

Partial 404 Assumption

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Legislative Update

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Challenges with Regulation of Oregon Wetlands and Waters

- Challenging regulatory path for land development
- Affects economic growth, housing, and supporting infrastructure
 - Costly
 - Stalled permitting
 - Project abandonment
- Dual permitting process
 - U.S. Army Corps. of Engineers and the Department of State Lands
- Need for jurisdictional and regulatory certainty



Case Studies

- Residential: Subdivision in Harrisburg
- Conservation: Salmon habitat restoration



404 Assumption

- Clean Water Act (CWA) Section 404: Regulates discharge of materials into U.S. waters
- CWA 404(g): Assuming state-equivalent Section 404 authority
- Federal oversight will ensure the state program meets federal CWA standards
- 2017 – 2018: Initial interest, Legislative Working Group

Partial 404 Assumption

- HB 2436 (2019)
- Consolidated permitting:
Urban Growth Boundaries,
mitigation bank
development, and mining
- Waiting for revised 404(g)
rules on assumption



Benefits of 404 Assumption

- State assumption of wetlands and certain streams/rivers
 - Consistency
 - Accountability
- Streamlined paths forward
 - Greater certainty (scope, schedule & budget)
 - Compliance with multiple state and federal laws
 - Empowers local governments to build out within their Urban Growth Boundaries

Benefits of 404 Assumption (cont.)

- Ability to address 404 issues at a state level
 - This is what we do best (e.g., Salmon protections)
- Maintains protections of waters and wetlands



404 Work Group

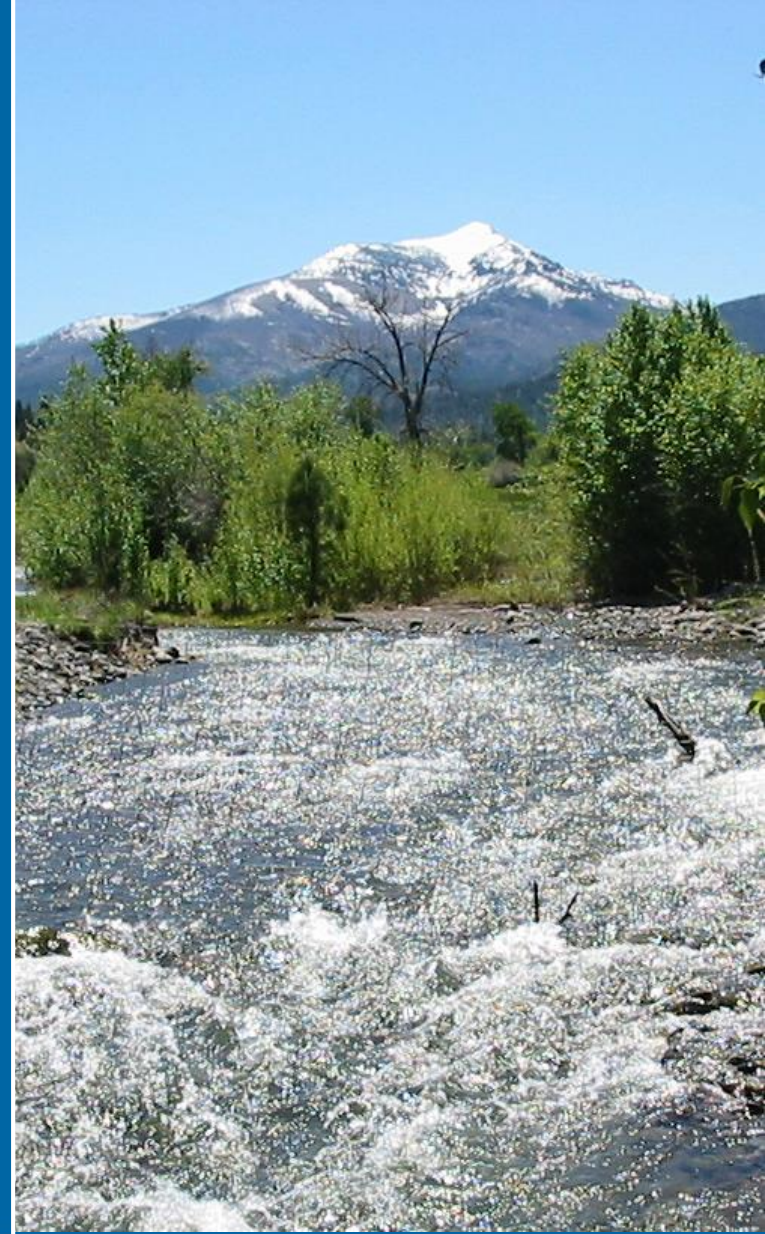
- Federal/state agencies, local governments, tribes, public interest organizations, industries, and public utilities
- Work Group process
 - Education on 404 Assumption
 - Feedback about impacts on programs and interests
 - Discussion of resource needs

404 Work Group

- Results
 - Identification of key issues
 - Potential paths forward
 - No consensus for/against partial assumption

Clear Path Forward

- Defining assumable waters
- Endangered Species Act compliance



Key Issues: Loss of Federal Nexus

- National Environmental Policy Act (NEPA)
- National Historic Preservation Act (NHPA)
- Tribal treaty rights
- Federal Trust Responsibility

Key Issues: Loss of Federal Nexus (Cont.)

- Costal Zone Management Act (DLCD)
- State 401 Water Quality Certification (DEQ)



Resource Needs

- Prepare 404 Assumption application package (\$970,072)
 - 3 natural resource specialists: \$620,072
 - Consultant for biological assessment: \$300,000
- Implementation and operation (\$1,705,183 per biennium)
 - 7 technical staff
 - 2 administrative support staff
- Additional state agency resources

Questions