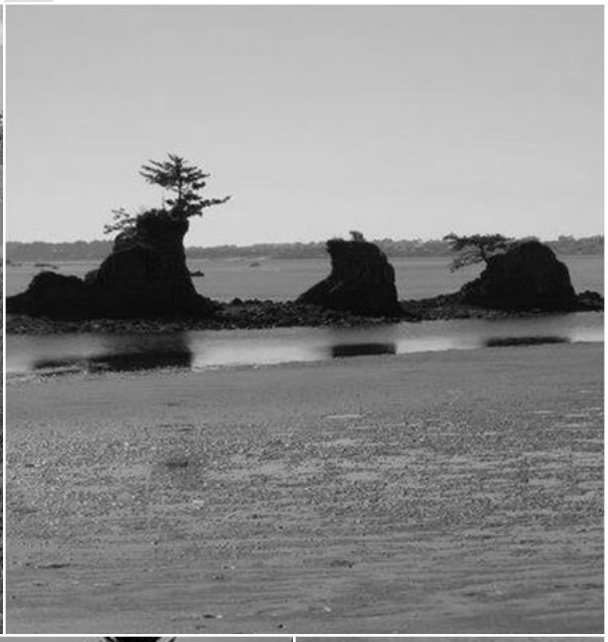
Oregon Department of State Lands

# *Filled Lands: Initial Review*

## Siletz River

November, 2016



This page intentionally left blank.

# FILLED LANDS INITIAL REVIEW: SILETZ RIVER

A project of Oregon's Department of State Lands to identify, calculate and map both historically and new filled lands.

**November, 2016**


**Project Team:**
Bill Ryan, Deputy Director
Linda Anderson, Project Manager
Blake Helm, State Lands Ownership Coordinator
John Bonnett, Ownership GIS Specialist
Chris Castelli, Senior Policy & Legislative Analyst
Gerry Hutson, Proprietary Coordinator
Nancy Pustis, Proprietary Specialist
Dan Antonson, GIS Analyst

**Contact:**
Bill Ryan, Deputy Director
Operations
Oregon Department of State Lands
bill.ryan@state.or.us


Cover Page Photos

(1) Lowe, Roy. *Siletz Bay National Wildlife Refuge*. N.d. Aerial Photograph. blog.oregonlive.com/terryrichard/2011/05/siletz_bay_national_wildlife_r Web. 6 Nov. 2016. [Top-left photograph]
(2) *View of Rocks, Siletz Bay Park*. N.d. Photograph. Tripadvisor.com/LocationPhotoDirectLink-g51947-d5961681-i112117679-Siletz_Bay_Park-Lincoln_City_Oregon. Web. 3 Nov. 2016. [Top-right photograph]
(3) *Siletz Bay Sunset*. N.d. Photograph. Oregoncoast.org/siletz-bay/ Web. 5 Nov. 2016 [Middle-left photograph]
(4) *Taft and Siletz Bay Aerial*. N.d. Aerial Photgraph. Oregoncoast.org/history/ Web. 2 Nov. 2016 [Middle-right photograph]
(5) *Blue Heron and Red Tailed Hawk*. N.d. Photograph. Coastvisitor.com/gallery/siletz-bay/ Web 5 Nov. 2016 [Bottom-left photograph]
(6) Lowe, Roy. *Snowy Owl at Siletz Bay*. N.d. Photograph. Fws.gov/news/blog/index.cfm/2012/1/17/Photo-Tour-relating-to-Snow Web. 3 Nov. 2016 [Bottom-right photograph]

*DISCLAIMER:*

*The data and analysis provided in this study is for informational purposes only and was not prepared for, nor is it suitable for legal, engineering, or surveying purposes.*

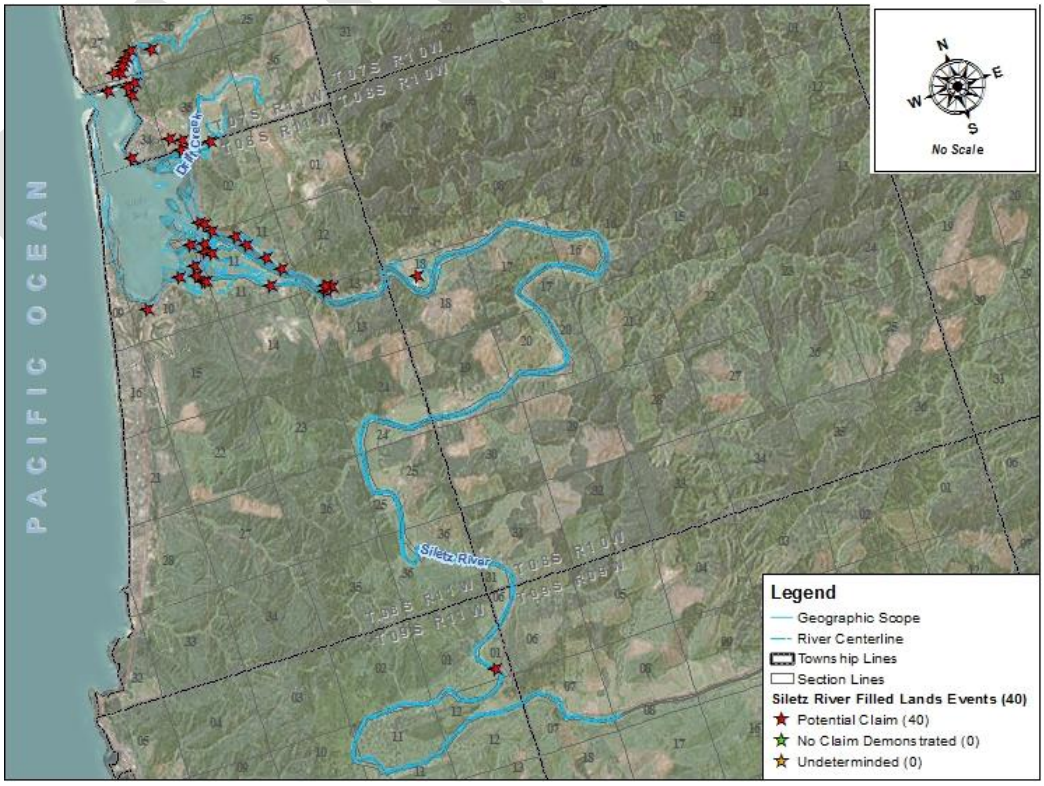
# TABLE OF CONTENTS

# EXECUTIVE SUMMARY

Waterways – lakes, rivers and streams – are vital to Oregonian's quality of life. Historically, many waterways were used as trade routes for Native Americans, pathways for explorers and pioneers and highways of commerce for timber and steamboats. Many of these same waterways provide habitat for anadromous species of fish. Over the years some of these waterways have been artificially filled creating new usable upland.

The purpose of this review is to determine whether any State of Oregon ownership interest remains or is vested in respect to filled lands as defined in ORS 274.905. This Initial Review identifies historically and new filled lands that the State of Oregon previously had, or currently has, an ownership interest. The focus of this review is the tidally influenced waters of the Siletz River, including Siletz Bay, Drift Creek and Schooner Creek. Within the review area there were a total of 40 fill events covering an area approximately 28 acres that were determined to be filled through artificial means. Historical fill (fill occurring before May 28, 1963) was identified in 26 areas and encompassed approximately 17 acres. New fill (fill occurring after May 28, 1963) constituted 11 of the areas and encompassed approximately 10.5 acres. The remaining three (3) areas, covering less than one (1) acre, lacked enough historical data to determine the approximate date when the fill occurred. The Department of State Lands (DSL), through this review, was able to determine that the state may retain an interest in some portion of all 40 of the fill events identified in this study.

Below is a map of the Siletz River Initial Review area which highlights the 40 areas where fill events took place and identifies sites where the state may retain an interest.



# INTRODUCTION

At statehood, Oregon acquired title to the submerged and submersible lands of navigable and tidally influenced waterways under the Equal Footing Doctrine and the Oregon Admissions Act. In conjunction with the Public Trust Doctrine, this ownership embodies the principle that the state holds title to these lands for public navigation, recreation, fisheries and commerce.

The Oregon Legislature delegated to the Department of State Lands (DSL) the authority to authorize uses of state-owned submerged and submersible lands. Revenue generated from these authorizations is deposited into the Common School Fund for Oregon's K-12 public schools.

Throughout much of Oregon's history the placement of fill on the state's submerged and submersible lands was unregulated. The filled lands were generally considered beneficial, resulting in expanded business opportunities along wharfs and docks or new agricultural lands. Dredging, which created much of the material available for fill, fostered more opportunities for commerce through deepened shipping channels. It was often thought that filling submerged and submersible land was an improvement to what was seen as low-value areas. Land owners adjacent to waterways placed fill or allowed fill to be placed on the submerged and submersible land adjacent to their property in order to increase the usable area of their property. In 1967, the Oregon Removal Fill law was enacted and the practice of filling waterways became a regulated activity.

Following a long line of legal cases, the act of filling in submerged land is considered an avulsive event that does not change property ownership lines. For that reason, the State of Oregon still has an interest in many of the filled lands since these lands were formed by placing fill on state owned submerged and submersible land. Before 1963 the state relinquished title to some submersible lands. As a result, the state does not claim title to all filled lands; only those lands where the state's title has never been relinquished.

In general, DSL has not proactively pursued any type of comprehensive statewide settlement of filled lands claims. These issues are typically raised on an individual basis through a bank financing requirement, regulatory permit or potential sale of the property. In many cases, the lending bank or title company will find a "cloud on title" through their research and initiate contact between DSL and the landowner. Currently, there is no comprehensive mapping or appraised value of all filled lands, but

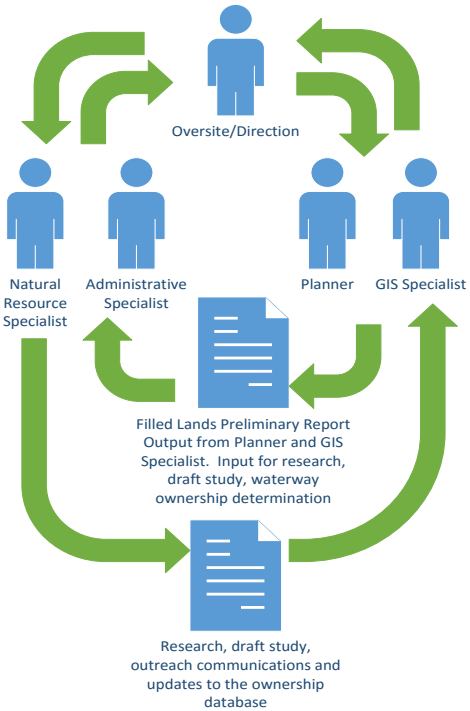



**Figure 1: Filled Lands Study Process**

their estimated fair market value is in the millions of dollars.

DSL is following a process which includes research and GIS data captured in an Initial Review. This document will be used to help with community outreach as well as further collection of any documentation in order to fully develop the Filled Lands Study as mandated by Oregon legislation. This process is circular as well as iterative in nature and depends upon all team members being informed by each other's work. See Figure 1 for a visual representation of this process.

## PURPOSE

In summary, Senate Bill 912 (SB 912 passed 2015), defines filled lands as those lands above ordinary high water (OHW) laying on submerged and submersible lands created by artificial fill or deposit. It also created two categories of filled lands: 1) historically; and 2) new filled lands. Historically filled lands are those filled lands created before May 28, 1963; new filled lands are filled lands created on or after May 28, 1963. SB 912 authorizes the State Land Board to direct DSL to determine if any state interest remains with respect to historically filled lands. Determinations are to be made for waterways of the state that are subject to tidal influence, that have been administratively or judicially determined navigable pursuant to ORS 274.400-274.412 and those that the state has asserted ownership prior to the enactment of ORS 274.402 on September 9, 1995. Once directed by the State Land Board, DSL will conduct a study in order to make a determination of the state's interest in historically filled lands for a specified geographic area. While conducting these studies, DSL will provide public notice to affected property owners that a study is being conducted for their area. Once completed DSL will submit to the State Land Board a draft report which puts forward the DSL's findings and conclusions of whether any historically filled lands are located in the area of study and the extent of the State of Oregon's interest in those lands. Concerning the draft report, DSL will provide the appropriate prior public notice to affected property owners and interested parties. The notice will provide a public hearing in the area of the affected filled lands as well as an opportunity for the public to provide written comments on the draft report and to submit public testimony as well as evidence concerning the presence of or the state's interest in historically filled lands.

The purpose of this review is to determine the location, ownership, approximate acreage and use of historically filled lands. As a result of the review, new filled lands within the tidally influenced reaches of the Siletz River were also identified. Additionally, this review is intended to be used as background research for a more detailed historically filled lands study to be conducted by DSL pursuant to SB 912. Terms relevant to the content in this review are defined by Oregon Statute. A few of the more important definitions pertaining to filled lands are shown below. Other related terms are defined in Appendix A.

### 274.005. Definitions

As used in in this chapter, unless the context requires otherwise:

(3) Line of ordinary high water means the line on the bank or shore to which the high water ordinarily rises annually in season.
(4) Line of ordinary low water means the line on the bank or shore to which the low water ordinarily recedes annually in season.
(7) Submerged lands, except as provided in ORS 274.705 means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.
(8) Submersible lands, except as provided in ORS 274.705 means land lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

Definitions for ORS 274.905 to 274.940

As used in ORS 274.905 to 274.940, unless the context requires otherwise:

(1)(a) "Historically" filled lands means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963.

(b) "Historically" filled lands does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(2)(a) "New lands" means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963.

(b) "New lands" does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(3) "Public body" means the State of Oregon or any port organized under the laws of this state or any dock commission of any city of this state.

## METHODS

A Geographic Information System (GIS) was utilized for collecting, generating and storing various data sets and conducting analysis for this review. Below is a brief summary of the steps used in this project to research and calculate filled lands and waterway ownership. Other methods used that are specific to this study are elaborated on under the Filled Lands Findings subsection found in the following chapter or in the detailed Project Data and Methodology Document.

1. Identify waterway for study based upon FLAG recommendations. See State Land Board, June 2015 agenda packet, pages 25–32, available at http://www.oregon.gov/dsl/Board/Documents/slb_jun2015_pkt.pdf.
2. Define the geographic scope of the waterway using heads of tide and navigability determinations as well as tidal influence data and LiDAR.
3. Establish historic shoreline using LiDAR, historic aerial photographs, charts, plats and maps where applicable.
4. Generate current shoreline using LiDAR, Imagery, and Oregon Costal Management Plan (OCMP) or National Oceanic and Atmospheric Administration (NOAA) Continually Updated Shoreline Product (CUSP) Mean High Water (MHW) data. Identify fill events and ownership using current and historical imagery along with county tax lot data and LiDAR.
5. Identify tideland sales for waterway to determine where ownership change occurs along the shoreline.
6. Review DSL's Land Administration System (LAS) for current removal-fill permits and filled lands sales for waterway.
7. Research current and historic information to construct a timeline of notable historic events.
8. Compile and complete review after an internal subject matter expert (SME) quality assurance/quality control process (QA/QC).

**For detailed information and documentation on the data generated, referenced and modified in this review, see the project Data and Methodology Document.**

The data provided in this study is for informational purposes only and was not prepared for, nor is it suitable for legal, engineering or surveying purposes. GIS software was used to calculate the acreage of fill and the calculations are only approximations. In order to determine an accurate and precise location and extent of both historically and new filled lands, a topographic, hydrographic, or geodetic survey conducted by a licensed professional surveyor may be necessary.

## DATA, MAPS, CHARTS & DOCUMENTS

Following is a list of maps, charts and other documents used to identify historically filled and new lands.

### Maps, Charts, & Aerial Photography

General Land Office (GLO) Plat Maps:

| 07S11W | 08S10W | 08S11W | 09S10W | 09S11W |
|---|---|---|---|---|
| 1872 | 1893 | 1876 | 1872 | 1876 |
| 1876 | 1901 | | 1876 | |
| | | | 1877 | |
| | | | 1894 | |

Lincoln County Assessor's Maps:

Township 07 South, Range 11 West
Township 08 South, Range 10 West
Township 08 South, Range 11 West
Township 09 South, Range 10 West

U.S. Army Corps of Engineers' Aerial Photos:

| | |
|---|---|
| 1939 | 1972 |
| 1962 | 1978 |
| 1963 | 1980 |
| 1971 | 1989 |

Civil Court Cases, Documents & Reports

- Department of State Lands (OR). *An Inventory of Filled Lands in the Siletz River, September 1972.* Edited by Stanley F. Hamilton, P.E.
- Department of State Lands (OR). *Heads of Tide for Coastal Streams in Oregon.* Prepared by Engineering Section, March 1989.
- Department of State Lands (OR). *Analysis of Siletz Bay Estuary*. Prepared by Jeffrey A. Zinn, Department of Geography, Oregon State University. July 1970
- Office of Water Resources Research, Department of the Interior (US). *Descriptions and Information Sources For Oregon's Estuaries.* Published by Sea Grant College Program, Oregon State University, May 1974.

GIS Data Sources & Services

- ArcGIS Services: World_Imagery. Sources: Esri, DigitalGlobe, GeoEye, i-cubed, USDA FSA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community.
- ArcGIS Services. USA Topo Maps. Sources: ©2014 National Geographic Society, i-cubed.
- Department of Water Resources (OR), 2015, Oregon River Mile Locations on 7.5' Quads, accessed [June, 2016].
- Digital Raster Graphic (DRG) of Tillamook Bay courtesy of the U.S. Geological Society (USGS).
- Lincoln County (OR). Lincoln County GIS. *Tax Lot Parcels 2016*, Lincoln City, OR: Lincoln County GIS Department, 2016.
- National Agriculture Imagery Program (NAIP) Imagery from 2014 courtesy of the U.S. Geological Survey (USGS).
- National Oceanic and Atmospheric Agency (NOAA), *Continually Updated Shoreline Product (CUSP)*, Washington D.C., 2015.
- Oregon Department of Geological and Mineral Industries (DOGAMI), Lidar Program, 2008, South Coast Geodatabase. Collected and processed by Watershed Sciences, Inc.
- Oregon Department of Land Conservation and Development (DLCD), 2014, *Approximate Maximum Extent of Oregon Tidal Wetlands* [Vector geospatial data], Salem, OR. Oregon Coastal Management Program (OCMP), 2014.
- Oregon Department of Land Conservation and Development (DLCD), 2015, *NSDC MHW Shoreline OCMP* [Vector geospatial data], Salem, OR. Oregon Coastal Management Program (OCMP), 2015.

- U.S. Geological Survey, 2013, National Hydrography Geodatabase: The National Map viewer available on the World Wide Web (http://viewer.nationalmap.gov/viewer/nhd.html?p=nhd), accessed June, 2016

**For detailed information and documentation on the data generated, referenced and modificed in this review, see the project Data and Methodology document.**

# FILLED LANDS SUMMARY & DESCRIPTION

### FEATURE NAME

Siletz River

### COUNTY

Lincoln County

### TOWNSHIP, RANGE & SECTION

T07S, R11W, Sec. 26, 27 & 34 – 36

T08S, R10W, Sec. 7, 8, 16 – 20 & 31

T08S, R11W, Sec. 2 – 4, 9 – 13, 24, 25 & 36

T09S, R10W, Sec. 6 – 8

T09S, R11W, Sec. 1, 2 & 10 – 12

### MEANDERED DATE & INFORMATION

The GLO original surveys for T8S R11W and T9S R10W were approved and accepted on June 23, 1876. The GLO original surveys for T7S R11W and T9S R11W were accepted and approved on June 25, 1876. The GLO original survey for T8S R10W was accepted and approved on March 20, 1893.

### GEOGRAPHIC SCOPE

The Siletz River, Schooner Creek and Drift Creek all feed into Siletz Bay. These four waterways comprise the geographic scope of this review. Previously, DSL staff conducted heads of tide determinations for the Siletz River, Schooner Creek and Drift Creek. Their findings concluded that the effects of the tidewater on the Siletz River extend 18 miles above U.S. Highway 101, Schooner Creek, 2 miles above U.S. Highway 101 and Drift Creek, 2 miles above U.S. Highway 101. DSL staff used spatial tidal influence data and conducted a GIS analysis to determine a probable head of tide for those current and historical waterways without a head of tide determination.

**For detailed information and documentation on the data generated, referenced and modified in this review, see the project Data and Methodology Document.**

Exhibit A-1 found on the following page illustrates the geographic scope of all waterways studied for this review as well as approximate heads of tide for those tidal reaches that have not been previously studied.

**[INSERT GEOGRAPHIC SCOPE REFERENCE MAP]**

## WATERWAY DESCRIPTION

The Siletz estuary, once a hub of commercial activity, is now primarily a recreational and residential area. Its proximity to inland population centers such as Salem, Albany and Corvallis encouraged the development of resort and residential areas around the estuary. Located in Lincoln County about 4 miles south of Lincoln City on the mid-Oregon coast, the estuary spans over 1,000 acres, with tidelands representing nearly three quarters of that area. The estuary features salt marsh, brackish marsh, tidal sloughs, mudflats and coniferous and deciduous forestland. The Oregon Land Conservation and Development Commission (LCDC) have classified the Siletz estuary as a conservation estuary. Conservation estuaries are to be managed for long-term uses of renewable resources that do not require major alterations.

The Siletz River is the primary tributary of the Siletz estuary and is characterized by a steep, highly dissected drainage basin of 308 square miles. Drift Creek, with a drainage basin of 41 square miles, and Schooner Creek, which drains 15 square miles, are two major streams which also discharge directly into the Siletz estuary.

The river and bay are home to Coho and Chinook salmon, steelhead and cutthroat trout as well as other anadromous fish species. Softshell clams are present in the mudflats between Kernville and Cutler City. The estuary is also known as an excellent location for bird-watchers with osprey, red-tailed hawk and bald eagles seen roosting at the top of snags throughout the estuary. A variety of estuarine dependent birds including great blue heron, great egret and some species of waterfowl can be seen foraging in the tidally influence waters.

## TIMELINE

Lieutenant Theodore Talbot pens first written description of Siletz Bay _____ 1849

400-ton Portuguese Schooner runs ashore near Schooner Creek _____ 1850

Siletz Reservation created by executive order _____ 1855

Oregon Statehood _____ 1859

Dawes Act opens up settlement of “excess” reservation lands _____ 1887

Lincoln County formed _____ 1893

Daniel Kern establishes the Kern Brothers Cannery near present day Kernville _____ 1896

Post office established at Kern Brother Cannery _____ 1896

George Parmele builds first sawmill on Drift Creek _____ 1905

Post office established in the community of Taft _____ 1906

Swinging bridge constructed across Schooner Creek _____ 1911

Mary and George E. Cutler establish the town of Cutler City _____ 1913

Roosevelt Coast Military Highway (US 101) constructed _____ 1925

Salmon River Cut-Off, the lowest pass across the Coast Range, completed 1927

Arthur G. Cutler and Associates contracted to build dikes in and around Cutler City 1930

Old fishing dock in Cutler City built 1931

Gravel dug out of the mouth of Drift Creek to be used for public improvement projects 1932

Pedestrian pathway connecting the communities of Oceanlake and Cutler City built 1937

Werner Timber Company erects company building 1940

Cutler City Lumber Mill burns to ground 1948

Millport Slough diked 1951

Garrigus Builders Supply warehouse destroyed by fire 1964

The communities of Cutler City, Taft, Nelscott, Oceanlake and Delake consolidate to form Lincoln City 1965

Dike at Millport Slough removed 1978

## FILLED LANDS FINDINGS

Historically and new filled lands were found at 40 sites within the geographic scope of this review. Of these sites 26 were determined to be historical fill, 11 new fill and three (3) sites require further investigation. The approximate acreage of all 40 sites is 28 acres, 17 of these acres are historic fill, 10.5 are new fill and the remaining 0.5 acres require further investigation.

Exhibit A-2, found on the following page, illustrates all filled lands sites identified for the Siletz River. Exhibit A-2 separates the waterway into four (4) discrete regions, labeled Region B-1 through B-4.

The sections following Exhibit A-2 provide a more detailed description of filled lands for each region of the Siletz River. Each subsequent narrative summarizes what type of fill occurred in the region, how many sites were found, the acreage of fill, whether any state interest remains, what data was used to identify the fill and how the site was documented or digitized. A map and table accompany each regional narrative and are intended to help summarize the research conducted by DSL staff.

**[INSERT FILLED LANDS REFERENCE MAP]**

## B-1

This region of the Siletz River covers the northern reaches of Siletz Bay, particularly where Schooner and Drift Creek enter as well as a small section of the Siletz River where it enters the bay. Filled lands were found at 21 sites with 16 of these sites determined by DSL staff to be historic and five (5) to be new fill. These filled lands sites cover approximately 17 acres, with 10.5 acres of historical fill and 6.5 acres of new fill. This review found that all of the sites in this region potentially had fill or partial fill on state owned submerged and submersible lands. Unless otherwise noted, 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at the sites in this section.

The following narratives provide greater detail of individual sites as determined by DSL staff. At the end of this section see the accompanying map titled Exhibit B-1.

**SR1:** Fill at site SR1 is historic. Fill at this site was originally placed for commercial and residential purposes. USACE aerial imagery from 1939 was used to approximate the date of fill. Lincoln County tax lot records indicate the area as privately held.

**SR2:** Fill at site SR2 is new. Fill was originally placed for residential purposes. USACE aerial imagery from 1972 was used by DSL staff to approximate the date of fill. Current county tax lot records identify the property as privately held.

**SR3:** Fill at site SR3 is new. Fill was originally placed at this site for commercial purposes. USACE aerial imagery from 1971 was used to determine the approximate date of fill. Lincoln County tax lot records indicate the site is privately held.

**SR4:** Fill at site SR4 is new. Fill at this site was originally placed for residential purposes. Site SR4 was first identified in DSL's 1972 filled lands study for the Siletz River. The original study determined that fill was placed in 1967. Lincoln County tax lot records indicate the area as privately held.

**SR5:** Fill at site SR5 is historic. Fill was originally placed at this site for the construction of a road, with portions of the site remaining undeveloped. USACE aerial imagery from 1939 was used to determine the approximate date of fill. Lincoln County tax lot records indicate the site is privately held.

**SR6:** Fill at site SR6 is historic. Fill at this site was originally placed for the construction of a pull out for Oregon Route 229. Fill at this site was first identified in DSL's 1972 filled lands study of the Siletz River. The original study determined that fill was originally placed in 1922. Current county tax lot records are unclear as to who the present owner of the site is.

**SR15:** Fill at site SR15 is new. Fill was originally placed for residential purposes. USACE aerial imagery from 1962 was used by DSL staff to approximate the date of fill. Current county tax lot records identify the property as privately held. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR16:** Fill at site SR16 is historic. It is unclear from historic records why fill was originally placed at this site. Currently the site appears to be largely undeveloped. USACE aerial imagery from 1939 was used to determine roughly when fill was placed. Current tax lot records indicate private ownership. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR17:** Fill at site SR17 is historic. Fill at the site was originally placed for the construction of a road. USACE aerial imagery from 1939 was used to determine when fill was placed at this site. Lincoln County tax lot records indicate the site as owned by Lincoln City. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR18:** Fill at site SR18 is historic. Fill at the site was originally placed for commercial purposes. USACE aerial imagery from 1962 was used to determine roughly when fill was placed. Lincoln County tax lot records indicate the site as privately owned. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR19:** Fill at site SR19 is historic. It is unclear from historic records why fill was originally placed at this site. Currently the site appears to be largely undeveloped. USACE aerial imagery from 1962 was used to determine roughly when fill was placed. Current tax lot records indicate private ownership. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR20:** Fill at site SR20 is historic. It is unclear from historic records why fill was originally placed at this site. Currently the site appears to be largely undeveloped. USACE aerial imagery from 1962 was used to determine roughly when fill was placed. Current tax lot records indicate private ownership. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR21:** Fill at site SR21 is historic. Fill was originally placed at this site for the construction of wastewater treatment ponds. USACE aerial imagery from 1963 was used to determine the approximate date of fill. Tax lot records indicate the site as owned by Lincoln City. USACE aerial imagery was used to digitize the extent of fill for this site.

**SR22:** Fill at site SR22 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1962 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR23:** Fill at site SR23 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1962 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR24:** Fill at site SR24 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a dike. USACE aerial imagery from 1939 was used by

DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records indicate the property as federally owned.

**SR25** Fill at site SR25 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records indicate the site as under private ownership.

**SR26:** Fill at site SR26 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. USACE aerial imagery from 1962 was used by DSL staff to determine approximately when fill was placed. Current Lincoln County tax lot records indicate the site is privately held.

**SR27:** Fill at site SR27 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for an undetermined purpose and is largely undeveloped. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Lincoln County tax lot records indicate the site is privately held.

**SR28:** Fill at site SR28 was determined to be new fill by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road and for commercial purposes. USACE aerial imagery from 1939 was used by DSL staff to determine approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR40:** Fill at site SR40 was determined by DSL staff to be historic. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for residential purposes. USACE aerial imagery from 1939 was used to approximate the date of fill. Lincoln County tax lot records indicate the site is privately held.

**Table 1: Filled Lands Sites for Region B-1**

| Site ID | Fill Type | Acres | Current Use | State Interest | Ownership |
|---|---|---|---|---|---|
| SR1 | Historic | 7 | Commercial & Residential | Potential claim | Private |
| SR2 | New | < 1 | Residential | Potential claim | Private |
| SR3 | New | < 1 | Commercial | Potential claim | Private |
| SR4 | New | < 1 | Residential | Potential claim | Private |
| SR5 | Historic | 1 | Road & Undeveloped | Potential claim | Private |
| SR6 | Historic | < 1 | Pull Out | Potential claim | Undetermined |
| SR15 | New | < 1 | Residential | Potential claim | Private |
| SR16 | Historic | < 1 | Undeveloped | Potential claim | Private |
| SR17 | Historic | < 1 | Road | Potential claim | City |
| SR18 | Historic | < 1 | Commercial | Potential claim | Private |
| SR19 | Historic | < 1 | Undeveloped | Potential claim | Private |
| SR20 | Historic | < 1 | Undeveloped | Potential claim | Private |
| SR21 | Historic | < 1 | Wasterwater Treatment | Potential claim | City |
| SR22 | Historic | < 1 | Road | Potential claim | Undetermined |
| SR23 | Historic | < 1 | Road | Potential claim | Undetermined |
| SR24 | Historic | < 1 | Dike | Potential claim | Federal |
| SR25 | Historic | < 1 | Road | Potential claim | Private |
| SR26 | Historic | < 1 | Agriculture | Potential claim | Private |
| SR27 | Historic | < 1 | Undeveloped | Potential claim | Private |
| SR28 | New | 5 | Commercial & Road | Potential claim | Undetermined |
| SR40 | Historic | < 1 | Residential | Potential claim | Private |

**[INSERT EXHIBIT B-1]**

## B-2

This region of the initial review covers the Siletz River just before it enters Siletz Bay. Filled lands were found at seven (7) sites with two (2 ) of these sites determined by DSL staff to be historic, three (3) to be new fill and two (2) site require further research to determine when it was placed. These filled lands sites cover less than one acre. This review found that all of the sites in this region had fill on state owned submerged and submersible lands.

The following narratives provide greater detail of individual sites. At the end of this section see the accompanying map titled Exhibit B-2.

**SR7:** Fill at site SR7 was determined to be historic by DSL staff. Fill at this site was originally placed during the construction of a log dump. This site was first identified in DSL's 1972 filled lands study of the Siletz River. The original study determined that fill was originally placed in 1922. Current Lincoln County tax lot records identify the site as privately owned. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR33:** DSL staff was unable to determine when fill at site SR33 occurred though it is clear that portions occurred on state owned submerged and submersible lands. Fill at this site was originally placed for the construction of a road. Current tax lot records indicate private ownership of the site. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR34:** Fill at site SR34 was determined by DSL staff to be new. Staff was also able to conclude that portions of fill occurred on state owned submerged and submersible lands. Fill at this site was originally placed for residential development. USACE aerial imagery from 1971 was used to determine approximately when fill was placed. Lincoln County tax lot records indicate the site is privately owned. USACE aerial imagery from 1971 was used to digitize the extent of fill for this site.

**SR35:** DSL staff concluded that fill at site SR35 is new fill with portions occurring on submerged and submersible land owned by the state. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1971 was used to approximate the date of fill. Current tax lot records indicate private ownership. USACE aerial imagery from 1971 was used to digitize the extent of fill for this site.

**SR36:** DSL staff was able to determine that fill at site SR36 is new and that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the purpose of constructing a roadway. USACE aerial imagery from 1971 was used to determine approximately when fill was placed. Current tax lot records indicate the site is privately held. USACE aerial imagery from 1971 was used to digitize the extent of fill for this site.

**SR37:** DSL staff was unable to determine when fill at site SR37 occurred though it is clear that portions occurred on state owned submerged and submersible lands. Fill at this site was originally placed for the construction of a road. Current tax lot records indicate private

ownership of the site. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR39:** Fill at site SR39 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**Table 2: Filled Land Sites for Region B-2**

| Site ID | Fill Type | Acres | Current Use | State Interest | Ownership |
|---|---|---|---|---|---|
| SR7 | Historic | < 1 | Undetermined | Potential claim | Private |
| SR33 | Undetermined | < 1 | Road | Potential claim | Private |
| SR34 | New | < 1 | Residential | Potential claim | Private |
| SR35 | New | < 1 | Road | Potential claim | Private |
| SR36 | New | < 1 | Road | Potential claim | Private |
| SR37 | Undetermined | < 1 | Road | Potential claim | Private |
| SR39 | Historic | < 1 | Road | Potential claim | Undetermined |

**[INSERT EXHIBIT B-2]**

## B-3

This region of the Siletz River covers the southern portion of Siletz Bay, including the Siletz Keys and parts of the Siletz Bay Wildlife Refuge. Filled lands were found at 11 sites with eight (8) of these sites determined by DSL staff to be historic and three to be new fill. These filled lands sites cover approximately one acre. This review found that all of the sites in this region had fill on state owned submerged and submersible lands. Unless otherwise noted, USACE aerial imagery from either 1939 or 1963 was used to digitize the extent of fill at the sites in this section.

The following narratives provide greater detail of individual sites. At the end of this section see the accompanying map titled Exhibit B-3.

**SR8:** Fill at site SR8 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1939 was used by DSL staff to determine approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR9:** DSL staff determined that fill at SR9 is historic with portions of fill occurring on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR10:** Fill at site SR10 was determined to be new fill by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1972 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR11:** DSL staff determined that fill at site SR11 is new with portions occurring on state owned submerged and submersible lands. Fill at this site was originally placed for the construction of a road and residential purposes. USACE aerial imagery from 1971 was used to determine the date that fill was placed. Lincoln County tax lot records are unclear who the current property owner is. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR12:** Fill at site SR12 was determined to be new fill by DSL staff with portions occurring on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1972 was used by DSL staff to determine approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR13:** Fill at site SR 13 was determined by DSL staff determined to be historic with portions of fill occurring on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1962 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at this site.

**SR14:** DSL staff determined that fill at SR14 is historic with portions of fill occurring on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a road. USACE aerial imagery from 1963 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records are unclear who the current property owner is.

**SR29:** DSL staff determined that fill at site SR29 is historic and that portions did occur on submerged and submersible lands owned by the state. Research conducted on this site determined that fill was originally placed on this site for the construction of a golf course. USACE aerial imagery from 1962 was used to determine the approximate date of fill. Lincoln County tax lot records indicate the site is privately held.

**SR30:** Fill at site SR30 was determined to be historic by DSL staff. Staff concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a dike. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records indicate the property as federally owned. Recent activity indicates that the dike has been removed.

**SR31:** DSL staff determined that fill at site SR31 is historic and concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a dike. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records indicate the property as federally owned. Recent activity indicates that the dike has been removed.

**SR32:** Fill at site SR32 was determined to be historic by DSL staff. Staff also concluded that portions of fill occurred on state owned submerged and submersible land. Fill at this site was originally placed for the construction of a dike. USACE aerial imagery from 1939 was used by DSL staff to determined approximately when fill was placed. Current Lincoln County tax lot records indicate the property as federally owned. Recent activity indicates that the dike has been removed.

**Table 3: Filled Land Sites for Region B-3**

| Site ID | Fill Type | Acres | Current Use | State Interest | Ownership |
|---|---|---|---|---|---|
| SR8 | Historic | 2 | Road | Potential claim | Undetermined |
| SR9 | Historic | 2 | Road | Potential claim | Undetermined |
| SR10 | New | < 1 | Road | Potential claim | Undetermined |
| SR11 | New | 2 | Residential & Road | Potential claim | Undetermined |
| SR12 | New | 1 | Road | Potential claim | Undetermined |
| SR13 | Historic | < 1 | Road | Potential claim | Undetermined |
| SR14 | Historic | < 1 | Road | Potential claim | Undetermined |
| SR29 | Historic | < 1 | Golf Course | Potential claim | Private |
| SR30 | Historic | < 1 | S & S | Potential claim | Federal |
| SR31 | Historic | < 1 | S & S | Potential claim | Federal |
| SR32 | Historic | < 1 | S & S | Potential claim | Federal |

**[INSERT EXHIBIT B-3]**

## B-4

This region of the initial review covers the upper portion of the Siletz River near the head of tide. Filled lands were found at one (1) site covering less than one (1) acre. 2009 LiDAR data acquired from DOGAMI was used to digitize the extent of fill at the site in this region.

The following narrative provides greater detail of the individual site. At the end of this section see the accompanying map titled Exhibit B-4.

**SR38:** DSL staff was unable to determine when fill at site SR38 occurred though it is clear that portions occurred on state owned submerged and submersible lands. Fill at this site was originally placed for the construction of a boat ramp. Current tax lot records indicate Lincoln County as the owner of record.

**Table 4: Filled Land Site for Region B-4**

| Site ID | Fill Type | Acres | Current Use | State Interest | Ownership |
|---|---|---|---|---|---|
| SR38 | Undetermined | < 1 | Boat Ramp | Potential claim | County |

**[INSERT EXHIBIT B-4]**

# SIGNATURE BLOCK

*The undersigned acknowledge they have reviewed and approved **Filled Lands Initial Review: Siletz River** for the Filled Lands Project.*

Signature: _____ Date: _____

Print Name:
Title: Deputy Director
Role: Project Sponsor

Signature: _____ Date: _____

Print Name:
Title: State Lands Ownership Coordinator
Role: Author

# APPENDIX A

## TERMS & DEFINITIONS

**Accretion –** The gradual and imperceptible addition of soil to the riparian or littoral lands (beaches and banks) of an ocean, lake, river or stream by the operation of water.

**Avulsion –** The sudden and perceptible gain or loss of shore land along a body of water caused by the action of water or a sudden change in the bed or course of a stream.

**Cloud on Title –** Any document, claim, unreleased lien or encumbrance that might invalidate or impair the title to real property or make the title doubtful. Clouds on title are usually discovered during a title search and are often resolved through initiating a quitclaim deed or a commencement of action to quiet title.

**Erosion –** The gradual and imperceptible loss of dry land through the wearing away of the shoreline by the action of the waters.

**Historically Filled Lands –** Those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit before May 28, 1963.

**Mean Higher High Tide (MHHT) –** Same as Mean Higher High Water.

**Mean Higher High Tide Line –** Same as Mean Higher-High-Water line.

**Mean Higher High water (MHHW) –** The average height of the higher high waters over a 19-year period

**Mean Higher High Water Line –** The intersection of the tidal plane of mean higher high water with the shore. See Mean Higher High Water.

**Mean High Tide (MHT) –** Same as Mean High Water

**Mean High Water (MHW) –** The average height of the high waters over a 19-year period. All high waters are included in the average where the tide is either semidiurnal or mixed. Where the type of tide is predominantly diurnal, only the higher high-water heights are included in the average on those days when the tide is semidiurnal. See mixed tides, semidiurnal tides, and diurnal tides.

**Mean High Water Line –** The intersection of the tidal plane of mean high water with the shore.

**Mean High Water Mark –** Same as Mean High-Water Line.

**Mean Lower Low Water (MLLW) –** The average height of the lower low waters over a 19-year period. The tidal plane used on the Pacific Coast as a datum for soundings on the hydrographic surveys and nautical charts of the Coast and Geodetic Survey.

**Mean Low Water (MLW) –** The average height of the low waters over a 19-year period. All low water heights are included in the average where the type of tide is either semidiurnal or mixed. Where the type of tide is predominantly diurnal, only the lower low water heights are included in the average on those days when the tide becomes semidiurnal.

**Mean Low Water Line –** The intersection of the tidal plane of mean low water with the shore.

**Mean Sea Level (MSL) –** The average height of the surface of the sea for all stages of the tide over a 19-year period, usually determined from hourly height readings. A determination of mean sea level that has been adopted das a standard for heights is called a sea level datum.

**Mean Tide Level (MTL) –** A tidal datum midway between Mean High Water and Mean Low Water.

**New Lands –** Those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, that were created upon submersible or submerged lands by artificial fill or deposit on or after May 28, 1963.

**Ordinary High Water (OHW) –** The line on the bank or shore to which the high water ordinarily rises annually in season. ORS 274.005(3).

**Ordinary Low Water (OLW) –** The line on the bank or shore to which the low water ordinarily recedes annually in season. ORS 274.005(4).

**Ownership Lines –** Lines used in determine the extent of real property. Typical lines used by the state for defining the extent of ownership are ordinary high water (OHW), ordinary low water (OLW) and county tax lots.

**Reliction –** The gradual withdrawal of water from the shoreline, leaving land exposed that had previously submerged.

**Submergence –** A gradual and imperceptible process in which land that was previously exposed is submerged.

**Tidelands** – The land that is covered and uncovered by the daily rise and fall of the tide. More specifically, it is the zone between the mean high-water line and the mean low-water line along a coast, and is commonly known as the “shore” or “beach.” Tidelands are referred to in legal decisions as lying between ordinary high-water mark and ordinary low water mark. Tidelands presuppose a high-water line as the upper boundary.