

Review of permitting process for Lost Valley Farm

Oregon Department of Agriculture
Oregon Water Resources Department



Confined Animal Feeding Operation Program (CAFO)

- Administered by ODA through a MOU with DEQ
 - MOU between ODA and DEQ has been in place since 1983.
- CAFOs are defined differently in Oregon than in other states
 - Subsequently the program permits a wide range of operations (in terms of size and species)
- Issue two categories of CAFO permits
 - National Pollutant Discharge Elimination System (NPDES) permit
 - Federal permit
 - General or Individual NPDES permit
 - Water Pollutant Discharge Elimination System (WPCF) permit
 - State permit
 - General or Individual WPCF permit



CAFO Breakdown

CAFO permit size	Number of total permits	Number of dairy cow permits*
Small	181	67
Medium	213	98
Large	122	41
TOTAL	516	206

*CAFO permit size for dairy farms	Number of mature dairy cows
Small	Less than 200
Medium	200 - 699
Large	700 or more

6 Individual CAFO NPDES permits



CAFO application process: brand new facility

- Permit applications must include:
 - Application to Register
 - Land Use Compatibility Statement (to be completed by the county)
 - Animal Waste Management Plan that meets the Minimum Required Elements
 - Includes construction approval request (required for construction of manure storage structures)
 - Application fee
- Additional requirements for new Large CAFO permit applications:
 - Public notice and participation requirements



Grade A milk license: brand new facility

- Required for the interstate shipment of milk
- ODA has adopted federal Pasteurized Milk Ordinance (PMO)
- PMO dictates:
 - Construction standards
 - Operation and sanitation standards
 - Frequency of inspections
 - Milk quality testing standards

(The PMO requires potable water to clean the dairy parlor and facilities.)



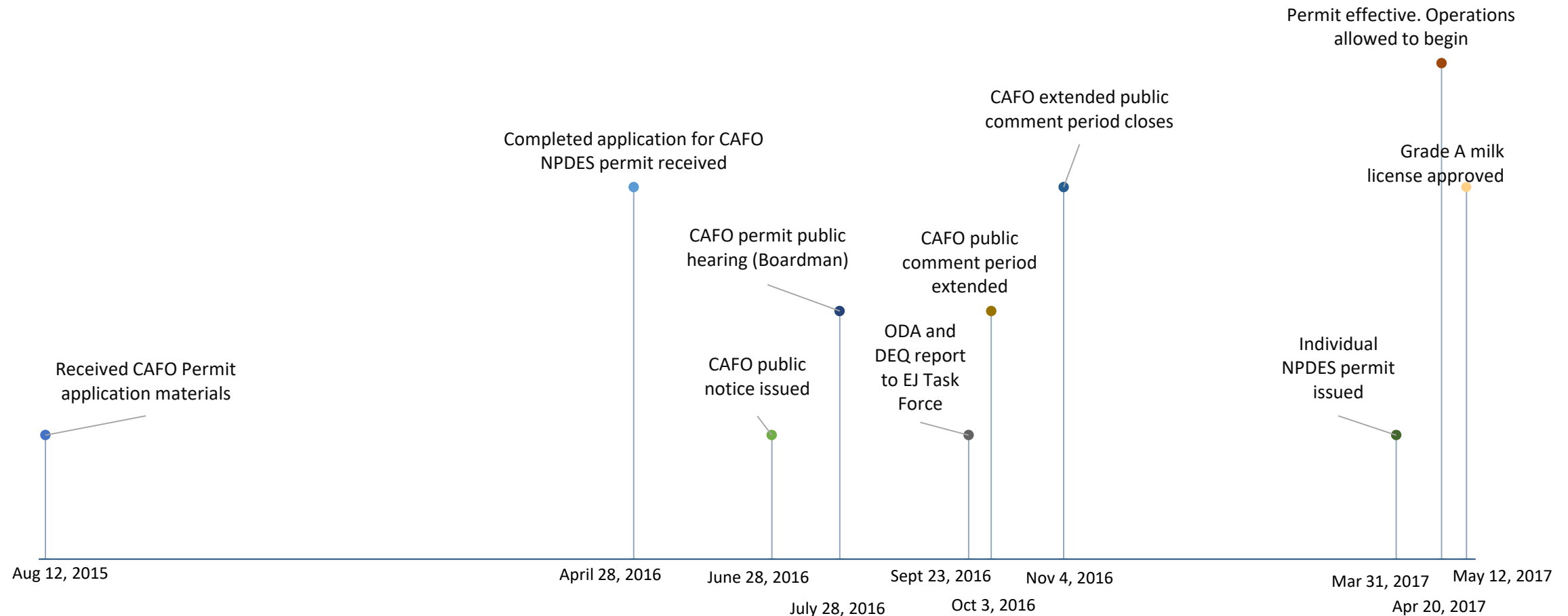
CAFO permit: LVF

- Issued an Individual NPDES permit
- Most extensive public engagement process
 - ODA made changes to permit conditions in response to this process
- The permit is the most protective of surface and groundwater quality of any CAFO permit issued in the state
- Most extensive monitoring of any CAFO permitted in the state
 - For example
 - On-going monitoring from 11 different groundwater wells
 - Double-lined lagoons with leak detection for animal manure lagoons
 - Increased inspection frequency – from April 2017 – April 2018 ODA inspected on average, once per week.



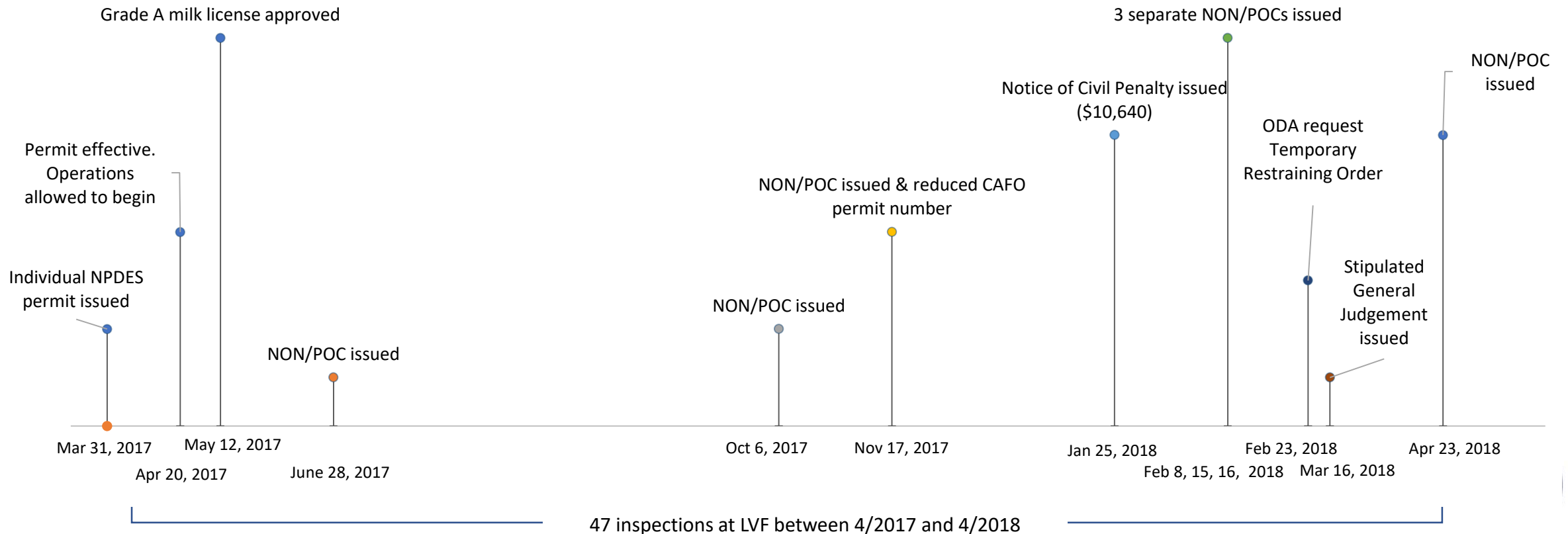
LVF Permitting Timeline

(August 2015 – May 2017)



LVF Permitting Timeline

(March 2017 – Present)



Administrative Procedures Act (APA)

(Oregon Revised Statutes Chapter 183)

- Requires that individuals affected by a **proposed state agency action** where individual legal rights or privileges are affected to be:
 - Provided notice that informs them of their rights and remedies with respect to the actions.
 - Afforded the opportunity for a hearing (contested case proceeding)
 - All contested cases are heard by administrative law judges (ALJs) from the Office of Administrative Hearings.
 - At the end of the contested case the ALJ issues a proposed order.
- The state agency reviews the proposed order and any exceptions received and issues a final order.
 - Review of the final agency order is to the Oregon Court of Appeals



Administrative Procedures Act (APA)

- Allows review of **final agency actions** in the circuit court.
 - Court reviews the agency order and may affirm, reverse, or remand the order.
 - Circuit court orders are reviewed by the Oregon Court of Appeals.



State required permits for LVF

Permit Type*	Administering Agency
Confined Animal Feeding Operation (CAFO)	ODA & DEQ
Grade A milk license	ODA
Drinking water*	OHA
Septic system	DEQ
Water rights	OWRD

*This does not include permits required by local government for the construction and operation of LVF.

**Employers with 25 or more employees for 60 days must have a public water system for human consumption.

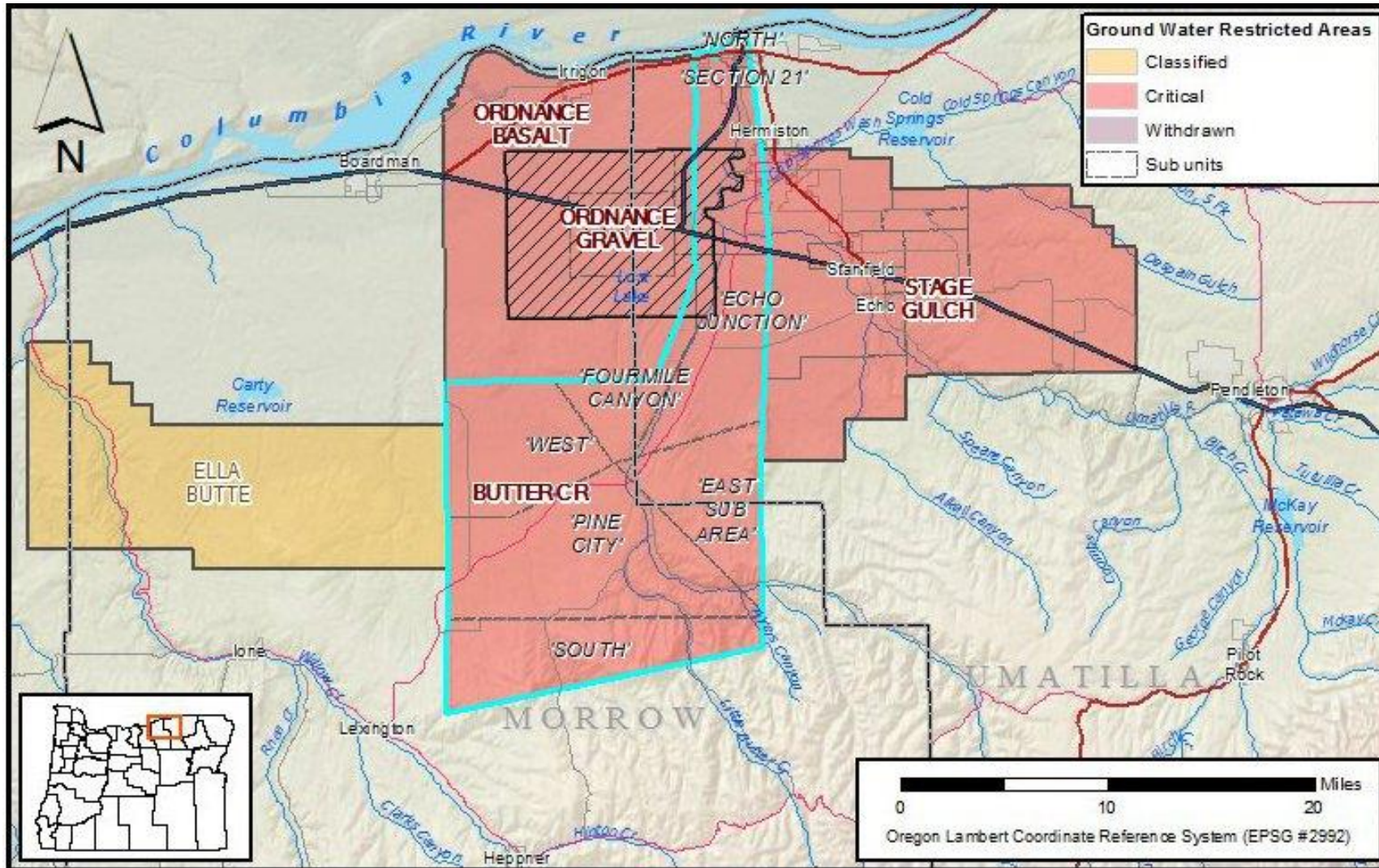


OWRD - Water Rights

- Water authorization is required to use water in the state
 - Exceptions: Most common in ORS 537.141 and ORS 537.545
- Potential options for meeting water needs:
 - Obtain new water right
 - Transfer an existing water right
 - Purchase water from an entity with a municipal water right
 - Obtain water under an exempt use
 - Limited license for short-term / fixed duration



Groundwater Restricted Areas and Location of Lost Valley Farm



Critical Groundwater Areas

- Ordnance Basalt
- Ordnance Gravel (alluvial)



Water Authorizations: LVF

- Existing Water Rights - Irrigation surface water rights
- New Water Rights - Not an option
- 1/2016 Permanent Transfers filed; protested in 2017
- 2017 Limited Licenses filed for construction/dairy operations;
 - Forbearance agreement with Sage Hollow to not use groundwater to offset Lost Valley's use
 - Temporary district transfer to allow Sage Hollow to use surface water instead
 - Petition for judicial review; withdrawn
- 2017 Purchase/Trucking Water from the Port of Morrow



Exempt Uses and Lost Valley Farm

- Livestock watering (ORS 537.545)
 - WRD expressed concerns early on: no limit on quantity that can be used other than beneficial use
 - Critical groundwater area currently allows exempt uses; changes would require rulemaking, and/or contested case hearing followed by an order
 - WRD discovered use in November 2017; forbearance agreement and temporary district transfer
 - WRD required installation of a measuring device; Took control of the well after failure to install proper device.
 - *Currently obtaining water from Columbia Irrigation District and potable water from the Port of Morrow*



Thank you

