

Enrolled
House Bill 2785

Sponsored by COMMITTEE ON AGRICULTURE AND NATURAL RESOURCES

CHAPTER

AN ACT

Relating to applicability of removal-fill laws; amending ORS 196.905.

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

SECTION 1. ORS 196.905 is amended to read:

196.905. (1) Nothing in ORS 196.600 to 196.905 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 196.905 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 196.905 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.

[(14)] **(15) 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.

SECTION 2. ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13, chapter 253, Oregon Laws 2003, section 4, chapter 342, Oregon Laws 2009, section 2, chapter 16, Oregon Laws 2011, and section 4, chapter 406, Oregon Laws 2011, is amended to read:

196.905. (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a permit under ORS 196.600 to 196.905 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 196.905 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 196.905 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);

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(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)] **(16)** 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.**

[(d)] (e) “Seeding” means the sowing of seed or placement of seedlings to produce crops or other agricultural products.

Passed by House April 24, 2017

Received by Governor:

Repassed by House June 13, 2017

.....M.,....., 2017

Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2017

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate June 8, 2017

Filed in Office of Secretary of State:

.....M.,....., 2017

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Peter Courtney, President of Senate

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Dennis Richardson, Secretary of State