

City of Newport: Water Supply Project

High Level Summary of Anticipated Permits and Approvals, exclusive of Water Rights

Permit / Approval and Responsible Agency	Triggers and Process
<p>National Environmental Policy Act (NEPA)</p> <p>U.S. Army Corps of Engineers (USACE)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> USACE approval required <p>Process:</p> <ul style="list-style-type: none"> A federal agency must comply with NEPA when they have an action (e.g., providing funding or regulatory authorization) The lead federal agency would need to be determined based on the federal “nexus.” At this juncture, USACE is presumed to be the lead federal agency. This could change if federal funding from another federal agency is issued or have other federal agencies use the USACE document as their basis for NEPA. The level of environmental review (Categorical Exclusion, Environmental Assessment, or Environmental Impact Statement) depends on the potential effects and standards of the lead agency in determining the significance of those effects.
<p>Clean Water Act Section 404</p> <p>U.S. Army Corps of Engineers (USACE)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Permanent or temporary discharge of fill in waters of the U.S. including wetlands. <p>Process:</p> <ul style="list-style-type: none"> Anticipate that an Individual Permit will be required. Submit a Joint Permit Application (JPA) that includes project plans, biological information (i.e., BA), wetland delineation, and other pertinent information. A Compensatory Mitigation plan may need to be developed prior to completion of the permit application if resources are permanently affected. Temporary impacts would require development of a restoration plan.
<p>Clean Water Act Section 401 Water Quality Certification</p> <p>Oregon Department of Environmental Quality (DEQ)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Any federal agency issuing a permit or an approval (e.g., Section 404, Section 402 permit) must comply with Section 401 of the Clean Water Act; DEQ has been delegated the federal jurisdiction to perform Section 401 review for projects in Oregon. <p>Process:</p> <ul style="list-style-type: none"> Review Clean Water Act Section 404 permit to determine if the project would affect beneficial uses of waters (including wetlands).
<p>Federal Endangered Species Act (ESA)</p> <p>U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Any federal agency issuing a permit or an approval must comply with the federal ESA <p>Process:</p> <ul style="list-style-type: none"> The applicant would conduct appropriate literature and field studies and prepare a Biological Assessment documenting the potential effects to species and/or critical habitat protected under the ESA. The federal agency (i.e., USACE) will conduct Section 7 consultation with the Service responsible for the species. Will likely require a “formal” consultation process (i.e., likely to adversely affect).

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<p>Magnuson Stevens Act</p> <p>NMFS</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Review required for potential impacts to Essential Fish Habitat (EFH) for ocean species and all anadromous fish throughout their migratory range. <p>Process:</p> <ul style="list-style-type: none"> The applicant would conduct appropriate literature and field studies to identify the potential presence of anadromous fish species at the project site. Assessment included as part of the BA prepared for ESA consultation.
<p>National Historic Preservation Act (NHPA), Section 106</p> <p>Oregon State Historic Preservation Office (SHPO)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Any federal Agency issuing a permit or an approval must comply with the NHPA. <p>Process:</p> <ul style="list-style-type: none"> The applicant would conduct appropriate literature and field studies to identify the potential presence of cultural and archeological resources at the project site. The NHPA requires consideration of potential project-related effects on properties listed, or eligible for listing in the National Register of Historic Places as well as cultural resources. Section 106 requires federal agencies to consult with SHPO to determine if activities may affect historic properties or cultural resources. SHPO is also required to consult with local Native American Tribes regarding cultural resources. If the project results in adversely affecting an eligible property or cultural resource, preparation of Determinations of Eligibility and Findings of Effect would be required.
<p>CWA Section 402 – National Pollutant Discharge Elimination System (NPDES) Permit</p> <p>Oregon DEQ</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Clearing, grading, and excavation that disturbs 1 acre or more of land. <p>Process:</p> <ul style="list-style-type: none"> Adherence to the Clean Water Act Section 402 requires NPDES permits from DEQ. A Stormwater Plan and Erosion and Sediment Control Plan would need to be prepared for these activities.
<p>Migratory Bird Treaty Act (MBTA)</p> <p>U.S. Fish Wildlife Service (USFWS)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Under the MBTA, taking, killing, or possessing migratory birds is unlawful, except as authorized under a valid permit. <p>Process:</p> <ul style="list-style-type: none"> Measures are usually part of the construction specifications and include timing certain activities and tree removal outside of nesting and mating season, or conducting individual tree nest clearances.
<p>Bald and Golden Eagle Protection Act</p> <p>U.S. Fish and Wildlife Service (USFWS)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Potential impacts from the project that would harass or harm bald or golden eagles. <p>Process:</p> <ul style="list-style-type: none"> If an eagle roosting area or nest is within 0.5 mile of the project an analysis of visual and noise effects is required. If no effect would occur, no further documentation is required. If the project may affect eagles, a permit from the USFWS would be required. The permit includes a brief project description, effects analysis, and general site plans.

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<p>Coastal Zone Management Act (CZMA)</p> <p>Oregon Department of Land Conservation and Development (DLCD)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Activities and development affecting coastal resources that involve federal activities, federal licenses or permits, and federal assistance programs (funding) require written Coastal Zone Management (CZM) federal consistency determinations by the DLCD. <p>Process:</p> <ul style="list-style-type: none"> As part of the JPA submittal, the applicant completes Federal Consistency documentation. The USACE and DSL provide the documentation to DLCD for review. DLCD provides either written concurrence or objects to the consistency determination. Public review of the consistency documentation occurs as part of the public notice requirements associated with the Clean Water Act Section 404 and Removal-Fill permits.
<p>Oregon Removal-Fill Authorization</p> <p>Oregon Department of State Lands (DSL)</p>	<p>Trigger:</p> <ul style="list-style-type: none"> Removal or fill activities within waters of the state (i.e., wetlands/streams) in any amount for Essential Salmonid Habitat (ESH) and or more than 50 cubic yards in non- ESH designated waters. Project would require an individual permit due to the type and scale of the project. <p>Process:</p> <ul style="list-style-type: none"> Similar to the Section 404 Permit, a JPA would be submitted, that included the project description, functional assessments off affected waters, and impact assessment. A Compensatory Mitigation plan may need to be developed prior to completion of the permit application if resources are permanently affected. Temporary impacts would require development of a restoration plan. DSL will solicit and rely on comments from state agencies related to impacts and factor into determination of the Removal-Fill authorization (e.g., ODFW regarding project effects to fish habitat, DEQ regarding effects to water quality).
<p>Oregon Fish Passage Approval</p> <p>Oregon Fish and Wildlife Department (ODFW)</p> <p>Oregon Fish and Wildlife Commission</p>	<p>Trigger:</p> <ul style="list-style-type: none"> ODFW is responsible for reviewing and approving projects that may affect fish passage. Any in-water work, whether temporary or permanent, would require adherence to the fish passage laws. <p>Process:</p> <ul style="list-style-type: none"> Fish passage past the dam for native migratory fish must be provided, unless a waiver is approved from the Fish and Wildlife Commission. An application for fish passage waiver would need to demonstrate that providing fish passage at the dam is not feasible and that alternate mitigation provides a net benefit to native migratory fish production. An isolation and fish recovery plan would be required with the permit submittal (to both ODFW and DSL) and implemented during construction to demonstrate passage or downstream fish habitat is provided during construction, as appropriate. Fish capture and release efforts require a Scientific Sampling Permit from ODFW and NMFS if fish need to be handled during construction (i.e., relocated during dewatering .

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Oregon Endangered Species Act	Trigger: <ul style="list-style-type: none">• Potential impacts to state listed wildlife, fish, and plant species from project implementation.
ODFW and Oregon Department of Agriculture	Process: <ul style="list-style-type: none">• State ESA protection is limited to state-owned land, state-leased land, and land over that the state has a recorded easement. Based on known information, the project does not occur on state land, and thus the state ESA does not apply.
City of Newport Conditional Use Permit	Trigger: <ul style="list-style-type: none">• The alternatives are within Residential Low Density Single Family (R-1) or Public Structure (P-1) zoning depending on the alternative. This would require a conditional use permit from the City.
City of Newport Community Development Department	Process: <ul style="list-style-type: none">• It is anticipated that the conditional use permit would be processed as a Type II decision. Application including narrative and plans is submitted to the City for approval.
City of Newport Building, Electrical, Plumbing, Mechanical, Sewer/Water Permit	Trigger: <ul style="list-style-type: none">• The dam alternative locations are within Lincoln County. Construction and/or modification of a dam would trigger the need for building, electrical, plumbing, mechanical, sewer/water permits. Process: <ul style="list-style-type: none">• Application including plans is submitted to the County for approval.• Each permit is a separate process.• These are typically obtained immediately prior to construction, as information regarding the contractor is required for the application.
City of Newport Building Department	