

(iv) The project boundary (excluding surveying details) of all areas designated for recreational development, sufficiently referenced to the appropriate Exhibit G drawings to show that all lands reserved for existing and future public recreational development and the shoreline buffer zone are included within the project boundary.

(h) A report on aesthetic resources. The applicant must provide a report that describes the aesthetic resources of the proposed project area, the expected impacts of the project on these resources, and the mitigation enhancement or protection measures proposed. The report must be prepared following consultation with federal, state, and local agencies having managerial responsibility for any part of the proposed project lands or lands abutting those lands. The report must contain:

- (A) A description of the aesthetic character of lands and waters directly and indirectly affected by the proposed project facilities;
- (B) A description of the anticipated impacts on aesthetic resources from construction activity and related equipment and material, and the subsequent presence of proposed project facilities in the landscape;
- (C) A description of mitigative measures proposed by the applicant, including architectural design, landscaping, and other reasonable treatment to be given project works to preserve and enhance aesthetic and related resources during construction and operation of proposed project facilities; and
- (D) Maps, drawings and photographs sufficient to provide an understanding of the information required under this paragraph. Maps or drawings may be consolidated with other maps or drawings required in this exhibit.

(i) A report on land use. The applicant must provide a report that describes the existing uses of the proposed project lands and adjacent property, and those land uses which would occur if the project is constructed. The report may reference the discussions of land uses in other sections of this exhibit. The report must be prepared following consultation with local planning and land management authorities, and any federal or state agency with managerial responsibility for the proposed project or abutting lands. The report must include:

- (A) A description of existing land use in the proposed project area, including identification of wetlands, floodlands, and high value or important farm land identified pursuant to OAR 660, Division 33 and the coastal zone described in the Oregon Coastal Zone Management Program, and, land owned or subject to control by government agencies.
- (B) A description of the proposed land uses within and abutting the project boundary that would occur as a result of development and operation of the project; and
- (C) Aerial photographs, maps drawings or other graphics sufficient to show location, extent and nature of the land uses referred to in this section.

(j) Alternative locations, designs, and energy sources. The applicant must provide an environmental assessment of the following:

- (A) Alternative sites considered in arriving at the selection of the proposed project site;
- (B) Alternative facility designs, processes, and operations that were considered and the reasons for their rejection;

- (C) Alternative electrical energy sources, such as gas, oil, coal, and nuclear-fueled power plants, purchased power or diversity exchange, and other conventional and pumped-storage hydroelectric plants; and
- (D) The overall consequences if the License application is denied.

(15) Exhibit F consists of general design drawings of the principal project works described under (Exhibit A) and supporting information used as the basis of design. If the Exhibit F submitted with the application is preliminary in nature, applicant must so state in the application. The exhibit must consist of ink drawings, or drawings of similar quality, on sheets no smaller than 8 and one-half inches by 11 inches, drawn to a scale no smaller than 1 inch equals 50 feet for plans, elevations, and profiles, and 1 inch equals 10 feet for sections.

(a) The drawings must show all major project structures in sufficient detail to provide a full understanding of the project, including:

- (A) Plans (overhead view);
- (B) Elevations (front view);
- (C) Profiles (side view); and
- (D) Sections.

(b) The applicant may submit preliminary design drawings with the application. The final Exhibit F may be submitted during or after the licensing process and must show the precise plans and specifications for proposed structures. If the project is Licensed on the basis of preliminary designs, the applicant must submit a final Exhibit F for Department approval prior to commencement of any construction of the project.

(c) Supporting design report. The applicant must furnish, at a minimum, the following supporting information to demonstrate that existing and proposed structures are safe and adequate to fulfill their stated functions and must submit such information in a separate report at the time the application is filed. The report must include:

- (A) An assessment of the suitability of the site and the reservoir rim stability based on geological and subsurface investigations, including investigations of soils and rock borings and tests for the evaluation of all foundations and construction materials sufficient to determine the location and type of dam structure suitable for the site;
- (B) Copies of boring logs, geology reports and laboratory test reports;
- (C) An identification of all borrow areas and quarry sites and an estimate of required quantities of suitable construction material;
- (D) Stability and stress analyses for all major structures and critical abutment slopes under all probable loading conditions, including seismic and hydrostatic forces induced by water loads up to the Probable Maximum Flood as a appropriate; and
- (E) The base for determination of seismic loading and the Spillway Design Flood in sufficient detail to permit independent staff evaluation.

(d) The applicant must submit five copies of this part of the supporting design report described in paragraph (15)(c) of this section at the time preliminary and final design drawings are submitted to the Director for review. If the report contains preliminary drawings, it must be designated a "Preliminary Supporting Design Report."

(16) Exhibit G shall be a map of the project. All maps, plans, and drawings are required to be certified by a professional engineer registered by the Board of Engineering Examiners of Oregon as required by ORS 672.010 to 672.340 and shall bear the date and number of the certificate of registration of the professional engineer. The map must consist of ink drawings or drawings of

similar quality on sheets no smaller than 8 and one-half inches by 11 inches and no larger than 24 inches by 36 inches, drawn to a scale no smaller than one inch equals 1,000 feet. If more than one sheet is used, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicating that portion of the project depicted on that sheet. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within a reasonable period following the completion of project construction, a final Exhibit G showing the extent of such changes. The map must show:

(a) Location of the project and principal features. The map must show the location of the project as a whole with reference to the affected stream or other body of water and, if possible, to a nearby town or any other permanent monuments or objects, such as roads, transmission lines or other structures, that can be noted on the map and recognized in the field. The map must also show the relative locations and physical interrelationships of the principal project works and other features described under (Exhibit A).

(b) Project boundary. The map must show a project boundary enclosing all project works and other features described under (Exhibit A) that are to be Licensed. If accurate survey information is not available at the time the License application is filed, the applicant must so state, and a tentative boundary may be submitted. The boundary must enclose only those lands necessary for operation and maintenance of the project and for other project purposes, such as recreation, shoreline control or protection of environmental resources (Exhibit E)). Existing residential, commercial, or other structures may be included within the boundary only to the extent that underlying lands are needed for project purposes (e.g. for flowage, public recreation, shoreline control, or protection of environmental resources). If the boundary is on land covered by a public survey, ties must be shown on the map at sufficient points to permit accurate platting of the position of the boundary relative to the lines of the public land survey. If the lands are not covered by a public land survey, the best available legal description of the position of the boundary must be provided, including distances and directions from fixed monuments or physical features. The boundary must be described as follows:

(c) Impoundments. The boundary around a project impoundment must be described by one of the following:

- (A) Contour lines, including the contour elevation (preferred method);
- (B) Specified courses and distances (metes and bounds);
- (C) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or
- (D) Any combination of the above methods.

(d) Continuous features. The boundary around linear ("continuous") project features such as access roads, transmission lines, and conduits may be described by specified distances from center lines or offset lines of survey. The width of such corridors must not exceed 200 feet unless good cause is shown for a greater width. Several sections of a continuous feature may be shown on a single sheet with information showing the sequence of contiguous sections.

(e) Noncontinuous features.

(A) The boundary around noncontinuous project works such as dams, spillways, and powerhouses must be described by one of the following:

- (i) Contour lines;
- (ii) Specified courses and distances;

- (iii) If the project lands are covered by a public land survey, lines upon or parallel to the lines of the survey; or
- (iv) Any combination of the above methods.

(B) The boundary must enclose only those lands that are necessary for safe and efficient operation and maintenance of the project or for other specified project purposes, such as public recreation or protection of environmental resources.

(f) Ownership of property (keyed to the ownership information in Exhibit A), including all federal, state and private ownership, must be identified as such on the map by:

(A) Legal subdivisions of a public land survey of the affected area (a protraction of identified township and section lines is sufficient for this purpose); and

(B) In the absence of a public land survey, the location of the ownerships according to the distances and directions from fixed monuments or physical features. When a federal survey monument or federal bench mark will be destroyed or rendered unusable by the construction of project works, at least two permanent, marked witness monuments or bench marks must be established at accessible points. The maps show the location (and elevation, for bench marks) of the survey monument or bench mark which will be destroyed or rendered unusable, as well as of the witness monuments or bench marks. Connecting courses and distances from the witness monuments or bench marks to the original must also be shown.

(g) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired for easement or lease.

(h) Provisions for protection of special management areas as defined in OAR 690-51-170(2) or areas otherwise restricted from development within the project vicinity;

(17) Exhibit H shall be a technical evaluation subject to Director approval of the potential for cumulative impacts on the natural resources listed in OAR 690-51-190 through 690-51-250 resulting from the proposed project when considered with other existing, approved and proposed hydroelectric projects in the river basin.

{adopted 10-13-86; amended: 6-21-90; 4-30-93}

### **Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings**

690-51-130

(1) A contested case hearing shall be held on any License or Permit application in excess of 100 THP, and on any application for 100 THP or less, as determined necessary pursuant to 690-51-090 for which the Commission determines it is in the public interest.

(2) A public hearing shall be held on each application for a Preliminary Permit. The public hearing shall be held in a community near the proposed project with notice provided pursuant to (3) of this section.

(3) Notice of hearing shall be given to:

- (a) The applicant;

- (b) Persons who have requested the Department provide notice of Department activity on the project.
- (c) Property owners within the project vicinity;
- (d) The affected Tribe(s) as identified by the Legislative Commission on Indian Services;
- (e) The governing body(ies) of any affected county(ies) or city(ies); and
- (f) The planning department(s) of the affected county(ies) or city(ies) as provided by ORS Chapters 183, 537 and 543.

(4) The Director, through press releases or additional notices, also shall endeavor to provide general notice to individuals or organizations who have expressed an interest in the outcome of the proceedings.

{adopted 10-13-86; amended: 4-30-93}

#### **Time and Place of Hearings**

690-51-140 The time and place for holding hearings shall be fixed by the Director. In case no protest or objection against an application is filed by the time announced in the hearing notice, the contested case hearing may be heard at the Director's office in Salem.

{adopted 10-13-86; amended: 4-30-93}

#### **Filing of Protest and Remonstrances**

690-51-150 All protests and objections must be filed with the Director within the time specified in the notice.

NOTE: Rules pertaining to preparation, filing and service of protests are found at OAR 690-02-030 to 690-02-050.

{adopted 10-13-86; amended: 4-30-93}

#### **Standards for Evaluation**

690-51-160 The standards in OAR 690-51-170 to 690-51-290 implement the provisions of ORS 537.160, 537.170, 543.017, 543.225 and 543.255 for the review of all hydroelectric License or Permit applications. To be approved, a project must meet the general and resource specific standards in OAR 690-51-170 to OAR 690-51-260. Economic and need for power standards in OAR 690-51-270 and 690-51-280 must be met as well. When required, a project must also be reviewed with other projects pursuant to OAR 690-51-290.

{adopted 10-13-86}

#### **Protection of Designated Resource Areas and Special Management Areas**

690-51-170

(1) Proposed projects having effects on a designated resource area listed in OAR 690-51-030(1) or a special management area listed in section (2) of this rule, shall be consistent with the authorized use of the area. The Director, or Commission in actions where exceptions have been

filed to the Director's proposed order requiring Commission action, shall decide if a project is consistent only after review of input from the managing agency. If the Director or Commission approves a project that is not consistent, findings that support the action shall be made.

(2) Section (1) of this rule applies to the following special management areas:

- (a) National wildlife refuges;
- (b) National recreation areas;
- (c) State wildlife management areas;
- (d) State forests;
- (e) County parks;
- (f) City parks;
- (g) Special district parks;
- (h) Sites listed in or determined eligible for inclusion on the National Register of Historic Places;
- (i) Areas managed by federal agencies for study, inclusion or designation as a protected area under federal law or regulation; and
- (j) Areas under study by state agencies for inclusion in or designation as a protected area under state statute or regulation.
- (k) Protected areas designated by the Columbia River Basin Fish and Wildlife Program (1987); Northwest Conservation and Electric Power Plan (1991); Strategy for Salmon (1992); including amendments identifying protected areas (September 14, 1988 and August 8, 1990, August 13, 1992).

(3) All applications for projects in or affecting the Columbia Gorge as designated in ORS 390.460 shall be consistent with the policy in ORS 390.415 as determined by the Commission after considering the recommendation of the Oregon Columbia River Gorge Commission.

{ adopted 10-13-86; amended: 4-30-93 }

### **Mitigation, No Net Loss**

690-51-180

(1) The following standards on mitigation and no net loss are minimums. They apply to all natural resources in general. Resource specific rules may impose stricter standards. In order to approve an application, the Director, or Commission when exceptions have been filed to the Director's proposed order on the License or Permit, shall have due regard for and enter appropriate findings on the following standards:

- (a) Proposed mitigation must be in the project vicinity;
- (b) Proposed mitigation must be acceptable to the Director or Commission;

(c) All mitigation measures which reasonably can, shall be fully functional when the project begins operation; and

(d) The collective benefits of all mitigation measures must equal or exceed the collective adverse impacts on natural resources so there is no net loss of natural resources.

(2) In applying the standards in section (1), the Commission or Director shall:

(a) Consult with federal, state, and local resource agencies, and the appropriate affected Tribe(s); and

(b) Prefer mitigation that benefits the natural resource(s) affected, over mitigation that benefits some other natural resource(s). If mitigation that benefits the affected natural resource(s) is unacceptable or not possible, mitigation that benefits some other natural resource(s) may be considered.

(3) The standards in section (1) shall apply to the following natural resources: water quality; wildlife; scenic and aesthetic resources; historic, cultural, and archaeological resources; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Director's discretion, or the Commission's discretion in the case where an exception has been filed to the Director's proposed order, the standards in section (1) may apply to natural resource(s) not identified in section (3) that an applicant or interested party can demonstrate to be of value to the public. Anyone making a showing of value for a natural resource not listed in section (3) shall also propose, for consideration, a standard for the protection of the natural resource. If agreed by the Director, or Commission in cases where an exception has been filed to the Director's proposed order, and upon acceptable showing of public value, an applicant may propose enhancement or other mitigation of an unlisted natural resource to offset impacts on natural resources listed in section (3).

{adopted 10-13-86; amended: 4-30-93}

### **Water Resources**

690-51-190 The Director and Commission shall have due regard for water resources. In order to approve an application, the Director, or in cases where the final order is issued by the Commission, the Commission, shall enter appropriate findings on the following standards:

(1) There is available water to provide for reasonable operation of the proposed project;

(2) The proposed use will not preclude or interfere with any existing rights or permits for the use of water;

(3) The proposed use is consistent with the applicable State Water Resources Policies in OAR Chapter 690 Divisions 400, 410 and the Basin Program in OAR Chapter 690 Divisions 500 through 520 or, in the absence of a policy, the proposed use is consistent with the policies set forth in ORS 536.300-350;

(4) The project is consistent with achieving maximum economic development of the waters involved;

(5) The project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity;

- (6) The project will not constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved;
- (7) The project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes;
- (8) The project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control; and
- (9) Construction and operation of the proposed project shall comply with water quality standards established in OAR Chapter 340, Division 41. Exceptions to this standard may be allowed if permitted by Division 41 rules, granted by the DEQ and approved by the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission.

{adopted 10-13-86; amended: 4-30-93}

## **Fish Resources**

690-51-200

- (1) The Director and Commission shall have due regard for fish resources in general. In order to approve an application, the Director, or in cases where exceptions have been filed to the Director's proposed order, the Commission, shall enter appropriate findings on the following standards:
  - (a) Project facilities and operations will not have significant adverse impacts on fish populations;
  - (b) Project facilities and operations will not unreasonably interfere with upstream and downstream passage of fish through the project vicinity. The Director, or in cases where the final order is approved by the Commission, the Commission may make exceptions to this standard in special cases where fish populations have been significantly damaged by past activities and the proposed single or multiple-purpose project development will improve existing fish populations;
  - (c) Project facilities and operation have been designed to mitigate, to the greatest extent practicable, adverse impacts upon spawning, rearing or other habitat areas necessary to maintain the levels and existing diversity of fish species.
  - (d) Unavoidable adverse impacts on fish or to fish management programs will be mitigated;
  - (e) Project construction, timing and procedures are designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbance;
  - (f) All fishery protective measures are scheduled to be fully functional when the project commences operations; and
  - (g) The proposed project is consistent with ODFW management programs in force on the effective date of these rules.
- (2) The Director and Commission shall have due regard for wild game fish. No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the



Director, or in cases where exceptions have been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(a) A project, any part of which is located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish, shall include mitigation measures which:

- (A) Are located in the project vicinity;
- (B) Are in effect at the time of adverse impact or start of project operation, whichever comes first;
- (C) Will prevent a net loss to individual species of wild game fish;
- (D) Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource;
- (E) Are consistent with ODFW management plans and programs in force on the effective date of these rules; and
- (F) Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource(s).

(3) The Director and Commission shall have due regard for salmon and steelhead fish and habitat. No project shall be approved that may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission, shall enter appropriate findings on the following standards:

(a) If proposed at an undeveloped site, it is not reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat; and

(b) Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include measures that:

- (A) Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river;
- (B) Comply with wild game fish standards in paragraphs (2)(a)(C) and (D) of this rule if the affected salmon or steelhead populations contain wild fish;
- (C) Are consistent with ODFW fishery management plans and programs in force on the effective date of these rules;
- (D) Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project; and
- (E) Are in effect at the time of adverse impact or start of project operation, whichever comes first.

(4) In order to approve an application for a project within the Columbia River Basin, the Director, or in cases where exceptions have been filed on the proposed order, the Commission shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the NPPC's Columbia River Basin Fish and Wildlife Program. Certification of compliance by the NPPC shall satisfy this standard.

{adopted 10-13-86; amended: 4-30-93}

## **Wildlife**

690-51-210 The Director and Commission shall have due regard for wildlife. In order to approve an application the Director, or in cases where an exception has been filed on the proposed order, the Commission shall enter appropriate findings on the following standards:

- (1) The location, design, construction or operation of the proposed project shall not jeopardize the continued existence of animal species which have been:
  - (a) Designated, or officially proposed by the USF&WS, or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973; or
  - (b) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon; or
  - (c) Identified by the Oregon Fish and Wildlife Commission as threatened or endangered in Oregon.
- (2) The location, design, construction and operation of project facilities will minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes;
- (3) Project construction methods and scheduling will minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity;
- (4) Unavoidable adverse impacts on wildlife or wildlife habitat will be mitigated in the project vicinity by methods such as replacement of vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights;
- (5) The project is consistent with applicable ODFW management programs in force on the effective date of these rules; and
- (6) If, within the Columbia River Basin, the project is consistent with the provisions of the NPPC's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan. Certification of compliance by the NPPC shall satisfy this standard.

{ adopted 10-13-86; amended: 4-30-93 }

## **Plant Life**

690-51-220 The Director and Commission shall have due regard for plant life. In order to approve an application, the Director, or the Commission in cases where an exception has been filed to the Director's proposed order, shall find that the location, design, construction or operation of the proposed project shall not jeopardize the continued existence of plant species which are:

- (1) Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973; or
- (2) Identified by the Oregon Natural Heritage Data Base as endangered, threatened or limited in Oregon.

{ adopted 10-13-86; amended: 4-30-93 }

## **Recreation**

690-51-230 The Director and Commission shall have due regard for recreation. No project may be approved that would result in a net loss of recreation opportunities. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

- (1) Project facilities will be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities or opportunities;
- (2) The proposed project will not reduce the abundance or variety of recreational facilities or opportunities available in the project vicinity;
- (3) Unavoidable adverse impacts on non water-dependent recreation facilities, activities or opportunities will be mitigated in the project vicinity by providing replacement facilities or opportunities of the same or similar nature and abundance;
- (4) The project will not have significant adverse impacts on any unique, unusual or distinct natural feature which provides the focus or attraction for non water dependent recreational facilities or activities;
- (5) Unavoidable adverse impacts on any water-dependent recreational opportunity will be mitigated with replacement by or enhancement of another water-dependent recreational opportunity available in the project vicinity;
- (6) The proposed project will not cause the loss of or significant adverse impact to any water-dependent recreational opportunities of statewide significance; and
- (7) Adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water-dependent recreational opportunity of statewide significance, will be offset by enhancement to other element(s) of the same water-dependent recreational opportunity in the project vicinity.

{ adopted 10-13-86; amended: 4-30-93 }

## **Historic, Cultural and Archaeological Resources**

690-51-240

(1) The Director and Commission shall have due regard for historic, cultural, and archaeological resources. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

- (a) The project will not result in significant adverse impact(s) on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places;
- (b) The project will comply with state laws to protect Indian graves (ORS 97.740 - 97.760), historical materials (ORS 273.705 - 273.711) and archaeological objects and sites (ORS 358.905 - 358.955);

(c) Unavoidable adverse impacts on historic, cultural and archaeological resources will be mitigated in accordance with generally accepted professional standards; and

(d) Archaeological data of significance associated with a site not eligible for inclusion in the National Register of Historic Places will be recovered in accordance with generally accepted professional standards.

(2) Before filing an application for a License or Permit, developers shall consult with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate Tribes about Indian historic and cultural resources in the project vicinity.

{adopted 10-13-86; amended: 4-30-93}

### **Land Resources**

690-51-250 The Director and Commission shall have due regard for land resources. In order to approve an application, the Director, or in cases where an exception has been filed to the Director's proposed order, the Commission shall enter appropriate findings on the following standards:

(1) Adverse impacts on high value or important farmlands or agricultural land as identified in OAR 660 Division 33 as defined in the Federal Register, Volume 43, January 1978, shall be avoided, minimized or offset by acceptable mitigation.

(2) Adverse impacts on prime forestlands as defined by the city or county and by the Oregon Forestry Department shall be avoided, minimized, or offset by acceptable mitigation.

(3) Adverse impacts on wetlands as defined by OAR 141-85-010(20) or identified by the Oregon Natural Heritage Data Base will be avoided, minimized, or offset by acceptable mitigation.

(4) Project facilities shall be designed and located to avoid or minimize adverse impacts on:

(a) Outstanding scenic and aesthetic views and sights inventoried in city and county comprehensive plans as required by Statewide Planning Goal 5; and

(b) Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection.

(5) Project facilities will be designed and located to blend with adjacent features;

(6) Mechanical noise caused by the project complies with applicable noise standards in OAR Chapter 340, Division 35;

(7) The location, design, construction or operation of the project will not:

(a) Disturb fragile or unstable soils; or

(b) Cause soil erosion which would impair other water uses.

(8) Design, location, construction and operation of the proposed project will avoid or minimize adverse impacts on natural communities or geological features identified by the Oregon Natural Heritage Data Base as threatened or endangered in Oregon;

(9) Project facilities located in geologically unstable areas are designed with appropriate safeguards; and

(10) Project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation are designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions.

{adopted 10-13-86; amended: 4-30-93}

## **Land Use**

690-51-260

(1) The Director or Commission shall meet requirements established in 690-05-045 (Standards for Goal Compliance and Compatibility with Acknowledged Comprehensive Plans) in evaluating, or taking action on, a Permit or License for hydroelectric use.

(2) In the event of a land use dispute, as defined in OAR 690-05-015 (Definitions), the Department shall follow resolution procedures provided in OAR 690-05-040 (Resolution of Land Use Disputes).

{adopted 10-13-86; amended: 6-21-90; 4-30-93}

## **Economics**

690-51-270 The Director and Commission shall have due regard for project economics. In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission shall find that the applicant, along with all co-owners, possesses or has reasonable assurance of obtaining the funds necessary to cover estimated construction, maintenance, operating, mitigation and compensation costs.

{adopted 10-13-86; amended: 4-30-93}

## **Need for Power**

690-51-280 In order to approve an application, the Director, or in cases where the Commission approves the final order, the Commission shall find:

(1) There is a need for project power based upon:

(a) The forecasts of the Regional Conservation and Electric Power Plan of the NPPC or state energy demands under OAR 345-78-030; or

(b) Evidence of a contract for the sale of power.

(2) Section (1) of this rule shall not apply to applications for the following types of projects:

(a) Small facilities intended to supply power for on-site uses;

(b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;

(c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or

(d) Projects by public or municipal utilities which will serve only the applicant utility's customers.

{adopted 10-13-86; amended: 4-30-93}

### **Consolidated Review**

690-51-290

(1) The Director shall enter an order on the potential that the proposed project may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the same river basin. It is presumed that if there are other existing, approved or proposed projects, in the same river basin, there is a potential for cumulative impacts. This presumption may be rebutted by showing the impacts of the proposed project are so small in extent, short-termed or localized that there is no reasonable likelihood of cumulative impacts. The Director shall consult with the agencies listed in OAR 690-51-060 on cumulative impacts. Natural resources on which the potential for cumulative impacts will be considered are listed in OAR 690-51-190 through 690-51-250.

(2) If the Director determines the proposed project may have unacceptable cumulative impacts, a consolidated review shall be conducted. The review will cover all existing, approved and proposed projects in the same river basin. Existing and approved projects shall not be subject to any action by the Director or the Commission resulting from the consolidated review. If an applicant for a proposed project does not wish to be included in the consolidated review, the application may be withdrawn and refiled at a later date. The application may be subject to a later consolidated review if refiled.

(3) If two or more of the applications are competing for the same site, only one will be chosen to proceed in the consolidated review. Preference will be given to the project best suited to the site. Suitability shall be based on the criteria in OAR 690-51-320.

(4) The consolidated review shall be conducted as a contested case hearing. Applicants and owners of all existing, approved and proposed projects in the affected basin will be advised of the need for a consolidated review contested case hearing. Applicants and owners shall be advised not less than 90 days before the hearing so they may prepare. Notice advising of the need for a consolidated review shall be sent by registered or certified mail. Separate notice will be given when the hearing actually is to take place. This notice will be as provided in OAR 690-51-130 and required by ORS 183.415.

(5) The consolidated review shall include a study of the individual and cumulative impacts each project would cause on the natural resources discussed in OAR 690-51-190 through 690-51-250. Cumulative impacts on any given natural resource shall be considered unacceptable if the level of impact would exceed any of the natural resource standards set forth in OAR 690-51-190 through 690-51-250.

(6) The purpose of the consolidated review will be to determine if the individual and cumulative impacts of proposed projects meet the natural resource standards in OAR 690-51-190 through 690-51-250. If the individual impacts of the applicant's project would exceed any of the resource standards, the application shall be rejected. When cumulative impacts on a natural resource would violate the natural resource standards, proposed projects in the consolidated review will be chosen for further consideration on the basis of the following criteria:

- (a) Contribution to cumulative impact(s) - projects exhibiting lesser potential contribution to cumulative impact(s) will be preferred over projects exhibiting greater potential contribution to cumulative impact(s);
- (b) Individual impacts on natural resources - projects potentially causing impact on a lesser number of natural resources and/or having a lesser degree of impact on a given resource shall be preferred over projects potentially affecting a greater number of natural resources or having a greater degree of impact on a given resource;
- (c) Project suitability - projects making more efficient use of water, developing more capacity, having greater annual output or producing more revenue will be preferred over projects that are less efficient, develop less capacity, have less annual output or produce less revenue;
- (d) Mitigation - projects proposing more desirable mitigation in terms of restoration, improvement or enhancement will be preferred over projects proposing less desirable mitigation; and
- (e) If no distinction can be made on the criteria in (a) through (d), the final basis of decision will be priority of filing.

(7) Following the conclusion of the consolidated review contested case hearing, the Director will enter an order stating the findings on each proposed project included in the review. Applications for projects not selected for further consideration on the basis of criteria in section (5), shall be rejected.

(8) Any application not filed in time to be included in the notice of contested case hearing for a consolidated review shall not be reviewed until after the Director, or in cases where an exception has been filed to the proposed order, the Commission, has entered the final order on the proceeding.

(9) If there is only one proposed project in the river basin, the Director may initiate consolidated review proceedings at the applicant's request.

{ adopted 10-13-86; amended: 4-30-93 }

### **Interim Orders**

690-51-300 If, after reviewing an application for a Permit under ORS 537.170, the Director determines there is insufficient information to address the standards of OAR 690-51-170 to 690-51-280, the Director may either enter an order rejecting the application without prejudice or enter an interim order continuing the hearing and specifying the nature of any studies or information necessary to complete the assessment. An interim order may also contain provisions for coordination or consultation with applicable federal, state or local governmental resource agencies and owners of all lands in the project area.

{ adopted 10-13-86; amended: 4-30-93 }

### **Record of Expenditures Under Preliminary Permits**

690-51-310 Each permittee shall keep an accurate and dependable record of all expenditures made under the Permit. If a License is issued for a project covered in whole or in part by a Permit, any and all items properly includible in the actual legitimate cost of the project representing expenditures made under the Permit and before the date of the License shall be supported by proper

vouchers or other records, in the same manner required of a Licensee when no Permit has been issued; and any vouchers or records, or certified copies in support of an item properly includible in the cost of the project shall become a part of the records of the project and shall be kept and retained by the Licensee in the manner required by the Commission or Director. Records kept by standard accounting methods are acceptable.

{ adopted 10-13-86; amended: 4-30-93 }

### **Competing Applications**

690-51-320

(1) When filed with the Director, a notice of competing application shall also be served on other applicants for the same site.

(2) A competing application shall be filed with the Director within 180 days of the time the original application is filed. If a hearing notice for the original application has been published before 180 days have passed, a notice of intent to file a competing application shall be filed. The notice of intent shall be filed prior to the closing date for comments as stated in the hearing notice. The competing application itself shall be filed within 60 days of the comment closing date.

(3) When determining which competing application should be given preference, the Director, or in cases where the Commission approves the final order in the contested case hearing, the Commission shall consider:

(a) Conservation of the waterpower involved including:

- (A) Efficiency within the system;
- (B) Effect on instream fisheries;
- (C) Water quality; and
- (D) Other factors as the Director, or the Commission in cases where the Commission approves the final order, the Commission may deem appropriate.

(b) Use of the waterpower involved including:

- (A) Availability of water;
- (B) Existing rights;
- (C) Development of the available hydroelectric potential; and
- (D) Other factors as the Director, or the Commission in cases where the Commission approves the final order, the Commission may deem appropriate.

(4) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and are equal in every other way, preference shall be given to the application with the earliest filing date.

(5) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is a municipal corporation and the other is a private developer, preference shall be given to the municipal corporation.

(6) If the Director, or the Commission in cases where the Commission approves the final order, the Commission finds that both applications are equally well adapted to conserve and utilize the



waterpower involved and one applicant is the holder of a valid Preliminary Permit and has priority under ORS 543.250, preference shall be given to the holder of the Preliminary Permit.

(7) Where one application is determined to be best adapted to conserve and utilize the waterpower involved and the other applicant is either a municipal corporation or has priority as the holder of a Preliminary Permit, the municipal corporation or holder of the Preliminary Permit shall be informed of specific reasons why its application is not as well adapted and shall be afforded a reasonable period of time to amend its application to be at least as well adapted as the competing application. If its application is amended to be at least as well adapted within the time allowed, preference will be given to the municipal corporation or holder of the Preliminary Permit.

{adopted 10-13-86; amended: 4-30-93}

#### **System of Accounts for Public Utilities**

690-51-330 Each License issued by the Director, or in cases where an exception is filed to the proposed order, the Commission, where the applicant is a public utility, shall be conditioned upon the establishment by the Licensee of a system of accounts in conformity with the Uniform Classification of Accounts for Electrical Utilities as prescribed and required by the Public Utility Commissioner of the State of Oregon. The Licensee shall be required to file with the Director one copy of all of its accounts as filed with the Public Utility Commissioner, duly certified, and such other statements, accounts, or records as the Director, or in cases where the Commission approves the final order, the Commission may require in order to furnish a full and complete knowledge of the facts necessary to carry out the provisions of ORS 543.010 to 543.620.

{adopted 10-13-86; amended: 4-30-93}

#### **Accounts When the Licensee Is Not a Public Utility**

690-51-340 When the applicant for a License is not a public utility, the Director, or the Commission in cases where the Commission approves the final order, will not require the establishment and maintenance of a system of accounts as prescribed for public utilities. The Licensee shall be required to keep and maintain books, records, accounts, and/or memoranda which will show the actual legitimate cost of construction of the project or any improvements. The Licensee shall file with the Director, under oath, when called for by the Director, or the Commission in cases where the Commission approves the final order, a statement of costs, except that a cooperative electric association shall establish a system of accounts as may be required by the Director, or the Commission in cases where the Commission approves the final order. A cooperative electric association shall file with the Director each year, one or more copies of the accounts duly certified and other statements, accounts, or records as required for a full and complete knowledge of facts necessary to carry out the provisions of ORS 543.010 to 543.620.

{adopted 10-13-86; amended: 4-30-93}

#### **Minor Projects, Waiver of Provisions of Act Where the Licensee Is Not a Public Utility**

690-51-350 For minor projects of not more than 100 THP, where the applicant for License is not a public utility, the Director, or in cases where a protest has been referred to the Commission, the Commission, in issuing Licenses, will waive the following conditions, provisions, and requirements of ORS Chapter 543:

(1) ORS 543.510 which requires the Licensee to establish and maintain amortization reserves to be applied in reduction of the net investment.

(2) ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.

(3) ORS 543.520 which provides that on amortization of the net investment the project shall become the property of the State of Oregon.

(4) ORS 543.550 relating to liens against the project and providing that any sale shall be of the whole property embraced in the project unless a partial sale is approved by the Director.

(5) ORS 543.560 which requires the Licensee to execute to the State of Oregon a bond to the effect that the Licensee shall promptly make payment to all persons supplying labor, material, machinery, etc.

{adopted 10-13-86; amended: 4-30-93}

### **Minor Project by Public Utility**

690-51-360 Where the applicant for License for a minor project of not more than 100 THP is a public utility, the Director will treat the application the same as an application for a major project and may waive the requirements of the Act identified in 690-51-350.

{adopted 10-13-86; amended: 4-30-93}

### **Transfer of Project to Public Utility**

690-51-370 Whenever a project, or any part thereof, covered by a License issued to a Licensee who is not a public utility, is transferred or conveyed to a public utility and becomes the property of the utility, or whenever a Licensee who is not a public utility changes status to that of a public utility by the sale of electricity to the public, the License issued shall terminate. In such a case, the Commission may issue a new License with provisions necessary to carry out the intent and purposes of ORS 543.010 to 543.620.

{adopted 10-13-86}

### **Water Rights**

690-51-380 The right to the use of the waters of the State of Oregon in connection with the development of any water power project for the generation of electricity under a License issued by the Director, or in cases where the Commission approved the final order, the Commission, shall be vested in the Licensee while the License or any lawful extension is in force. Each License will be conditioned so the right to use water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the License, the right to use water shall revert to the public. In case a project is taken over by the state or a municipality under the provisions of ORS 543.610, the right to use the waters previously used by the project shall continue in the state or the municipality until lawfully terminated or transferred. In case of a project falling to the state by amortization under ORS 543.520, the right to use the waters previously used by the project shall continue in the state until lawfully terminated or transferred.

{adopted 10-13-86; amended: 4-30-93}

## **Failure to Construct Project or Utilize Water**

690-51-390

(1) When starting construction, a Licensee must notify the Director using the form attached to the License. Similar notice must be sent to the Director when the project is completed.

(2) Whenever a Licensee fails to begin or complete construction work within the time fixed in the License or as lawfully extended or fails to proceed with construction with due diligence, or, after completing the work, fails to use or operate the project for any period of five consecutive years, the Director shall, after due notice given, terminate the License by a written order. If, after two years' nonuse of the Licensed project there is a conflicting application for or claim to the use of the water, the Licensee may be required by the Director to show why the conflicting application should not be granted and the License in question terminated.

(3) The holder of a Preliminary Permit may request an extension of time to complete feasibility studies and prepare a License application. A Licensee may request an extension of time to begin or complete construction under a hydroelectric License. Extension requests shall be made on forms provided by the Director or on an acceptable substitute prepared by the applicant.

(4) Applications for extensions of time must contain the following information:

- (a) Name, address and telephone number of the applicant;
- (b) File number and type of Permit or License;
- (c) Length of extension requested; and
- (d) Work previously completed.

(5) In considering applications for extension of time, the Director shall consider:

- (a) Preliminary Permits (additional one-year maximum) including:
  - (A) Adequacy and timeliness of required six-month reports; and
  - (B) Studies completed within the term of the Permit.
- (b) Beginning of construction under License (one extension for maximum of two additional years); and
- (c) Time to completion of construction (no statutory limit) including:
  - (A) Whether an extension is in the public interest; and
  - (B) Whether construction has been carried on in good faith and with reasonable diligence.

(6) No legally allowable request for extension of time shall be denied if the reasons for delay are litigation or required actions by other state and federal agencies.

{ adopted 10-13-86; amended: 4-30-93 }

## **Fees: Filing and Annual**

690-51-400

(1) An applicant for a Preliminary Permit or License for a project or for a Permit to appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a Permit should be granted.

(2) The amount of the total project fee required under subsection (1) of this section shall be:

(a) For a project of less than 100 theoretical horsepower, \$1,000.

(b) For any project of 100 theoretical horsepower or more, an amount equal to \$5,000 plus \$1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of \$100,000.

(3) The project fee shall be payable in advance of each of four stages of project review as described in OAR 690-51-095 as follows:

(a) For minor projects less than 100 theoretical horsepower, fifty percent of the fee at the time the application is filed and the fifty percent remaining fee charge when the License is issued.

(b) For major projects, the fee shall be collected as follows:

(A) Stage One - 20%; Not to exceed \$2,500.

(B) Stage Two - 30%.

(C) Stage Three - 30%.

(D) Stage Four - 20%.

(c) If any Stage is skipped, the fee at the time of submittal shall be the total application fee due up to and including the Stage of current application review.

(4) In addition to the project fee required under this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(5) An annual fee as described in ORS 543.710 shall be required for each Permit issued under ORS chapter 537.

(6) Each License issued shall be conditioned to require the payment of an annual fee as follows:

(a) For the first 25 THP or fraction thereof, \$1.00 per THP; and

(b) For each THP in excess of 25, 20 cents.

{ adopted 10-13-86; amended: 4-30-93 }

## Agreements Between Municipal and Private Applicants

690-51-410

(1) A district or municipal applicant and a private applicant may contract together for the purpose of developing hydroelectric power. The joint project may receive the benefit of municipal preference and proceed under the municipal application process if the benefit, interest and control retained by the district or municipal corporation is as follows:

(a) A minimum of 10% of the gross or 30% of the net project income annually, at the option of the applicant, unless excepted by the Commission;

(b) The proprietary interest in the project lands; and

(c) Control over the operation of the project to the extent the district or municipal corporation can assure:

(A) Compliance with all regulations conditions and orders of the Director, or in cases where the final order is approved by the Commission, the Commission, affecting the project;

(B) Maintenance of flow, fish passage facilities, screening devices and other structural facilities and operational measures required by the Director, or in cases where the final order is approved by the Commission, the Commission or the Oregon Department of Fish and Wildlife; and

(C) Payment of annual fees required by ORS 543.710 and 543.720 and expenses required by any agreement developed under ORS 543.265.

(2) Any changes in the terms of a contract between a district/municipal corporation and private applicant that affect OAR 690-51-410(1), shall first be approved by the Director.

{adopted 10-13-86; amended: 4-30-93}