are elevated to a level 2 team consisting of managers. Processes have been developed to ensure the conflict is addressed in a timely and efficient manner. The processes call for the City's permits manager (referred to as Team Coordinator in the federal standard operating procedures) to be notified in order to coordinate the elevation procedures.

It is important that the elevation procedures be followed in order for them to work. Challenges to an effective resolution of the problem occur when the permits manager is not notified, the procedures are not followed, and/or agency and city directors are contacted before the Streamlining Team has been given the opportunity to address the problem.¹¹

Achieving Decision-Making Consistency between the Agencies

In addition to providing project teams with early agency input into the project predesigns, the Streamlining Team's standard operating procedures are designed to *improve coordination and communication among the agencies*. Through increased interagency communications, the hoped

10 Other governmental streamlining processes have elevation procedures incorporated into their agreements including the Oregon Department of Transportation's CETAS Charter Agreement and the federal Streamlined Consultation Procedures for Section 7 between the Forest Service, BLM, NMFS and USFWS. All of the elevation procedures operate under the basic premise that they are to be used only when staff cannot resolve an issue.

11 There has been one elevation to the level 2 team of managers since the standard operating procedures were adopted in 2003. The Streamlining Team process is designed to work through conflicts associated with project designs and permit requirements. Common challenges to the conflict resolution process occur when managers want to insert themselves into the process before the issue has been formally elevated.

for outcome is consistent decisions between the agencies and that agency decisions will occur within the same time period whenever possible.

While all of the laws administered by the Streamlining Team’s participating agencies share similar environmental protection goals,¹² they also share similar review procedures and jurisdictional coverage. In order to carry out an effective and efficient coordination of multiple governments and agencies, it is important to understand how each law’s decision-making requirements compare including any potential coordination opportunities and challenges.

Agency decision-making guidance compared in this report include: (a) the alternatives analysis, (b) mitigation requirements for unavoidable impacts, (c) internal agency decision-making guidance, (d) jurisdictional coverage, (e) streamlined or expedited approval, and (f) the agencies ability to coordinate and involve other agencies during the review of the proposed activity.

Recommendations are provided at the end of this report that build on existing opportunities and improve upon the challenges for ensuring the Streamlining Team will operate successfully for the next five years.

Selection of the Preferred Project Design - The Alternative Analysis and Mitigation

The Corps, DSL and City/BDS (e.g., City’s Environmental Code) administer laws that require an applicant to show that the preferred option is the “least damaging practicable alternative” and the “best design option based on the resources and functional values found on the site.”¹³ To help

12 The agencies participating in the Streamlining Agreement share similar environmental protection goals: (a) Under the **Corps** consolidated review of all federal and state laws applicable to the proposed action under their jurisdiction (ESA and CWA among other laws), the Corps final permit decision is designed to *protect, conserve, restore and maintain the physical, chemical and biological integrity of waters of the U.S.*, (b) The **Department of State Land’s Removal Fill Law** requires that the proposed activity’s impacts be consistent with the *protection, conservation and best use of the water resources of the state*, (c) The City’s **Greenway Program**, including the **Greenway Plan and code** (adopted by City Council Ordinance 148537), was established in 1979 to meet the requirements of the Statewide Land Use Planning Goal 15 mandate to “*protect, conserve, maintain, and enhance the scenic, natural, historical, economic, and recreational qualities of lands along the Willamette River*”, (d) The City’s **Environmental Code regulations** derive from Title 3 of Metro’s Urban Growth Management Functional Plan (Metro Code 3.07.340.B) and Oregon’s Statewide Planning Goals are intended to *protect resources and functional values* that have been identified by the City as *providing important public benefits*.

13 The **Corps** selection of a preferred project is guided by the *Environmental Protection Agency’s Section 404 (b) (1) Guidelines for Alternatives Requirements* for determining compliance with the *Clean Water Act*. The selected alternative must be evaluated in accordance with the *Environmental Impact Assessment under NEPA (33 CFR Part 320.4 (a)(2)(ii) and 40 CFR Part 230.10(a))*; **DSL** requires the project proponent to include the project’s **purpose and need** including an alternatives analysis of the preferred project design. **DSL’s** authority to approve or deny

facilitate the sharing of this required information, the Streamlining Team’s standard operating protocols encourage early presentation of the proposed project’s alternatives analysis.

Challenges can occur when an alternatives analysis is not required of the applicant.

When the project’s alternatives analysis is presented to the Streamlining Team early in the project’s predesign, potential agency permit pathways and consultation roles are identified for the proposed activity. This early input also provides opportunities for the project team to incorporate agency concerns into the design before considerable time and money has been spent on the project. If the selected option has unavoidable impacts associated with it, mitigation requirements can also be identified. These discussions between the agencies can increase opportunities for consistent agreement on the preferred alternative and mitigation requirements.

Challenges to achieving a unified decision regarding the applicant’s preferred design exist with the Greenway Code lacking an alternative analysis requirement for applicants. Currently only activities that are proposed within the River Water Quality Overlay Zones along the Willamette River require an impact evaluation.¹⁴ Other Greenway Overlay Zones do not require an alternatives analysis (e.g., River Industrial Overlay Zone, River Recreational Overlay Zone, River Natural Overlay Zone, River General Overlay Zone). Without an opportunity to require applicants to show that the preferred project option is the “best design option” based on an alternatives analysis, there will be challenges to consistent, coordinated decisions through the Streamlining Team.

Mitigation is required when there are no practicable alternatives to the proposed activity’s impacts. All three levels of government follow similar protocols for determining if the project will be required to mitigate for unavoidable impacts to the environment.¹⁵ Challenges can occur

individual permit applications is contained in the *Oregon Revised Statutes* (ORS 196.805) and guidance for carrying out this authority is contained in the *Oregon Administrative Rules* (OAR 141-085); **City/BDS** guidance for conducting an alternative analysis and mitigation are contained in *Title 33* of the *Zoning Code* (Chapters 33.430 and 33.440).

¹⁴ At the time of this writing, the Bureau of Planning is currently updating the Willamette Greenway Plan for the North Reach of the Willamette River as part of the River Plan. The North Reach includes the area of the confluence with the Columbia River south to the Fremont Bridge on the west side and the Broadway Bridge on the east side.

¹⁵ The Corps mitigation policy includes avoid, minimize, and then compensate for remaining unavoidable losses. DSL requires the applicant to follow the sequence of avoidance, minimization, and rectification. DSL will allow

when mitigation is required by one or more agencies but not by others. At the time of this writing all of the agencies share similar decision-making criteria for prioritizing on-site mitigation followed by off-site mitigation when the on-site mitigation goals cannot be reasonably obtained.¹⁶

A challenge to achieving consistent decisions between agencies occurs when there are differences of opinion over the need for mitigation and whether on-site or off-site mitigation will be required. If the agencies differ in their mitigation decisions, this creates not only inconsistencies between the agencies final decisions, but can also affect project budgets and timeframes. Different or inconsistent mitigation decisions between the agencies can also contribute to the applicant's poor perceptions of the permitting experience.

Internal Agency Guidance – Opportunities and Challenges

Each agency's laws and implementing regulations and policies differ regarding the direction given reviewing and approving a proposed activity including the amount of discretion that is allowed in arriving at a decision. The Streamlining Team increases opportunities for consistent decisions between the City, federal and state agencies but the probability for inconsistent interpretations will occur when individual agencies do not have clear internal guidance.

The Corps is guided by several memorandums and regulatory guidance letters for clarifying the Corps decision-making role with the administration of Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Examples include "*Standard Operating Procedures for the Corps Regulatory Program*" (Oct. 15, 1999); an "*Alternative Analysis Guidance*" for

mitigation only after these steps are followed. The City/BDS requires the proposed activity avoid or minimize the impacts. Mitigation is allowed only after these steps have been followed.

¹⁶ For decisions regarding on site versus off site mitigation, the **Corps** and **EPA** have formulated policy and procedures that demonstrate compliance with the Clean Water Act's Section 404(b)(1) Guidelines (40 CFR 230). When on site mitigation is not possible, the Corps is directed to determine what is "best ecologically", on a watershed basis (Regulatory Guidance Letter No. 02-2, Dec. 24, 2002). **DSL's** mitigation guidance follows a similar decision-making sequence of avoidance, minimization, and compensatory mitigation contained in the Oregon Revised Statutes (ORS 196.805) and Oregon Administrative Rules (OAR 185-085). Where on site mitigation is not possible, DSL requires the applicant to own or control the proposed off site mitigation area. Where a mitigation or remediation plan is required by either the **Greenway and Environmental Review** approval decision, the applicant's mitigation or remediation plan must demonstrate that the following are met: On site and as close as practicable to the area of disturbance; within the same watershed as the proposed use or development; within the of Portland city limits.

demonstrating compliance with the Clean Water Act (October 23, 2003); a “*Scope of Analysis and Alternatives*” guidance for complying with the National Environmental Policy Act (Regulatory Guidance Letter 88-13) and “*Federal Agencies Roles and Responsibilities*” for clarifying the Corps decision-making role with multiple participating agencies with the federal permit (Regulatory Guidance Letter 92-01).

The Department of State Lands is guided by the *Oregon Administrative Rules (OAR 141-085)* and *Standard Operating Procedures* (draft March 27, 2008) to help “*achieve consistent, thorough, and prompt decision-making* in applying provisions of the Removal/Fill Law, associated administrative rules, and formal guidance documents.”

The City’s Environmental Zoning Code gives specific direction through the code’s stated purpose to “*protect resources and functional values that have been identified by the City as providing benefits to the public*” (Chapter 33.430.010). The Code provides decision-making guidance within the environmental zones through the “*application of detailed studies that have been carried out within eight separate areas of the City.*” Furthermore, “*Each study report identifies the resources and describes the functional values of the resource sites.*” The City’s resource inventory reports spell out which resources (as well as functions and values) the city’s regulators are to protect in the environmental zones. The City’s Environmental Code requirement to protect resources and functional values is consistent with the other agency’s resource responsibilities.

The Greenway Overlay Zoning Code (Title 33, Chapter 33.440) and Plan (adopted by City Council Ordinance 148537), was established in 1979 to meet the requirements of the Statewide Land Use Planning Goal 15 mandate to “*protect, conserve, maintain, and enhance the scenic, natural, historical, economic, and recreational qualities* of lands along the Willamette River”. Under Oregon Revised Statute requirements (ORS 390.310 to 390.368)¹⁷, other State Planning

¹⁷ ORS 390.314 Legislative findings and policy states; “The Legislative Assembly finds that, to protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River, to preserve and restore historical sites, structures, facilities and objects on lands along the Willamette River for public education and enjoyment and to further the state policy established under ORS 390.010, *it is in the public interest to develop and maintain a natural, scenic, historical and recreational greenway upon lands along the Willamette River to be known as the Willamette River Greenway.*”

Goals (Goals 5, 6, and 7)¹⁸, Portland Area Metropolitan Service District (Metro) regional *Urban Growth Management Functional Plan (Metro Code 3.07.340.B Title 3)*,¹⁹ and the City’s Comprehensive Plan policies and objectives, the Greenway Program addresses additional public goals as well including: recreational opportunities, flood protection and control, public access, and creation of an aesthetic urban environment.

There are opportunities for consistent decisions to be made between the Corps, DSL and BDS Environmental Zoning Code staff based on existing internal agency guidance. The current challenge with the Greenway Code is that it is a complex code with little internal guidance for interpreting the multiple goals particularly when the goals are potentially in conflict with each other.

Current draft code language to the Greenway Code, through the River Overlay Zone Code, states that decisions must be consistent with DSL and the Corps: “... *the conditions of the approval for reviews must be generally consistent with the decisions or recommendations make by DSL and the Corps regarding mitigation, project design and conditions for the proposal.*” (33.475.300(D)(2)(g), *draft River Overlay Zones July, 24,2008*).

The Streamlining Team increases opportunities for consistent decisions between the City, federal and state agencies but without clear guidance for implementing the City Code in the lower Willamette River, conflicts may occur between competing uses of the land e.g., natural resource protection and economic use goals. Guidance language would assist City Greenway staff with

18 State law requires each city and county to adopt a comprehensive plan and the zoning and land-division ordinances needed to put the plan into effect. The City’s Comprehensive Plan is required to be consistent with the Statewide Planning Goals. There are 19 Statewide Planning Goals in all. The State of Oregon’s Department of Land Conservation and Development Commission administers Oregon’s Statewide Planning Goals covering a variety of land use planning and related topics. Oregon’s planning laws apply not only to local governments but also to special districts (such as Metro) and state agencies. The laws emphasize coordination – keeping plans and programs consistent with each other, with the goals, and with acknowledged local plans.

19 Metro refers to the Portland Area Metropolitan Service District, the only regional government in the United States with a “home-rule” charter and directly elected officials serving residents in Clackamas, Multnomah and Washington counties, and the 25 cities in the Portland, Oregon metropolitan area. Metro was established to “plan and establish policies for preserving and enhancing the quality of life and the environment for present and future generations”; as well as providing regional services such as operating a solid waste disposal system and acquisition and management of a system of parks and open spaces. Title 3 refers to a Model Ordinance that describes specific performance standards and practices for floodplain, water quality and fish and wildlife habitat protection. Sections 2, 3, 4, and 5 of Title 3 implement Oregon Statewide Goals 5, 6 and 7. Goal 5 addresses fish and wildlife protection; Goal 6: Air, Water and Land Resources Quality and Goal 7: Areas Subject to Natural Disasters and Hazards.

consistent and supportable interpretations of the Code in the same manner as the Corps Regulatory Guidance Letters or DSL's Administrative Rules. Clear guidance language would also allow applicants to better determine the outcomes of the Review decision.

Jurisdictional Coverage – Opportunities and Challenges

All three levels of government are directed to review not only the immediate area where the proposed activity will occur but adjoining areas that appear to be outside the law's jurisdictional coverage. This type of review allows the agency to determine not only direct impacts but potential secondary and cumulative effects to the environment that might be associated with understanding the full scope of the project. *The opportunity presented by similar project area review requirements increases the potential for comparing the project's benefits and impacts and if needed, determining mitigation requirements. This comparison allows opportunities for more consistent agreement between the agencies.*

The Corps' scope of analysis is referred to as the "*federal action area*". The federal action area is defined (33 CFR 325 Appendices B and C) to include all waters of the U.S. as well as any additional area of non-waters where the Corps determines there is *adequate federal control and responsibility to include it in the action area*. The action area always includes *upland areas in the immediate vicinity of the waters of the U.S. where the regulated activity occurs*. The Corps analyzes all potential adverse environmental effects within the action area.

DSL defines the proposed "*project area*" to mean the physical space in which the removal fill takes place (OAR 141-085). The project area will *include the entire area of ground disturbance, even though not within waters of the state, including upland staging areas and access ways, both temporary and permanent* to meet the laws intent.

The Greenway's code regulations come into play when an activity is proposed within one of the designated overlay zones and the activity does not meet exempted criteria. Depending on the type of activity, Greenway regulations can *require review and conditions placed on activities landward of the top of bank within the overlay setback as well as riverward of the setback if it is deemed necessary*. This can include activities such as resource enhancement, utility line

maintenance and construction, grading, excavating, filling of soil for any reason and other topography altering activities below the ordinary high water mark.

The Environmental code regulations come into play when an activity is proposed within an environmental zone and the activity does not meet exemption criteria. Unlike the diverse designated uses of the Greenway overlay zones, the Environmental zones are more generally categorized as either protection or conservation zones located within the “*vegetated streamside corridor*” as well as “*significant upland wildlife habitat.*” While more focused on riparian zones, *there are specifically defined activities at or below the ordinary high water mark* that the Environmental regulations will review including resource enhancement activities as well as where zones have been mapped “to the centerline” of the waterbody.

From the standpoint of the Streamlining Team protocol’s intent to coordinate multiple agency reviews of the project, the opportunity presented by similar project area review requirements *increases the potential for comparing the project’s benefits and impacts and if needed, determining mitigation requirements.* This comparison allows opportunities for more consistent agreement between the agencies.

Streamlined Permit/Review Pathways - Opportunities and Challenges

The Corps, DSL and BDS laws applicable to the Streamlining Agreement offer opportunities to expedite or streamline the review and approval for specific proposed activities, except for the Greenway Zoning Code. Projects that meet the streamlining criteria for these different laws share the concept that the proposed activities are small enough in scale and their impacts are minimal (if any) and predictable.²⁰ *Streamlined permit and review opportunities allow smaller impacting proposed projects to move through the agency review processes in a more expedited manner.*

20 Agency streamlining opportunities include: (a) **Corps’ Nationwide Permits** (NWP) authorize certain activities requiring permits under Section 404 and Section 10 that are substantially similar in nature and can be accomplished with *minimal environmental impacts*, individually as well as cumulatively. (b) **Oregon Department of Environmental Quality’s Section 401** program has “precertified” some of the Corps NWPs allowing the activity to receive a Corps permit without a water quality certification. (c) The **Removal Fill Law allows the Department of State Lands** to grant **General Authorizations** for removal and fill activities that cause only *minimal individual and cumulative environmental impacts*, and would not result in long-term harm to water resources of the state. (d) The **National Marine Fisheries Service’s programmatic biological opinion for SLOPES (Standard Local Operating Procedures for Endangered Species)** allows the Corps to authorize activities that are *minor and repetitive* and will be in compliance with the federal Endangered Species Act and Section 7 consultation

Challenges occur when one of more agencies/laws do not offer expedited review opportunities compared with others that do for the same activity. This creates inconsistencies in the treatment that applicants are receiving from the different permitting agencies. As an example, the Greenway Overlay Code requires applicants to complete a full review (when required) even when state and federal laws allow an expedited review of the proposed activity.

Without the means to provide an agency review that is commensurate with the proposed project's impacts, the different agency decisions can not only make it difficult to estimate overall project budgets and construction timeframes, but creates the potential for a much more confusing permitting experience for the applicant.

Ability to Coordinate with other Agencies and Laws Triggered by the Proposed Activities - Opportunities and Challenges

The agencies differ in their requirements and ability to coordinate with other agencies during the review of proposed activities. Each permitting agency has potentially two types of coordination with other agencies. One type of coordination is through the public review. The second type, commonly referred to as the consolidated review, involves other laws and agencies in the application review beyond those of the primary permitting agency. These additional agency reviews can be either required by law or included at the discretion of the primary agency reviewing the proposed activity.

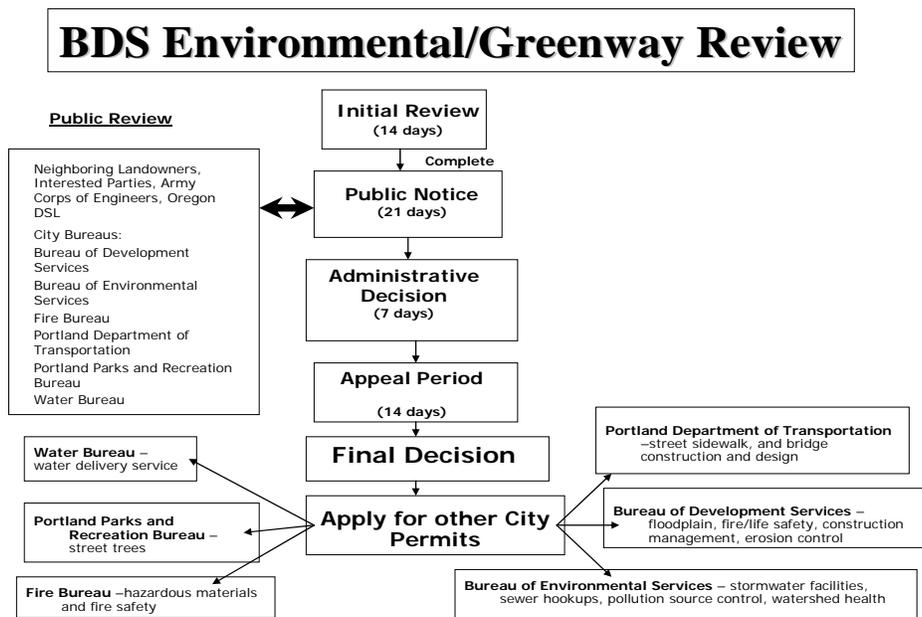
The Public Review

The Corps, DSL and the City/BDS all require public reviews during the permit application review that allows some limited intergovernmental coordination. The public review involves a diverse segment of the public including local, state and federal agencies, adjoining landowners, interested parties, and affected Indian tribes. The City/BDS uses the public review to learn not

requirements. (e) **Bureau of Development Service's Environmental Zoning Code** offers clear measurable and objective development standards that create streamlined approval opportunities. The *Environmental Plan Check* lists the objective standards that the proposed activity must meet to qualify. It is a "non-discretionary" process that allows for a quicker decision than an environmental review.

only of the public’s concerns for the project but also of concerns from the different bureaus within the City as well as the Corps and DSL (Figure 3).

Figure 3. Bureau of Development Service’s Environmental and Greenway Review

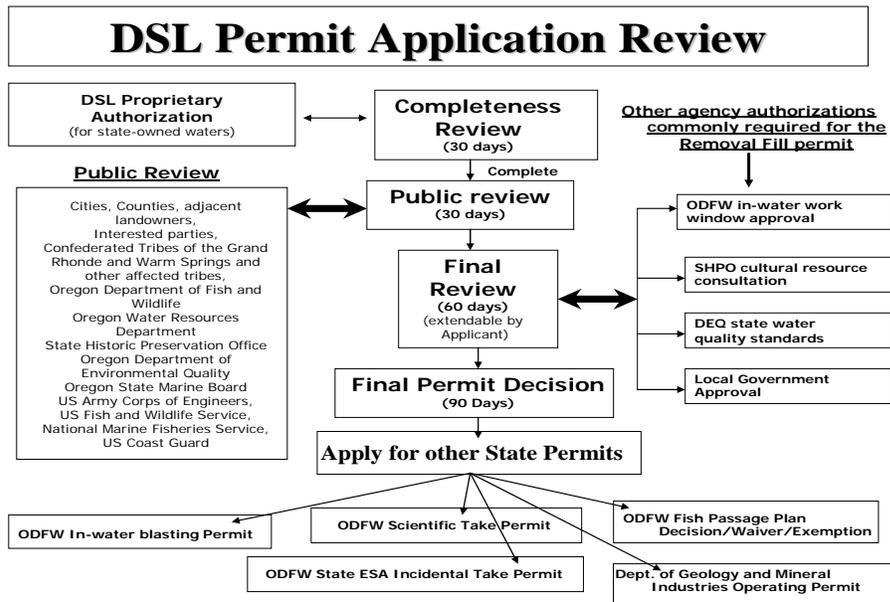


DSL uses the public review to learn of other state interests and can include these as conditions of the Removal Fill permit. (Figure 4).

Among the factors that DSL must consider in reviewing the proposed activity, priority is given to proposed activities that are in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged local comprehensive plan and zoning ordinance. The Department will not issue an individual removal-fill permit for a project that is

“not consistent or compatible with the local comprehensive land use plan and/or land use regulations.” (141-085-0029(3)(d)).

Figure 4. DSL’s Permit Application Review

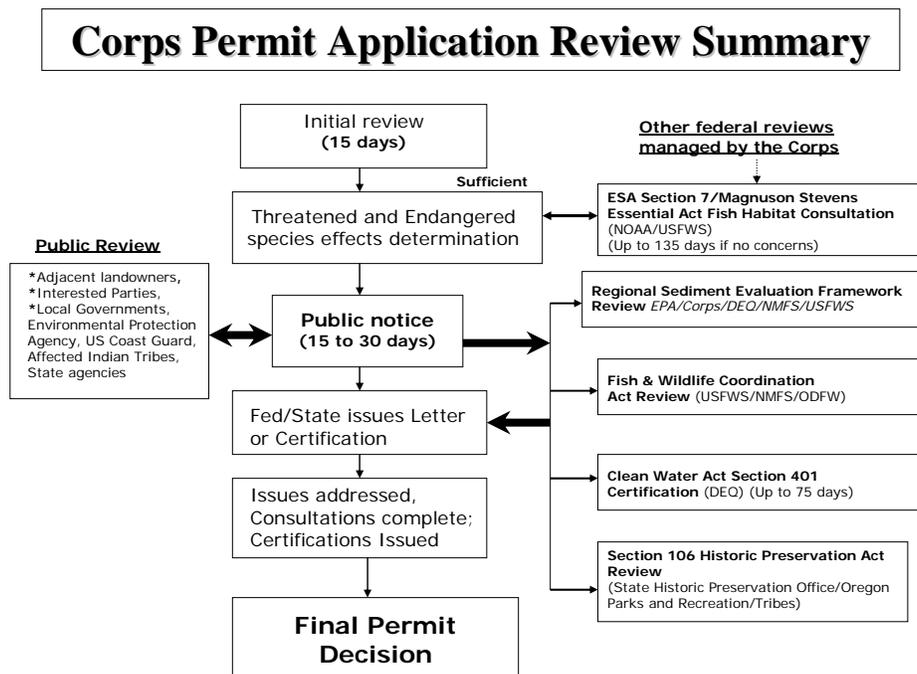


In many cases, consistent coordination between the federal, state and local levels of government occurs through the public review. *The City’s Streamlining Team’s standard operating procedures allows for increased intergovernmental coordination during the review of proposed activities that can increase opportunities for consistent decisions between the federal, state and local governments.*

Ability to involve other agencies in the Review - Consolidated Agency Reviews

For all proposed activities that fall under their jurisdiction, the Corps manages a consolidated agency review and permitting process (**Figure 5**). Under the National Environmental Policy Act (NEPA) the Corps must consider how other federal laws may be triggered by the proposed activity. For those federal laws that require a permit, consultation or certification, the Corps is responsible for ensuring these are completed before they will issue a final determination. Other federal laws require federal consultations. For example, under Section 7 of the Endangered Species Act, the Corps is required to consult with the National Marine Fisheries Service and the U.S. Fish and Wildlife Service to ensure that the proposed action will not jeopardize listed species and/or will not adversely modify critical habitat. The Corps will also consult with state agencies such as the state Oregon Department of Environmental Quality as a result of delegated authority given to the state by the Environmental Protection Agency for implementing Section 401 of the Clean Water Act.

Figure 5. Corps Permit Application Review



The DSL and City/BDS do not manage consolidated permit application reviews with other agencies. While the Department of State Lands Removal Fill law requires an extensive public review that includes all applicable state agencies, it does not require other state permit

requirements applicable to the proposed activity be obtained *before* DSL issues a permit. Unlike the coordination requirements of some federal laws, the Removal Fill permit review and other state approvals can have their own separate review and approval processes and timeframes. Nonetheless, under the authority of the Removal Fill law to protect waters of the state, the Department of State Lands commonly exercises their authority to require the applicant to meet other pertinent state laws through conditions applied to the Removal-Fill permit.²¹

The City's **Greenway and Environmental Codes** require applicants to obtain the final Review decision before other city permits can be acquired.²²

There are opportunities as well as potential challenges associated with consolidating other agency permits and consultations into one single permit. An obvious opportunity is the assurance that all other laws applicable to the proposed activity are met. If multiple reviews can occur concurrently without significant delays, consolidated reviews can be a valuable streamlining mechanism. The challenge is the potential delay that can occur while one or more of the agency issues are addressed.

Probably the most significant risk to an agency not able to consolidate the review and approval of a proposed activity with other applicable permitting agencies is the possibility that an earlier permitted project design will be changed by other permit requirements. This would require modifying the original permit with the potential for added review times, later construction start dates and altered projected budgets. In addition, if the applicant does not understand the

²¹ Depending on the location, scope and nature of the proposed activity, the DSL Removal-Fill permit review can involve up to five state agencies including; **Oregon State Historic Preservation Office** (cultural and archeological review); **Oregon Department of Fish and Wildlife** (In-water work period approval; ESA Incidental Take Permit; Fish Passage Plan Decision/Exemption); **Oregon Parks and Recreation Department** (Scenic Water Way Requirements); **Oregon Department of Land Conservation Development** (Land Use conditions); **Department of Geology and Mineral Industries** (Operating Permit).

²² City Bureaus that can potentially issue a permit to the applicant after the Review is completed include: **Bureau of Development Services** (floodplain, fire/life safety, construction management, erosion control), **Bureau of Environmental Services** (stormwater facilities, sewer hookups, pollution source control, watershed health), Fire Bureau (hazardous materials and fire safety issues), **Portland Department of Transportation** (street sidewalk, and bridge construction and design issues), **Portland Parks and Recreation Bureau** (street trees), **Water Bureau** (water delivery service).

requirement to modify permits that are not in alignment with the final project design, an enforcement action can occur if the action taken is different from the permitted activity.

In summary, the Corps is able to consolidate and coordinate all applicable federal authorizations into one final permit decision. While not a requirement, the DSL, through the powers vested in the Removal Fill law, is able to apply conditions to the permit to meet or address many but not all state and local requirements. The City's Greenway and Environmental Reviews currently do not consolidate other required city bureau permits into the final decision.

The City's Streamlining Team's standard operating procedures allows for increased intergovernmental coordination during the review of proposed activities. The benefits arising from the Streamlining Team's coordination efforts includes consistent decisions between the federal, state and local governments and that final permit decisions will occur within the same time period whenever possible.

Section 5 - The Next Five Years

The Streamlining Agreement has increased opportunities for multiple agency coordination for issuing permits for proposed City activities. The streamlined process includes *improved coordination and communication not only between the permitting agencies and project applicants but also between the permitting agencies as well.* Early involvement with the permitting agencies can identify agency concerns/suggestions that can be wrapped into the project design. Discussions between the permitting and consultation agencies can increase the probability that consistent decisions will be made between the agencies and that agency decisions will occur within the same time period whenever possible.

The laws administered by the Streamlining Team's participating agencies share many similar review procedures and jurisdictional coverage. Effective coordination among the agencies requires an ability to arrive at similar decisions. Agency decision-making guidance was compared in Section 4 including a discussion of opportunities and challenges. Recommendations are provided at the end of this report that build on existing opportunities and improve upon the challenges for ensuring the Streamlining Team will operate successfully for the next five years.

Expanding Streamlining Team Opportunities for the Private Sector

Interest in providing private sector access to the City’s Streamlining Team originated from the City of Portland, Bureau of Planning’s River Plan discussions.²³ The Streamlining Team is currently set up to assist city-sponsored projects based on the terms of the Streamlining Agreement. While there have been some public-private partnerships that have benefited from the current arrangement, it is currently a government to government agreement between the City and federal and state agencies set up to assist city-sponsored activities through multiple permit reviews. The River Plan recommends a pilot optional “Enhanced Permit Coordination” process for private sector proposals in the north reach of the Portland Harbor. This process as currently proposed would be separate from the current Streamlining Team process.

In addition, the City is encouraging the Streamlining Team members to allow time after the regularly scheduled Team meetings to discuss private sector applications. No presentations will be required of the applicants. Eligible private sector applications will be those that require City Reviews (e.g., Greenway, River Plan, and Environmental) as well as Oregon Department of State Lands and Army Corps of Engineers permits.

These proposed changes will give the Streamlining Team members opportunities for coordinating reviews of private sector applicants that are seeking permits from all three levels of government.²⁴

23 The River Plan is an update of the 1987 Willamette Greenway Plan, zoning code and design guidelines. The Bureau of Planning River Plan manager, Sallie Edmunds, and staff presented the private sector expansion proposal to the Streamlining Team on September 19, 2006 and September 18, 2007. One of the River Plan task groups, the Permitting and Bank Design Task Group, also discussed the concept.

24 Interagency coordination is not only a goal of the Streamlining Agreement but is also called for by many of the laws administered by the member agencies. For example, the proposed language of the River Code states: “... *the conditions of the approval for this review must be generally consistent with the decisions or recommendations made by DSL and the Corps regarding mitigation, project design and conditions for the proposal.*” (33.475.300(D)(2)(g), *draft River Overlay Zones July, 24, 2008*). The Oregon Administrative Review for DSL’s Removal Fill law states: “*The Department will not issue an individual removal-fill permit for a project that is not consistent or compatible with the local comprehensive land use plan and/or land use regulations.*” (141-085-0029(3)(d)).

Recommendations for the Next Five Years

Based on the experience and progress made over the last 5 years, the Streamlining Team has agreed to the following recommendations for ensuring a successful next five years (See Appendix E for agency support letters):

1. Reaffirm a commitment by all the members of the Streamlining Team and River Trust Partners to the Streamlining Agreement.
2. Follow the agreed upon standard operating procedures and pre-application guidance.
3. Support the use of a Permits Compliance Manager position for coordinating communications between the City and the Streamlining Team including:
 - a. Acting as the contact person between the agencies and city project teams,
 - b. Chairing the team meetings,
 - c. Ensuring issued permit requirements are understood and followed through.
4. Continue to strive towards more consistent decisions between the participating agencies on the Streamlining Team including:
 - a. Agreement on the selection of the preferred option through the alternatives analysis;
 - b. Agreement on mitigation requirements including on-site and off-site mitigation.
5. Where applicable look to updating the City's Greenway Code that includes:
 - a. Requiring an impact evaluation/alternatives analysis for all Greenway Reviews;
 - b. Develop a two-track system that allows applicants to be able to receive a streamlined review for activities that meet measurable and objective development standards (e.g., similar to an Environmental Plan Check) in addition to a full review for those activities that do not meet the standards.
 - c. Develop standard operating procedures and/or other types of guidance for assisting the City and applicant with more consistent interpretations of the Greenway Code's goals and purpose statements.

The following includes recommendations for increasing opportunities for Streamlining Team review of private sector applications:

6. Aid private applicants with coordinated interagency reviews with the following:

- a. Create an optional “Enhanced Permit Coordination” process for projects in the Portland Harbor that require approval from city, state and federal resource agencies. This would involve a City/State/Federal coordination process that provides private applicants with the option of participating in a facilitated multi-jurisdictional pre-application meeting and permit coordination process. This pilot process will provide a venue for early information sharing and collaborative problem-solving between the applicant and regulatory agencies.

- d. It is recommended that meetings be scheduled on the same day that the city-sponsored projects are being heard by the agencies. Furthermore, it is recommended that the Team’s standard operating procedures be used as a model for organizing the meetings. The process as currently proposed will be separate from the Streamlining Team process.

- b. For private sector applications outside of the Portland Harbor area that are not participating in the enhanced permit coordination process, time will be set aside at the end of the regularly scheduled Streamlining Team meetings for regulators to discuss applications that require reviews by all three participating governments. The discussions will occur at the request of any of the participating agency members of the Streamlining Team. The time for this process will be coordinated with the City’s Permits Compliance manager so that the meeting room space will be available at the end of the regularly scheduled Streamlining Team meetings.

This page has been intentionally left blank.