

CHAPTER 502

AN ACT

HB 3309

Relating to the State Department of Geology and Mineral Industries; amending ORS 401.950, 455.446, 455.447 and 517.750.

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

SECTION 1. ORS 517.750 is amended to read:

517.750. As used in ORS 517.702 to 517.989, unless the context requires otherwise:

(1) "Board" means the governing board of the State Department of Geology and Mineral Industries.

(2) "Completion" means termination of surface mining activities including reclamation of the surface-mined land in accordance with the approved reclamation plan and operating permit.

(3) "Cooperating agency" means the State Department of Agriculture, the State Department of Fish and Wildlife or any agency that has statutory responsibility related to a mining operation but that does not issue a permit for the mining operation.

(4) "Department" means the State Department of Geology and Mineral Industries.

(5) "Exploration" means all activities conducted on or beneath the surface of the earth for the purpose of determining presence, location, extent, grade or economic viability of a deposit. "Exploration" does not include prospecting or chemical processing of minerals.

(6) "Explorer" means[*notwithstanding the provisions of ORS 517.810 (2), any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever*] **a person** that is engaged in exploration.

(7) "Landowner" means:

(a) The person possessing fee title to the natural mineral deposit being surface mined or explored; and

(b) The owner of an equitable interest in land that is subject to a deed of trust.

(8) "Minerals" includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use from natural deposits situated within or upon lands in this state.

(9) "Operator" means any individual, public or private corporation, political subdivision, agency, board or department of this state, any municipality, partnership, association, firm, trust, estate or any other legal entity whatsoever that is engaged in surface mining operations.

(10) "Overburden" means the soil, rock and similar materials that lie above natural deposits of minerals.

(11) "Person" means any person, any federal agency or any public body, as defined in ORS 174.109.

(12) "Processing" includes, but is not limited to, crushing, washing, milling and screening as well as

the batching and blending of mineral aggregate into asphalt and portland cement concrete located within the operating permit area.

(13) "Reclamation" means the employment in a surface mining operation or exploration of procedures reasonably designed to:

(a) Minimize, as much as practicable, the adverse effects of the surface mining operation or exploration on land, air and water resources; and

(b) Provide for the rehabilitation of surface resources adversely affected by the surface mining operations or exploration through the rehabilitation of plant cover, soil stability and water resources and through other measures that contribute to the subsequent beneficial use of the explored, mined or reclaimed lands.

(14) "Reclamation plan" means a written proposal, submitted to the department as required by ORS 517.702 to 517.989 and subsequently approved by the department as provided in ORS 517.702 to 517.989, for the reclamation of the land area adversely affected by a surface mining operation or exploration and including, but not limited to the following information:

(a) Proposed measures to be undertaken by the operator in protecting the natural resources of adjacent lands.

(b) Proposed measures for the rehabilitation of the explored or surface-mined lands and the procedures to be applied.

(c) The procedures to be applied in the surface mining operation or exploration to control the discharge of contaminants and the disposal of surface mining refuse.

(d) The procedures to be applied in the surface mining operation or exploration in the rehabilitation of affected stream channels and stream banks to a condition minimizing erosion, sedimentation and other factors of pollution.

(e) The map required by ORS 517.790 (1)(e) and such other maps and supporting documents as may be requested by the department.

(f) A proposed time schedule for the completion of reclamation operations.

(g) Requirements of the exploration permit.

(15) "Surface impacts of underground mining" means all waste materials produced by underground mining and placed upon the surface including, but not limited to, waste dumps, mill tailings, washing plant fines and all surface subsidence related to underground mining.

(16)(a) "Surface mining" includes:

(A) All or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of ad-

jacent or off-site borrow pits, [(except those constructed for use as access roads)].

(B) Removal or filling, or both, within the beds or banks of any waters of this state 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.

(b) "Surface mining" does not include:

(A) Excavations of sand, gravel, clay, rock or other similar materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel that is being excavated;

(B) Excavation or grading operations, reasonably necessary for farming;

(C) Nonsurface effects of underground mining;

(D) Removal of rock, gravel, sand, silt or other similar substances removed from the beds or banks of any waters of this state pursuant to a permit issued under ORS 196.800 to 196.900;

(E) Excavations or reprocessing of aggregate material, or grading operations, within the highway right of way reasonably necessary for the construction, reconstruction or maintenance of a highway as defined in ORS 801.305;

(F) Excavation or movement of materials on site at a landfill, as defined in ORS 459.005, for the primary purpose of construction, reconstruction or maintenance of access roads or for landfill operations, including but not limited to landfill cell construction and daily, interim and final cover operations, if the excavation or movement of materials is covered by a permit issued by the Department of Environmental Quality under ORS 459.205 to 459.385; [or]

(G) Excavation or grading operations necessary for construction and maintenance of utilities or drainage facilities, where the excavated material is used on site and is not sold into the commercial market as aggregate material[.]; **or**

(H) Excavation or grading operations that:

(i) Are associated with on-site construction activities; and

(ii) Do not result in any excavated materials being sold into the commercial market.

(17) "Surface mining refuse" means all waste materials, soil, rock, mineral, liquid, vegetation and other materials resulting from or displaced by surface mining operations within the operating permit area, including all waste materials deposited in or upon lands within the operating permit area.

(18) "Underground mining" means all human-made excavations below the surface of the ground through shafts or adits for the purpose of exploring for, developing or producing valuable minerals.

SECTION 2. ORS 455.446 is amended to read:

455.446. [(1)(a) New essential facilities described in ORS 455.447 (1)(a)(A), (B) and (G) and new special occupancy structures described in ORS 455.447 (1)(e)(B), (C) and (E) may not be constructed in the tsunami inundation zone established under paragraph (c) of this subsection. The provisions of this paragraph apply to buildings with a capacity greater than 50 individuals for every public, private or parochial school through secondary level and child care centers.]

[(b)] (1) The State Department of Geology and Mineral Industries shall establish the parameters of the area of expected tsunami inundation based on scientific evidence that may include geologic field data and tsunami modeling.

[(c)] (2) The governing board of the State Department of Geology and Mineral Industries, by rule, shall determine the tsunami inundation zone based on the parameters established by the department. [The board shall adopt the zone as determined by the department under paragraph (b) of this subsection except as modified by the board under paragraph (d) of this subsection.]

[(d)] The board may grant exceptions to restrictions in the tsunami inundation zone established under paragraph (c) of this subsection after public hearing and a determination by the board that the applicant has demonstrated that the safety of building occupants will be ensured to the maximum reasonable extent:]

[(A)] By addressing the relative risks within the zone.]

[(B)] By balancing competing interests and other considerations.]

[(C)] By considering mitigative construction strategies.]

[(D)] By considering mitigative terrain modification.]

[(e)] The provisions of paragraph (a) of this subsection do not apply:]

[(A)] To fire or police stations where there is a need for strategic location; and]

[(B)] To public schools if there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.]

[(f)] All materials supporting an application for an exception to the tsunami inundation zone are public records under ORS 192.005 to 192.170 and must be retained in the library of the department for periods of time determined by its governing board.]

[(g)] The applicant for an exception to the tsunami inundation zone established under paragraph (c) of this subsection shall pay any costs for department review of the application and the costs, if any, of the approval process.]

[(2)] The definitions in ORS 455.447 apply to this section.]

[(3)] The provisions of this section do not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.]

[(4) Decisions made under this section are not land use decisions under ORS 197.015 (10).]

SECTION 3. ORS 455.447 is amended to read:

455.447. (1) As used in this section, unless the context requires otherwise:

(a) "Essential facility" means:

(A) Hospitals and other medical facilities having surgery and emergency treatment areas;

(B) Fire and police stations;

(C) Tanks or other structures containing, housing or supporting water or fire-suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;

(D) Emergency vehicle shelters and garages;

(E) Structures and equipment in emergency-preparedness centers;

(F) Standby power generating equipment for essential facilities; and

(G) Structures and equipment in government communication centers and other facilities required for emergency response.

(b) "Hazardous facility" means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released.

(c) "Major structure" means a building over six stories in height with an aggregate floor area of 60,000 square feet or more, every building over 10 stories in height and parking structures as determined by Department of Consumer and Business Services rule.

(d) "Seismic hazard" means a geologic condition that is a potential danger to life and property that includes but is not limited to earthquake, landslide, liquefaction, tsunami inundation, fault displacement, and subsidence.

(e) "Special occupancy structure" means:

(A) Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;

(B) Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;

(C) Buildings for colleges or adult education schools with a capacity greater than 500 persons;

(D) Medical facilities with 50 or more resident, incapacitated patients not included in subparagraphs (A) to (C) of this paragraph;

(E) Jails and detention facilities; and

(F) All structures and occupancies with a capacity greater than 5,000 persons.

(2) The Department of Consumer and Business Services shall consult with the Seismic Safety Policy Advisory Commission and the State Department of Geology and Mineral Industries prior to adopting rules. Thereafter, the Department of Consumer and Business Services may adopt rules as set forth in ORS 183.325 to 183.410 to amend the state building code to:

(a) Require new building sites for essential facilities, hazardous facilities, major structures and spe-

cial occupancy structures to be evaluated on a site specific basis for vulnerability to seismic geologic hazards.

(b) Require a program for the installation of strong motions accelerographs in or near selected major buildings.

(c) Provide for the review of geologic and engineering reports for seismic design of new buildings of large size, high occupancy or critical use.

(d) Provide for filing of noninterpretive seismic data from site evaluation in a manner accessible to the public.

(3) For the purpose of defraying the cost of applying the regulations in subsection (2) of this section, there is hereby imposed a surcharge in the amount of one percent of the total fees collected under the structural and mechanical specialty codes for essential facilities, hazardous facilities, major structures and special occupancy structures, which fees *[shall be]* **are** retained by the jurisdiction enforcing the particular specialty code as provided in ORS 455.150 or enforcing a building inspection program under ORS 455.148.

(4) Developers of new essential facilities, hazardous facilities, *[and]* major structures *[described in subsection (1)(a)(E), (b) and (c) of this section and new]* **and** special occupancy structures *[described in subsection (1)(e)(A), (D) and (F) of this section]* that are located in an identified tsunami inundation zone, **as described in ORS 455.446 (2)**, shall consult with the State Department of Geology and Mineral Industries for assistance in determining the impact of possible tsunamis on the proposed development and for assistance in preparing methods to mitigate risk at the site of a potential tsunami. Consultation *[shall]* **must** take place prior to submittal of design plans to the building official for final approval.

SECTION 4. ORS 401.950 is amended to read:

401.950. (1) As used in this section:

(a) "Transient lodging facility" means a hotel, motel, inn, condominium, any other dwelling unit or a public or private park that is made available for transient occupancy or vacation occupancy as those terms are defined in ORS 90.100.

(b) "Tsunami inundation zone" means an area of expected tsunami inundation, based on scientific evidence that may include geologic field data and tsunami modeling, determined by the governing board of the State Department of Geology and Mineral Industries, by rule, as required by ORS 455.446 (1)(b) and (c) **(2)**.

(2) The Office of Emergency Management, in consultation and cooperation with the State Department of Geology and Mineral Industries, shall:

(a) Develop and adopt by rule tsunami warning information and evacuation plans for distribution to transient lodging facilities located in a tsunami inundation zone; and

(b) Facilitate and encourage broad distribution of the tsunami warning information and evacuation plans to transient lodging facilities and other lo-

cations within tsunami inundation zones frequented by visitors to the area.

(3) The office is not required to carry out the duties assigned under subsection (2) of this section

if sufficient moneys are not available under ORS 401.955.

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