

Enrolled House Bill 2105

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of State Lands)

CHAPTER

AN ACT

Relating to Department of State Lands; creating new provisions; amending ORS 196.620, 196.643, 196.682, 196.686, 196.800, 196.810, 196.815, 196.825, 196.850, 196.860, 196.865 and 196.875; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

FEES

SECTION 1. ORS 196.815 is amended to read:

196.815. (1) *[Each applicant for a]* **A person who is required to have a permit to remove material from the bed or banks or fill any waters of this state** *[first]* shall file a written application with the Director of the Department of State Lands, *[specifying the nature and amount of material to be removed or the amount of fill, the waters and the specific location from which it is to be removed or where the fill will be placed, the method of removal or filling and the times during which removal or filling is to be conducted. The director may require additional information as is necessary to enable the director to determine whether the granting of the permit applied for is consistent with the protection, conservation and best use of the water resources of this state. For the purposes of this subsection, fills or removals of material at locations not more than one mile apart may be combined in one application]* **for each individual project before performing any removal or fill.**

[(2) The Director of the Department of State Lands shall furnish to any member of the public upon written request and at the expense of the member of the public a copy of any application for a permit pursuant to subsection (1) of this section.]

[(3)(a)] **(2)(a)** 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, *[\$50]* **\$85.**

(B) For a removal by a public body, *[\$150]* **\$250.**

(C) For a removal by a commercial operator, *[\$150]* **\$250.**

(D) For a fill by a private operator, or a person contracting to perform services for a private operator, *[\$150]* **\$250.**

(E) For a fill by a public body, *[\$375]* **\$620.**

(F) For a fill by a commercial operator, *[\$375]* **\$620.**

(G) For erosion-flood repair, including riprap, *[by a private landowner or public body, or a person contracting to perform services for such persons,]* 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 [4,999] **less than 5,000** cubic yards, [*\$75 for private operator, \$75 for public body and \$75 for commercial operator*] **\$125**.

(C) 5,000 to **less than or equal to** 50,000 cubic yards, [*\$150 for private operator, \$150 for public body and \$150 for commercial operator*] **\$250**.

(D) Over 50,000 cubic yards, [*\$225 for private operator, \$225 for public body and \$225 for commercial operator*] **\$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 [2,999] **less than 3,000** cubic yards, [*\$75 for private operator, \$75 for public body and \$75 for commercial operator*] **\$125**.

(C) 3,000 to **less than or equal to** 10,000 cubic yards, [*\$150 for private operator, \$150 for public body and \$150 for commercial operator*] **\$250**.

(D) Over 10,000 cubic yards, [*\$225 for private operator, \$225 for public body and \$225 for commercial operator*] **\$375**.

(d) For the purposes of this subsection[*the following terms shall have the following meanings*]:

(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 regulations promulgated by the Department of State Lands; 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.

[(4)] (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 [(3)] (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.**

[(5)] (6) [*Annually*] **Prior to or** on the anniversary date of the permit, 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 [(3)] (2) of this section, except that the applicant shall pay only the base fee. 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 [*any extension*] **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.

[(6)] (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 196.905[, 196.990 and 541.990 and as otherwise required by law].

(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 Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for 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.

DEFINITIONS

SECTION 2. ORS 196.800 is amended to read:

196.800. As used in ORS 196.600 to 196.905, 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) "Department" means the Department of State Lands.]

[(3) "Director" means the Director of the Department of State Lands.]

[(4)] (2) "Estuary" means:

(a) **For waters other than the Columbia River, the [a] body of water [semienclosed] from the ocean to the head of tidewater that is partially enclosed** by land and [connected with the open ocean] within which salt water is usually diluted by fresh water [derived] from the land[. "Estuary" includes], **including all associated** estuarine waters, tidelands, tidal marshes and submerged lands [extending upstream to the head of tidewater.]; **and**

(b) [However,] **For the Columbia River [Estuary extends], 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.**

[(5)] (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.

[(6)] (4) "General authorization" means [a rule adopted by the director authorizing, without a permit from the department,] **an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, [on a statewide or other geographic basis] without a permit.**

[(7) "Governmental body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.]

(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.**

[(8)] (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.

[(9)] (7) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

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

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

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

(c) Rectifying the [impact] **effect** by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the [impact] **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 [impact] **effect** by replacing or providing comparable substitute wetland or water resources.

(9) **“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)] (10) **“Practicable” means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.**

[(12)] (11) **“Public use” means a publicly owned project or a privately owned project that is available for use by the public.**

[(13)] (12) **“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)] (13) **“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)] (14) **“Waters of this state” means all natural waterways [including all], tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands [and other bodies of water in this state, navigable and nonnavigable, including], that portion of the Pacific Ocean [which] that is in the boundaries of this state[. “Waters of this state” does not include], all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, [with the exception of those areas] 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)] (15) **“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)] (16) **“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.**

SECTION 3. ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8, chapter 253, Oregon Laws 2003, and section 15, chapter 738, Oregon Laws 2003, is amended to read: 196.800. As used in ORS 196.600 to 196.905, 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)] **“Department” means the Department of State Lands.]**

[(3)] **“Director” means the Director of the Department of State Lands.]**

[(4)] (2) **“Estuary” means:**

(a) **For waters other than the Columbia River, the [a] body of water [semienclosed] from the ocean to the head of tidewater that is partially enclosed by land and [connected with the open ocean] within which salt water is usually diluted by fresh water [derived] from the land[. “Estuary” includes], including all associated estuarine waters, tidelands, tidal marshes and submerged lands [extending upstream to the head of tidewater. However,]; and**

(b) **For the Columbia River [Estuary extends], 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.**

[(5)] (3) **“Fill” means the deposit by artificial means of material at one location in any waters of this state.**

[(6)] (4) **“General authorization” means [a rule adopted by the director authorizing, without a permit from the department,] an authorization granted under ORS 196.850 for a category of activities involving removal or fill, or both, [on a statewide or other geographic basis] 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.**

[(7)] *“Governmental body” includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.*

[(8)] (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.**

[(9)] (7) **“Material” means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.**

[(10)] (8) **“Mitigation” means the reduction of adverse effects of a proposed project by considering, in the following order:**

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

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

(c) Rectifying the [impact] **effect** by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the [impact] **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 [impact] **effect** by replacing or providing comparable substitute wetland or water resources.

(9) **“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)] (10) **“Practicable” means capable of being accomplished after taking into consideration the cost, existing technology and logistics with respect to the overall project purpose.**

[(12)] (11) **“Public use” means a publicly owned project or a privately owned project that is available for use by the public.**

[(13)] (12) **“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)] (13) **“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)] (14) **“Waters of this state” means all natural waterways [including all], tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands [and other bodies of water in this state, navigable and nonnavigable, including], that portion of the Pacific Ocean [which] that is in the boundaries of this state[. “Waters of this state” does not include], all other navigable and nonnavigable bodies of water in this state and those portions of the ocean shore, as defined in ORS 390.605, [with the exception of those areas] 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)] (15) **“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)] (16) **“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.**

PERMITS AND GENERAL AUTHORIZATIONS

SECTION 4. ORS 196.825 is amended to read:

196.825. (1) The Director of the Department of State Lands shall issue a permit *[to remove material from the beds or banks of any waters of this state]* applied for under ORS 196.815 if the director determines that the *[removal]* **project** described in the application *[will not be inconsistent]*:

(a) **Is consistent** with the protection, conservation and best use of the water resources of this state as specified in ORS *[196.805.]* **196.600 to 196.905; and**

[(2)] (b) *[The director shall issue a permit applied for under ORS 196.815 for filling waters of this state if the director determines that the proposed fill]* Would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

[(3)] (2) In determining whether *[or not]* **to issue** a permit *[shall be issued]*, 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 *[fill]* 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 *[zoning ordinances]* **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 *[(10)]*. If off-site compensatory wetland mitigation is proposed, the applicant shall document the impracticability of on-site compensatory wetland mitigation.

[(4)] (3) 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 *[fill]* **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 196.905.

[(5)] (4) 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 *[subsections (1) and (2)]* **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse *[impacts from]* **effects of** project development. In formulating such conditions the director may request comment from *[the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the Soil and Water Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the Director of Transportation, the Director of the Economic and Community Development Department, the Water Resources Director and affected local governmental units]* **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. *[Obtaining a lease from the Department of State Lands may not be one of the conditions to be considered in granting a permit under ORS 196.815.]* The director *[of the Department of State Lands]* shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse *[impacts from]* **effects of** project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

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

(6) 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 [subsections (1), (2) and (5) of] this section by the director [of the Department of State Lands], 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.

(7) 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)] (4) 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 [involving fill or removal of material] within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (9)(b) of this section; or

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

(8) 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, [468.010, 468.030 to 468.045,] **468.020, 468.035, 468.045,** 468.055, 468.060, [468.075,] 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 [such permits] **the permit or authorization** are substantially the same as those established pursuant to ORS 164.775, 164.785, [468.010,] **468.020,** 468.035, [468.040,] **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.

(9)(a) Any [agency or other unit of government] **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 [under subsection (5) of this section] must submit its comments to the director not more than 30 days after receiving the request for comment. If [an agency or other unit of] **a public body, federal agency or tribal** government fails to comment on the application within 30 days, the director shall assume [the agency or other unit of] **that the public body, federal agency or tribal** government has no objection [and shall approve or deny the application].

(b) The Department of Environmental Quality shall provide comments to the director within 75 days after receiving notice under subsection [(5)] (4) of this section if the permit action requires certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

(10) 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.

(11) As used in this section:

(a) "Applicant" means a landowner or person authorized by a landowner to conduct a removal or fill activity.

(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 *[subsections (1) to (5) of]* this section.

SECTION 5. ORS 196.825, as amended by section 3, chapter 516, Oregon Laws 2001, section 10, chapter 253, Oregon Laws 2003, and section 18a, chapter 738, Oregon Laws 2003, is amended to read:

196.825. (1) The Director of the Department of State Lands shall issue a permit *[to remove material from the beds or banks of any waters of this state]* applied for under ORS 196.815 if the director determines that the *[removal]* **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 196.905[.]; **and**

[(2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state if the director determines that the proposed fill:]

[(a)] (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; *and]*.

[(b) Is consistent with ORS 196.600 to 196.905.]

[(3)] (2) In determining whether to issue a permit *[under subsection (1) or (2) of this section]*, 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 *[fill]* 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 *[zoning ordinances]* **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 *[(10)]*. If off-site compensatory wetland mitigation is proposed, the applicant shall document the impracticability of on-site compensatory wetland mitigation.

[(4)] (3) 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 *[fill]* **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 196.905.

[(5)] (4) 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 [subsections (1) and (2)] **subsection (1)** of this section and to provide mitigation for the reasonably expected adverse [impacts from] **effects of** project development. In formulating such conditions the director may request comment from [the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the Soil and Water Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the Director of Transportation, the Director of the Economic and Community Development Department, the Water Resources Director and affected local governmental units] **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. [Obtaining a lease from the Department of State Lands may not be one of the conditions to be considered in granting a permit under ORS 196.815.] The director [of the Department of State Lands] shall impose, as conditions to any permit, general authorization or wetland conservation plan, measures to provide mitigation for the reasonably expected adverse [impacts from] **effects of** project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

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

(6) 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 [subsections (1), (2) and (5) of] 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.

(7) 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)] (4) 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 [involving fill or removal of material] within 90 days after the date the director determines that the application is complete unless:

(A) An extension of time is granted under subsection (9)(b) of this section; or

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

(8) 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, [468.010, 468.030 to 468.045,] **468.020, 468.035, 468.045,** 468.055, 468.060, [468.075,] 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 [such permits] **the permit or authorization** are substantially the same as those established pursuant to ORS 164.775, 164.785, [468.010,] **468.020,** 468.035, [468.040,] **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.

(9)(a) Any [agency or other unit of government] **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 [under subsection (5) of this section] must submit its comments to the director not more than 30 days

after receiving the request for comment. If *[an agency or other unit of]* a **public body, federal agency or tribal** government fails to comment on the application within 30 days, the director shall assume *[the agency or other unit of]* **that the public body, federal agency or tribal** government has no objection *[and shall approve or deny the application]*.

(b) The Department of Environmental Quality shall provide comments to the director within 75 days after receiving notice under subsection *[(5)]* (4) of this section if the permit action requires certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

(10) 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.

(11) As used in this section:

(a) “Applicant” means a landowner or person authorized by a landowner to conduct a removal or fill activity.

(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 *[subsections (1) to (5) of]* this section.

SECTION 6. ORS 196.850 is amended to read:

196.850. (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 *[the]* **this** state without a permit from the department if the department finds that *[those]* **the** activities subject to the general authorization:

(a) Are substantially similar in nature *[and]*;

(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 *[such]* general authorization upon actions necessary to minimize environmental impacts.

[(2)] (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 *[subsection (1) of]* this section.

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

(a) Notify the department in writing prior to conducting *[such]* **the** action.

(b) Pay the applicable fee to the department as determined under subsection (9) of this section.

[(4)] (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.

[5] (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 [such] **the** review, the department may either modify, reissue or rescind the general authorization.

[6] (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 [whether the requirement of] **the findings required by** subsection (1) of this section [has been met].

(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 196.905.

SECTION 7. ORS 196.850, as amended by section 4, chapter 516, Oregon Laws 2001, and section 12, chapter 253, Oregon Laws 2003, is amended to read:

196.850. (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 [the] **this** state without a permit from the department if the department finds that [those] **the** activities subject to the general authorization:

(a) Are substantially similar in nature [and];

(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 [such] general authorization upon actions necessary to minimize environmental impacts.

[2] (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 [subsection (1) of] this section.

[3] (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 subsection (10) of this section.

[4] (6) The **Director of the Department of State Lands shall waive the** requirements of subsection [(3)] (5) of this section [shall be waived] if the director [of the Department of State Lands] 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.

[5] (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 re-

sult in more than minimal environmental impacts or long-term harm to the water resources of this state.

[(6)] **(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 *[such]* **the** review, the department may either modify, reissue or rescind the general authorization.

[(7)] **(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 *[whether the requirement of]* **the findings required by** subsection (1) of this section *[has been met]*.

(10) 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.

(11) 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 196.905.

SECTION 8. Section 9 of this 2007 Act is added to and made a part of ORS 196.800 to 196.825.

SECTION 9. (1)(a) Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a removal or fill general permit:

(A) For processing applications on a statewide or geographic basis; or

(B) 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 196.905 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) Any person proposing to conduct an action under a general permit shall apply to the department in accordance with procedures set forth by the department by rule.

(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.

CONFORMING AMENDMENTS

SECTION 10. ORS 196.620 is amended to read:

196.620. (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)] (4), for any other authorization issued in accordance with ORS 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905.

(3) Credits from a freshwater 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 of

the Department of State Lands determines, in exceptional circumstances, 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.

(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 and enhancement actions to establish other wetland 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 wetland functions and values of the mitigation bank site are equal to or greater than the functions and the values of the wetland area to be damaged or destroyed.

(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 196.905.

(8) The director annually shall:

(a) Evaluate the wetlands functions and values created within each wetland 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; or

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

SECTION 11. ORS 196.643 is amended to read:

196.643. A person who provides off-site compensatory wetland mitigation in order to comply with a condition imposed on a permit in accordance with ORS 196.825 [(5)] (4), an authorization issued in accordance with ORS 196.800 to 196.905 or a resolution of a violation of ORS 196.800 to 196.905 may make a payment for credits to an approved mitigation bank with available credits, or to the Oregon Wetlands Mitigation Bank Revolving Fund Account, if credits from a mitigation bank are not available. If the person is making a payment to the Oregon Wetlands Mitigation Bank Revolving Fund Account, the payment shall be equal to the average cost of credits available from all active mitigation banks in the state.

SECTION 12. ORS 196.682 is amended to read:

196.682. (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 [(5) and (6)] and 196.835. In lieu of the substantive standards for permit issuance in ORS [196.815 (1) and] 196.825 [(1),] (2) [and (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 [insure] **ensure** that the project:

(a) Is properly designed or configured to minimize the need for alterations to waters of [the] **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 [*insure*] **ensure** wetland creation, restoration or enhancement measures are implemented to fully replace impacted resources.

(2) In any order approving a plan which 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 [*insure*] **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.

SECTION 13. ORS 196.686 is amended to read:

196.686. (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 [(5) and (6)], 196.830 and 196.835. In lieu of the substantive standards for permit issuance in ORS [196.815 (1) and] 196.825 [(1),] (2) [and (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 [insure] **ensure** that the project:

- (a) Is designed or configured to minimize alterations to waters of [the] **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 or enhancement 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.

SECTION 14. ORS 196.810 is amended to read:

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, [no person or governmental body may] **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 [wetlands] **wetland** conservation plan.

(b) Notwithstanding the permit requirements of this section and notwithstanding the provisions of ORS 196.800 [(5) and (13)] **(3) and (12)**, 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) [No person may be] **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 pres-

ent. Removal or filling activities customarily associated with mining require a permit under paragraph (b) of this subsection.

(d) *[No permit may be]* **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 498.311, 498.316, 498.326 or 509.600 to 509.645.

(e) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(f) 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 non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(2) *[No governmental body may]* **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 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any *[governmental]* **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 196.905.

(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.

SECTION 15. ORS 196.810, as amended by section 2, chapter 516, Oregon Laws 2001, and section 97, chapter 14, Oregon Laws 2003, is amended to read:

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a person *[or governmental body]* 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 *[wetlands]* **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 498.311, 498.316, 498.326 or 509.600 to 509.645.

(d) Nothing in this section limits or otherwise changes the exemptions under ORS 196.905.

(2) A *[governmental]* **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 196.905.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any *[governmental]* **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 196.905.

(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.

(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 non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

SECTION 16. ORS 196.860 is amended to read:

196.860. (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 *[wetlands]* **wetland** conservation plan, the director may:

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to 196.905, as soon as possible.

(b) For the purpose of investigating conditions relating to such 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 196.905.

(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 *[or governmental body]* 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 196.905 or of any rule or final order of the director under ORS 196.600 to 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and 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 such 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 such violation.

(2) 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 such violation presents an imminent and substantial risk of injury, loss or damage to water resources.

(a) 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) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection.

(b) 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.

(c) 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.

(d) 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 such 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.

SECTION 17. ORS 196.865 is amended to read:

196.865. If the Director of the Department of State Lands finds that a person [*or governmental body*] 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.

SECTION 18. ORS 196.875 is amended to read:

196.875. (1) If any person [*or governmental body*], 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 [or governmental body] 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.

MISCELLANEOUS PROVISIONS

SECTION 19. The amendments to ORS 196.620, 196.643, 196.682, 196.686, 196.800, 196.810, 196.815, 196.825, 196.850 and 196.865 by sections 1 to 7, 10 to 15 and 17 of this 2007 Act apply only to permits applied for or permits renewed on or after the effective date of this 2007 Act.

SECTION 20. The unit captions used in this 2007 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2007 Act.

SECTION 21. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on July 1, 2007.

Passed by House June 21, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 23, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State