

## 1 MITIGATION

2 **196.600 Definitions for ORS 196.600 to 196.655.** As used in ORS 196.600 to 196.655:

3 (1) “Compensatory mitigation” means activities conducted by a permittee or third party to  
4 create, restore, enhance or preserve the functions and values of the water resources of this  
5 state to compensate for the removal-fill related adverse effects of project development to  
6 waters of this state or to resolve violations of ORS 196.800 to 196.905. Compensatory  
7 mitigation for removal-fill activities does not affect permit requirements of other state  
8 departments.

9 (2) “Credit” means the measure of the increase in the functions and values of the water  
10 resources of this state achieved at a mitigation bank site.

11 (3) “Mitigation bank” means a site created, restored, enhanced or preserved in accordance  
12 with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this  
13 state due to activities which otherwise comply with the requirements of ORS 196.600 to  
14 196.905.

15 (4) “Mitigation bank instrument” means the legally binding and enforceable agreement  
16 between the Director of the Department of State Lands and a mitigation bank sponsor that  
17 formally establishes the mitigation bank and stipulates the terms and conditions of the  
18 mitigation bank’s construction, operation and long-term management.

19 (5) “Off-site compensatory mitigation” means activities conducted away from the project  
20 site that create, restore, enhance or preserve the functions and values of the water resources  
21 of this state in order to compensate for the adverse impacts to waters of this state from project  
22 development.

23 (6) “On-site compensatory mitigation” means activities conducted at the project site to  
24 create, restore, enhance or preserve the functions and values of the water resources of this  
25 state in order to compensate for the adverse impacts to waters of this state from project  
26 development.

27 (7) “Permit action” means activity under a specific removal or fill permit or other  
28 authorization requested or issued under ORS 196.600 to 196.905.

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

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

38 **196.605 Purpose.** It is the purpose of ORS 196.600 to 196.655 to:

39 (1) Promote, in concert with other federal and state programs as well as interested parties,  
40 the maintenance and conservation of the water resources of this state;

41 (2) Improve cooperative efforts among private, nonprofit and public entities for the  
42 management and protection of the waters of this state;

1 (3) Offset losses of the functions and values of the water resources of this state caused by  
 2 activities that otherwise comply with state and federal law in order to create, restore, enhance  
 3 or preserve those functions and values;

4 (4) Maintain and encourage a predictable, efficient regulatory framework for  
 5 environmentally acceptable development;

6 (5) Provide an option for accomplishing off-site compensatory mitigation when on-site  
 7 compensatory mitigation is not practicable; and

8 (6) Allow the use of mitigation banks to offset adverse effects from removal or fill activities  
 9 on the waters of this state. [Formerly 541.555; 2003 c.738 §4; 2009 c.343 §2]

10 **196.610 Powers of Director of Department of State Lands; fees.** Subject to approval by the  
 11 State Land Board, the Director of the Department of State Lands may:

12 (1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 196.600 to  
 13 196.655.

14 (2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to  
 15 preserve sensitive or unique habitat in or near the waters of this state.

16 (3) Pay costs incurred for alterations needed to create, restore, enhance or preserve waters  
 17 of this state for purposes of carrying out the provisions of ORS 196.600 to 196.655 or 196.800  
 18 to 196.905.

19 (4) Authorize payment of administrative, research or scientific monitoring expenses of the  
 20 Department of State Lands in carrying out the provisions of ORS 196.600 to 196.655 or 196.800  
 21 to 196.905.

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

24 (6) Receive funds under the federal Emergency Wetlands Resources Act of 1986, P.L. 99-645,  
 25 for the voluntary acquisition of wetlands and interests therein according to the wetlands  
 26 provisions of the Statewide Comprehensive Outdoor Recreation Plan. Funds received under the  
 27 federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, shall be used for  
 28 nonmitigation complementary purposes and programs of ORS 196.600 to 196.655. [Formerly  
 29 541.557; 1993 c.18 §36; 2003 c.738 §5; 2009 c.343 §3]

30 **196.615 Program for mitigation banks; program standards and criteria; rules.** (1) In  
 31 accordance with the provisions of ORS 196.600 to 196.655, upon the approval of the State Land  
 32 Board, the Director of the Department of State Lands shall initiate and implement a program  
 33 for mitigation banks. The director shall encourage the development of and the expeditious  
 34 approval of mitigation banks and other types of compensatory mitigation.

35 (2) Subject to the approval of the State Land Board, the Department of State Lands shall  
 36 adopt, by rule, standards and criteria for the site selection process, operation and evaluation of  
 37 mitigation banks. Criteria to be considered shall include but need not be limited to:

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

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

41 (A) Wildlife, migratory birds and resident species;

42 (B) Commercial and sport fisheries;

- 1 (C) Surface and ground water quality and quantity, and flood moderation;
- 2 (D) Outdoor recreation including enhancement of scenic waterways; and
- 3 (E) Scientific and research values.

4 (c) Regional economic needs.

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

6 (a) Guidelines for the use of mitigation banks to compensate for adverse effects of project  
7 development or to resolve violations of ORS 196.800 to 196.905 related to waters of this state;  
8 and

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

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

15 **196.620 Resource values and credits for mitigation banks; use and withdrawal of credits;**  
16 **annual evaluation of system by director.** (1) For each mitigation bank, the Department of State  
17 Lands shall establish a system of resource values and credits.

18 (2) A credit from a mitigation bank may be withdrawn for a condition imposed on a permit  
19 in accordance with ORS 196.825 (5), for any other authorization issued in accordance with ORS  
20 196.800 to 196.905 or to resolve a violation of ORS 196.800 to 196.905. At the request of a  
21 mitigation bank sponsor, the Director of the Department of State Lands may authorize the  
22 withdrawal of mitigation bank credits by a public benefit corporation as defined in ORS 65.001  
23 or a public body as defined by ORS 174.109 designated by the director for the purpose of  
24 reserving credits for future use in accordance with this subsection. The director shall manage  
25 such transactions to ensure that each credit is used no more than one time to satisfy a use in  
26 accordance with this section.

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

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

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

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

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

40 (c) Evaluated the results of the actions and determined that a high probability exists that the  
41 functions and values of the mitigation bank site are equal to or greater than the functions and  
42 values of the area to be impacted or that the functions and values of the mitigation bank

1 compensate for unavoidable adverse effects on the waters of this state due to the activities  
2 otherwise allowed under ORS 196.600 to 196.905.

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

6 (7) The director shall not consider the availability or nonavailability of mitigation bank  
7 credits in deciding whether to grant or deny any removal or fill permit under ORS 196.600 to  
8 196.905.

9 (8) The director annually shall:

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

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

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

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

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

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

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

22 (c) The functions and values of the mitigation bank do not compensate for unavoidable  
23 adverse effects on the waters of this state due to the activities otherwise allowed under ORS  
24 196.600 to 196.905. [Formerly 541.565; 1997 c.444 §3; 2003 c.738 §7; 2005 c.22 §135; 2007  
25 c.804 §70; 2007 c.849 §10; 2009 c.343 §5; 2011 c.370 §2]

26 **196.623 Watershed enhancement project as mitigation bank; sale of mitigation credit.** (1)

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

31 (2) A person, state agency, federal agency, federally recognized Indian tribe, watershed  
32 council or political subdivision in this state that owns land upon which is located a watershed  
33 enhancement program that qualifies as a mitigation bank under subsection (1) of this section  
34 may sell mitigation credit from the mitigation bank subject to ORS 196.600 to 196.655 and the  
35 rules of the Department of State Lands adopted under ORS 196.600 to 196.655. [1997 c.444 §2;  
36 2009 c.343 §6]

37 **196.625 Fill and removal activities in mitigation banks; reports.** (1) The Director of the

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

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

1       **196.630 Rules.** Subject to the approval of the State Land Board, the Director of the  
 2 Department of State Lands shall adopt rules according to the provisions of ORS chapter 183 to  
 3 carry out the provisions of ORS 196.600 to 196.655. [Formerly 541.570]

4       **196.635 Director to consult and cooperate with other agencies and interested parties.** (1)  
 5 The provisions of ORS 196.600 to 196.655 shall be carried out by the Director of the  
 6 Department of State Lands. The Department of State Lands shall solicit, but not be bound by,  
 7 comments from the State Department of Fish and Wildlife, Department of Transportation,  
 8 Department of Land Conservation and Development, Department of Environmental Quality,  
 9 Oregon Business Development Department, federal natural resources and regulatory agencies,  
 10 affected local governments and special districts, conservation organizations and other  
 11 interested parties. All comments shall be in writing and provided to the Department of State  
 12 Lands and mitigation bank sponsor within 30 days of solicitation by the Department of State  
 13 Lands. If comments are not received by the Department of State Lands from a state agency or  
 14 from an affected local government or special district within 30 days of solicitation, the director  
 15 shall assume that the state agency, local government or special district does not desire to  
 16 provide comments.

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

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

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

24       (3) The director shall confer with the Oregon Watershed Enhancement Board to develop  
 25 criteria to certify watershed enhancement projects as mitigation banks. [Formerly 541.575;  
 26 1997 c.444 §4; 2003 c.738 §9]

27       **196.640 Oregon Removal-Fill Mitigation Fund; rules.** (1) The Oregon Removal-Fill  
 28 Mitigation Fund is established, separate and distinct from the General Fund. All moneys  
 29 received under ORS 196.645 shall be paid into the State Treasury and credited to the Oregon  
 30 Removal-Fill Mitigation Fund. All moneys in the fund are appropriated continuously to the  
 31 Department of State Lands to be used by the department as set forth in ORS 196.650. The  
 32 moneys in the fund may be invested and reinvested as provided in ORS 293.701 to 293.857.  
 33 Interest earned by the fund shall be credited to the fund.

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

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

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

1       **196.643 Payments to comply with permit condition, authorization or resolution of**  
2 **violation; report; rules.** (1) A person who provides off-site compensatory mitigation in order to  
3 comply with a condition imposed on a permit in accordance with ORS 196.825 (5), an  
4 authorization issued in accordance with ORS 196.800 to 196.905 or a resolution of a violation of  
5 ORS 196.800 to 196.905 may make a payment for credits to the Oregon Removal-Fill Mitigation  
6 Fund when:

7       (a) Credits from an approved mitigation bank are not available; or

8       (b)(A) Credits from an approved mitigation bank were not available in a region at the time  
9 the first payment for credits was made to the Oregon Removal-Fill Mitigation Fund; and

10       (B) The expenses associated with a Department of State Lands mitigation bank project in the  
11 region in accordance with this section and ORS 196.650 have not been fully recovered by the  
12 Department of State Lands.

13       (2) Any payments for off-site compensatory mitigation made to the Oregon Removal-Fill  
14 Mitigation Fund under subsection (1) of this section must be sufficient to cover the costs and  
15 expenses of land acquisition, project design and engineering, construction, planting,  
16 monitoring, maintenance, long-term management and protection activities, administration and  
17 other costs and expenses related to the off-site compensatory mitigation, which may vary  
18 depending on the region of this state where the off-site compensatory mitigation is conducted,  
19 and shall be calculated by the Department of State Lands as follows:

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

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

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

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

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

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

39       (d) The effectiveness of the July 2010 “Oregon Rapid Wetland Assessment Protocol” of the  
40 department in protecting the functions and values of wetlands through off-site compensatory  
41 mitigation. [2003 c.738 §22; 2007 c.849 §11; 2009 c.343 §10; 2011 c.370 §3; 2013 c.257 §1;  
42 2015 c.343 §1]



1       **196.645 Sources of fund.** The following moneys shall be paid into the Oregon Removal-Fill  
2 Mitigation Fund:

3       (1) Any moneys appropriated for that purpose by the Legislative Assembly;

4       (2) Moneys received from conditions imposed on a permit, authorizations or resolutions of  
5 violations, except civil penalties, involving compensatory mitigation in which the Department of  
6 State Lands is the party responsible for the compensatory mitigation;

7       (3) Moneys awarded for such purposes as specifically stipulated under grants through the  
8 federal Emergency Wetlands Resources Act of 1986, P.L. 99-645, or the federal Coastal Zone  
9 Management Act of 1972, 16 U.S.C. 1451 et seq., as amended;

10       (4) Moneys obtained by gift, bequest, donation or grant from any other public or private  
11 source for the purposes of ORS 196.600 to 196.655 or 196.800 to 196.905;

12       (5) Repayment of moneys from the fund, including interest on such moneys; and

13       (6) Moneys obtained from interest or other earnings from investments of moneys in the  
14 fund. [Formerly 541.580; 1999 c.59 §50; 2003 c.738 §11; 2009 c.343 §11]

15       **196.650 Use of fund.** The Department of State Lands may use the moneys in the Oregon  
16 Removal-Fill Mitigation Fund for the following purposes:

17       (1) For the voluntary acquisition of land or interests therein suitable for use in mitigation  
18 banks.

19       (2) To pay for specific projects to create, restore, enhance or preserve water resources of  
20 this state for purposes of carrying out the provisions of ORS 196.600 to 196.905. Moneys  
21 deposited in the fund for impacts to the waters of this state may be used only for projects that  
22 create, restore, enhance or preserve water resources of this state.

23       (3) For the implementation of long-term protection measures related to projects that  
24 create, restore, enhance or preserve water resources of this state.

25       (4) For purchase of credits from approved mitigation banks.

26       (5) For payment of administrative, research or scientific monitoring expenses of the  
27 department in carrying out the provisions of ORS 196.600 to 196.655.

28       (6) For the disbursement of funds received under the federal Coastal Zone Management Act of  
29 1972, as amended (16 U.S.C. 1451 et seq.), for such purposes as specifically stipulated in a grant  
30 award.

31       (7) For the disbursement of funds received under the federal Emergency Wetlands Resources Act  
32 of 1986, P.L. 99-645, for the voluntary acquisition of wetlands and interests therein as identified  
33 in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan. [Formerly  
34 541.585; 1993 c.18 §37; 2003 c.738 §12; 2009 c.343 §12]

35       **196.655 Report on Oregon Removal-Fill Mitigation Fund; contents.** As part of the report to  
36 the State Land Board required under ORS 196.885, the Director of the Department of State  
37 Lands shall prepare an annual report on the Oregon Removal-Fill Mitigation Fund. The report  
38 shall include, but need not be limited to:

39       (1) The financial status of the fund;

40       (2) Creation, restoration, enhancement or preservation activities and credits sold, granted or  
41 otherwise disposed of or remaining in mitigation banks established under ORS 196.600 to  
42 196.655;

- 1 (3) Portions of the waters of this state, including but not limited to wetlands, acquired with
- 2 moneys in the fund;
- 3 (4) Compensatory mitigation projects financed with moneys in the fund; and
- 4 (5) For each mitigation bank, a summary of activities, including but not limited to:
- 5 (a) A description of the location, size, number of potential credits and credits withdrawn for
- 6 each specific permit action; and
- 7 (b) The status of all mitigation bank activities pending or completed during the past year.
- 8 [Formerly 541.587; 2003 c.738 §13; 2009 c.343 §13]

9 **196.660 Effect of ORS 196.600 to 196.655.** ORS 196.600 to 196.655 are intended to be  
 10 supplementary to, and are not intended to abrogate, any state or federal law relating to the  
 11 waters of this state. [Formerly 541.590; 1999 c.59 §51; 2009 c.343 §14]

12 **196.665 Short title.** ORS 196.600 to 196.655 may be cited as the “Oregon Removal-Fill  
 13 Mitigation Fund Act.” [Formerly 541.595; 2009 c.343 §15]

14 WETLAND CONSERVATION PLANS

15 **196.668 Legislative findings.** The Legislative Assembly finds that:

- 16 (1) Wetlands provide a natural means of flood and storm damage protection through the
- 17 absorption and storage of water during high runoff periods, thereby reducing flood crests and
- 18 preventing loss of life and property;
- 19 (2) Wetlands provide essential breeding, spawning, rearing, feeding, nesting and wintering
- 20 habitats for a major portion of this state’s fish and wildlife;
- 21 (3) Wetlands provide essential habitat for waterfowl using the Pacific Flyway and for the
- 22 rearing of salmon and other anadromous and resident fish;
- 23 (4) Wetlands act as accumulation areas for sediments which retain nutrients and other
- 24 pollutants that may prevent entry of the pollutants into other waterways;
- 25 (5) Wetlands provide a valuable public service of maintaining clean water by retaining
- 26 nutrients, metals and toxic materials from the water to protect water quality;
- 27 (6) Wetlands provide significant opportunities for environmental and ecological research,
- 28 public recreation and education and provide scenic diversity and aesthetic value as open space
- 29 and areas of visual enjoyment;
- 30 (7) Much of this state’s original wetlands have been diked, drained, filled, dredged, ditched
- 31 or otherwise altered;
- 32 (8) There is continuing development pressure on wetlands in Oregon;
- 33 (9) There are often conflicts between wetland protection and other resource values and
- 34 uses;
- 35 (10) Uncoordinated regulation of wetlands by local, state and federal agencies can cause
- 36 confusion, frustration and unreasonable delay and uncertainty for the general public; and
- 37 (11) Wetland management is a matter of this state’s concern since benefits and impacts
- 38 related to wetland resources can be international, national, regional and statewide in scope.
- 39 [1989 c.837 §2]



1       **196.670** [Formerly 541.605; renumbered 196.800 in 1989]

2       **196.672 Policy.** In addition to the policy described in ORS 196.805, it is the policy of the  
3 State of Oregon to:

4       (1) Promote the protection, conservation and best use of wetland resources, their functions  
5 and values through the integration and close coordination of statewide planning goals, local  
6 comprehensive plans and state and federal regulatory programs.

7       (2) Use a single definition of “wetlands” for the purposes of ORS 196.800 to 196.905 and  
8 statewide planning goals and a single, uniform methodology of delineating wetland boundaries.

9       (3) Develop a statewide inventory of wetlands based on uniform identification standards  
10 and criteria at a scale practicable for planning and regulatory purposes, and to make such  
11 inventory available to state agencies and local governments to facilitate better management of  
12 wetland resources and closer coordination of local, state and federal wetland programs.

13       (4) Maintain a stable resource base of wetlands through the mitigation of losses of wetland  
14 resources and the adoption of the procedural mitigation standard currently used by federal  
15 agencies.

16       (5) Establish the opportunity to increase wetland resources by encouraging wetland  
17 restoration and creation where appropriate.

18       (6) Reduce the delays and uncertainty which can occur in the current wetland planning and  
19 regulatory framework through improved coordination of the provisions in ORS 196.800 to  
20 196.905 with local land use planning and regulation and by providing mechanisms for expedited  
21 permit review consistent with the protection and conservation of wetland resources.

22       (7) Continue to meet the requirements of federal law in the protection and management of  
23 wetland resources, while asserting the interests of this state, in concert with those of local  
24 governments in urging the federal resource and regulatory agencies to develop a uniform  
25 wetland policy and more consistent, cohesive standards to implement the Federal Water  
26 Pollution Control Act (33 U.S.C. 1344).

27       (8) Develop and provide information to the general public concerning the functions, values  
28 and distribution of wetlands of this state to raise public awareness of these resources.

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

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

35       **196.674 Statewide Wetlands Inventory; rules.** (1) The Department of State Lands shall  
36 compile and maintain a comprehensive Statewide Wetlands Inventory.

37       (2) In compiling the Statewide Wetlands Inventory, the department shall develop, by rule, a  
38 system for uniform wetland identification, delineation and comprehensive mapping. Initial  
39 inventories shall be based upon the National Wetlands Inventory prepared by the United States  
40 Department of the Interior, Fish and Wildlife Service. The Department of State Lands shall

1 consult with the public, local governments and affected state and federal agencies concerning  
2 the accuracy of the inventory.

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

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

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

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

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

16 (8) Nothing in this section shall restrict the regulatory jurisdiction of the Department of  
17 State Lands under ORS 196.800 to 196.905.

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

21 **196.675** [Formerly 541.610; renumbered 196.805 in 1989]

22 **196.676 Response to notices from local governments.** The Department of State Lands shall  
23 respond to the notice received from local governments pursuant to ORS 215.418 (1) and  
24 227.350 (1) within 30 days of receipt of the notice. The response shall state whether a permit is  
25 or in the future will be required or whether a permit has been issued by the department for the  
26 activity which is subject to notice. [1989 c.837 §7]

27 **196.678 Wetland conservation plans; contents; procedure for adopting.** (1) Any city or  
28 county may develop and submit to the Department of State Lands a wetland conservation plan  
29 for review pursuant to the provisions of ORS 196.678 to 196.684.

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

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

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

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

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

40 (e) A mitigation plan, including a program for replacement of planned wetland losses and  
41 restoration of lost functions and values through creation of new wetlands or enhancement of

1 existing wetland areas which designates specific sites within the plan area and actions for  
 2 restoration and enhancement;

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

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

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

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

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

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

14 **196.680** [Formerly 541.615; renumbered 196.810 in 1989]

15 **196.681 Duties of department; standards for approval of plan; conditions for approval;**  
 16 **order.** (1) In accordance with rules adopted pursuant to this chapter, the Department of State  
 17 Lands shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (5) Approval by the director of a wetland conservation plan shall be conditioned upon  
9 adoption by the affected local governments of comprehensive plan policies and land use  
10 regulations consistent with and sufficient to implement the wetland conservation plan.

11 Appropriate implementing measures may include the following planning and zoning  
12 requirements regulating:

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

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

16 (c) Upland areas adjacent to wetlands; and

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

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

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

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

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

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

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

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

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

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

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

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

41 (8) Upon a finding by the director that a fill or removal, or both, authorized under subsection  
42 (7)(b) of this section has caused or is likely to cause more than minimal adverse impact to the  
43 wetland system considering required mitigation conditions, the director shall revise the order  
44 to require individual permit review according to ORS 196.682 or provide additional conditions

1 to ensure that adverse impacts are minimal. Such revision shall not be subject to ORS 196.684.  
2 [1989 c.837 §11; 1999 c.59 §52]

3 **196.682 Permits required for removal or fill; conditions on issuance of permit.** (1) Except  
4 where otherwise provided by the order approving the plan, individual permit applications shall  
5 be required for removal or fill, or both, in areas subject to an approved wetland conservation  
6 plan. If individual permit applications are to be reviewed under the authority of the Director of  
7 the Department of State Lands, then application fees and review procedures shall be in  
8 accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for  
9 permit issuance in ORS 196.825 (3), the Department of State Lands shall issue a permit if the  
10 removal or fill, or both, is consistent with the wetland conservation plan or can be conditioned  
11 to be consistent with the plan. The department shall condition any such permit as necessary to  
12 ensure that the project:

13 (a) Is properly designed or configured to minimize the need for alterations to waters of this  
14 state;

15 (b) Is the minimum size necessary to reasonably provide for the proposed use;

16 (c) Complies with applicable provisions of the acknowledged comprehensive plan and land  
17 use regulations for the area;

18 (d) Is designed to minimize impacts from implementing the project; and

19 (e) Is conditioned to ensure wetland creation, restoration, enhancement or preservation  
20 measures are implemented to fully replace impacted resources.

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

26 **196.684 Amendment of plans; review of plans by department; review of orders by Land  
27 Use Board of Appeals.** (1) Local governments shall provide notice to the Department of State  
28 Lands of any proposed amendments to the land use plan and ordinances affecting lands subject  
29 to a wetland conservation plan approved under this section.

30 (2) Amendments to plan policies, maps and implementing ordinances by the local  
31 government within an approved wetland conservation plan shall be reviewed by the  
32 department against the requirements of this section. These provisions do not exempt local  
33 governments from the provisions of ORS 197.610 to 197.625.

34 (3) The Director of the Department of State Lands shall provide notice and the opportunity  
35 for public comment and hearing as defined by rule on the matter of including the amendment  
36 in the wetland conservation plan.

37 (4) If the director finds that the proposed local government amendment to acknowledged  
38 comprehensive plan and land use regulations meets the requirements of ORS 196.681, the  
39 director shall approve the plan by order, and notify the local government within 10 days of the  
40 completion of the public review provided in subsection (3) of this section.

41 (5) If the amendments to acknowledged comprehensive plan and land use regulations  
42 adopted by the local government are determined not to comply with the requirements of ORS

1 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885,  
 2 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350, the director shall  
 3 revoke the approval order or amend the order to insure compliance with the requirements of  
 4 ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830, 196.850 to 196.860, 196.885,  
 5 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

6 (6) The department shall review each approved wetland conservation plan every five years.  
 7 After such review the director shall either modify, reissue or rescind the order approving the  
 8 plan.

9 (7) In conducting the five-year review of an approved wetland conservation plan, the  
 10 director shall provide notice and the opportunity for public comment and hearing on whether:

11 (a) There has been a substantial change in circumstances that would affect the wetland  
 12 resources subject to the plan and would adversely affect the compliance of the plan with the  
 13 standards in ORS 196.681;

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

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

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

22 (9) An order by the director regarding approval, amendment or review of a wetland  
 23 conservation plan shall be reviewable by the Land Use Board of Appeals as a land use decision  
 24 of a state agency. For the purpose of such review, the director's order shall not become final  
 25 until the local government adopts its wetland conservation plan or plan amendment. The Land  
 26 Use Board of Appeals shall consolidate for review appeals of the director's order and the local  
 27 government adoption. The Land Use Board of Appeals shall review such order for compliance  
 28 with the requirements of ORS 196.668 to 196.692, 196.800, 196.810, 196.825, 196.830,  
 29 196.850 to 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418  
 30 and 227.350.

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

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

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

40 **196.685** [Formerly 541.620; renumbered 196.815 in 1989]

41 **196.686 Acknowledged estuary management plans; review and approval; hearings; final**  
 42 **order.** (1) For the purposes of this section, an acknowledged estuary management plan includes



1 the comprehensive plan and land use regulations adopted by cities and counties to satisfy the  
2 requirement of statewide planning goals related to estuarine resources including shoreland  
3 portions of estuarine sites designated for development as those plans and regulations existed  
4 on January 1, 1989.

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

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

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

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

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

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

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

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

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

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

34 (b) A hearing is requested and the request:

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

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

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

42 (11) The director shall approve the acknowledged estuary management plan as a wetland  
43 conservation plan by order unless the director finds by a preponderance of the evidence that  
44 the estuary management plan does not meet the standards for approving wetland conservation

1 plans or unreasonably interferes with the use of the estuary for navigation, fisheries or public  
 2 recreation or that substantial fills proposed in an estuary management plan for nonwater  
 3 dependent use are not for a public use and would not satisfy a public need that outweighs  
 4 harm to navigation, fisheries or public recreation.

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

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

11 (14) Individual permit applications shall be required for removal or fill, or both, in areas  
 12 subject to an approved estuary management plan. Individual permit applications shall be  
 13 reviewed in accordance with ORS 196.815, 196.825, 196.830 and 196.835. In lieu of the  
 14 substantive standards for permit issuance in ORS 196.825 (3), the department shall issue a  
 15 permit if the removal or fill, or both, is determined by the director to be consistent with the  
 16 estuary management plan or can be conditioned to be consistent with the plan. The  
 17 department shall condition any such permit as necessary to ensure that the project:

18 (a) Is designed or configured to minimize alterations to waters of this state;

19 (b) Is the minimum size necessary to reasonably provide for the proposed use;

20 (c) Is consistent with the resource capabilities of the area and the purposes of the  
 21 management unit, unless this has been previously determined in the approved estuary  
 22 management plan;

23 (d) Is designed to minimize impacts from implementing the project; and

24 (e) Has estuarine resource replacement measures for creation, restoration, enhancement or  
 25 preservation that replaces impacted resources.

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

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

31 **196.687 Regulation of alteration or fill of artificially created wetlands.** (1) Notwithstanding  
 32 the provisions of ORS 196.600 to 196.905, state or local governments shall not prohibit or  
 33 restrict the alteration or fill of wetland areas up to one acre in size that have been artificially  
 34 created from upland for the purpose of controlling, storing or maintaining storm water.

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

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

- 1 (a) Shall not be implemented or enforced; and  
 2 (b) Has no legal effect.  
 3 (4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.  
 4 (5) If the Department of State Lands assumes responsibility under 33 U.S.C. 1344(g) of the  
 5 Federal Water Pollution Control Act, ORS 196.600 to 196.905 shall apply to artificially created  
 6 wetlands described in subsections (1) and (2) of this section. [1995 c.482 §1]

7 **Note:** 196.687 was enacted into law by the Legislative Assembly but was not added to or  
 8 made a part of ORS chapter 196 or any series therein by legislative action. See Preface to  
 9 Oregon Revised Statutes for further explanation.

10 **196.688 Public information program.** (1) The Department of State Lands shall develop a  
 11 public information program to educate permit applicants and the general public about:

- 12 (a) Wetland functions and values.  
 13 (b) The status and trends of Oregon’s wetlands.  
 14 (c) The Statewide Wetlands Inventory.  
 15 (d) Wetland regulation.

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

19 **196.690** [Formerly 541.622; renumbered 196.820 in 1989]

20 **196.692 Rules.** (1) The Department of State Lands shall adopt rules to carry out the  
 21 provisions of ORS 196.668 to 196.692, 196.800, 196.810, 196.818, 196.825, 196.830, 196.850 to  
 22 196.860, 196.885, 196.905, 197.015, 197.279, 215.213, 215.283, 215.284, 215.418 and 227.350.

23 (2) Rules adopted pursuant to subsection (1) of this section shall include rules governing the  
 24 application for and issuance of permits to remove material from the beds or banks of any  
 25 waters of this state or to fill any waters of this state including, but not limited to, clear and  
 26 objective standards and criteria for determining whether to grant or deny a permit. [1989 c.837  
 27 §32; 2001 c.460 §1; 2007 c.850 §4]

28 **196.695** [Formerly 541.625; renumbered 196.825 in 1989]

29 **196.700** [Formerly 541.626; renumbered 196.830 in 1989]

30 **196.705** [Formerly 541.627; renumbered 196.835 in 1989]

31 **196.710** [Formerly 541.630; renumbered 196.840 in 1989]

32 **196.715** [Formerly 541.635; renumbered 196.845 in 1989]

33 **196.718** [Enacted in lieu of 541.640; renumbered 196.850 in 1989]

- 1        **196.720** [Formerly 541.645; renumbered 196.855 in 1989]
- 2        **196.725** [Formerly 541.650; renumbered 196.860 in 1989]
- 3        **196.730** [Formerly 541.655; renumbered 196.865 in 1989]
- 4        **196.735** [Formerly 541.660; renumbered 196.870 in 1989]
- 5        **196.740** [Formerly 541.662; renumbered 196.875 in 1989]
- 6        **196.745** [Formerly 541.665; renumbered 196.880 in 1989]
- 7        **196.750** [Formerly 541.670; renumbered 196.885 in 1989]
- 8        **196.755** [Formerly 541.675; renumbered 196.890 in 1989]
- 9        **196.760** [Formerly 541.680; renumbered 196.895 in 1989]
- 10       **196.765** [Formerly 541.685; renumbered 196.900 in 1989]
- 11       **196.770** [Formerly 541.695; renumbered 196.905 in 1989]

12       REMOVAL OF MATERIAL; FILLING

13       **Note:** Section 2, chapter 45, Oregon Laws 1989, provides:

14       **Sec. 2. Provision relating to fills depending on EPA approval.** (1) Notwithstanding any other  
 15       provision of ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in 1989]:

16       (a) As used in ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in 1989], “fill”  
 17       means the deposit by artificial means of material in any waters of this state.

18       (b) In the manner provided by ORS 541.640 [196.850], the director may provide a general  
 19       exception from the application of ORS 541.605 to 541.685 [renumbered 196.800 to 196.900 in  
 20       1989] for fills that involve less than 50 cubic yards of material and will not result in substantial  
 21       harm to the water resources of this state.

22       (2) This section does not become operative until the federal Environmental Protection  
 23       Agency grants authority to the Department of State Lands to administer permits for the  
 24       discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control  
 25       Act (P.L. 92-500, as amended). [1989 c.45 §2]

26       **Note:** See second note under 196.800.

27       **196.795 Streamlining process for administering state removal or fill permits; application**  
 28       **for state program general permit; periodic reports to legislative committee.** (1) The  
 29       Department of State Lands shall continue to pursue methods to streamline the process for  
 30       administering permits for the removal of material from the bed or banks of any waters of this

1 state or for filling the waters of this state, reducing paperwork, eliminating duplication,  
2 increasing certainty and timeliness and enhancing resource protection. The efforts of the  
3 Department of State Lands shall include but need not be limited to applying to the United  
4 States Army Corps of Engineers for a state program general permit as authorized in federal  
5 regulations implementing section 404 of the Federal Water Pollution Control Act, and section  
6 10 of the Rivers and Harbors Act of 1899, as amended. In conjunction with these activities, the  
7 Department of State Lands may continue to investigate the possibility of assuming the federal  
8 regulatory program under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act.

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

12 **Note:** 196.795 was enacted into law by the Legislative Assembly but was not added to or  
13 made a part of ORS chapter 196 or any series therein by legislative action. See Preface to  
14 Oregon Revised Statutes for further explanation.

15 **196.800 Definitions for ORS 196.600 to 196.905.** As used in ORS 196.600 to 196.905, unless  
16 the context requires otherwise:

17 (1) “Channel relocation” means a change in location of a channel in which a new channel is  
18 dug and the flow is diverted from the old channel into the new channel if more than 50 cubic  
19 yards of material is removed in constructing the new channel or if it would require more than  
20 50 cubic yards of material to completely fill the old channel.

21 (2) “Estuary” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 (13) “Removal” means:

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

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

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

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

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

40 (17) “Wetlands” means those areas that are inundated or saturated by surface or ground  
41 water at a frequency and duration sufficient to support, and that under normal circumstances  
42 do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.  
43 [Formerly 541.605 and then 196.670; 1999 c.373 §1; 2003 c.253 §7; 2003 c.738 §14; 2007 c.849  
44 §2; 2009 c.343 §18; 2013 c.198 §1]



1       **Note:** Operation of the amendments to 196.800 by section 1, chapter 516, Oregon Laws  
 2 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
 3 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
 4 that is operative after that approval, including amendments by section 8, chapter 253, Oregon  
 5 Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849, Oregon Laws  
 6 2007, section 19, chapter 343, Oregon Laws 2009, and section 2, chapter 198, Oregon Laws  
 7 2013, is set forth for the user’s convenience.

8       **196.800.** As used in ORS 196.600 to 196.905, unless the context requires otherwise:

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

11       (2) “Estuary” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (13) “Removal” means:

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

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

12 (14) “Water resources” includes not only water itself but also aquatic life and habitats  
13 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,  
15 intermittent streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific  
16 Ocean that is in the boundaries of this state, all other navigable and nonnavigable bodies of  
17 water in this state and those portions of the ocean shore, as defined in ORS 390.605, where  
18 removal or fill activities are regulated under a state-assumed permit program as provided in 33  
19 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended.

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

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

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

29 **Sec. 11.** The amendments to ORS 196.800, 196.810, 196.850, 196.895, 196.905, 196.990,  
30 390.835, 421.628 and 459.047 by sections 1 to 10, chapter 516, Oregon Laws 2001, and the  
31 repeal of section 2, chapter 45, Oregon Laws 1989, by section 13, chapter 516, Oregon Laws  
32 2001, become operative on January 2 of the even-numbered year following the date the United  
33 States Environmental Protection Agency grants authority by letter to the Department of State  
34 Lands to administer permits for the discharge of dredge or fill materials under section 404 of  
35 the Federal Water Pollution Control Act (P.L. 92-500, as amended) and the Legislative Assembly  
36 approves the grant of authority. [2001 c.516 §11; 2009 c.11 §19]

37 **Sec. 12.** (1) The Department of State Lands may take any action necessary to prepare to fully  
38 implement the provisions of this 2001 Act prior to the operative date of this 2001 Act.

39 (2) The department shall periodically report to the appropriate committee of the Legislative  
40 Assembly on the status of its effort to assume authority to administer permits for the discharge  
41 of dredge or fill materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-  
42 500, as amended).

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

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

5 **Sec. 14.** If, after assuming authority to administer permits for the discharge of dredge or fill  
 6 materials under section 404 of the Federal Water Pollution Control Act (P.L. 92-500, as  
 7 amended), the Department of State Lands seeks to relinquish the authority granted to the  
 8 department by the federal government, the department shall, in compliance with ORS 171.130  
 9 and at least two years prior to the anticipated date for relinquishing the authority, submit to  
 10 the Legislative Assembly a proposed legislative measure designed to implement a state  
 11 permitting program for the dredging and filling of materials in the waters of this state. [2001  
 12 c.516 §14]

13 **196.805 Policy.** (1) The protection, conservation and best use of the water resources of this  
 14 state are matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies  
 15 of water in this state, including not only water and materials for domestic, agricultural and  
 16 industrial use but also habitats and spawning areas for fish, avenues for transportation and  
 17 sites for commerce and public recreation, are vital to the economy and well-being of this state  
 18 and its people. Unregulated removal of material from the beds and banks of the waters of this  
 19 state may create hazards to the health, safety and welfare of the people of this state.  
 20 Unregulated filling in the waters of this state for any purpose, may result in interfering with or  
 21 injuring public navigation, fishery and recreational uses of the waters. In order to provide for  
 22 the best possible use of the water resources of this state, it is desirable to centralize authority  
 23 in the Director of the Department of State Lands, and implement control of the removal of  
 24 material from the beds and banks or filling of the waters of this state.

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

27 (3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of  
 28 property under ORS 196.600 to 196.905 without due process of law. [Formerly 541.610 and  
 29 then 196.675; 2003 c.738 §16; 2012 c.108 §7]

30 **196.810 Permit required to remove material from bed or banks of waters; status of**  
 31 **permit; exceptions; rules.** (1)(a) Except as otherwise specifically permitted under ORS 196.600  
 32 to 196.905, a person may not remove any material from the beds or banks of any waters of this  
 33 state or fill any waters of this state without a permit issued under authority of the Director of  
 34 the Department of State Lands, or in a manner contrary to the conditions set out in the permit,  
 35 or in a manner contrary to the conditions set out in an order approving a wetland conservation  
 36 plan.

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

1 State Lands in consultation with the State Department of Fish and Wildlife and in consultation  
2 with other affected parties.

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

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

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

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

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

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

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

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

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

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

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

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

40 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in  
41 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

42 (3) Subsection (1) of this section does not apply to removal of material under a contract,  
43 permit or lease with any public body, as defined in ORS 174.109, entered into before  
44 September 13, 1967. However, no such contract, permit or lease may be renewed or extended

1 on or after September 13, 1967, unless the person removing the material has obtained a permit  
2 under ORS 196.600 to 196.905.

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

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

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

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

13 (d) Does not relieve the person from payment of a fee calculated in the manner provided in  
14 ORS 196.815. [Formerly 541.615 and then 196.680; 1993 c.765 §101; 1997 c.190 §1; 1997 c.508  
15 §1; 2001 c.65 §1; 2001 c.923 §4; 2003 c.14 §96; 2003 c.738 §20; 2007 c.71 §63; 2007 c.625 §4;  
16 2007 c.849 §14; 2013 c.198 §3; 2015 c.386 §10]

17 **Note:** Operation of the amendments to 196.810 by section 2, chapter 516, Oregon Laws  
18 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
19 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
20 that is operative after that approval, including amendments by section 97, chapter 14, Oregon  
21 Laws 2003, section 64, chapter 71, Oregon Laws 2007, section 5, chapter 625, Oregon Laws  
22 2007, section 15, chapter 849, Oregon Laws 2007, and section 11, chapter 386, Oregon Laws  
23 2015, is set forth for the user's convenience.

24 **196.810.** (1)(a) Except as otherwise specifically permitted under ORS 196.600 to 196.905, a  
25 person may not remove any material from the beds or banks of any waters of this state or fill  
26 any waters of this state without a permit issued under authority of the Director of the  
27 Department of State Lands, or in a manner contrary to the conditions set out in the permit, or  
28 in a manner contrary to the conditions set out in an order approving a wetland conservation  
29 plan.

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

37 (c) A permit is not required under paragraph (a) of this subsection for construction or  
38 maintenance of fish passage and fish screening structures associated with irrigation ditches or  
39 the maintenance of drainage ditches that are constructed, operated or maintained under ORS  
40 498.306, 498.316, 498.326 or 509.600 to 509.645.

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

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

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

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

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

11 (2) A public body, as defined in ORS 174.109, may not issue a lease or permit contrary or in  
12 opposition to the conditions set out in the permit issued under ORS 196.600 to 196.905.

13 (3) Subsection (1) of this section does not apply to removal of material under a contract,  
14 permit or lease with any public body, as defined in ORS 174.109, entered into before  
15 September 13, 1967. However, a contract, permit or lease may not be renewed or extended on  
16 or after September 13, 1967, unless the person removing the material has obtained a permit  
17 under ORS 196.600 to 196.905.

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

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

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

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

28 (d) Does not relieve the person from payment of a fee calculated in the manner provided in  
29 ORS 196.815.

30 (5) As used in this section:

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

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

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

38 **Note:** See second note under 196.800.

39 **196.812 Large woody debris; rules.** The provisions of ORS 196.600 to 196.905 do not affect  
40 the removal of large woody debris if the large woody debris:

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



- 1 (2) Poses a risk of harm to transportation facilities including, but not limited to, culverts,  
 2 bridges and roads located near or within the beds or banks of any waters of this state;  
 3 (3) Prevents or obstructs navigation within the beds or banks of any waters of this state; or  
 4 (4) Meets conditions for the removal of large woody debris as specified in rules of the  
 5 Director of the Department of State Lands. [2013 c.198 §5]

6 **Note:** 196.812 was added to and made a part of 196.600 to 196.905 by legislative action but  
 7 was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further  
 8 explanation.

9 **196.815 Application for permit; rules; fees; disposition of fees.** (1) A person who is required  
 10 to have a permit to remove material from the bed or banks or fill any waters of this state shall  
 11 file a written application with the Director of the Department of State Lands for each individual  
 12 project before performing any removal or fill.

13 (2)(a) Except as otherwise may be provided by the rules of the Department of State Lands  
 14 for removal or fill permits related to ocean renewable energy facilities as defined in ORS  
 15 274.870, each application under subsection (1) of this section must be accompanied by a base  
 16 fee in accordance with the following schedule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (e) For the purposes of this subsection:

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

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

6 (C) “Commercial operator” means any person undertaking a project having financial profit  
7 as a goal;

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

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

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

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

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

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

31 (7) Fees received under this section shall be credited to the Common School Fund for use by  
32 the department in administration of ORS 196.600 to 196.905.

33 (8) The director shall issue an order revising the fees specified in this section on January 1 of  
34 each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA Consumer Price  
35 Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the  
36 United States Department of Labor. The director shall round the amount of each fee to the  
37 nearest dollar. The revised fees shall take effect January 1 and apply for that calendar year.  
38 [Formerly 541.620 and then 196.685; 2007 c.849 §1; 2009 c.342 §1; 2009 c.882 §2; 2015 c.386  
39 §12]

40 **196.816 General permits allowing removal of certain amount of material for maintaining**  
41 **drainage; rules; waiver of fees.** Notwithstanding ORS 196.810, the Department of State Lands  
42 may establish by rule a general permit that allows the removal of no more than 100 cubic yards  
43 of material from waters of this state, including in essential indigenous anadromous salmonid

1 habitat, for the purpose of maintaining drainage and protecting agricultural land. The  
2 department may waive the fees specified in ORS 196.815 for removal taking place under the  
3 provisions of this section. [2011 c.713 §7]

4 **196.817 General permits; rules.** (1)(a) Notwithstanding ORS 196.810, the Department of  
5 State Lands may establish a removal or fill general permit:

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

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

9 (b) The department must find that the project is in compliance with the review standards set  
10 forth in ORS 196.600 to 196.905 and would not result in long-term harm to water resources of  
11 this state.

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

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

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

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

24 (4) Any person proposing to conduct an action under a general permit shall pay the  
25 applicable fee required under ORS 196.815 for individual permit applications. [2007 c.849 §9;  
26 2011 c.559 §1]

27 **196.818 Wetland delineation reports; review by Department of State Lands; fees; rules.** (1)  
28 A person or governmental body requesting a permit under ORS 196.810 shall submit a wetland  
29 delineation report to the Department of State Lands for a determination of:

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

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

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

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

36 (3) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

32 (10) Fees received under this section shall be credited to the Common School Fund for use  
33 by the department in administration of ORS 196.600 to 196.905. [2007 c.850 §2; 2012 c.108 §5]

34 **Note:** Sections 1 to 4, chapter 108, Oregon Laws 2012, provide:

35 **Sec. 1.** Section 2 of this 2012 Act is added to and made a part of ORS 196.600 to 196.905.  
36 [2012 c.108 §1]

37 **Sec. 2. Wetland delineation determinations.** (1)(a) A person may request an independent  
38 review of a determination made under:

39 (A) ORS 196.818 (1)(a), if the Department of State Lands determines that wetlands are  
40 present on a land parcel owned by the person; or

41 (B) ORS 196.818 (1)(b), if the department determines where the boundaries of a wetland are  
42 located on a land parcel owned by the person.

1 (b) Notwithstanding paragraph (a) of this subsection, a person may not request an  
2 independent review of a determination made under ORS 196.818 (1)(a) or (b) unless the person  
3 first applies to the department for reconsideration of the determination, as required by the  
4 department by rule.

5 (2)(a) Upon receiving a request for independent review under subsection (1) of this section,  
6 the department shall enter into an agreement with the person making the request under which  
7 a panel of independent reviewers may modify a determination made under ORS 196.818 (1)(a)  
8 or (b).

9 (b) Notwithstanding paragraph (a) of this subsection, the department is not required to  
10 enter into an agreement with the person making the request if the person does not agree to  
11 make the decision of the panel of independent reviewers final and binding.

12 (3)(a) Review under this section must be conducted by a panel of three individuals who are  
13 well informed on matters relating to waters of this state. A reviewer:

14 (A) Shall disclose all prior knowledge of the land parcel that is the subject of the review and  
15 any potential or actual conflicts of interest;

16 (B) Must have no interest in the land parcel that is the subject of the review;

17 (C) Must have five years of experience with wetland plant identification, hydric soil  
18 determinations, wetland hydrology monitoring, wetland boundary mapping and related data  
19 analysis; and

20 (D) Must have been a principal investigator for four wetland delineation reports submitted  
21 under ORS 196.818 and approved by the department within the five years preceding the date  
22 on which review is requested.

23 (b) As used in this subsection, “principal investigator” means an individual who has been  
24 responsible for collecting more than 33 percent of the field data for a wetland delineation  
25 report and for mapping at least 33 percent of the wetland boundary for a wetland delineation  
26 report.

27 (4) The panel of independent reviewers shall be selected in the following manner:

28 (a) The Department of State Lands shall select one reviewer;

29 (b) The person requesting the review under subsection (1) of this section shall select one  
30 reviewer; and

31 (c) The reviewers selected under paragraphs (a) and (b) of this subsection shall jointly select  
32 one reviewer.

33 (5) A person must request a review under this section no more than 21 days after the date  
34 on which the department reconsiders a determination made under ORS 196.818 (1)(a) or (b).

35 (6) The panel of independent reviewers must be selected no more than 30 days after the  
36 date on which the person requests a review. If the reviewers selected under subsection (4)(a)  
37 and (b) of this subsection do not jointly select a third reviewer under subsection (4)(c) of this  
38 section on or before the 30th day, the department shall request the United States Army Corps  
39 of Engineers to provide a reviewer who has experience reviewing wetland delineations. A  
40 reviewer provided under this subsection is exempt from subsection (3)(a)(D) of this section.

41 (7) The panel of independent reviewers must reach a decision no more than 60 days after  
42 the date on which the third reviewer is selected or provided. As part of the decision reached  
43 under this subsection, the reviewers must determine the cost of the review, including the

1 reviewers' expenses and fees. The parties to the agreement shall each pay half of the cost.  
2 [2012 c.108 §2]

3 **Sec. 3.** Section 2 of this 2012 Act applies to determinations made by the Department of  
4 State Lands under ORS 196.818 (1)(a) and (b) on or after the effective date of this 2012 Act  
5 [January 1, 2013]. [2012 c.108 §3]

6 **Sec. 4.** Sections 1 and 2 of this 2012 Act are repealed on January 2, 2022. [2012 c.108 §4]

7 **196.820 Prohibition against issuance of permits to fill Smith Lake or Bybee Lake;**  
8 **exception.** (1) Notwithstanding any provision of ORS 196.600 to 196.905 to the contrary, except  
9 as provided in subsection (2) of this section, the Director of the Department of State Lands shall  
10 not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the  
11 contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted  
12 United States Coastal Geodetic Survey Datum.

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

19 **196.825 Criteria for issuance of permit; conditions; consultation with public bodies;**  
20 **hearing; appeal.** (1) The Director of the Department of State Lands shall issue a permit applied  
21 for under ORS 196.815 if the director determines that the project described in the application:

22 (a) Is consistent with the protection, conservation and best use of the water resources of  
23 this state as specified in ORS 196.600 to 196.905; and

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

26 (2) If the director issues a permit applied for under ORS 196.815 to a person that proposes a  
27 removal or fill activity for construction or maintenance of a linear facility, and if that person is  
28 not a landowner or a person authorized by a landowner to conduct the proposed removal or fill  
29 activity on a property, then the person may not conduct removal or fill activity on that property  
30 until the person obtains:

31 (a) The landowner's consent;

32 (b) A right, title or interest with respect to the property that is sufficient to undertake the  
33 removal or fill activity; or

34 (c) A court order or judgment authorizing the use of the property.

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

36 (a) The public need for the proposed fill or removal and the social, economic or other public  
37 benefits likely to result from the proposed fill or removal. When the applicant for a permit is a  
38 public body, the director may accept and rely upon the public body's findings as to local public  
39 need and local public benefit.

40 (b) The economic cost to the public if the proposed fill or removal is not accomplished.

41 (c) The availability of alternatives to the project for which the fill or removal is proposed.

42 (d) The availability of alternative sites for the proposed fill or removal.



1 (e) Whether the proposed fill or removal conforms to sound policies of conservation and  
2 would not interfere with public health and safety.

3 (f) Whether the proposed fill or removal is in conformance with existing public uses of the  
4 waters and with uses designated for adjacent land in an acknowledged comprehensive plan and  
5 land use regulations.

6 (g) Whether the proposed fill or removal is compatible with the acknowledged  
7 comprehensive plan and land use regulations for the area where the proposed fill or removal is  
8 to take place or can be conditioned on a future local approval to meet this criterion.

9 (h) Whether the proposed fill or removal is for streambank protection.

10 (i) Whether the applicant has provided all practicable mitigation to reduce the adverse  
11 effects of the proposed fill or removal in the manner set forth in ORS 196.800. In determining  
12 whether the applicant has provided all practicable mitigation, the director shall consider the  
13 findings regarding wetlands set forth in ORS 196.668 and whether the proposed mitigation  
14 advances the policy objectives for the protection of wetlands set forth in ORS 196.672.

15 (4) The director may issue a permit for a project that results in a substantial fill in an estuary  
16 for a nonwater dependent use only if the project is for a public use and would satisfy a public  
17 need that outweighs harm to navigation, fishery and recreation and if the proposed fill meets  
18 all other criteria contained in ORS 196.600 to 196.905.

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

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

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

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

39 (7) Any applicant whose application for a permit or authorization has been deemed  
40 incomplete or has been denied, or who objects to any of the conditions imposed under this  
41 section by the director, may, within 21 days of the denial of the permit or authorization or the  
42 imposition of any condition, request a hearing from the director. Thereupon the director shall  
43 set the matter down for hearing, which shall be conducted as a contested case in accordance  
44 with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director

1 shall enter an order containing findings of fact and conclusions of law. The order shall rescind,  
2 affirm or modify the director’s initial order. Appeals from the director’s final order may be  
3 taken to the Court of Appeals in the manner provided by ORS 183.482.

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

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

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

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

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

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

19 (9) Permits issued under this section shall be in lieu of any permit or authorization that  
20 might be required for the same operation under ORS 164.775, 164.785, 468.020, 468.035,  
21 468.045, 468.055, 468.060, 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to  
22 468B.085, so long as:

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

24 (b) The standards for granting the permit or authorization are substantially the same as  
25 those established pursuant to ORS 164.775, 164.785, 468.020, 468.035, 468.045, 468.055,  
26 468.110, 468.120, 468B.005 to 468B.030 and 468B.048 to 468B.085 to the extent they affect  
27 water quality.

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

34 (b) The Department of Environmental Quality shall provide comments to the director within  
35 75 days after receiving notice under subsection (5) of this section if the permit action requires  
36 certification under the Federal Water Pollution Control Act (P.L. 92-500), as amended.

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

39 (12) As used in this section:

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

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

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

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

4 (C) The fee required under ORS 196.815;

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

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

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

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

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

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

21 **196.830 Estuarine resource replacement as condition for fill or removal from estuary;**  
22 **considerations; other permit conditions.** (1) As used in this section, “estuarine resource  
23 replacement” means the creation, restoration or enhancement of an estuarine area to maintain  
24 the functional characteristics and processes of the estuary, such as its natural biological  
25 productivity, habitats and species diversity, unique features and water quality.

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

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

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

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

32 (c) The provisions of land use plans for the area adjacent to or surrounding the area of the  
33 proposed activity;

34 (d) The recommendations of any interested or affected state or local agencies; and

35 (e) The extent of compensating activity inherent in the proposed activity.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **196.835 Hearing regarding issuance of permit; procedure; appeals; suspension of permit**  
24 **pending appeal.** Any person aggrieved or adversely affected by the grant of a permit by the  
25 Director of the Department of State Lands may file a written request for hearing with the  
26 director within 21 days after the date the permit was granted. If the director finds that the  
27 person making the written request has a legally protected interest which is adversely affected  
28 by the grant of the permit, the director shall set the matter down for hearing within 30 days  
29 after receipt of the request. The hearing shall be conducted as a contested case in accordance  
30 with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a party  
31 to the proceeding. Within 45 days of the hearing the director shall enter an order containing  
32 findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's  
33 original order. Appeals from the director's final order may be taken to the Court of Appeals in  
34 the manner provided by ORS 183.482. A permit to fill granted by the director may be  
35 suspended by the director during the pendency of the proceedings before the director and any  
36 appeal. The director shall not suspend the permit unless the person aggrieved or adversely  
37 affected by grant of permit makes a showing before the director by clear and convincing  
38 evidence that commencement or continuation of the fill would cause irreparable damage and  
39 would be inconsistent with ORS 196.600 to 196.905. [Formerly 541.627 and then 196.705; 2003  
40 c.738 §19]

41 **196.840** [Formerly 541.630 and then 196.710; repealed by 2005 c.729 §1]

1       **196.845 Investigations and surveys.** In considering applications for permits, the Director of  
2 the Department of State Lands may cause investigations or surveys to be made of the location  
3 of the work contemplated to determine whether such removal or filling is consistent with ORS  
4 196.805 and 196.825. [Formerly 541.635 and then 196.715]

5       **196.850 Waiving permit requirement in certain cases; rules; notice; review; fees;  
6 disposition of fees.** (1) Notwithstanding ORS 196.810, the Department of State Lands may, by  
7 rule, grant general authorization for removal of material from the bed or banks of any waters of  
8 this state or the filling of any waters of this state without a permit from the department if the  
9 department finds that the activities subject to the general authorization:

10       (a) Are substantially similar in nature;

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

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

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

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

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

19       (a) A clear description of the proposal; and

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

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

22       (a) Notify the department in writing prior to conducting the action.

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

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

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

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

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

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

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

41       (10) The department shall credit any fee collected under this section to the Common School  
42 Fund for use by the department in administration of ORS 196.600 to 196.905. [1989 c.837 §9  
43 (enacted in lieu of 541.640); renumbered 196.850 in 1989; 2003 c.253 §11; 2007 c.849 §6]

1       **Note:** Operation of the amendments to 196.850 by section 4, chapter 516, Oregon Laws  
2 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
3 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
4 that is operative after that approval, including amendments by section 12, chapter 253, Oregon  
5 Laws 2003, and section 7, chapter 849, Oregon Laws 2007, is set forth for the user’s  
6 convenience.

7       **196.850.** (1) Notwithstanding ORS 196.810, the Department of State Lands may, by rule,  
8 grant general authorization for removal of material from the bed or banks of any waters of this  
9 state or the filling of any waters of this state without a permit from the department if the  
10 department finds that the activities subject to the general authorization:

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

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

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

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

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

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

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

25       (b) Pay the applicable fee to the department as determined under subsection (10) of this  
26 section.

27       (6) The Director of the Department of State Lands shall waive the requirements of  
28 subsection (5) of this section if the director issues a general authorization and the authorized  
29 activity:

- 30       (a) Involves less than 50 cubic yards of material;
- 31       (b) Will be conducted during periods that minimize adverse effects to fish and wildlife in  
32 accordance with guidance provided by the State Department of Fish and Wildlife;
- 33       (c) Will not dam or divert a waterway in a manner that obstructs fish passage or vessel  
34 navigation; and

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

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

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



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

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

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

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

11 (11) The department shall credit any fee collected under this section to the Common School  
 12 Fund for use by the department in administration of ORS 196.600 to 196.905.

13 **Note:** See second note under 196.800.

14 **196.855 Noncomplying removal of material or filling as public nuisance.** The removal of  
 15 material from the beds or banks or filling any of the waters of this state without a permit issued  
 16 under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a  
 17 manner contrary to the conditions set out in an order approving a wetland conservation plan, is  
 18 a public nuisance. [Formerly 541.645 and then 196.720; 2007 c.71 §65]

19 **196.860 Enforcement powers of director.** (1) If the Director of the Department of State  
 20 Lands determines that material is being removed from or filling is occurring in any of the waters  
 21 of this state without a permit issued under ORS 196.825, or in a manner contrary to the  
 22 conditions set out in the permit, or in a manner contrary to the conditions set out in an order  
 23 approving a wetland conservation plan, the director may:

24 (a) Investigate, hold hearings, make orders and take action, as provided in ORS 196.600 to  
 25 196.905, as soon as possible.

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

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

30 (d) Publish findings and recommendations as they are developed relative to public policies  
 31 and procedures necessary for the correction of conditions or violations of ORS 196.600 to  
 32 196.905.

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

40 (f) Take appropriate action for the enforcement of any rules or final orders. Any violation of  
 41 ORS 196.600 to 196.905 or of any rule or final order of the director under ORS 196.600 to

1 196.905 may be enjoined in civil abatement proceedings brought in the name of the State of  
 2 Oregon. In any such proceedings the director may seek and the court may award a sum of  
 3 money sufficient to compensate the public for any destruction or infringement of any public  
 4 right of navigation, fishery or recreation resulting from the violation. Proceedings thus brought  
 5 by the director shall set forth if applicable the dates of notice and hearing and the specific rule  
 6 or order of the director, together with the facts of noncompliance, the facts giving rise to the  
 7 public nuisance, and a statement of the damages to any public right of navigation, fishery or  
 8 recreation, if any, resulting from the violation.

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

13 (b) An order under this subsection:

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

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

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

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

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

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

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

32 (3) As used in this section, "violation" means removing material from or placing fill in any of  
 33 the waters of this state without a permit or in a manner contrary to the conditions set out in a  
 34 permit issued under ORS 196.825. [Formerly 541.650 and then 196.725; 2007 c.71 §66; 2007  
 35 c.849 §16]

36 **196.865 Revocation, suspension or refusal to renew permit.** If the Director of the  
 37 Department of State Lands finds that a person holding a permit issued under ORS 196.825 is  
 38 removing material from the bed or banks or filling any of the waters of this state contrary to the  
 39 conditions set out in the permit, the director may revoke, suspend or refuse to renew such  
 40 permit. The director may revoke a permit only after giving notice and opportunity for a hearing  
 41 as provided in ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. [Formerly 541.655  
 42 and then 196.730; 2007 c.849 §17]

1       **196.870 Abatement proceedings; restraining order; injunction; public compensation.** (1) In  
 2 addition to any enforcement action taken under ORS 196.860, civil proceedings to abate alleged  
 3 public nuisances under ORS 196.855 may be instituted at law or in equity, in the name of the  
 4 State of Oregon, upon relation of the Director of the Department of State Lands or by any  
 5 person in the person's name.

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

11       (3) The director may institute an action in the name of the State of Oregon for a temporary  
 12 restraining order or preliminary injunction if a threatened or existing nuisance under ORS  
 13 196.855 creates an emergency that requires immediate action to protect the public health,  
 14 safety or welfare. The director shall not be required to furnish a bond in such proceeding.

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

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

21       (6) In any action brought under this section, the plaintiff may seek and the court may award  
 22 a sum of money sufficient to compensate the public for any destruction or infringement of any  
 23 public right of navigation, fishery or recreation resulting from an existing public nuisance under  
 24 ORS 196.855. Any money received by the plaintiff under this subsection shall be deposited in  
 25 the Common School Fund. [Formerly 541.660 and then 196.735]

26       **196.875 Double and treble damages for destruction of public right of navigation, fishery  
 27 or recreation; costs and attorney fees.** (1) If any person, through negligence, violates ORS  
 28 196.810, the Director of the Department of State Lands, in a proceeding brought pursuant to  
 29 ORS 196.870, may seek and the court may award double a sum of money sufficient to  
 30 compensate the public for any destruction or infringement of any public right of navigation,  
 31 fishery or recreation resulting from such violation.

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

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

38       (4) In any action brought under ORS 196.870, the court shall award to the prevailing party  
 39 the costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions  
 40 of ORS 20.140, any costs and attorney fees so awarded to the director shall be deposited in the  
 41 Common School Fund to offset the director's expenses of bringing such action. [Formerly  
 42 541.662 and then 196.740; 2007 c.849 §18]

1       **Note:** 196.875 [formerly 541.662 and 196.740] was enacted by two identical provisions,  
 2 section 10 of chapter 330 and section 13 of chapter 674, Oregon Laws 1973. Both are compiled  
 3 as a single section.

4       **196.880 Fill under permit presumed not to affect public rights; public rights extinguished.**  
 5 If the Director of the Department of State Lands issues a permit to fill pursuant to ORS 196.600  
 6 to 196.905, it shall be presumed that such fill does not infringe upon the public rights of  
 7 navigation, fishery or recreation, and the public rights to lands created by the fill shall be  
 8 considered extinguished. [Formerly 541.665 and then 196.745]

9       **196.885 Annual report of fill and removal activities; contents of report.** The Director of the  
 10 Department of State Lands shall submit an annual report to the State Land Board on the  
 11 activities conducted under ORS 196.600 to 196.905. The annual report shall include the  
 12 following:

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

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

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

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

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

27       (4) A summary of enforcement activities, including:

28       (a) The number of potential violations reported.

29       (b) The number of compliance investigations conducted.

30       (c) The results of compliance actions, including:

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

33       (B) The amount of damages and penalties assessed;

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

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

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

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

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

1 (8) The number of wetland conservation plans approved by the director and a description of  
 2 each, including the issues raised during the approval process. [Formerly 541.670 and then  
 3 196.750; 2009 c.343 §21]

4 **196.890 Civil penalties.** Any person who violates any provision of ORS 196.600 to 196.905 or  
 5 any rule, order or permit adopted or issued under ORS 196.600 to 196.905 shall be subject to a  
 6 civil penalty in an amount to be determined by the Director of the Department of State Lands of  
 7 not more than \$10,000 per day of violation. [Formerly 541.675 and then 196.755]

8 **196.895 Imposition of civil penalties.** (1) Civil penalties under ORS 196.890 shall be imposed  
 9 as provided in ORS 183.745.

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

14 (3) Any civil penalty recovered under this section shall be deposited in the Common School  
 15 Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905,  
 16 196.990 and 541.990 and as otherwise required by law. [Formerly 541.680 and then 196.760;  
 17 1991 c.734 §12]

18 **Note:** Operation of the amendments to 196.895 by section 5, chapter 516, Oregon Laws  
 19 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
 20 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
 21 that is operative after that approval is set forth for the user's convenience.

22 **196.895.** (1) Except as provided in subsection (4) of this section, civil penalties under ORS  
 23 196.890 shall be imposed as provided in ORS 183.745.

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

28 (3) Any civil penalty recovered under this section shall be deposited in the Common School  
 29 Fund for use by the Department of State Lands in administration of ORS 196.600 to 196.905,  
 30 196.990 and 541.990 and as otherwise required by law.

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

35 **Note:** See second note under 196.800.

36 **196.900 Schedule of civil penalties; rules; factors to be considered in imposing civil**  
 37 **penalties.** (1) The Director of the Department of State Lands shall adopt by rule the amount of  
 38 civil penalty that may be imposed for a particular violation.

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

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

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

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

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

8 (3) The penalty imposed under this section may be remitted or mitigated upon such terms  
9 and conditions as the director determines to be proper and consistent with the policy of ORS  
10 196.805. Upon the request of the person incurring the penalty, the director shall consider  
11 evidence of the economic and financial condition of the person in determining whether a  
12 penalty shall be remitted or mitigated. [Formerly 541.685 and then 196.765]

13 **196.905 Applicability; rules.** (1) Nothing in ORS 196.600 to 196.905 applies to filling the  
14 beds of the waters of this state for the purpose of constructing, operating and maintaining  
15 dams or other diversions for which permits or certificates have been or shall be issued under  
16 ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be  
17 issued under ORS 543.010 to 543.610.

18 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or  
19 banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this  
20 state, if:

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

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

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

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

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

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

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

35 (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
36 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
37 215.203, if the lands are converted wetlands that are also certified as prior converted cropland  
38 by the Natural Resources Conservation Service of the United States Department of Agriculture,  
39 or its successor agency, so long as commercial agricultural production on the land has not been  
40 abandoned for five or more years.

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



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

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

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

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

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

14 (11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the  
15 beds or banks of any waters of this state conducted as part of a surface mining operation, that  
16 is the subject of a memorandum of agreement between the Department of State Lands and the  
17 State Department of Geology and Mineral Industries in which the State Department of Geology  
18 and Mineral Industries is assigned sole responsibility for permitting as described in ORS  
19 517.797.

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

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

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

32 (a) A dwelling:

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

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

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

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

37 (c) Activities that:

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

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

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

41 (15) As used in this section:

42 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June  
43 30, 1989, were brought into commercial agricultural production by diking, draining, leveling,

1 filling or any similar hydrologic manipulation and by removal or manipulation of natural  
2 vegetation, and that are managed for commercial agricultural purposes.

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

5 (c) “Replacement” means the construction of a new structure that is substantially similar in  
6 size, sited in a substantially similar location and constructed in place of a previously existing  
7 structure. [Formerly 541.695 and then 196.770; 1999 c.610 §1; 2009 c.342 §3; 2011 c.16 §1;  
8 2011 c.406 §3; 2017 c.428 §1]

9 **Note:** Operation of the amendments to 196.905 by section 6, chapter 516, Oregon Laws  
10 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
11 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
12 that is operative after that approval, including amendments by section 13, chapter 253, Oregon  
13 Laws 2003, section 4, chapter 342, Oregon Laws 2009, section 2, chapter 16, Oregon Laws 2011,  
14 section 4, chapter 406, Oregon Laws 2011, and section 2, chapter 428, Oregon Laws 2017, is set  
15 forth for the user’s convenience.

16 **196.905.** (1) Notwithstanding the exemptions in subsections (3) to (8) of this section, a  
17 permit under ORS 196.600 to 196.905 is required for any fill or removal of material in or from  
18 the waters of this state when:

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

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

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

23 (2) Nothing in ORS 196.600 to 196.905 applies to removal of materials from the beds or  
24 banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this  
25 state, if:

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

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

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

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

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

35 (b) Maintenance of farm roads, provided that:

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

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

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

41 (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for any activity  
42 defined as a farm use in ORS 215.203, on lands zoned for exclusive farm use pursuant to ORS  
43 215.203, if the lands are converted wetlands that are also certified as prior converted cropland

1 by the Natural Resources Conservation Service of the United States Department of Agriculture,  
2 or its successor agency, so long as commercial agricultural production on the land has not been  
3 abandoned for five or more years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (12) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the  
39 beds or banks of any waters of this state conducted as part of a surface mining operation that is  
40 the subject of a memorandum of agreement between the Department of State Lands and the  
41 State Department of Geology and Mineral Industries in which the State Department of Geology  
42 and Mineral Industries is assigned sole responsibility for permitting as described in ORS  
43 517.797.

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

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

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

13 (a) A dwelling:

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

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

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

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

18 (c) Activities that:

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

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

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

22 (16) As used in this section:

23 (a)(A) “Converted wetlands” means agriculturally managed wetlands that, on or before June  
24 30, 1989, were brought into commercial agricultural production by diking, draining, leveling,  
25 filling or any similar hydrologic manipulation and by removal or manipulation of natural  
26 vegetation, and that are managed for commercial agricultural purposes.

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

29 (b) “Harvesting” means physically removing crops or other agricultural products.

30 (c) “Plowing” includes all forms of primary tillage, including moldboard, chisel or wide-blade  
31 plowing, discing, harrowing or similar means of breaking up, cutting, turning over or stirring soil  
32 to prepare it for planting crops or other agricultural products. “Plowing” does not include:

33 (A) The redistribution of soil, rock, sand or other surface materials in a manner that changes  
34 areas of waters of this state into dry land; or

35 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the  
36 reduction of water storage and recharge capability, or the overburdening of natural water  
37 filtration capacity.

38 (d) “Replacement” means the construction of a new structure that is substantially similar in  
39 size, sited in a substantially similar location and constructed in place of a previously existing  
40 structure.

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

43 **Note:** See second note under 196.800.

1       **196.910 Monitoring fill and removal activities; public education and information**  
 2 **materials; periodic reports to legislative committee.** The Department of State Lands shall:

3       (1) Monitor removal and fill activities, including but not limited to prospecting and placer  
 4 mining, within designated essential indigenous anadromous salmonid habitat areas to  
 5 determine the effects of such activities on salmonid spawning and rearing habitat and compile  
 6 the results in an annual report.

7       (2) Cooperate with the State Department of Fish and Wildlife and other interested parties to  
 8 develop and distribute public education and information materials designed to increase  
 9 understanding and awareness of permit requirements and acceptable removal and fill practices  
 10 related to prospecting and placer mining.

11       (3) Report periodically to the appropriate legislative committee on the progress of the  
 12 Department of State Lands in implementing ORS 196.810. [1997 c.508 §2; 1999 c.59 §54; 2003  
 13 c.253 §14; 2007 c.354 §3]

14       **Note:** 196.910 was enacted into law by the Legislative Assembly but was not added to or  
 15 made a part of ORS chapter 196 or any series therein by legislative action. See Preface to  
 16 Oregon Revised Statutes for further explanation.

17 **PENALTIES**

18       **196.990 Penalties.** Violation of ORS 196.810 is a misdemeanor. [Formerly subsection (4) of  
 19 541.990]

20       **Note:** Operation of the amendments to 196.990 by section 7, chapter 516, Oregon Laws  
 21 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter  
 22 516, Oregon Laws 2001, as amended by section 19, chapter 11, Oregon Laws 2009. The text  
 23 that is operative after that approval is set forth for the user's convenience.

24       **196.990.** (1) A person commits the offense of unlawful removal from or filling of waters of  
 25 this state if the person knowingly violates ORS 196.810 or an order issued thereunder, or any  
 26 rule or condition of a permit issued under ORS 196.600 to 196.905.

27       (2) Notwithstanding ORS 161.515, unlawful removal from or filling of waters of this state is  
 28 an offense punishable by a fine of up to \$10,000 per day of violation.

29       **Note:** See second note under 196.800.