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States' Wetlands Permitting Statutes:

Oregon



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ORS §§ 196.600 – 196.993

Current through laws enacted in the 2023 Regular Session of the 82nd Legislative Assembly.

ORS § 196.600. Definitions for ORS 196.600 to 196.655.

As used in ORS 196.600 to 196.655:

- (1) "Compensatory mitigation" means activities conducted by a permittee or third party to create, restore, enhance or preserve the functions and values of the water resources of this state to compensate for the removal-fill related adverse effects of project development to waters of this state or to resolve violations of ORS 196.800 to 196.921. Compensatory mitigation for removal-fill activities does not affect permit requirements of other state departments.
- (2) "Credit" means the measure of the increase in the functions and values of the water resources of this state achieved at a mitigation bank site.
- (3) "Mitigation bank" means a site created, restored, enhanced or preserved in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this state due to activities which otherwise comply with the requirements of ORS 196.600 to 196.921.
- (4) "Mitigation bank instrument" means the legally binding and enforceable agreement between the Director of the Department of State Lands and a mitigation bank sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's construction, operation and long-term management.
- (5) "Off-site compensatory mitigation" means activities conducted away from the project site that create, restore, enhance or preserve the functions and values of the water resources of this state in order to compensate for the adverse impacts to waters of this state from project development.
- (6) "On-site compensatory mitigation" means activities conducted at the project site to create, restore, enhance or preserve the functions and



values of the water resources of this state in order to compensate for the adverse impacts to waters of this state from project development.

(7) "Permit action" means activity under a specific removal or fill permit or other authorization requested or issued under ORS 196.600 to 196.921.

(8) "Service area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map - 1974, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project developments to waters of this state. Service areas for mitigation banks are not mutually exclusive.

(9) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460-L et seq.). [Formerly 541.550; 1995 c.370 §2; 2003 c.738 §3; 2009 c.343 §1]

ORS § 196.605. Purpose.

It is the purpose of ORS 196.600 to 196.655 to:

- (1) Promote, in concert with other federal and state programs as well as interested parties, the maintenance and conservation of the water resources of this state;
- (2) Improve cooperative efforts among private, nonprofit and public entities for the management and protection of the waters of this state;
- (3) Offset losses of the functions and values of the water resources of this state caused by activities that otherwise comply with state and federal law in order to create, restore, enhance or preserve those functions and values;
- (4) Maintain and encourage a predictable, efficient regulatory framework for environmentally acceptable development;
- (5) Provide an option for accomplishing off-site compensatory mitigation when on-site compensatory mitigation is not practicable; and
- (6) Allow the use of mitigation banks to offset adverse effects from removal or fill activities on the waters of this state. [Formerly 541.555; 2003 c.738 §4; 2009 c.343 §2]

ORS § 196.610. Powers of director of Department of State Lands; fees.



Subject to approval by the State Land Board, the Director of the Department of State Lands may:

- (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to 196.655.
- (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to preserve sensitive or unique habitat in or near the waters of this state.
- (3) Pay costs incurred for alterations needed to create, restore, enhance or preserve waters of this state for purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.921.
- (4) Authorize payment of administrative, research or scientific monitoring expenses of the Department of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800 to 196.921.
- (5) Disburse funds received under the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.
- (6) Receive funds under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for nonmitigation complementary purposes and programs of ORS 196.600 to 196.655. [Formerly 541.557; 1993 c.18 §36; 2003 c.738 §5; 2009 c.343 §3]

ORS § 196.615. Program for mitigation banks; program standards and criteria; rules.

- (1) In accordance with the provisions of ORS 196.600 to 196.655, upon the approval of the State Land Board, the Director of the Department of State Lands shall initiate and implement a program for mitigation banks. The director shall encourage the development of and the expeditious approval of mitigation banks and other types of compensatory mitigation.
- (2) Subject to the approval of the State Land Board, the Department of State Lands shall adopt, by rule, standards and criteria for the site selection process, operation and evaluation of mitigation banks. Criteria to be considered shall include but need not be limited to:



(a) Historical trends relating to the waters of this state, including the estimated rate of current and future losses of the respective types of waters of this state.

(b) The contributions of the waters of this state to:

(A) Wildlife, migratory birds and resident species;

(B) Commercial and sport fisheries;

(C) Surface and ground water quality and quantity, and flood moderation;

(D) Outdoor recreation including enhancement of scenic waterways; and

(E) Scientific and research values.

(c) Regional economic needs.

(3) The rules adopted by the department under this section must also include:

(a) Guidelines for the use of mitigation banks to compensate for adverse effects of project development or to resolve violations of ORS 196.800 to 196.921 related to waters of this state; and

(b) Guidelines for allowing a permittee or third party to create a mitigation bank or to conduct compensatory mitigation in order to create, restore, enhance or preserve water resources of this state.

(4) For each mitigation bank, the department shall establish a well-defined plan, including preliminary objectives, inventory of resource values and an evaluation and monitoring program. [Formerly 541.560; 1991 c.67 §48; 2003 c.738 §6; 2009 c.343 §4]

ORS § 196.620. Resource values and credits for mitigation banks; use and withdrawal of credits; annual evaluation of system by director.

(1) For each mitigation bank, the Department of State Lands shall establish a system of resource values and credits.

(2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit in accordance with ORS 196.825 (5), for any other authorization issued in accordance with ORS 196.800 to 196.921 or to resolve a violation of ORS 196.800 to 196.921. At the request of a



mitigation bank sponsor, the Director of the Department of State Lands may authorize the withdrawal of mitigation bank credits by a public benefit corporation as defined in ORS 65.001 or a public body as defined by ORS 174.109 designated by the director for the purpose of reserving credits for future use in accordance with this subsection. The director shall manage such transactions to ensure that each credit is used no more than one time to satisfy a use in accordance with this section.

(3) Credits from a mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the service area of the mitigation bank, consistent with the mitigation bank instrument, unless the director determines that it is environmentally preferable to exceed this limitation.

(4) Credits from an estuarine mitigation bank may be used only as described in subsection (2) of this section for permits, authorizations or resolutions of violations approved within the same estuarine ecological system unless the director determines that it is environmentally preferable to exceed this limitation.

(5) The director may not withdraw any credits from any mitigation bank until the director has:

(a) Taken actions sufficient to establish hydrological function of the mitigation bank site;

(b) Conducted other creation, restoration, enhancement or preservation actions to establish other functions and values at the mitigation bank site; and

(c) Evaluated the results of the actions and determined that a high probability exists that the functions and values of the mitigation bank site are equal to or greater than the functions and values of the area to be impacted or that the functions and values of the mitigation bank compensate for unavoidable adverse effects on the waters of this state due to the activities otherwise allowed under ORS 196.600 to 196.921.

(6) The price for any mitigation credit shall be set at an amount that will compensate the state for all of the costs and expenses the state has incurred and is expected to incur in establishing and maintaining that portion of the mitigation bank.

(7) The director shall not consider the availability or nonavailability of mitigation bank credits in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to 196.921.



(8) The director annually shall:

(a) Evaluate the functions and values created within each mitigation bank site; and

(b) Compare the current functions and values with those that the director anticipated that the mitigation bank would provide. If the director finds any significant disparity between the actual and anticipated functions and values, the director shall:

(A) Suspend the withdrawal of credits to that mitigation site; or

(B) Take prompt action to ensure that the anticipated functions and values are established.

(9) The director may not withdraw credits from the mitigation bank for a specific permit, authorization or resolution of a violation if the director determines that:

(a) The credits for that specific permit, authorization or resolution of a violation would not adequately maintain habitat or species diversity;

(b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently similar in functions and values to the area to be impacted; or

(c) The functions and values of the mitigation bank do not compensate for unavoidable adverse effects on the waters of this state due to the activities otherwise allowed under ORS 196.600 to 196.921. [Formerly 541.565; 1997 c.444 §3; 2003 c.738 §7; 2005 c.22 §135; 2007 c.804 §70; 2007 c.849 §10; 2009 c.343 §5; 2011 c.370 §2]

ORS § 196.623. Watershed enhancement project as mitigation bank; sale of mitigation credit.

(1) The Department of State Lands may approve a watershed enhancement program and certify the project as a mitigation bank under ORS 196.600 to 196.655 if the watershed enhancement program complies with the rules adopted by the department under ORS 196.615 for certification of a program as a mitigation bank.

(2) A person, state agency, federal agency, federally recognized Indian tribe, watershed council or political subdivision in this state that owns land upon which is located a watershed enhancement program that qualifies as a mitigation bank under subsection (1) of this section may sell mitigation



credit from the mitigation bank subject to ORS 196.600 to 196.655 and the rules of the Department of State Lands adopted under ORS 196.600 to 196.655. [1997 c.444 §2; 2009 c.343 §6]

ORS § 196.625. Fill and removal activities in mitigation banks; reports.

(1) The Director of the Department of State Lands shall maintain a record of fill and removal activities and actions for each mitigation bank implemented and conduct monitoring of mitigation banks with moneys from the Oregon Removal-Fill Mitigation Fund.

(2) The director shall provide annual reports to the State Land Board on moneys spent and received for each mitigation bank. [Formerly 541.567; 2003 c.738 §8; 2009 c.343 §7]

ORS § 196.630. Rules.

Subject to the approval of the State Land Board, the Director of the Department of State Lands shall adopt rules according to the provisions of ORS chapter 183 to carry out the provisions of ORS 196.600 to 196.655. [Formerly 541.570]

ORS § 196.635. Director to consult and cooperate with other agencies and interested parties.

(1) The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the Department of State Lands. The Department of State Lands shall solicit, but not be bound by, comments from the State Department of Fish and Wildlife, Department of Transportation, Department of Land Conservation and Development, Department of Environmental Quality, Oregon Business Development Department, federal natural resources and regulatory agencies, affected local governments and special districts, conservation organizations and other interested parties. All comments shall be in writing and provided to the Department of State Lands and mitigation bank sponsor within 30 days of solicitation by the Department of State Lands. If comments are not received by the Department of State Lands from a state agency or from an affected local government or special district within 30 days of solicitation, the director shall assume that the state agency, local government or special district does not desire to provide comments.

(2) In cooperation with the parties in subsection (1) of this section, the director, in consultation with the State Land Board, shall:

(a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive Outdoor Recreation Plan.



(b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes and programs under ORS 196.600 to 196.655.

(3) The director shall confer with the Oregon Watershed Enhancement Board to develop criteria to certify watershed enhancement projects as mitigation banks. [Formerly 541.575; 1997 c.444 §4; 2003 c.738 §9]

ORS § 196.640. Oregon Removal-Fill Mitigation Fund; rules.

(1) The Oregon Removal-Fill Mitigation Fund is established, separate and distinct from the General Fund. All moneys received under ORS 196.645 shall be paid into the State Treasury and credited to the Oregon Removal-Fill Mitigation Fund. All moneys in the fund are appropriated continuously to the Department of State Lands to be used by the department as set forth in ORS 196.650. The moneys in the fund may be invested and reinvested as provided in ORS 293.701 to 293.857. Interest earned by the fund shall be credited to the fund.

(2) The department shall keep a record of all moneys deposited in the fund. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged.

(3) The department shall publish annually the record of moneys deposited in and removed from the fund.

(4) The department may adopt rules for prioritizing expenditures from the fund for the purposes specified in ORS 196.650. [Formerly 541.577; 2003 c.738 §10; 2009 c.343 §9]

ORS § 196.643. Payments to comply with permit condition, authorization or resolution of violation; report; rules.

(1) A person who provides off-site compensatory mitigation in order to comply with a condition imposed on a permit in accordance with ORS 196.825 (5), an authorization issued in accordance with ORS 196.800 to 196.921 or a resolution of a violation of ORS 196.800 to 196.921 may make a payment for credits to an approved mitigation bank with available credits or to the Oregon Removal-Fill Mitigation Fund.

(2) Any payments for off-site compensatory mitigation made to the Oregon Removal-Fill Mitigation Fund under subsection (1) of this section must be sufficient to cover the costs and expenses of land acquisition, project



design and engineering, construction, planting, monitoring, maintenance, long-term management and protection activities, administration and other costs and expenses related to the off-site compensatory mitigation, which may vary depending on the region of this state where the off-site compensatory mitigation is conducted, and shall be calculated by the Department of State Lands as follows:

(a) If the off-site compensatory mitigation project and project costs and expenses are identified at the time of payment to the Oregon Removal-Fill Mitigation Fund, the department shall calculate the payment based on the actual costs and expenses of the off-site compensatory mitigation.

(b) If the off-site compensatory mitigation project and project costs and expenses are not identified at the time of payment to the Oregon Removal-Fill Mitigation Fund, the department shall calculate the payment based on the estimate of costs and expenses for off-site compensatory mitigation, as set forth in rules adopted by the department, for the region of this state where the department, to the greatest extent practicable, determines the off-site compensatory mitigation may be conducted.

(3) No later than December 1 of each year, the Director of the Department of State Lands shall submit to the Legislative Assembly and the State Land Board a detailed report that specifies:

(a) The costs and expenses related to off-site compensatory mitigation, including variations and trends in costs and expenses over time.

(b) Efforts undertaken by the department to reduce the costs and expenses specified in paragraph (a) of this subsection.

(c) Efforts undertaken by the department to improve efficiencies of the department related to off-site compensatory mitigation.

(d) The effectiveness of the July 2010 "Oregon Rapid Wetland Assessment Protocol" of the department in protecting the functions and values of wetlands through off-site compensatory mitigation. [2003 c.738 §22; 2007 c.849 §11; 2009 c.343 §10; 2011 c.370 §3; 2013 c.257 §1; 2015 c.343 §1; 2019 c.652 §3]

ORS § 196.645. Sources of fund.

The following moneys shall be paid into the Oregon Removal-Fill Mitigation Fund:



- (1) Any moneys appropriated for that purpose by the Legislative Assembly;
- (2) Moneys received from conditions imposed on a permit, authorizations or resolutions of violations, except civil penalties, involving compensatory mitigation in which the Department of State Lands is the party responsible for the compensatory mitigation;
- (3) Moneys awarded for such purposes as specifically stipulated under grants through the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the federal Coastal Zone Management Act of 1972, 16 U.S.C. 1451 et seq., as amended;
- (4) Moneys obtained by gift, bequest, donation or grant from any other public or private source for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.921;
- (5) Repayment of moneys from the fund, including interest on such moneys; and
- (6) Moneys obtained from interest or other earnings from investments of moneys in the fund. [Formerly 541.580; 1999 c.59 §50; 2003 c.738 §11; 2009 c.343 §11]

ORS § 196.650. Use of fund.

The Department of State Lands may use the moneys in the Oregon Removal-Fill Mitigation Fund for the following purposes:

- (1) For the voluntary acquisition of land or interests therein suitable for use in mitigation banks.
- (2) To pay for specific projects to create, restore, enhance or preserve water resources of this state for purposes of carrying out the provisions of ORS 196.600 to 196.921. Moneys deposited in the fund for impacts to the waters of this state may be used only for projects that create, restore, enhance or preserve water resources of this state.
- (3) For the implementation of long-term protection measures related to projects that create, restore, enhance or preserve water resources of this state.
- (4) For purchase of credits from approved mitigation banks.
- (5) For payment of administrative, research or scientific monitoring expenses of the department in carrying out the provisions of ORS 196.600 to 196.655.



(6) For the disbursal of funds received under the federal Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant award.

(7) For the disbursal of funds received under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan. [Formerly 541.585; 1993 c.18 §37; 2003 c.738 §12; 2009 c.343 §12]

ORS § 196.655. Report on Oregon Removal-Fill Mitigation Fund; contents.

As part of the report to the State Land Board required under ORS 196.885, the Director of the Department of State Lands shall prepare an annual report on the Oregon Removal-Fill Mitigation Fund. The report shall include, but need not be limited to:

- (1) The financial status of the fund;
- (2) Creation, restoration, enhancement or preservation activities and credits sold, granted or otherwise disposed of or remaining in mitigation banks established under ORS 196.600 to 196.655;
- (3) Portions of the waters of this state, including but not limited to wetlands, acquired with moneys in the fund;
- (4) Compensatory mitigation projects financed with moneys in the fund; and
- (5) For each mitigation bank, a summary of activities, including but not limited to:
 - (a) A description of the location, size, number of potential credits and credits withdrawn for each specific permit action; and
 - (b) The status of all mitigation bank activities pending or completed during the past year. [Formerly 541.587; 2003 c.738 §13; 2009 c.343 §13]

ORS § 196.660. Effect of ORS 196.600 to 196.655.

ORS 196.600 to 196.655 are intended to be supplementary to, and are not intended to abrogate, any state or federal law relating to the waters of this state. [Formerly 541.590; 1999 c.59 §51; 2009 c.343 §14]

ORS § 196.665. Short title.



ORS 196.600 to 196.655 may be cited as the "Oregon Removal-Fill Mitigation Fund Act." [Formerly 541.595; 2009 c.343 §15]

ORS § 196.668. Legislative findings.

The Legislative Assembly finds that:

- (1) Wetlands provide a natural means of flood and storm damage protection through the absorption and storage of water during high runoff periods, thereby reducing flood crests and preventing loss of life and property;
- (2) Wetlands provide essential breeding, spawning, rearing, feeding, nesting and wintering habitats for a major portion of this state's fish and wildlife;
- (3) Wetlands provide essential habitat for waterfowl using the Pacific Flyway and for the rearing of salmon and other anadromous and resident fish;
- (4) Wetlands act as accumulation areas for sediments which retain nutrients and other pollutants that may prevent entry of the pollutants into other waterways;
- (5) Wetlands provide a valuable public service of maintaining clean water by retaining nutrients, metals and toxic materials from the water to protect water quality;
- (6) Wetlands provide significant opportunities for environmental and ecological research, public recreation and education and provide scenic diversity and aesthetic value as open space and areas of visual enjoyment;
- (7) Much of this state's original wetlands have been diked, drained, filled, dredged, ditched or otherwise altered;
- (8) There is continuing development pressure on wetlands in Oregon;
- (9) There are often conflicts between wetland protection and other resource values and uses;
- (10) Uncoordinated regulation of wetlands by local, state and federal agencies can cause confusion, frustration and unreasonable delay and uncertainty for the general public; and
- (11) Wetland management is a matter of this state's concern since benefits and impacts related to wetland resources can be international, national, regional and statewide in scope. [1989 c.837 §2]



ORS § 196.672. Policy.

In addition to the policy described in ORS 196.805, it is the policy of the State of Oregon to:

- (1) Promote the protection, conservation and best use of wetland resources, their functions and values through the integration and close coordination of statewide planning goals, local comprehensive plans and state and federal regulatory programs.
- (2) Use a single definition of "wetlands" for the purposes of ORS 196.800 to 196.921 and statewide planning goals and a single, uniform methodology of delineating wetland boundaries.
- (3) Develop a statewide inventory of wetlands based on uniform identification standards and criteria at a scale practicable for planning and regulatory purposes, and to make such inventory available to state agencies and local governments to facilitate better management of wetland resources and closer coordination of local, state and federal wetland programs.
- (4) Maintain a stable resource base of wetlands through the mitigation of losses of wetland resources and the adoption of the procedural mitigation standard currently used by federal agencies.
- (5) Establish the opportunity to increase wetland resources by encouraging wetland restoration and creation where appropriate.
- (6) Reduce the delays and uncertainty which can occur in the current wetland planning and regulatory framework through improved coordination of the provisions in ORS 196.800 to 196.921 with local land use planning and regulation and by providing mechanisms for expedited permit review consistent with the protection and conservation of wetland resources.
- (7) Continue to meet the requirements of federal law in the protection and management of wetland resources, while asserting the interests of this state, in concert with those of local governments in urging the federal resource and regulatory agencies to develop a uniform wetland policy and more consistent, cohesive standards to implement the Federal Water Pollution Control Act (33 U.S.C. 1344).
- (8) Develop and provide information to the general public concerning the functions, values and distribution of wetlands of this state to raise public awareness of these resources.



(9) Promote the protection of wetland values on private lands by developing and using public recognition programs, incentives and other nonregulatory actions.

(10) Encourage wetlands as an interim use of mining and construction sites on lands that were not originally wetlands and are designated for other than wetland purposes in an acknowledged comprehensive plan, while insuring that interim wetland use does not limit the future use of such sites for mining and construction. [1989 c.837 §3]

ORS § 196.674. Statewide Wetlands Inventory; rules.

(1) The Department of State Lands shall compile and maintain a comprehensive Statewide Wetlands Inventory.

(2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a system for uniform wetland identification, delineation and comprehensive mapping. Initial inventories shall be based upon the National Wetlands Inventory prepared by the United States Department of the Interior, Fish and Wildlife Service. The Department of State Lands shall consult with the public, local governments and affected state and federal agencies concerning the accuracy of the inventory.

(3) The Department of State Lands shall revise the inventory maps as new or more complete information becomes available.

(4) The Department of State Lands shall provide each city and county planning office with copies of the Statewide Wetlands Inventory covering the local jurisdiction.

(5) The Department of State Lands shall provide each state agency with a copy of the inventory upon request.

(6) Copies of the Statewide Wetlands Inventory shall be made available to the general public, through the Department of State Lands, upon payment of a fee to offset administrative and reproduction costs.

(7) A wetland inventory developed by another party may be utilized by the Department of State Lands if it is consistent with standards adopted pursuant to this section, after consulting with the affected local government, and is reviewed and approved by the Department of State Lands as complying with the standards adopted pursuant to subsection (2) of this section.

(8) Nothing in this section shall restrict the regulatory jurisdiction of the Department of State Lands under ORS 196.800 to 196.921.



(9) In compiling and updating the Statewide Wetlands Inventory, the Department of State Lands shall identify opportunities for wetland creation, restoration and enhancement when the information is available. [1989 c.837 §6; 2003 c.253 §6]

ORS § 196.676. Response to notices from local governments.

The Department of State Lands shall respond to the notice received from local governments pursuant to ORS 215.418 (1) and 227.350 (1) within 30 days of receipt of the notice. The response shall state whether a permit is or in the future will be required or whether a permit has been issued by the department for the activity which is subject to notice. [1989 c.837 §7]

ORS § 196.678. Wetland conservation plans; contents; procedure for adopting.

(1) Any city or county may develop and submit to the Department of State Lands a wetland conservation plan for review pursuant to the provisions of ORS 196.678 to 196.684.

(2) A wetland conservation plan shall include the following elements:

(a) A description and maps of the area to be covered by the plan;

(b) A detailed inventory of the wetlands, identifying the location, quality and quantity of the wetland resource and the source of the water for the wetlands within the area covered by the plan;

(c) An assessment of wetland functions and values, including an historical analysis of wetland degradation, alterations and losses;

(d) Designation of wetland areas for protection, conservation or development. Wetlands within areas designated for development shall be delineated to determine regulatory boundaries;

(e) A mitigation plan, including a program for replacement of planned wetland losses and restoration of lost functions and values through creation of new wetlands or enhancement of existing wetland areas which designates specific sites within the plan area and actions for restoration and enhancement;

(f) Policies and implementing measures establishing protection, conservation and best use of the wetlands in the plan area;



(g) Specification of sites for fill or removal, or both, and the conditions and procedures under which fill or removal, or both, may occur;

(h) Monitoring provisions that insure the wetland mitigation measures are implemented and mitigation goals are achieved;

(i) Identification of public uses of the wetlands and waters and conflicting planned uses; and

(j) Specification of buffer areas and uses allowed on lands which are adjacent to wetlands and which are necessary to maintain, protect or restore wetland functions and values.

(3) The proposed wetland conservation plan shall be adopted by the affected local government according to the procedures set forth in ORS 197.610 to 197.625. [1989 c.837 §10]

ORS § 196.681. Duties of department; standards for approval of plan; conditions for approval; order.

(1) In accordance with rules adopted pursuant to this chapter, the Department of State Lands shall:

(a) Review any proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan against the standards in this section;

(b) Prepare a proposed order that approves, approves with conditions or denies the proposed wetland conservation plan or proposed amendment to an approved wetland conservation plan;

(c) Provide notice and the opportunity for public hearing and comment on the proposed order;

(d) Consult with affected local, state and federal agencies; and

(e) Consider the applicable findings made in the order of acknowledgment issued by the Land Conservation and Development Commission.

(2) The Director of the Department of State Lands may approve by order a wetland conservation plan that includes the necessary elements of ORS 196.678 (2) and meets the standards of subsections (3) and (4) of this section.



(3) A wetland conservation plan shall comply with the following standards:

(a) Uses and activities permitted in the plan including fill or removal, or both, conform to sound policies of conservation and will not interfere with public health and safety;

(b) Uses and activities permitted in the plan including fill or removal, or both, are not inconsistent with the protection, conservation and best use of the water resources of this state and the use of state waters for navigation, fishing and public recreation; and

(c) Designation of wetlands for protection, conservation and development is consistent with the resource functions and values of the area and the capability of the wetland area to withstand alterations and maintain important functions and values.

(4) Wetland areas may be designated for development including fill or removal, or both, only if they meet the following standards:

(a) There is a public need for the proposed uses set forth in the acknowledged comprehensive plan for the area;

(b) Any planned wetland losses shall be fully offset by creation, restoration or enhancement of wetland functions and values or in an estuarine area, estuarine resource replacement is consistent with ORS 196.830; and

(c) Practicable, less damaging alternatives, including alternative locations for the proposed use are not available.

(5) Approval by the director of a wetland conservation plan shall be conditioned upon adoption by the affected local governments of comprehensive plan policies and land use regulations consistent with and sufficient to implement the wetland conservation plan. Appropriate implementing measures may include the following planning and zoning requirements regulating:

(a) Adjacent lands or buffer areas necessary to maintain, protect or restore wetland functions and values, including riparian vegetation, and the uses to be allowed in those areas;

(b) Sites for mitigation of impacts from development activities;

(c) Upland areas adjacent to wetlands; and



(d) Activities or location of buildings, structures and improvements which may affect wetland values or functions, such as storm water runoff.

(6) The director shall issue an order approving, approving with conditions or denying a wetland conservation plan, including a clear statement of findings which sets forth the basis for the approval, conditioning or denial. The order shall include:

(a) A clear statement of findings that the elements specified in ORS 196.678 (2) have been developed;

(b) The findings in support of the determination of compliance or noncompliance with the standards in subsections (3) and (4) of this section; and

(c) The conditions under which fill or removal or both may occur.

(7) The director may, as a part of an order approving a plan, authorize site-specific fill or removal without an individual permit as required by ORS 196.810 provided that:

(a) The director adopts findings demonstrating that fill or removal for any proposed project complies with ORS 196.682 (1)(a) to (e); or

(b) The director adopts findings that specific areas of fill or removal within areas designated as development in the plan meet the following standards:

(A) The fill or removal approved by the order will result in minimal impacts to the wetland system in the planning area;

(B) The public need for the proposed area of fill or removal outweighs the environmental damage likely to result from full development;

(C) The director conditions any such order as necessary to ensure that the fill or removal, or both, is designed to minimize impacts from implementing the project; and

(D) Full replacement of wetland losses is provided through creation, restoration or enhancement of wetlands with comparable functions and values.



(8) Upon a finding by the director that a fill or removal, or both, authorized under subsection (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the wetland system considering required mitigation conditions, the director shall revise the order to require individual permit review according to ORS 196.682 or provide additional conditions to ensure that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684. [1989 c.837 §11; 1999 c.59 §52]

ORS § 196.682. Permits required for removal or fill; conditions on issuance of permit.

(1) Except where otherwise provided by the order approving the plan, individual permit applications shall be required for removal or fill, or both, in areas subject to an approved wetland conservation plan. If individual permit applications are to be reviewed under the authority of the Director of the Department of State Lands, then application fees and review procedures shall be in accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for permit issuance in ORS 196.825 (3), the Department of State Lands shall issue a permit if the removal or fill, or both, is consistent with the wetland conservation plan or can be conditioned to be consistent with the plan. The department shall condition any such permit as necessary to ensure that the project:

- (a) Is properly designed or configured to minimize the need for alterations to waters of this state;
- (b) Is the minimum size necessary to reasonably provide for the proposed use;
- (c) Complies with applicable provisions of the acknowledged comprehensive plan and land use regulations for the area;
- (d) Is designed to minimize impacts from implementing the project; and
- (e) Is conditioned to ensure wetland creation, restoration, enhancement or preservation measures are implemented to fully replace impacted resources.

(2) In any order approving a plan that authorizes any fill or removal or both, without the necessity of subsequently obtaining an individual permit, the director shall condition such approval as necessary to ensure that the project complies with the conditions of subsection (1) of this section and clearly delineates the wetland area in which fill or removal, or both, is to occur. [1989 c.837 §12; 2007 c.849 §12; 2009 c.343 §16; 2011 c.370 §4]



ORS § 196.684. Amendment of plans; review of plans by department; review of orders by Land Use Board of Appeals.

- (1) Local governments shall provide notice to the Department of State Lands of any proposed amendments to the land use plan and ordinances affecting lands subject to a wetland conservation plan approved under this section.
- (2) Amendments to plan policies, maps and implementing ordinances by the local government within an approved wetland conservation plan shall be reviewed by the department against the requirements of this section. These provisions do not exempt local governments from the provisions of ORS 197.610 to 197.625.
- (3) The Director of the Department of State Lands shall provide notice and the opportunity for public comment and hearing as defined by rule on the matter of including the amendment in the wetland conservation plan.
- (4) If the director finds that the proposed local government amendment to acknowledged comprehensive plan and land use regulations meets the requirements of ORS 196.681, the director shall approve the plan by order, and notify the local government within 10 days of the completion of the public review provided in subsection (3) of this section.
- (5) If the amendments to acknowledged comprehensive plan and land use regulations adopted by the local government are determined not to comply with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.921, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350, the director shall revoke the approval order or amend the order to insure compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.921, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.
- (6) The department shall review each approved wetland conservation plan every five years. After such review the director shall either modify, reissue or rescind the order approving the plan.
- (7) In conducting the five-year review of an approved wetland conservation plan, the director shall provide notice and the opportunity for public comment and hearing on whether:
 - (a) There has been a substantial change in circumstances that would affect the wetland resources subject to the plan and would adversely affect the compliance of the plan with the standards in ORS 196.681;



(b) Changes have been made in applicable state law, statewide land use planning goals, federal law or agency rules that require the plan to be changed; and

(c) In the director's evaluation, the plan as implemented over the preceding five years meets the goals established in the plan.

(8) Wetland conservation plans approved by the Director of the Department of State Lands pursuant to ORS 196.668 to 196.692 shall be deemed to comply with the requirements of any statewide planning goals relating to wetlands, other than estuarine wetlands, for those areas, uses and activities which are regulated by the plan.

(9) An order by the director regarding approval, amendment or review of a wetland conservation plan shall be reviewable by the Land Use Board of Appeals as a land use decision of a state agency. For the purpose of such review, the director's order shall not become final until the local government adopts its wetland conservation plan or plan amendment. The Land Use Board of Appeals shall consolidate for review appeals of the director's order and the local government adoption. The Land Use Board of Appeals shall review such order for compliance with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.921, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(10) Nothing in this section shall be construed to require a contested case proceeding regarding approval, amendment or review of a wetland conservation plan.

(11) Nothing in this section shall be construed to affect the evaluation of a permit application in areas that do not have a wetland conservation plan.

(12) Upon a finding by the director, after a public hearing, that an affected local government is not enforcing the comprehensive plan provisions or land use regulations set forth in the conditions of the order, as specified in ORS 196.681 (5), and that such lack of enforcement has resulted or would result in adverse impacts to wetlands, the director shall modify, suspend or revoke approval of the wetland conservation plan. [1989 c.837 §13]

ORS § 196.686. Acknowledged estuary management plans; review and approval; hearings; final order.

(1) For the purposes of this section, an acknowledged estuary management plan includes the comprehensive plan and land use regulations adopted by cities and counties to satisfy the requirement of statewide planning goals related to estuarine resources including shoreland portions of estuarine



sites designated for development as those plans and regulations existed on January 1, 1989.

(2) Any city or county may submit an acknowledged estuary management plan for review and approval by the Department of State Lands pursuant to the provisions of this section. The plan shall be submitted with a written request for review.

(3) To allow timely and effective review of acknowledged estuary management plans, the department may limit acceptance for review to two plans but not more than one plan for a deep draft development estuary at any one time.

(4) With the consent of the city or county submitting an estuary management plan for review and approval, the department may extend any or all of the deadlines set forth in this section.

(5) Acknowledged estuary management plans shall be presumed to comply with requirements for approval of wetland conservation plans specified in ORS 196.681.

(6) Within 10 days of acceptance of a request for review, the department shall provide notice to affected state agencies, local governments, federal agencies and the public of receipt of the acknowledged estuary management plan and of the request for review and approval of the acknowledged estuary management plan as a wetland conservation plan.

(7) Within 30 days of acceptance of a request for review and upon provision of at least two weeks' notice, the department shall hold a public informational hearing on the proposed approval of the acknowledged estuary management plan as a wetland conservation plan.

(8) Within 60 days of acceptance of the request for review, the department shall conduct a preliminary review of the acknowledged estuary management plan. The department shall consult with the affected local government prior to finalizing the preliminary review.

(9) Except as provided in subsection (10) of this section, the Director of the Department of State Lands shall approve the acknowledged estuary management plan by order within 60 days of completion of the preliminary review.

(10) A contested case hearing shall be held within 30 days of the completion of the preliminary review or receipt of a request for hearing if:



(a) The director determines there is probable cause to believe that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation; or

(b) A hearing is requested and the request:

(A) Is made in writing within 60 days of the date of mailing of notice of completion of review;

(B) Clearly states the reasons for requesting the hearing; and

(C) Provides sufficient information for the director to determine that there is probable cause to believe that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation.

(11) The director shall approve the acknowledged estuary management plan as a wetland conservation plan by order unless the director finds by a preponderance of the evidence that the estuary management plan does not meet the standards for approving wetland conservation plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public recreation or that substantial fills proposed in an estuary management plan for nonwater dependent use are not for a public use and would not satisfy a public need that outweighs harm to navigation, fisheries or public recreation.

(12) The director shall prepare a proposed order for review by the parties within 30 days of any contested case hearing held pursuant to subsection (10) of this section.

(13) A final order from the director that recommends, pursuant to subsection (8) of this section, denial of an estuary management plan as a wetland conservation plan shall identify deficient elements and provisions of the acknowledged estuary management plan and what measures may be taken to correct those deficiencies.

(14) Individual permit applications shall be required for removal or fill, or both, in areas subject to an approved estuary management plan. Individual permit applications shall be reviewed in accordance with ORS 196.815, 196.825, 196.830 and 196.835. In lieu of the substantive standards for permit issuance in ORS 196.825 (3), the department shall issue a permit if the removal or fill, or both, is determined by the director to be consistent with the estuary management plan or can be conditioned to be consistent with the plan.



The department shall condition any such permit as necessary to ensure that the project:

- (a) Is designed or configured to minimize alterations to waters of this state;
- (b) Is the minimum size necessary to reasonably provide for the proposed use;
- (c) Is consistent with the resource capabilities of the area and the purposes of the management unit, unless this has been previously determined in the approved estuary management plan;
- (d) Is designed to minimize impacts from implementing the project; and
- (e) Has estuarine resource replacement measures for creation, restoration, enhancement or preservation that replaces impacted resources.

(15) Judicial review of an order granting or denying approval of an estuary management plan as provided in this section shall be as provided in ORS 183.470.

(16) Following approval by the director of an estuary management plan, the requirements of ORS 196.684 shall apply to the approved estuary management plan. [1989 c.837 §14; 2007 c.849 §13; 2009 c.343 §17; 2011 c.370 §5]

ORS § 196.687. Regulation of alteration or fill of artificially created wetlands.

(1) Notwithstanding the provisions of ORS 196.600 to 196.921, state or local governments shall not prohibit or restrict the alteration or fill of wetland areas up to one acre in size that have been artificially created from upland for the purpose of controlling, storing or maintaining storm water.

(2) An area that was developed as a storm water detention or retention facility as a condition of a development approval shall not be altered or filled without acceptance by the approving authority of a plan to mitigate the loss of functional capabilities of the detention or retention facility.

(3) Until a local government adopts an ordinance to conform its comprehensive plan and land use regulations to the provisions of this section, the provisions of subsection (1) of this section shall apply directly to proposed activities in wetland areas. Any portion of a goal, rule, comprehensive plan, land use regulation or ordinance not in conformance with the provisions of this section on September 9, 1995:



(a) Shall not be implemented or enforced; and

(b) Has no legal effect.

(4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.

(5) If the Department of State Lands assumes responsibility under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, ORS 196.600 to 196.921 shall apply to artificially created wetlands described in subsections (1) and (2) of this section. [1995 c.482 §1]

ORS § 196.688. Public information program.

(1) The Department of State Lands shall develop a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values.

(b) The status and trends of Oregon's wetlands.

(c) The Statewide Wetlands Inventory.

(d) Wetland regulation.

(2) Upon request, the department shall, within the limits of staffing ability, provide technical assistance to other state agencies and local governments and the public in identifying and delineating the boundaries of wetlands. [1989 c.837 §20]

ORS § 196.692. Rules.

(1) The Department of State Lands shall adopt rules to carry out the provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825, 196.830, 196.850 to 196.860, 196.885, 196.921, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

(2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the application for and issuance of permits to remove material from the beds or banks of any waters of this state or to fill any waters of this state including, but not limited to, clear and objective standards and criteria for determining whether to grant or deny a permit. [1989 c.837 §32; 2001 c.460 §1; 2007 c.850 §4]



ORS § 196.795. Streamlining process for administering state removal or fill permits; application for state program general permit; periodic reports to legislative committee.

(1) The Department of State Lands shall continue to pursue methods to streamline the process for administering permits for the removal of material from the bed or banks of any waters of this state or for filling the waters of this state, reducing paperwork, eliminating duplication, increasing certainty and timeliness and enhancing resource protection. The efforts of the Department of State Lands shall include but need not be limited to applying to the United States Army Corps of Engineers for a state program general permit as authorized in federal regulations implementing section 404 of the Federal Water Pollution Control Act, and section 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with these activities, the Department of State Lands may continue to investigate the possibility of assuming the federal regulatory program under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act.

(2) The department shall report periodically to the appropriate legislative committee on the progress in implementing subsection (1) of this section. [1995 c.474 §1; 1997 c.116 §1; 1999 c.59 §53; 2007 c.354 §2]

ORS § 196.800. Definitions for ORS 196.600 to 196.921.

As used in ORS 196.600 to 196.921, unless the context requires otherwise:

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(2) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.



- (3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.
- (4) "General authorization" means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.
- (5) "General permit" means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.
- (6) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.
- (7) "Large woody debris" means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.
- (8) "Material" means rock, gravel, sand, silt and other inorganic substances, and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.
- (9) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
- (a) Avoiding the effect altogether by not taking a certain action or parts of an action;
 - (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.



(10) "Person" means a person, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(11) "Practicable" means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

(12) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

(13) "Removal" means:

(a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or

(b) The movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation.

(14) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(15) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(16) "Wetland conservation plan" means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and protection of wetlands, waters and related adjacent uplands and which has specific implementing measures and which apply to designated geographic areas of the State of Oregon.

(17) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. [Formerly 541.605 and then 196.670; 1999 c.373 §1; 2003 c.253 §7; 2003 c.738 §14; 2007 c.849 §2; 2009 c.343 §18; 2013 c.198 §1]



Note 1: The amendments to 196.800 by section 13, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative from the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026, until 196.800 as set forth in Note 2 becomes operative.

As used in ORS 196.600 to 196.921, unless the context requires otherwise:

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(2) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(3) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.

(4) "General authorization" means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.

(5) "General permit" means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(6) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(7) "Large woody debris" means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood



placed into waters of this state as part of a habitat improvement or conservation project.

(8) "Material" means rock, gravel, sand, silt and other inorganic substances, and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(9) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(10) "Person" means a person, a public body as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(11) "Practicable" means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

(12) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

(13) "Removal" means:

(a) The taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or

(b) The movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation.



(14) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with rules adopted by the Department of State Lands.

(15) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(16) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(17) "Wetland conservation plan" means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and protection of wetlands, waters and related adjacent uplands and which has specific implementing measures and which apply to designated geographic areas of the State of Oregon.

(18) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Note 2: Operation of the amendments to 196.800 by section 1, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text that is operative after that approval, including amendments by section 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849, Oregon Laws 2007, section 19, chapter 343, Oregon Laws 2009, section 2, chapter 198, Oregon Laws 2013, and section 14, chapter 403, Oregon Laws 2023, is set forth for the user's convenience. As used in ORS 196.600 to 196.921, unless the context requires otherwise:

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel.

(2) "Estuary" means:



(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes and submerged lands.

(3) "Fill" means the deposit by artificial means of material at one location in any waters of this state.

(4) "General authorization" means an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, without a permit.

(5) "General permit" means a permit for removal activities or fill activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.

(6) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(7) "Large woody debris" means any naturally downed wood that captures gravel, provides stream stability or provides fish habitat, or any wood placed into waters of this state as part of a habitat improvement or conservation project.

(8) "Material" means rock, gravel, sand, silt and other inorganic substances, and large woody debris, removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(9) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the effect altogether by not taking a certain action or parts of an action;

(b) Minimizing the effect by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the effect by repairing, rehabilitating or restoring the affected environment;



(d) Reducing or eliminating the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.

(10) "Person" means a person, a public body, as defined in ORS 174.109, the federal government, when operating in any capacity other than navigational servitude, or any other legal entity.

(11) "Practicable" means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.

(12) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

(13) "Removal" means:

(a) The taking of material in any waters of this state; or

(b) The movement by artificial means of material within the bed of such waters, including channel relocation.

(14) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with rules adopted by the Department of State Lands.

(15) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(16) "Waters of this state" means all natural waterways, tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, where removal or fill activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

(17) "Wetland conservation plan" means a written plan providing for wetland management containing a detailed and comprehensive statement of policies, standards and criteria to guide public and private uses and protection of wetlands, waters and related adjacent uplands and which



has specific implementing measures and which apply to designated geographic areas of the State of Oregon.

(18) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Note 3: Sections 11 to 14, chapter 516, Oregon Laws 2001, provide:

Sec. 11. The amendments to ORS 196.800, 196.810, 196.850, 196.895, 196.905 [renumbered 196.921], 196.990, 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, and the repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws 2001, become operative on January 2 of the even-numbered year following the date the United States Environmental Protection Agency grants authority by letter to the Department of State Lands to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended) and the Legislative Assembly approves the grant of authority. [2001 c.516 §11; 2009 c.11 §19]

Sec. 12.

(1) The Department of State Lands may take any action necessary to prepare to fully implement the provisions of this 2001 Act prior to the operative date of this 2001 Act.

(2) The department shall periodically report to the appropriate committee of the Legislative Assembly on the status of its effort to assume authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended).

(3) After the Legislative Assembly approves the grant of authority, the department shall notify the Legislative Assembly prior to the transfer of authority from the United States Environmental Protection Agency. [2001 c.516 §12]

Sec. 13. Section 2, chapter 45, Oregon Laws 1989, is repealed. [2001 c.516 §13]

Sec. 14. If, after assuming authority to administer permits for the discharge of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended), the Department of State Lands seeks to relinquish the authority granted to the department by the federal government, the department shall, in compliance with ORS 171.130 and at least two years prior to the anticipated date for relinquishing the authority, submit to the Legislative Assembly a proposed



legislative measure designed to implement a state permitting program for the dredging and filling of materials in the waters of this state.

ORS § 196.805. Policy.

(1) The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in this state, including not only water and materials for domestic, agricultural and industrial use but also habitats and spawning areas for fish, avenues for transportation and sites for commerce and public recreation, are vital to the economy and well-being of this state and its people. Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the people of this state. Unregulated filling in the waters of this state for any purpose, may result in interfering with or injuring public navigation, fishery and recreational uses of the waters. In order to provide for the best possible use of the water resources of this state, it is desirable to centralize authority in the Director of the Department of State Lands, and implement control of the removal of material from the beds and banks or filling of the waters of this state.

(2) The director shall take into consideration all beneficial uses of water including streambank protection when administering fill and removal statutes.

(3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 196.600 to 196.921 without due process of law. [Formerly 541.610 and then 196.675; 2003 c.738 §16; 2012 c.108 §7]

ORS § 196.806. Adoption of fees by rule.

(1) In accordance with ORS chapter 183, the Director of the Department of State Lands shall adopt rules to establish fees for:

(a) Applications for, and renewal of, removal or fill permits required under ORS 196.810;

(b) The review of wetland delineation reports under ORS 196.818; or

(c) General authorizations under ORS 196.850.

(2)

(a) In establishing fees under subsection (1) of this section, the director shall evaluate the impact of fully recovering, through fees, the costs to the Department of State Lands of administering the



removal and fill program provided for under ORS 196.600 to 196.921.

(b) The director shall establish project tiers for fees established under subsection (1)(a) of this section. In establishing project tiers, the director shall consider the administrative costs to the department, and the impacts on the waters of this state, associated with different project types.

(c) The director shall establish project tiers for fees established under subsection (1)(b) of this section. In establishing project tiers, the director shall consider the administrative costs to the department associated with the review of wetland delineation reports for land parcels of different sizes.

(d) A fee established under subsection (1)(c) of this section for a general authorization shall be based on the cost of processing the general authorization. [2023 c.403 §4]

Note: 196.806 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 196 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 4a, chapter 403, Oregon Laws 2023, provides:

Sec. 4a. Fees implementation report. No later than February 15, 2025, the Department of State Lands shall submit a report in the manner provided by ORS 192.245 to the committees of the Legislative Assembly related to the environment, land use and natural resources that describes the department's progress in implementing section 4 of this 2023 Act [196.806]. [2023 c.403 §4a]

ORS § 196.810. Permit for removal of material from or rill of waters; rules.

(1)

(a) Except as otherwise specifically permitted under ORS 196.600 to 196.921, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in essential indigenous



anadromous salmonid habitat, except for those activities customarily associated with agriculture, a permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this section shall be further defined and designated by rule by the Department of State Lands in consultation with the State Department of Fish and Wildlife and in consultation with other affected parties.

(c) A person is not required to obtain a permit under paragraph (b) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a designated essential indigenous anadromous salmonid habitat segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (b) of this subsection.

(d) A permit is not required under paragraph (b) of this subsection for construction or maintenance of fish passage and fish screening structures that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

(e)

(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

(B) An application for a permit related to an ocean renewable energy facility in the territorial sea must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(C) The Department of State Lands may not issue a removal or fill permit for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(f) Nothing in this section limits or otherwise changes the exemptions under ORS 196.921.



(g) As used in paragraphs (b) and (c) of this subsection:

(A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.

(C) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(D) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(E) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.921.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.921.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.



(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.

(d) Does not relieve the person from payment of a fee calculated in the manner provided in ORS 196.815. [Formerly 541.615 and then 196.680; 1993 c.765 §101; 1997 c.190 §1; 1997 c.508 §1; 2001 c.65 §1; 2001 c.923 §4; 2003 c.14 §96; 2003 c.738 §20; 2007 c.71 §63; 2007 c.625 §4; 2007 c.849 §14; 2013 c.198 §3; 2015 c.386 §10]

Note 1: The amendments to 196.810 by section 6, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative from the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026, until 196.810 as set forth in Note 2 becomes operative.

(1)

(a) Except as otherwise specifically permitted under ORS 196.600 to 196.921, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in essential indigenous anadromous salmonid habitat, except for those activities customarily associated with agriculture, a permit is required. "Essential indigenous anadromous salmonid habitat" as defined under this section shall be further defined and designated by rule by the Department of State Lands in consultation with the State Department of Fish and Wildlife and in consultation with other affected parties.

(c) A person is not required to obtain a permit under paragraph (b) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of



material at any one individual site and, cumulatively, not more than five cubic yards of material within a designated essential indigenous anadromous salmonid habitat segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (b) of this subsection.

(d) A permit is not required under paragraph (b) of this subsection for construction or maintenance of fish passage and fish screening structures that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

(e)

(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

(B) An application for a permit related to an ocean renewable energy facility in the territorial sea must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(C) The Department of State Lands may not issue a removal or fill permit for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(f) Nothing in this section limits or otherwise changes the exemptions under ORS 196.921.

(g) As used in paragraphs (b) and (c) of this subsection:

(A) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(B) "Essential indigenous anadromous salmonid habitat" means the habitat that is necessary to prevent the depletion of indigenous anadromous salmonid species during their life history stages of spawning and rearing.



(C) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho salmon, and steelhead and cutthroat trout, that are members of the family Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(D) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(E) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.921.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.921.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.

(c) If issued orally, shall be confirmed in writing by the department within five days.



(d) Does not relieve the person from payment of a fee calculated in the manner provided by rules adopted by the director under ORS 196.806.

Note 2: Operation of the amendments to 196.810 by section 2, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009 (third note under 196.800). The text that is operative after that approval, including amendments by section 97, chapter 14, Oregon Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625, Oregon Laws 2007, section 15, chapter 849, Oregon Laws 2007, section 11, chapter 386, Oregon Laws 2015, and section 7, chapter 403, Oregon Laws 2023, is set forth for the user's convenience.

(1)

(a) Except as otherwise specifically permitted under ORS 196.600 to 196.921, a person may not remove any material from the beds or banks of any waters of this state or fill any waters of this state without a permit issued under authority of the Director of the Department of State Lands, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan.

(b) A permit is not required under paragraph (a) of this subsection for prospecting or other nonmotorized activities resulting in the removal from or fill of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material within a particular stream segment in a single year. Prospecting or other nonmotorized activities may be conducted only within the bed or wet perimeter of the waterway and may not occur at any site where fish eggs are present. Removal or filling activities customarily associated with mining require a permit under paragraph (a) of this subsection.

(c) A permit is not required under paragraph (a) of this subsection for construction or maintenance of fish passage and fish screening structures associated with irrigation ditches or the maintenance of drainage ditches that are constructed, operated or maintained under ORS 498.306, 498.316, 498.326 or 509.600 to 509.645.

(d)

(A) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 (3) and (13), if any removal or fill activity is proposed in Oregon's



territorial sea that is related to an ocean renewable energy facility as defined in ORS 274.870, a permit is required.

(B) An application for a permit related to an ocean renewable energy facility in the territorial sea must include all of the information required by that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(C) The Department of State Lands may not issue a removal or fill permit for an ocean renewable energy facility that does not comply with the criteria described in that part of the Territorial Sea Plan that addresses the development of ocean renewable energy facilities in the territorial sea.

(e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.921.

(2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 196.600 to 196.921.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, a contract, permit or lease may not be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.921.

(4) Notwithstanding subsection (1) of this section, the Department of State Lands may issue, orally or in writing, an emergency authorization to a person for the removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property. The emergency authorization issued under this subsection:

(a) Shall contain conditions of operation that the department determines are necessary to minimize impacts to water resources or adjoining properties.

(b) Shall be based, whenever practicable, on the recommendations contained in an on-site evaluation by an employee or representative of the department.



(c) If issued orally, shall be confirmed in writing by the department within five days.

(d) Does not relieve the person from payment of a fee calculated in the manner provided by rules adopted by the director under ORS 196.806.

(5) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Wet perimeter" means the area of the stream that is under water or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

ORS § 196.812. Large woody debris; rules.

The provisions of ORS 196.600 to 196.921 do not affect the removal of large woody debris if the large woody debris:

(1) Poses a direct and demonstrable danger to livestock, human life or real property;

(2) Poses a risk of harm to transportation facilities including, but not limited to, culverts, bridges and roads located near or within the beds or banks of any waters of this state;

(3) Prevents or obstructs navigation within the beds or banks of any waters of this state; or

(4) Meets conditions for the removal of large woody debris as specified in rules of the Director of the Department of State Lands. [2013 c.198 §5]

Note: 196.812 was added to and made a part of 196.600 to 196.921 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

ORS § 196.815. Application for permit; rules; fees; disposition of fees.

(1) A person who is required to have a permit to remove material from the bed or banks or fill any waters of this state shall file a written application



with the Director of the Department of State Lands for each individual project before performing any removal or fill.

(2)

(a) Except as otherwise may be provided by the rules of the Department of State Lands for removal or fill permits related to ocean renewable energy facilities as defined in ORS 274.870, each application under subsection (1) of this section must be accompanied by a base fee in accordance with the following schedule:

(A) For a removal by a private operator, or a person contracting to perform services for a private operator, \$85.

(B) For a removal by a public body, \$250.

(C) For a removal by a commercial operator, \$250.

(D) For a fill by a private operator, or a person contracting to perform services for a private operator, \$250.

(E) For a fill by a public body, \$620.

(F) For a fill by a commercial operator, \$620.

(G) For erosion-flood repair, including riprap, no fee.

(b) In addition to the base fee for removal established under paragraph (a) of this subsection, each applicant shall also pay as part of the application fee the following fee based on the volume of removal material:

(A) Less than 500 cubic yards, no volume fee.

(B) 500 to less than 5,000 cubic yards, \$125.

(C) 5,000 to less than or equal to 50,000 cubic yards, \$250.

(D) Over 50,000 cubic yards, \$375.

(c) In addition to the base fee for fill established under paragraph (a) of this subsection, each applicant shall also pay as part of the application fee the following fee based on the volume of fill material:

(A) Less than 500 cubic yards, no volume fee.



(B) 500 to less than 3,000 cubic yards, \$125.

(C) 3,000 to less than or equal to 10,000 cubic yards, \$250.

(D) Over 10,000 cubic yards, \$375.

(d) The department may establish by rule a volume-based fee for the commercial removal of sand and gravel from the waters of this state for use in administering the provisions of the fill and removal law in this state.

(e) For the purposes of this subsection:

(A) "Private operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(B) "Public body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services;

(C) "Commercial operator" means any person undertaking a project having financial profit as a goal;

(D) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with rules adopted by the department; and

(E) "Erosion-flood repair" means riprap or any other work necessary to preserve existing facilities and land from flood and high streamflows, in accordance with regulations promulgated by the department.

(3) For each application that involves both removal and filling, the application fee assessed shall be either for removal or filling, whichever is higher according to the fee schedule in subsection (2) of this section.

(4) The department may waive the fees specified in subsection (2) of this section for a permit that will be used to perform a voluntary habitat restoration project.

(5) A person who receives an emergency authorization under ORS 196.810 to remove material from the beds or banks of any waters of this state or to fill any waters of this state shall, within 45 days after receiving the authorization, submit a fee to the department calculated in the manner provided under this section for permit applications.



(6) Each holder of a material removal or fill permit shall pay a fee during the term of the permit in accordance with the schedule set forth in subsection (2) of this section, except that the applicant shall pay only the base fee. For multiyear permits valid over a period of more than one year, the department may assess a one-time fee that covers all fees due under subsection (2) of this section for the period of the permit. The permit shall be suspended during any period of delinquency of payment as though no permit was applied for. Notwithstanding this subsection the director may, before granting a renewal of the permit, require the permittee to show that the continued exercise of the permit is consistent with the protection, conservation and best use of the water resources of this state.

(7) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921.

(8) The director shall issue an order revising the fees specified in this section on January 1 of each year, beginning in 2009, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount of each fee to the nearest dollar. The revised fees shall take effect January 1 and apply for that calendar year. [Formerly 541.620 and then 196.685; 2007 c.849 §1; 2009 c.342 §1; 2009 c.882 §2; 2015 c.386 §12; 2019 c.57 §9]

Note: The amendments to 196.815 by section 5, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative on and after the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026.

(1) A person who is required to have a permit to remove material from the bed or banks or fill any waters of this state shall file a written application with the Director of the Department of State Lands and pay a fee established by the director by rule under ORS 196.806 for each individual project before performing any removal or fill.

(2) The Department of State Lands may waive the fees established by rule under ORS 196.806 for a permit that will be used to perform a voluntary habitat restoration project.

(3) A person who receives an emergency authorization under ORS 196.810 to remove material from the beds or banks of any waters of this state or to fill any waters of this state shall, within 45 days after receiving the authorization, submit a fee to the department calculated in the manner



provided by rules adopted by the director under ORS 196.806 for removal or fill permit applications.

(4) The director may, before granting a renewal of a removal or fill permit, require the permittee to show that the continued exercise of the permit is consistent with the protection, conservation and best use of the water resources of this state.

(5) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921.

ORS § 196.816. General permits allowing removal of certain amount of material for maintaining drainage; rules; waiver of fees.

(1) As used in this section, "traditionally maintained channel" has the meaning given that term in ORS 196.909.

(2) Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a general permit that allows the removal of no more than 100 cubic yards of material from waters of this state, including in essential indigenous anadromous salmonid habitat, for the purpose of maintaining drainage and protecting agricultural land.

(3) Notwithstanding ORS 196.810, the department shall establish by rule one or more general permits that allow the removal of material from waters of this state, including in essential indigenous anadromous salmonid habitat, to conduct maintenance of traditionally maintained channels during channel conditions where flowing or standing water is present. The general permits must require the maintenance to be conducted in a manner that protects, maintains or improves existing agricultural and ecological functions of the channels, including the life history functions of fish and wildlife that inhabit the channels. In establishing a general permit under this subsection, the department shall utilize best available science and shall consult with the State Department of Agriculture, the State Department of Fish and Wildlife, other relevant state or federal agencies and representatives of agricultural interests and conservation interests.

(4) The Department of State Lands may waive the fees specified in ORS 196.815 for removal taking place under the provisions of this section. [2011 c.713 §7; 2019 c.699 §9]

Note: The amendments to 196.816 by section 8, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative



on and after the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026.

(1) As used in this section, "traditionally maintained channel" has the meaning given that term in ORS 196.909.

(2) Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a general permit that allows the removal of no more than 100 cubic yards of material from waters of this state, including in essential indigenous anadromous salmonid habitat, for the purpose of maintaining drainage and protecting agricultural land.

(3) Notwithstanding ORS 196.810, the department shall establish by rule one or more general permits that allow the removal of material from waters of this state, including in essential indigenous anadromous salmonid habitat, to conduct maintenance of traditionally maintained channels during channel conditions where flowing or standing water is present. The general permits must require the maintenance to be conducted in a manner that protects, maintains or improves existing agricultural and ecological functions of the channels, including the life history functions of fish and wildlife that inhabit the channels. In establishing a general permit under this subsection, the department shall utilize best available science and shall consult with the State Department of Agriculture, the State Department of Fish and Wildlife, other relevant state or federal agencies and representatives of agricultural interests and conservation interests.

(4) The Department of State Lands may waive the fees established by the Director of the Department of State Lands by rule under ORS 196.806 for removal taking place under the provisions of this section.

ORS § 196.817. General permits; rules.

(1)

(a) Notwithstanding ORS 196.810, the Department of State Lands may establish a removal or fill general permit:

(A) By rule for processing applications on a statewide or geographic basis; or

(B) By order for an applicant or group of applicants to cover activities that are substantially similar in nature, are recurring or ongoing, and have predictable effects and outcomes.



(b) The department must find that the project is in compliance with the review standards set forth in ORS 196.600 to 196.921 and would not result in long-term harm to water resources of this state.

(c) The department shall condition any such general permit upon actions necessary to minimize environmental effects.

(2)

(a) Any person proposing to conduct an action under a general permit specified in subsection (1)(a)(A) of this section shall apply to the department in accordance with procedures set forth by the department by rule.

(b) Any person proposing to conduct an action under a general permit specified in subsection (1)(a)(B) of this section shall apply to the department in accordance with procedures set forth by the department by order.

(3) The department shall amend or rescind any general permit upon a determination that the activities conducted under the permit have resulted in or would result in unacceptable individual or cumulative environmental effects or long-term harm to the water resources of this state.

(4) Any person proposing to conduct an action under a general permit shall pay the applicable fee required under ORS 196.815 for individual permit applications. [2007 c.849 §9; 2011 c.559 §1]

ORS § 196.818. Wetland delineation reports; review by Department of State Lands; fees; rules.

(1) A person or governmental body requesting a permit under ORS 196.810 shall submit a wetland delineation report to the Department of State Lands for a determination of:

(a) Whether waters of this state are present on a specific land parcel;

(b) Where the boundaries of waters of this state are located on a land parcel; or

(c) Whether the waters of this state or a proposed activity in the waters of this state is subject to permit requirements.



(2) A person or governmental body must pay a nonrefundable fee of \$350 to the department when submitting a wetland delineation report under subsection (1) of this section.

(3) The department shall:

(a) Review the wetland delineation report submitted under subsection (1) of this section no more than 120 days after the date on which the person or governmental body submits the report; and

(b) Give priority to the review of a wetland delineation report that is submitted with or in advance of an application for a permit required under ORS 196.810 if the permit would authorize activities on the land parcel that is the subject of the wetland delineation report.

(4) All determinations made by the department under subsection (1)(a) and (b) of this section:

(a) Must be made by a person with expertise in wetlands hydrology, soil and vegetation; and

(b) Expire five years after the date on which a final determination is made.

(5) Five years after the date on which a final determination has been made under subsection (1)(a) or (b) of this section, if the owner of the land parcel that is the subject of the determination is conducting activities that require a permit under ORS 196.810, the landowner shall conduct a review of the land parcel. If the baseline conditions leading to the final determination have sufficiently changed to require a new determination, then the landowner shall submit a new wetland delineation report under subsection (1) of this section. If the baseline conditions leading to the final determination have not sufficiently changed to require a new determination, then the final determination of the department, notwithstanding subsection (4)(b) of this section, may be extended by five years.

(6) The department may waive or suspend the requirements of this section for the purpose of issuing an emergency authorization under ORS 196.810.

(7) The fee described in subsection (2) of this section is in addition to any permit application fee required under ORS 196.815. A person or governmental body submitting a revised report to replace a previously rejected report must pay an additional nonrefundable fee of \$100.



(8) Delineations made pursuant to this section, and determinations made under this section, must comport with:

(a) The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and

(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the Director of the Department of State Lands. Such rules must comply with those federal supplements and guidance documents.

(9) The director shall issue an order revising the fee specified in subsection (2) of this section on January 1 of each year, based on changes in the Consumer Price Index for All Urban Consumers, West Region (All Items), as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount to the nearest dollar. The revised fee shall take effect January 1 and apply for that calendar year.

(10) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921. [2007 c.850 §2; 2012 c.108 §5; 2019 c.57 §10]

Note: The amendments to 196.818 by section 9, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative on and after the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026.

(1) A person or governmental body requesting a permit under ORS 196.810 shall submit a wetland delineation report to the Department of State Lands for a determination of:

(a) Whether waters of this state are present on a specific land parcel;

(b) Where the boundaries of waters of this state are located on a land parcel; or

(c) Whether the waters of this state or a proposed activity in the waters of this state is subject to permit requirements.

(2) A person or governmental body must pay a nonrefundable fee to the department, as provided in rules adopted by the Director of the



Department of State Lands under ORS 196.806, when submitting a wetland delineation report under subsection (1) of this section.

(3) The department shall:

(a) Review the wetland delineation report submitted under subsection (1) of this section no more than 120 days after the date on which the person or governmental body submits the report; and

(b) Give priority to the review of a wetland delineation report that is submitted with or in advance of an application for a permit required under ORS 196.810 if the permit would authorize activities on the land parcel that is the subject of the wetland delineation report.

(4) All determinations made by the department under subsection (1)(a) and (b) of this section:

(a) Must be made by a person with expertise in wetlands hydrology, soil and vegetation; and

(b) Expire five years after the date on which a final determination is made.

(5) Five years after the date on which a final determination has been made under subsection (1)(a) or (b) of this section, if the owner of the land parcel that is the subject of the determination is conducting activities that require a permit under ORS 196.810, the landowner shall conduct a review of the land parcel. If the baseline conditions leading to the final determination have sufficiently changed to require a new determination, then the landowner shall submit a new wetland delineation report under subsection (1) of this section. If the baseline conditions leading to the final determination have not sufficiently changed to require a new determination, then the final determination of the department, notwithstanding subsection (4)(b) of this section, may be extended by five years, after payment of the applicable fee established by the director by rule under ORS 196.806.

(6) The department may waive or suspend the requirements of this section for the purpose of issuing an emergency authorization under ORS 196.810.

(7) Delineations made pursuant to this section, and determinations made under this section, must comport with:

(a) The United States Army Corps of Engineers Wetlands Delineation Manual of 1987; and



(b) Any subsequent federal supplements to the manual or applicable guidance documents issued by the United States Army Corps of Engineers, including guidance documents for the area in which a delineation will take place, as adopted by rule of the Director of the Department of State Lands. Such rules must comply with those federal supplements and guidance documents.

(8) Fees received under this section shall be credited to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921.

ORS § 196.820. Prohibition against issuance of permits to fill Smith Lake or Bybee Lake; exception.

(1) Notwithstanding any provision of ORS 196.600 to 196.921 to the contrary, except as provided in subsection (2) of this section, the Director of the Department of State Lands shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States Coastal Geodetic Survey Datum.

(2) The Director of the Department of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat or support recreational use or public access at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife.
[Formerly 541.622 and then 196.690; 2016 c.84 §9]

ORS § 196.825. Criteria for issuance of permit; conditions; consultation with public bodies; hearing; appeal.

(1) The Director of the Department of State Lands shall issue a permit applied for under ORS 196.815 if the director determines that the project described in the application:

(a) Is consistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.600 to 196.921; and

(b) Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a removal or fill activity for construction or maintenance of



a linear facility, and if that person is not a landowner or a person authorized by a landowner to conduct the proposed removal or fill activity on a property, then the person may not conduct removal or fill activity on that property until the person obtains:

- (a) The landowner's consent;
- (b) A right, title or interest with respect to the property that is sufficient to undertake the removal or fill activity; or
- (c) A court order or judgment authorizing the use of the property.

(3) In determining whether to issue a permit, the director shall consider all of the following:

- (a) The public need for the proposed fill or removal and the social, economic or other public benefits likely to result from the proposed fill or removal. When the applicant for a permit is a public body, the director may accept and rely upon the public body's findings as to local public need and local public benefit.
- (b) The economic cost to the public if the proposed fill or removal is not accomplished.
- (c) The availability of alternatives to the project for which the fill or removal is proposed.
- (d) The availability of alternative sites for the proposed fill or removal.
- (e) Whether the proposed fill or removal conforms to sound policies of conservation and would not interfere with public health and safety.
- (f) Whether the proposed fill or removal is in conformance with existing public uses of the waters and with uses designated for adjacent land in an acknowledged comprehensive plan and land use regulations.
- (g) Whether the proposed fill or removal is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill or removal is to take place or can be conditioned on a future local approval to meet this criterion.
- (h) Whether the proposed fill or removal is for streambank protection.
- (i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the



manner set forth in ORS 196.800. In determining whether the applicant has provided all practicable mitigation, the director shall consider the findings regarding wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objectives for the protection of wetlands set forth in ORS 196.672.

(4) The director may issue a permit for a project that results in a substantial fill in an estuary for a nonwater dependent use only if the project is for a public use and would satisfy a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS 196.600 to 196.921.

(5) If the director issues a permit, the director may impose such conditions as the director considers necessary to carry out the purposes of ORS 196.805 and 196.830 and subsection (1) of this section and to provide mitigation for the reasonably expected adverse effects of project development. In formulating such conditions the director may request comment from public bodies, as defined in ORS 174.109, federal agencies and tribal governments affected by the permit. Each permit is valid only for the time specified therein. The director shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse effects of project development. Compensatory mitigation shall be limited to replacement of the functions and values of the impacted water resources of this state.

(6)

(a) The director may request comment from interested parties and adjacent property owners on any application for a permit.

(b) The director shall furnish to any person, upon written request and at the expense of the person who requests the copy, a copy of any application for a permit or authorization under this section or ORS 196.850.

(c) For permit applications for a removal or fill activity for construction or maintenance of a linear facility that are deemed complete by the director, the director shall notify by first-class mail, electronic mail or electronic facsimile transmission all landowners whose land is identified in the permit application and all landowners whose land is adjacent to the property of a landowner whose land is identified in the permit application.

(7) Any applicant whose application for a permit or authorization has been deemed incomplete or has been denied, or who objects to any of the



conditions imposed under this section by the director, may, within 21 days of the denial of the permit or authorization or the imposition of any condition, request a hearing from the director. Thereupon the director shall set the matter down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

(8) Except for a permit issued under the process set forth in ORS 517.952 to 517.989, the director shall:

(a) Determine whether an application is complete within 30 days from the date the Department of State Lands receives the application. If the director determines that an application is complete, the director shall distribute the application for comment pursuant to subsection (5) of this section. If the director determines that the application is not complete, the director shall notify the applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

(b) Issue a permit decision within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (10)(b) of this section;

(B) The applicant and the director agree to a longer time period; or

(C) The director determines that an extension is necessary to coordinate the issuance of a proprietary authorization decision for an ocean renewable energy facility under ORS 274.873 and a removal or fill permit decision.

(9) Permits issued under this section shall be in lieu of any permit or authorization that might be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085, so long as:

(a) The operation is that for which the permit or authorization is issued; and

(b) The standards for granting the permit or authorization are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055, 468.110,



468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect water quality.

(10)

(a) Any public body, as defined in ORS 174.109, federal agency or tribal government requested by the director to comment on an application for a permit must submit its comments to the director not more than 30 days after receiving the request for comment. If a public body, federal agency or tribal government fails to comment on the application within 30 days, the director shall assume that the public body, federal agency or tribal government has no objection.

(b) The Department of Environmental Quality shall provide comments to the director within 75 days after receiving notice under subsection (5) of this section if the permit action requires certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

(11) In determining whether to issue a permit, the director may consider only standards and criteria in effect on the date the director receives the completed application.

(12) As used in this section:

(a) "Applicant" means a landowner, a person authorized by a landowner to conduct a removal or fill activity or a person that proposes a removal or fill activity for construction or maintenance of a linear facility.

(b) "Completed application" means a signed permit application form that contains all necessary information for the director to determine whether to issue a permit, including:

(A) A map showing the project site with sufficient accuracy to easily locate the removal or fill site;

(B) A project plan showing the project site and proposed alterations;

(C) The fee required under ORS 196.815;

(D) Any changes that may be made to the hydraulic characteristics of waters of this state and a plan to minimize or avoid any adverse effects of those changes;



(E) If the project may cause substantial adverse effects on aquatic life or aquatic habitat within this state, documentation of existing conditions and resources and identification of the potential impact if the project is completed;

(F) An analysis of alternatives that evaluates practicable methods to minimize and avoid impacts to waters of this state;

(G) If the project is to fill or remove material from wetlands, a wetlands mitigation plan; and

(H) Any other information that the director deems pertinent and necessary to make an informed decision on whether the application complies with the policy and standards set forth in this section.

(c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, communication line, overhead or underground electrical transmission or distribution line or similar facility. [Formerly 541.625 and then 196.695; 1991 c.735 §25; 1993 c.741 §18; 1995 c.370 §1; 1995 c.472 §1; 2001 c.460 §2; 2001 c.516 §3; 2003 c.253 §§9,10; 2003 c.738 §§17a,18a; 2007 c.849 §§4,5; 2009 c.342 §2; 2009 c.343 §20; 2011 c.370 §1; 2015 c.386 §13]

ORS § 196.830. Estuarine resource replacement as condition for fill or removal from estuary; considerations; other permit conditions.

(1) As used in this section, "estuarine resource replacement" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality.

(2) Except as provided in subsection (4) of this section, the Director of the Department of State Lands shall require estuarine resource replacement as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the director requires estuarine resource replacement, the director shall consider:

(a) The identified adverse impacts of the proposed activity;

(b) The availability of areas in which replacement activities could be performed;



- (c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;
- (d) The recommendations of any interested or affected state or local agencies; and
- (e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of this chapter and ORS chapters 195, 197 and 197A or the statewide planning goals adopted thereunder to the contrary, the director may:

(a) Waive estuarine resource replacement in part for an activity for which replacement would otherwise be required if, after consultation with appropriate state and local agencies the director determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which estuarine resource replacement could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive estuarine resource replacement wholly or in part for an activity for which replacement would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;



(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the director to impose conditions on a permit under ORS 196.825. [Formerly 541.626 and then 196.700; 2005 c.22 §136]

ORS § 196.835. Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal.

Any person aggrieved or adversely affected by the grant of a permit by the Director of the Department of State Lands may file a written request for hearing with the director within 21 days after the date the permit was granted. If the director finds that the person making the written request has a legally protected interest which is adversely affected by the grant of the permit, the director shall set the matter down for hearing within 30 days after receipt of the request. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a party to the proceeding. Within 45 days of the hearing the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's original order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482. A permit to fill granted by the director may be suspended by the director during the pendency of the proceedings before the director and any appeal. The director shall not suspend the permit unless the person aggrieved or adversely affected by grant of permit makes a showing before the director by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.600 to 196.921. [Formerly 541.627 and then 196.705; 2003 c.738 §19]

ORS § 196.845. Investigations and surveys.

In considering applications for permits, the Director of the Department of State Lands may cause investigations or surveys to be made of the location of the



work contemplated to determine whether such removal or filling is consistent with ORS 196.805 and 196.825. [Formerly 541.635 and then 196.715]

ORS § 196.850. Waiving permit requirement in certain cases; rules; notice; review; fees; disposition of fees.

(1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant general authorization for removal of material from the bed or banks of any waters of this state or the filling of any waters of this state without a permit from the department if the department finds that the activities subject to the general authorization:

- (a) Are substantially similar in nature;
- (b) Would cause only minimal individual and cumulative environmental impacts; and
- (c) Would not result in long-term harm to water resources of the state.

(2) A general authorization may be granted on a statewide or other geographic basis.

(3) The department shall condition any general authorization upon actions necessary to minimize environmental impacts.

(4) The department shall provide notice of any proposed general authorization to affected federal and state agencies, local governments, tribal governments and the public. The notice shall include:

- (a) A clear description of the proposal; and
- (b) Draft findings and any proposed conditions pursuant to this section.

(5) Any person proposing to conduct an action under a general authorization shall:

- (a) Notify the department in writing prior to conducting the action.
- (b) Pay the applicable fee to the department as determined under subsection (9) of this section.

(6) The department shall amend or rescind any general authorization upon a determination that the activities conducted under the authorization have resulted in or would result in more than minimal environmental impacts or long-term harm to the water resources of this state.



(7) The department shall review each general authorization adopted pursuant to this section every five years. The review shall include public notice and opportunity for public hearing. After the review, the department may either modify, reissue or rescind the general authorization.

(8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence in the rulemaking record. The record shall include copies of all documents before the agency relevant to the findings required by subsection (1) of this section.

(9) If the rule adopting a general authorization under this section is:

(a) For actions that result in moving less than 50 cubic yards of material, the department may not charge a fee for the general authorization.

(b) For actions that result in moving 50 or more cubic yards of material, the department may establish a fee for the general authorization. The fee may not exceed \$250 and shall be based on the cost of processing the general authorization.

(10) The department shall credit any fee collected under this section to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921. [1989 c.837 §9 (enacted in lieu of 541.640); renumbered 196.850 in 1989; 2003 c.253 §11; 2007 c.849 §6]

Note 1: The amendments to 196.850 by section 10, chapter 403, Oregon Laws 2023, become operative on the earlier of the effective date of rules first adopted by the Director of the Department of State Lands under 196.806 or January 1, 2026. See section 15, chapter 403, Oregon Laws 2023. The text set forth below is operative from the earlier of the effective date of the rules adopted by the Director of the Department of State Lands or January 1, 2026, until 196.850 as set forth in Note 2 becomes operative.

(1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant general authorization for removal of material from the bed or banks of any waters of this state or the filling of any waters of this state without a permit from the department if the department finds that the activities subject to the general authorization:

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impacts; and



- (c) Would not result in long-term harm to water resources of the state.
- (2) A general authorization may be granted on a statewide or other geographic basis.
- (3) The department shall condition any general authorization upon actions necessary to minimize environmental impacts.
- (4) The department shall provide notice of any proposed general authorization to affected federal and state agencies, local governments, tribal governments and the public. The notice shall include:
- (a) A clear description of the proposal; and
 - (b) Draft findings and any proposed conditions pursuant to this section.
- (5) Any person proposing to conduct an action under a general authorization shall:
- (a) Notify the department in writing prior to conducting the action.
 - (b) Pay the applicable fee to the department as determined under rules adopted by the Director of the Department of State Lands under ORS 196.806.
- (6) The department shall amend or rescind any general authorization upon a determination that the activities conducted under the authorization have resulted in or would result in more than minimal environmental impacts or long-term harm to the water resources of this state.
- (7) The department shall review each general authorization adopted pursuant to this section every five years. The review shall include public notice and opportunity for public hearing. After the review, the department may either modify, reissue or rescind the general authorization.
- (8) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence in the rulemaking record. The record shall include copies of all documents before the agency relevant to the findings required by subsection (1) of this section.
- (9) The department shall credit any fee collected under this section to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921.



Note 2: Operation of the amendments to 196.850 by section 4, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009 (third note under 196.800). The text that is operative after that approval, including amendments by section 12, chapter 253, Oregon Laws 2003, section 7, chapter 849, Oregon Laws 2007, and section 11, chapter 403, Oregon Laws 2023, is set forth for the user's convenience.

(1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule, grant general authorization for removal of material from the bed or banks of any waters of this state or the filling of any waters of this state without a permit from the department if the department finds that the activities subject to the general authorization:

(a) Are substantially similar in nature;

(b) Would cause only minimal individual and cumulative environmental impacts; and

(c) Would not result in long-term harm to water resources of the state.

(2) A general authorization may be granted on a statewide or other geographic basis.

(3) The department shall condition any general authorization upon actions necessary to minimize environmental impacts.

(4) The department shall provide notice of any proposed general authorization to affected federal and state agencies, local governments, tribal governments and the public. The notice shall include:

(a) A clear description of the proposal; and

(b) Draft findings and any proposed conditions pursuant to this section.

(5) Any person proposing to conduct an action under a general authorization shall:

(a) Notify the department in writing prior to conducting the action. The person may not commence the action until the person receives a letter of authorization from the department.

(b) Pay the applicable fee to the department as determined under rules adopted by the Director of the Department of State Lands under ORS 196.806.



(6) The director shall waive the requirements of subsection (5) of this section if the director issues a general authorization and the authorized activity:

(a) Involves less than 50 cubic yards of material;

(b) Will be conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

(c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel navigation; and

(d) Will not violate water quality standards as established by the Department of Environmental Quality.

(7) The Department of State Lands shall amend or rescind any general authorization upon a determination that the activities conducted under the authorization have resulted in or would result in more than minimal environmental impacts or long-term harm to the water resources of this state.

(8) The department shall review each general authorization adopted pursuant to this section every five years. The review shall include public notice and opportunity for public hearing. After the review, the department may either modify, reissue or rescind the general authorization.

(9) In addition to the grounds for review set forth in ORS 183.400 (4), on judicial review of the validity of a rule adopted under this section, the rule shall be reviewable for substantial evidence in the rulemaking record. The record shall include copies of all documents before the agency relevant to the findings required by subsection (1) of this section.

(10) The department shall credit any fee collected under this section to the Common School Fund for use by the department in administration of ORS 196.600 to 196.921.

ORS § 196.855. Noncomplying removal of material or filling as public nuisance.

The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan, is a public nuisance. [Formerly 541.645 and then 196.720; 2007 c.71 §65]



ORS § 196.860. Enforcement powers of director.

(1) If the Director of the Department of State Lands determines that material is being removed from or filling is occurring in any of the waters of this state without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan, the director may:

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to 196.921, as soon as possible.

(b) For the purpose of investigating conditions relating to the removal or filling, through the employees or the duly authorized representatives of the Department of State Lands, enter at reasonable times upon any private or public property.

(c) Conduct public hearings in accordance with ORS chapter 183.

(d) Publish findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 196.600 to 196.921.

(e) Give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person affected. Any person aggrieved by a proposed order of the director may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS chapter 183 applicable to contested cases, and judicial review of final orders shall be conducted in the Court of Appeals according to ORS 183.482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency.

(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 196.600 to 196.921 or of any rule or final order of the director under ORS 196.600 to 196.921 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any such proceedings the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from the violation. Proceedings thus brought by the director shall set forth if applicable the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a



statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from the violation.

(2)

(a) In addition to the administrative action the director may take under subsection (1) of this section, the director may enter an order requiring any person to cease and desist from any violation if the director determines that the violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(b) An order under this subsection:

(A) May be entered without prior notice or hearing.

(B) Shall be served upon the person by personal service or by registered or certified mail.

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order.

(D) May not be stayed during the pendency of a hearing conducted under paragraph (c) of this subsection.

(c) If a person subject to an order under this subsection files a timely demand for hearing, the director shall hold a contested case hearing according to the applicable provisions of ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency.

(d) Neither the director nor any duly authorized representative of the department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection.

(e) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing the order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the director's order in the same manner as with an order of that court.

(3) As used in this section, "violation" means removing material from or placing fill in any of the waters of this state without a permit or in a



manner contrary to the conditions set out in a permit issued under ORS 196.825. [Formerly 541.650 and then 196.725; 2007 c.71 §66; 2007 c.849 §16]

ORS § 196.865. Revocation, suspension or refusal to renew permit.

If the Director of the Department of State Lands finds that a person holding a permit issued under ORS 196.825 is removing material from the bed or banks or filling any of the waters of this state contrary to the conditions set out in the permit, the director may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. [Formerly 541.655 and then 196.730; 2007 c.849 §17]

ORS § 196.870. Abatement proceedings; restraining order; injunction; public compensation.

(1) In addition to any enforcement action taken under ORS 196.860, civil proceedings to abate alleged public nuisances under ORS 196.855 may be instituted at law or in equity, in the name of the State of Oregon, upon relation of the Director of the Department of State Lands or by any person in the person's name.

(2) Before beginning any action under subsection (1) of this section, a person other than the director shall provide 60 days notice to the director of the intended action. A person other than the director may not begin an action under subsection (1) of this section if the director has commenced and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

(3) The director may institute an action in the name of the State of Oregon for a temporary restraining order or preliminary injunction if a threatened or existing nuisance under ORS 196.855 creates an emergency that requires immediate action to protect the public health, safety or welfare. The director shall not be required to furnish a bond in such proceeding.

(4) The State Land Board, the Director of the Department of State Lands and the employees or duly authorized representatives of the Department of State Lands shall not be liable for any damages a defendant may sustain as a result of an injunction, restraining order or abatement order issued under this section.

(5) A case filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(6) In any action brought under this section, the plaintiff may seek and the court may award a sum of money sufficient to compensate the public for



any destruction or infringement of any public right of navigation, fishery or recreation resulting from an existing public nuisance under ORS 196.855. Any money received by the plaintiff under this subsection shall be deposited in the Common School Fund. [Formerly 541.660 and then 196.735]

ORS § 196.875. Double and treble damages for destruction of public right of navigation, fishery or recreation; costs and attorney fees.

(1) If any person, through negligence, violates ORS 196.810, the Director of the Department of State Lands, in a proceeding brought pursuant to ORS 196.870, may seek and the court may award double a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(2) If any person intentionally violates ORS 196.810, the director, in a proceeding brought pursuant to ORS 196.870, may seek and the court may award treble a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(3) An award made pursuant to this section shall be in addition to and not in lieu of any criminal penalties imposed for a violation of ORS 196.810.

(4) In any action brought under ORS 196.870, the court shall award to the prevailing party the costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common School Fund to offset the director's expenses of bringing such action. [Formerly 541.662 and 196.740; 2007 c.849 §18]

ORS § 196.880. Fill under permit presumed not to affect public rights; public rights extinguished.

If the Director of the Department of State Lands issues a permit to fill pursuant to ORS 196.600 to 196.921, it shall be presumed that such fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights to lands created by the fill shall be considered extinguished. [Formerly 541.665 and then 196.745]

ORS § 196.885. Annual report of fill and removal activities; contents of report.

The Director of the Department of State Lands shall submit an annual report to the State Land Board on the activities conducted under ORS 196.600 to 196.921. The annual report shall include the following:



(1) The number of fill and removal permits applied for, denied and granted, organized according to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as amended). For all permits granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body, that shows:

(a) The total number of permits, the number of new permits and the number of renewal permits.

(b) The volume and acreage of fills and removals authorized during the past year, and the volume and acreage of fills and removals completed during the past year.

(2) By river or other water body, a summary of the total volume and acreage of fills and removals made under a general waiver, general permit or similar authority.

(3) A summary of mitigation measures, including a description of each mitigation project approved during the past year including the location and size of each mitigation project and a report on the status of all mitigation projects pending or completed during the past year.

(4) A summary of enforcement activities, including:

(a) The number of potential violations reported.

(b) The number of compliance investigations conducted.

(c) The results of compliance actions, including:

(A) The number of cases resolved by voluntary compliance, administrative hearings and judicial enforcement proceedings;

(B) The amount of damages and penalties assessed;

(C) The amount of damages and penalties recovered; and

(D) A brief description of each after-the-fact permit issued, including the location and size by volume and acreage.

(5) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.



(6) The report on the Oregon Removal-Fill Mitigation Fund as required under ORS 196.655.

(7) The number of and average time for responding to notices received by local governments and the number of responses that took more than 30 days.

(8) The number of wetland conservation plans approved by the director and a description of each, including the issues raised during the approval process. [Formerly 541.670 and then 196.750; 2009 c.343 §21]

ORS § 196.890. Civil penalties.

Any person who violates any provision of ORS 196.600 to 196.921 or any rule, order or permit adopted or issued under ORS 196.600 to 196.921 shall be subject to a civil penalty in an amount to be determined by the Director of the Department of State Lands of not more than \$10,000 per day of violation. [Formerly 541.675 and then 196.755]

ORS § 196.895. Imposition of civil penalties.

(1) Civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

(2) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the Director of the Department of State Lands under this section may be joined by the director with any other action taken against the same person under ORS 196.860 (1)(f).

(3) Any civil penalty recovered under this section shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.921, 196.990 and 541.990 and as otherwise required by law. [Formerly 541.680 and then 196.760; 1991 c.734 §12]

Note: Operation of the amendments to 196.895 by section 5, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009 (third note under 196.800). The text that is operative after that approval is set forth for the user's convenience.

(1) Except as provided in subsection (4) of this section, civil penalties under ORS 196.890 shall be imposed as provided in ORS 183.745.

(2) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the Director of the Department of State Lands under this section may be joined by the



director with any other action taken against the same person under ORS 196.860 (1)(f).

(3) Any civil penalty recovered under this section shall be deposited in the Common School Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.921, 196.990 and 541.990 and as otherwise required by law.

(4) Notwithstanding any provision of ORS 183.745, any person having an interest that is adversely affected or aggrieved by an alleged violation for which civil penalties are imposed under ORS 196.890 may intervene in a contested case proceeding pertaining to the imposition of civil penalties under this section.

ORS § 196.600. Schedule of civil penalties; rules; factors to be considered in imposing civil penalties.

(1) The Director of the Department of State Lands shall adopt by rule the amount of civil penalty that may be imposed for a particular violation.

(2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the director shall consider the following factors:

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders and permits pertaining to waters of the state.

(c) The impact of the violation on public interests in fishery, navigation and recreation.

(d) Any other factors determined by the director to be relevant and consistent with the policy of ORS 196.805.

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the director determines to be proper and consistent with the policy of ORS 196.805. Upon the request of the person incurring the penalty, the director shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated. [Formerly 541.685 and then 196.765]

ORS § 196.906. Legislative findings and declarations.



(1) The Legislative Assembly finds and declares that:

(a) It is in the best interest of the state to create a simple regulatory approach for the maintenance of channels used for agricultural drainage and to improve awareness of, and compliance with, the removal and fill program provided for under ORS 196.600 to 196.921.

(b) The provisions of ORS 196.906 to 196.919 are designed to protect the economic viability of Oregon's farmers and ranchers by allowing for the maintenance of channels used for agricultural drainage to be conducted in a manner that protects, maintains or improves ecological function of the channels.

(2) The Legislative Assembly declares that it is the policy of the state:

(a) To adaptively manage the implementation of ORS 196.906 to 196.919 to allow for a workable process for persons to maintain traditionally maintained channels while protecting the ecological and life history functions of fish and wildlife that inhabit the channels; and

(b) To place a high priority on and to encourage the identification and development of opportunities for voluntary actions to restore, improve or enhance the ecological health or benefits of traditionally maintained channels. [2019 c.699 §2]

Note: 196.906 to 196.919 were added to and made a part of 196.600 to 196.921 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

ORS § 196.909. Definitions.

As used in ORS 196.906 to 196.919:

(1) "Adaptive management" has the meaning given that term in ORS 541.890.

(2) "Channel" means the defined bed and bank that serve to confine where a stream of water runs.

(3) "Dry" means:

(a) Channel conditions where no flowing or standing water is present, other than small quantities of water that may occur in low areas of the channel as a direct result of active maintenance activities; and



(b) For the channel of a waterway that is subject to tidal influence, the existence of channel conditions described in paragraph (a) of this subsection during all tidal conditions.

(4) "Maintenance" means channel upkeep and removal from the channel of sediment, vegetation or debris, in the minimum amount necessary to restore the serviceability of the channel for facilitating drainage.

(5) "Traditionally maintained channel" means the channel of a segment, set of segments or the entirety of a drainage ditch, intermittent stream or perennial stream that:

(a) Has been routinely subject to maintenance to facilitate drainage related to farming or ranching operations; and

(b) Has been serviceable for facilitating drainage within the past five years.

(6) "Undisturbed wetland" means a wetland that has not been materially affected by human activity and as further defined by the Department of State Lands by rule. [2019 c.699 §3; 2021 c.256 §1]

ORS § 196.911. Maintenance without permit; applicability; notice.

(1) Notwithstanding the permit requirements of ORS 196.810, a person may engage in removal activities or fill activities, or both, for conducting maintenance of a traditionally maintained channel without a permit from the Department of State Lands if:

(a) The person has a valid notice of maintenance activities on file with the State Department of Agriculture prior to initiating activities for the maintenance of a traditionally maintained channel; and

(b) The maintenance activities are conducted in compliance with the notice described in paragraph (a) of this subsection and with ORS 196.913 and 196.915.

(2) Notwithstanding the permit requirements of ORS 196.810, a district organized under ORS chapter 545, 547, 552 or 553 or a district improvement company or district improvement corporation organized under ORS chapter 554 may engage in removal activities or fill activities, or both, for conducting maintenance of a traditionally maintained channel without a permit from the Department of State Lands if:



(a) The district, company or corporation has a valid notice of maintenance activities on file with the State Department of Agriculture prior to initiating activities for the maintenance of a traditionally maintained channel;

(b) The maintenance activities are conducted in compliance with the notice described in paragraph (a) of this subsection and with ORS 196.913 and 196.915; and

(c) The governing body of the district, company or corporation, as part of the notice filed pursuant to subsection (3) of this section, agrees to submit to the jurisdiction of the Department of State Lands and the State Department of Agriculture for purposes of enforcement of ORS 196.906 to 196.919.

(3) A person shall file a notice of maintenance activities with the State Department of Agriculture on a form developed by the department. A notice filed under this subsection is valid for a period of five years from the date that the notice is filed. The notice must:

(a) Identify the location of the traditionally maintained channel in which the maintenance activities will occur;

(b) Include a description of the maintenance activities that, at a minimum, identifies the linear miles of channel to be maintained and the estimated volume per linear mile of material that will be removed from the channel over the course of a five-year period; and

(c) If the maintenance activities will be undertaken in part by a district, company or corporation described in subsection (2) of this section and in part by persons subject to the jurisdiction of the district, company or corporation, clearly identify which activities will be undertaken by the district, company or corporation and which activities will be undertaken by a person subject to the jurisdiction of the district, company or corporation.

(4) A district, company or corporation described in subsection (2) of this section shall endeavor to submit the notice required under subsection (2) of this section in coordination with submission of notices under subsection (1) of this section by persons subject to the jurisdiction of the district, company or corporation. The State Department of Agriculture may develop a consolidated form for the filing of notices by districts, companies and corporations and persons subject to the jurisdiction of the districts, companies and corporations. [2019 c.699 §4]



ORS § 196.613. Prohibitions; conditions.

(1) Activities for conducting maintenance of a traditionally maintained channel pursuant to a notice submitted under ORS 196.911 may not result in:

(a) The removal of more than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid;

(b) The spreading of material in:

(A) A wetland or converted wetland pursuant to subsection (2)(k) of this section in a volume greater than 3,000 cubic yards per linear mile of traditionally maintained channel over the course of the five-year period for which the notice is valid; or

(B) An undisturbed wetland;

(c) The removal or fill of material, or any other maintenance, occurring in a channel that has been designated by rule and mapped by the Department of State Lands as essential indigenous anadromous salmonid habitat as defined in ORS 196.810; or

(d) The enlargement of a water right or in otherwise causing injury to another existing water right.

(2) In addition to complying with all applicable laws related to fish passage as described in ORS 509.585 and all applicable laws related to water quality, maintenance activities conducted pursuant to a notice submitted under ORS 196.911 must comply with the following conditions:

(a) A traditionally maintained channel must be dry before the commencement of any removal activities in the channel. If there is standing water in the channel that is due to a rain event and not indicative of a perennial stream, a person must request a variance under ORS 196.915 (5) prior to initiation of maintenance activities.

(b) A person must complete removal activities during the applicable regional dry maintenance time period established by the State Department of Fish and Wildlife for the region where the traditionally maintained channel is located.

(c) The body of motorized equipment used to conduct removal or fill activities must be operated from the bank of the channel, with only



the bucket or portion of the motorized equipment that actively removes material operating within the channel.

(d) The bottom of the channel bed must be excavated on a smooth grade, in a manner that avoids creating depressions or grade changes within the channel.

(e) Maintenance activities must be conducted in a manner that minimizes new erosion into the channel.

(f) Removal of woody vegetation must be limited to the minimum amount needed to complete the maintenance activity.

(g) Revegetation must occur for any riparian areas that serve as a buffer adjacent to the channel and that experience vegetation loss as a result of the maintenance activity. This condition is satisfied whether revegetation occurs naturally or after seeding.

(h) Work related to the maintenance activity must be conducted only from one bank of the channel, on either the north or east side, when practicable, to minimize the ecological impacts of the maintenance activity.

(i) Motorized equipment used for maintenance activities must utilize existing crossings, if crossing the channel is necessary to complete maintenance activities.

(j) Maintenance activities must begin at the most upstream location of the traditionally maintained channel and progress downstream.

(k) Material that is removed from the channel may be temporarily placed in a wetland or converted wetland to dry, provided that the material must, no later than one year after the date that the maintenance activity was completed, be moved to uplands or be spread in a thin layer outside the riparian area that serves as a buffer adjacent to the channel. Fill activities related to the maintenance of a traditionally maintained channel must be limited to fill pursuant to this paragraph.

(L) Maintenance activities may not result in converting wetlands to uplands and may not materially change the depth or functionality of a wetland.

(m) Impacts to wetlands by the maintenance activities must be temporary and must be limited to impacts related to accessing the



site to conduct removal activities in the channel, the removal of material and the disposal of removed material.

(n) Maintenance activities may not result in a change in location of a channel through the digging of a new channel and the diversion of the flow from the old channel into the new channel or in increasing the width or depth of the channel beyond the width or depth to which the channel has routinely been maintained to facilitate drainage.

(o) The maintenance activities must not alter any existing inlet or outlet connections with other waterways. [2019 c.699 §5; 2021 c.256 §2]

ORS § 196.915. State agencies' review and responses to notice; additional conditions; expediate review; variances; inspections; records; rules.

(1) The State Department of Agriculture shall, no later than five days after the date the department receives a notice filed pursuant to ORS 196.911, provide a copy of the notice to the State Department of Fish and Wildlife. The State Department of Fish and Wildlife shall, within 30 days after receiving a copy of the notice, provide a response to the State Department of Agriculture. The response may indicate that a review was conducted and the work may proceed, or may provide recommendations on:

(a) Whether the maintenance activities described in the notice will meet the requirements of ORS 196.913; and

(b) Whether conditions in addition to those required under ORS 196.913 are necessary to address the presence of endangered or threatened species, to protect endangered or threatened species' habitat quality or quantity, or to otherwise protect the existing functions of the channel.

(2)

(a) Except as provided under paragraph (b) of this subsection, the State Department of Agriculture shall include any conditions recommended by the State Department of Fish and Wildlife in the response to the notice required under subsection (3) of this section.

(b) If the State Department of Agriculture disagrees with the recommendations of the State Department of Fish and Wildlife, the State Department of Agriculture shall provide a copy of the notice and of the recommendations to the Department of State Lands for the Department of State Lands to make a final determination regarding:



(A) Whether the maintenance activities described in the notice may occur without a removal or fill permit; and

(B) What conditions in addition to those required under ORS 196.913, if any, are necessary for the maintenance activities to occur without a removal or fill permit.

(c) The Department of State Lands shall provide any final determination required pursuant to paragraph (b) of this subsection to the State Department of Agriculture within five days after receiving the copies of the notice and recommendations.

(3) The State Department of Agriculture shall provide a response to a notice filed pursuant to ORS 196.911 no later than 45 days after the date that the notice is received. The response must include any conditions in addition to those required under ORS 196.913 that the departments have determined are necessary, pursuant to the process described in subsection (2) of this section, for maintenance activities to occur in the traditionally maintained channel without a removal or fill permit. If the State Department of Agriculture does not provide a response to a notice within the time period described in this subsection, maintenance activities may proceed as described in the notice and pursuant to ORS 196.913.

(4) Upon a request from the person submitting a notice under ORS 196.911, the State Department of Agriculture and the State Department of Fish and Wildlife may provide for expedited review under subsections (1) to (3) of this section, if the expedited review is necessary to allow for maintenance activities to occur within a specific time period.

(5) Prior to initiation of maintenance activities, a person who has a notice of maintenance activities on file with the State Department of Agriculture may request from the State Department of Agriculture a variance from any condition required under ORS 196.913 (2) or this section. The State Department of Agriculture shall consult with the State Department of Fish and Wildlife before granting a variance under this subsection. A person that has applied for a variance may not commence maintenance activities until after the State Department of Agriculture has granted the variance and informed the person of any modifications to conditions or additional conditions that must be met for the maintenance to occur.

(6)

(a) Subject to paragraph (b) of this subsection, the State Department of Agriculture or the State Department of Fish and Wildlife may enter onto and inspect lands for which notices have been filed



under ORS 196.911 in order to develop the recommendations and response required by subsections (1) to (3) of this section or to ascertain compliance with ORS 196.906 to 196.919.

(b) To enter onto and inspect lands under this subsection:

(A) The Department of Agriculture shall first make a reasonable attempt to notify the landowner;

(B) The departments may only enter onto and inspect the lands at a reasonable time; and

(C) The State Department of Fish and Wildlife may not, without the express agreement of the person, district, company or corporation that filed the notice, enter onto and inspect the lands unless accompanied by the State Department of Agriculture.

(7) The State Department of Agriculture shall maintain a record of a notice filed pursuant to ORS 196.911 and any related correspondence for 10 years after the date that the notice is received.

(8)

(a) The Department of State Lands may, after consultation with the State Department of Agriculture and the State Department of Fish and Wildlife, adopt rules as necessary to implement ORS 196.906 to 196.919. Rules adopted pursuant to this subsection may include, but need not be limited to, rules:

(A) Modifying the volume limits for removal or fill set forth in ORS 196.913 (1) or applying different volume limits within certain geographies for certain types or categories of traditionally maintained channels; or

(B) Modifying the conditions that apply for maintenance of a traditionally maintained channel set forth in ORS 196.913 (2).

(b) Any rules adopted under paragraph (a)(A) or (B) of this subsection must be based on the best available scientific information and on findings that the rules will:

(A) Allow for maintenance of traditionally maintained channels to be conducted in a manner that protects, maintains or improves the existing ecological and habitat function of traditionally maintained channels; and



(B) Result in appropriate changes to the conditions required for conducting maintenance activities, under an adaptive management approach, for carrying out the state policy stated in ORS 196.906.

(9) Nothing in ORS 196.906 to 196.919 limits or otherwise changes the exemptions under ORS 196.921.

(10) The costs of activities taken by the State Department of Fish and Wildlife to carry out the duties of the department under ORS 196.906 to 196.919 may not be charged to another state agency as recompensable assistance under ORS 496.167 and 496.168. [2019 c.699 §6]

Note: See note under 196.906.

Note: Sections 1 to 3, chapter 26, Oregon Laws 2021, provide:

Sec. 1. If the Department of State Lands or the State Department of Agriculture adopts rules to implement ORS 196.906 to 196.919, the rules may provide for implementation on a region-by-region basis but must provide for implementation throughout this state within a five-year period. [2021 c.26 §1]

Sec. 2. Section 1 of this 2021 Act does not modify the duties, functions or powers, under ORS 196.906 to 196.919, of the Department of State Lands, the State Department of Agriculture or the State Department of Fish and Wildlife. [2021 c.26 §2]

Sec. 3. Sections 1 and 2 of this 2021 Act are repealed on January 2, 2031. [2021 c.26 §3]

ORS § 196.917. Notice of violation; reasonable efforts to induce voluntary compliance.

Upon finding that a person has engaged in removal activities or fill activities for the maintenance of a traditionally maintained channel without a permit required under ORS 196.810 and in violation of ORS 196.911, 196.913 or 196.915, the State Department of Agriculture or the Department of State Lands, in consultation with the State Department of Fish and Wildlife, shall notify the person and direct the person to take any actions necessary to bring the maintenance activities into compliance with ORS 196.600 to 196.921 within a reasonable period of time. In all cases, the State Department of Agriculture or the Department of State Lands shall make reasonable efforts to induce voluntary compliance, prior to the assessment of any civil penalty under ORS 196.890 for violation of ORS 196.911, 196.913 or 196.915. [2019 c.699 §7]

ORS § 196.919. Memoranda of understanding.



(1) The Department of State Lands and the State Department of Agriculture shall enter into a memorandum of understanding providing for the State Department of Agriculture to implement ORS 196.906 to 196.919. Subject to the terms of the memorandum of understanding, the State Department of Agriculture:

(a) May perform the functions of the Department of State Lands in implementing and enforcing ORS 196.906 to 196.919.

(b) Shall, in coordination with soil and water conservation districts, work to provide education on the requirements of ORS 196.906 to 196.919.

(c) Shall, in coordination with the Department of State Lands, develop and implement a process for responding to requests to review the accuracy of the designation by the Department of State Lands and mapping of essential indigenous anadromous salmonid habitat as defined in ORS 196.810.

(2) The Department of State Lands may enter into any memorandum of understanding other than that required under subsection (1) of this section that is necessary for the implementation and enforcement of ORS 196.906 to 196.919.

(3) The State Department of Agriculture, in consultation with the Department of State Lands and the State Department of Fish and Wildlife, shall biennially conduct an adaptive management review of the implementation of ORS 196.906 to 196.919 to determine whether implementation changes are required to best carry out the policy stated in ORS 196.906. [2019 c.699 §8]

Note: See note under 196.906.

Note: Sections 10 to 15, chapter 699, Oregon Laws 2019, provide:

Sec. 10. Benefits and impacts study.

(1) The College of Agricultural Sciences of Oregon State University shall conduct a study of the benefits and impacts of maintenance activities in traditionally maintained channels on habitat complexity and other biological parameters, including the benefits and impacts of maintenance activities for fish and wildlife that inhabit the channels. In conducting the study, the college shall assess the impacts of maintenance activities at a variety of geographic locations, in a variety of channel types and on a variety of channel conditions.



(2) In designing and implementing the study, the college shall consult with representatives of agricultural interests and conservation interests, the Department of State Lands, the State Department of Agriculture, the State Department of Fish and Wildlife and any other interested agencies of state government, as defined in ORS 174.111, as necessary to develop study questions and to design the study in a manner that will best align with the needs of the Department of State Lands, the State Department of Agriculture and the State Department of Fish and Wildlife in applying adaptive management to the implementation of sections 2 to 8 of this 2019 Act [196.906 to 196.919] and ORS 196.816 (3).

(3) The college shall submit a report on the study required by this section, and may include recommendations for legislation, to the interim committees of the Legislative Assembly related to agriculture in the manner provided under ORS 192.245, and to the Department of State Lands, the State Department of Agriculture and the State Department of Fish and Wildlife no later than January 1, 2025. [2019 c.699 §10]

Sec. 11. Sunset. Section 10 of this 2019 Act is repealed on January 2, 2025. [2019 c.699 §11]

Sec. 12. Use of report on benefits and impacts study in adaptive management. Upon receipt of the study results contained in the report required under section 10 of this 2019 Act, the State Department of Agriculture shall consider the results in developing adaptive management recommendations pursuant to section 8 (3) of this 2019 Act [196.919 (3)]. [2019 c.699 §12]

Sec. 13. Sunset. Section 12 of this 2019 Act is repealed on January 2, 2027. [2019 c.699 §13]

Sec. 14. Joint biennial report on maintenance activities.

(1) The State Department of Agriculture, the Department of State Lands and the State Department of Fish and Wildlife shall jointly prepare a report on activities in this state for the maintenance of traditionally maintained channels. The State Department of Agriculture shall coordinate preparation of the report.

(2) The report shall:

(a) Describe activities related to the implementation of sections 2 to 8 [196.906 to 196.919], 10 and 12 of this 2019 Act and the amendments to ORS 196.816 by section 9 of this 2019 Act, including methods of implementation, compliance information and outcomes;



(b) Provide a discussion of the biennial adaptive management review required under section 8 (3) of this 2019 Act [196.919 (3)];

(c) Include information on the number of notices required under section 4 of this 2019 Act [196.911] on file with the Department of Agriculture, the linear miles of traditionally maintained channel in this state being maintained and the amount of cubic yards of material being removed pursuant to sections 2 to 8 of this 2019 Act;

(d) Provide a discussion of the potential impacts and benefits to agricultural lands and ecological function by maintenance conducted pursuant to sections 2 to 8 of this 2019 Act;

(e) Provide a discussion of opportunities to provide incentives to landowners to improve or enhance the ecological functions of channels maintained under sections 2 to 8 of this 2019 Act, including incentives provided to landowners during the period covered by the report; and

(f) Include any other relevant information on the implementation and effectiveness of sections 2 to 8 of this 2019 Act.

(3) The report may include recommendations for legislation.

(4) The report shall be submitted to the interim committees of the Legislative Assembly related to agriculture in the manner provided under ORS 192.245 no later than December 15 of each odd-numbered year. [2019 c.699 §14]

Sec. 15. Sunset. Section 14 of this 2019 Act is repealed on January 2, 2030. [2019 c.699 §15]

ORS § 196.921. Applicability; rules.

(1) Nothing in ORS 196.600 to 196.921 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

(2) Nothing in ORS 196.600 to 196.921 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and



(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting, cultivating, conventional crop rotation or harvesting.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for exclusive farm use as described in ORS 215.203 for the following activities:

(a) Drainage or maintenance of farm or stock ponds; or

(b) Maintenance of farm roads in such a manner as to not significantly adversely affect wetlands or any other waters of this state.

(5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for subsurface drainage by deep ripping, tiling or moling on converted wetlands that are zoned for exclusive farm use pursuant to ORS 215.203.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, so long as commercial agricultural production on the land has not been abandoned for five or more years.

(7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as in effect on January 1, 2010.

(8) The exemptions in subsections (3) to (7) of this section do not apply to any fill or removal that involves changing an area of wetlands to a nonfarm use.

(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and



(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(11) Nothing in ORS 196.600 to 196.921 applies to removal or filling, or both, within the beds or banks of any waters of this state conducted as part of a surface mining operation, that is the subject of a memorandum of agreement between the Department of State Lands and the State Department of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries is assigned sole responsibility for permitting as described in ORS 517.797.

(12) The Department of State Lands may adopt a rule that exempts from the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse impact on waters of this state.

(13) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change in the point of diversion to withdraw surface water for beneficial use if the change in the point of diversion is necessitated by a change in the location of the surface water and authorized by the Water Resources Department.

(14) Unless otherwise provided in a proposed order or in a final order issued in a contested case, nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, originally intended or subsequently used for the establishment, repair, restoration, resumption or replacement of the following uses, if the use was established on or before January 1, 2017, on lands zoned for exclusive farm use, forest use or mixed farm and forest use:

(a) A dwelling:

(A) Described in ORS 215.213 (1) or (3) or 215.283 (1);

(B) Established subject to county approval under ORS 215.402 to 215.438; or

(C) Lawfully established on or before December 31, 1973;



(b) An agricultural building as defined in ORS 455.315; or

(c) Activities that:

(A) Are associated with a dwelling or agricultural building described in this subsection;

(B) Have received county approval, if necessary, under ORS 215.402 to 215.438; and

(C) Are located on the same lot or parcel as the dwelling or agricultural building.

(15) Nothing in ORS 196.800 to 196.921 applies to removal or filling, or both, as part of a voluntary project for stream restoration and habitat improvement authorized by the State Department of Fish and Wildlife under ORS 496.266.

(16) As used in this section:

(a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes.

(b) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

(c) "Replacement" means the construction of a new structure that is substantially similar in size, sited in a substantially similar location and constructed in place of a previously existing structure. [Formerly 196.905; 2021 c.63 §4]

Note: Operation of the amendments to 196.921 (formerly 196.905) by section 6, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009 (third note under 196.800). The text that is operative after that approval, including amendments by section 13, chapter 253, Oregon Laws 2003, section 4, chapter 342, Oregon Laws 2009, section 2, chapter 16, Oregon Laws 2011, section 4, chapter 406, Oregon Laws 2011, section 2, chapter 428, Oregon Laws 2017, and section 5, chapter 63, Oregon Laws 2021, is set forth for the user's convenience.



(1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit under ORS 196.600 to 196.921 is required for any fill or removal of material in or from the waters of this state when:

(a) The fill or removal is a part of an activity whose purpose is to bring an area of state waters into a use to which it was not previously subject; and

(b)

(A) The flow or circulation of the waters of this state may be impaired; or

(B) The reach of the waters may be reduced.

(2) Nothing in ORS 196.600 to 196.921 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forestland; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to 527.770, 527.990 and 527.992.

(3) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on converted wetlands for normal farming and ranching activities such as plowing, grazing, seeding, planting, cultivating, conventional crop rotation or harvesting.

(4) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, on lands zoned for exclusive farm use as described in ORS 215.203 for the following activities:

(a) Drainage or maintenance of farm or stock ponds; or

(b) Maintenance of farm roads, provided that:

(A) The farm roads are constructed and maintained in accordance with construction practices designed to minimize any adverse effects to the aquatic environment;

(B) Borrow material for farm road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and



(C) Maintenance activities are confined to the scope of construction for the original project.

(5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS 215.203, if the lands are converted wetlands that are also certified as prior converted cropland by the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, so long as commercial agricultural production on the land has not been abandoned for five or more years.

(6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the reestablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C. 3831 as in effect on January 1, 2010.

(7) The exemptions in subsections (3) to (6) of this section do not apply to any fill or removal that involves changing an area of wetlands or converted wetlands to a nonfarm use.

(8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drainage ditches, irrigation ditches and tile drain systems, provided that:

(a) The structure was serviceable within the past five years; and

(b) Such maintenance or reconstruction would not significantly adversely affect wetlands or other waters of this state to a greater extent than the wetlands or waters of this state were affected as a result of the original construction of those structures.

(9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary dams constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided the following conditions are satisfied:

(a) The removal or filling is conducted during periods that minimize adverse effects to fish and wildlife in accordance with guidance provided by the State Department of Fish and Wildlife;

(b) The removal or filling does not jeopardize a threatened or endangered species or adversely modify or destroy the habitat of a threatened or endangered species listed under federal or state law; and

(c) Temporary fills are removed in their entirety and the area is restored to its approximate original elevation.



(10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable roads or transportation structures such as groins and riprap protecting roads, causeways and bridge abutments or approaches.

(11) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the maintenance of access roads constructed to move mining equipment, subject to the following conditions:

(a) The access roads are constructed and maintained in accordance with construction practices that minimize adverse effects to the aquatic environment;

(b) Borrow material for access road maintenance does not come from waters of this state unless authorized by the Department of State Lands; and

(c) Maintenance activities are confined to the scope of construction for the original project.

(12) Nothing in ORS 196.600 to 196.921 applies to removal or filling, or both, within the beds or banks of any waters of this state conducted as part of a surface mining operation that is the subject of a memorandum of agreement between the Department of State Lands and the State Department of Geology and Mineral Industries in which the State Department of Geology and Mineral Industries is assigned sole responsibility for permitting as described in ORS 517.797.

(13) The department may adopt a rule that exempts from the requirement to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal adverse impact on waters of this state.

(14) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change in the point of diversion to withdraw surface water for beneficial use if the change in the point of diversion is necessitated by a change in the location of the surface water and authorized by the Water Resources Department.

(15) Unless otherwise provided in a proposed order or in a final order issued in a contested case, nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, originally intended or subsequently used for the establishment, repair, restoration, resumption or replacement of the following uses, if the use was established on or before January 1, 2017, on lands zoned for exclusive farm use, forest use or mixed farm and forest use:



(a) A dwelling:

(A) Described in ORS 215.213 (1) or (3) or 215.283 (1);

(B) Established subject to county approval under ORS 215.402 to 215.438; or

(C) Lawfully established on or before December 31, 1973;

(b) An agricultural building as defined in ORS 455.315; or

(c) Activities that:

(A) Are associated with a dwelling or agricultural building described in this subsection;

(B) Have received county approval, if necessary, under ORS 215.402 to 215.438; and

(C) Are located on the same lot or parcel as the dwelling or agricultural building.

(16) Nothing in ORS 196.800 to 196.921 applies to removal or filling, or both, as part of a voluntary project for stream restoration and habitat improvement authorized by the State Department of Fish and Wildlife under ORS 496.266.

(17) As used in this section:

(a)

(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30, 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that are managed for commercial agricultural purposes.

(B) "Converted wetlands" does not include any stream, slough, ditched creek, spring, lake or any other waters of this state that are located within or adjacent to a converted wetland area.

(b) "Harvesting" means physically removing crops or other agricultural products.



(c) "Plowing" includes all forms of primary tillage, including moldboard, chisel or wide-blade plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil to prepare it for planting crops or other agricultural products. "Plowing" does not include:

(A) The redistribution of soil, rock, sand or other surface materials in a manner that changes areas of waters of this state into dry land; or

(B) Rock crushing activities that result in the loss of natural drainage characteristics, the reduction of water storage and recharge capability, or the overburdening of natural water filtration capacity.

(d) "Replacement" means the construction of a new structure that is substantially similar in size, sited in a substantially similar location and constructed in place of a previously existing structure.

(e) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other agricultural products.

ORS § 196.931. Monitoring fill and removal activities; public education and information materials; periodic reports to legislative committee.

The Department of State Lands shall:

(1) Monitor removal and fill activities, including but not limited to prospecting and placer mining, within designated essential indigenous anadromous salmonid habitat areas to determine the effects of such activities on salmonid spawning and rearing habitat and compile the results in an annual report.

(2) Cooperate with the State Department of Fish and Wildlife and other interested parties to develop and distribute public education and information materials designed to increase understanding and awareness of permit requirements and acceptable removal and fill practices related to prospecting and placer mining.

(3) Report periodically to the appropriate legislative committee on the progress of the Department of State Lands in implementing ORS 196.810. [Formerly 196.910]

Note: 196.931 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 196 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.



ORS § 196.990. Penalties for unpermitted removal from or filling of waters.

Violation of ORS 196.810 is a misdemeanor. [Formerly subsection (4) of 541.990]

Note: Operation of the amendments to 196.990 by section 7, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009 (third note under 196.800). The text that is operative after that approval is set forth for the user's convenience.

(1) A person commits the offense of unlawful removal from or filling of waters of this state if the person knowingly violates ORS 196.810 or an order issued thereunder, or any rule or condition of a permit issued under ORS 196.600 to 196.921.

(2) Notwithstanding ORS 161.515, unlawful removal from or filling of waters of this state is an offense punishable by a fine of up to \$10,000 per day of violation.

ORS § 196.993. Penalties for unauthorized use of Willamette Falls Locks.

A person who gains or attempts to gain unauthorized access to or use of the properties or facilities of the Willamette Falls Locks Authority in violation of any use restriction or condition imposed by the authority, including assessment of any fees, commits a Class D violation. In addition to any enforcement officers specifically identified in ORS 153.005, the executive director of the Willamette Falls Locks Authority and other employees of the Willamette Falls Locks Authority may issue citations for violations of this section. [2021 c.229 §11]

