

Enrolled
House Bill 2396

Sponsored by Representative WITT; Representatives BUCKLEY, CLEM, DOHERTY, FREDERICK,
MATTHEWS (Pre-session filed.)

CHAPTER

AN ACT

Relating to large woody debris; creating new provisions; and amending ORS 196.800 and 196.810.

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

SECTION 1. 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) "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.

~~[(7)]~~ **(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.

~~[(8)]~~ **(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.

[(9)] (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.

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

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

[(12)] (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.

[(13)] (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.

[(14)] (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.

[(15)] (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.

[(16)] (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.

SECTION 2. ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8, chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849, Oregon Laws 2007, and section 19, chapter 343, Oregon Laws 2009, 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) "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.**

[(7)] (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.

[(8)] (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.

[(9)] (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.

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

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

[(12)] (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.

[(13)] (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.

[(14)] (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.

[(15)] (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.

[(16)] (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.

SECTION 3. ORS 196.810 is amended to read:

196.810. (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, 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 [(12)] (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) 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) 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 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 4. Section 5 of this 2013 Act is added to and made a part of ORS 196.600 to 196.905.

SECTION 5. The provisions of ORS 196.600 to 196.905 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.

SECTION 6. Sections 4 and 5 of this 2013 Act and the amendments to ORS 196.800 and 196.810 by sections 1 to 3 of this 2013 Act apply to permits for which applications are filed or renewals are requested on or after the effective date of this 2013 Act.

Passed by House March 20, 2013

Received by Governor:

Repassed by House May 15, 2013

.....M.,....., 2013

Approved:

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Ramona J. Line, Chief Clerk of House

.....M.,....., 2013

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate May 13, 2013

Filed in Office of Secretary of State:

.....M.,....., 2013

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State