

OPRD/SHPO
ENFORCEABLE POLICIES

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ORS Chapter 390
(Parks and Recreation;
Ocean Shores)
[Link to ORS Chapter 390](#)

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OUTDOOR RECREATION RESOURCES

390.010 Policy of state toward outdoor recreation resources. The Legislative Assembly recognizes and declares:

(1) It is desirable that all Oregonians of present and future generations and visitors who are lawfully present within the boundaries of this state be assured adequate outdoor recreation resources. It is desirable that all levels of government and private interests take prompt and coordinated action to the extent practicable without diminishing or affecting their respective powers and functions to conserve, develop, and utilize such resources for the benefit and enjoyment of all the people.

(2) The economy and well-being of the people are in large part dependent upon proper utilization of the state's outdoor recreation resources for the physical, spiritual, cultural, scientific and other benefits which such resources afford.

(3) It is in the public interest to increase outdoor recreation opportunities commensurate with the growth in need through necessary and appropriate actions, including, but not limited to, the following:

(a) Protection of existing and needed open spaces for appreciation, use and enjoyment of Oregon's scenic landscape.

(b) Provision of adequate land for outdoor recreation.

(c) Preservation and restoration for public enjoyment and education of structures, objects, facilities and resources which are examples of Oregon history, archaeology and natural science.

(d) Development of a system of scenic roads to enhance recreational travel and sightseeing.

(e) Encouragement of outdoor activities such as festivals, fairs, and events relating to music, dance, drama, art and sports.

(f) Expansion of facilities for camping, picnicking and lodging in or near recreational areas and along routes of travel.

(g) Provision of tourist hospitality centers, which may include informational services, sanitary facilities, camping and picnicking areas at points near major highway entrances into the state.

(h) Provision of trails for horseback riding, hiking, bicycling and motorized trail vehicle riding.

(i) Development of waterways, land and water facilities for recreational boating, hunting and fishing.

(j) Development of all recreation potentials of the several river basins, compatible with programs of water use enunciated by the Water Resources Commission.

(k) Provision for access to public lands and waters having recreational values.

(L) Encouragement of the development of winter sports facilities.

(m) Encouragement of programs for recreational enjoyment of mineral resources.

(4) It is in the public interest that all efforts be made through research, education and enforcement to the end that Oregon's outdoor recreation resources will be used under the highest standards of conduct.

(5) It shall be the policy of the State of Oregon to supply those outdoor recreation areas, facilities and opportunities which are clearly the responsibility of the state in meeting growing needs; and to encourage all agencies of government, voluntary and commercial organizations, citizen recreation groups and others to work cooperatively and in a coordinated manner to assist in meeting total recreation needs through exercise of their appropriate responsibilities. [Formerly 184.310]

STATE PARKS AND RECREATION DEPARTMENT (Archaeological Sites and Historical Material)

390.235 Permits and conditions for excavation or removal of archaeological or historical material; rules; criminal penalty. (1)(a) A person may not excavate or alter an archaeological site on public lands, make an exploratory excavation on public lands to determine the presence of an archaeological site or remove

from public lands any material of an archaeological, historical, prehistorical or anthropological nature without first obtaining a permit issued by the State Parks and Recreation Department.

(b) If a person who obtains a permit under this section intends to curate or arrange for alternate curation of an archaeological object that is uncovered during an archaeological investigation, the person must submit evidence to the State Historic Preservation Officer that the Oregon State Museum of Anthropology and the appropriate Indian tribe have approved the applicant's curatorial facilities.

(c) No permit shall be effective without the approval of the state agency or local governing body charged with management of the public land on which the excavation is to be made, and without the approval of the appropriate Indian tribe.

(d) The State Parks and Recreation Director, with the advice of the Oregon Indian tribes and Executive Officer of the Commission on Indian Services, shall adopt rules governing the issuance of permits.

(e) Disputes under paragraphs (b) and (c) of this subsection shall be resolved in accordance with ORS 390.240.

(f) Before issuing a permit, the State Parks and Recreation Director shall consult with:

(A) The landowning or land managing agency; and

(B) If the archaeological site in question is associated with a prehistoric or historic native Indian culture:

(i) The Commission on Indian Services; and

(ii) The most appropriate Indian tribe.

(2) The State Parks and Recreation Department may issue a permit under subsection (1) of this section under the following circumstances:

(a) To a person conducting an excavation, examination or gathering of such material for the benefit of a recognized scientific or educational institution with a view to promoting the knowledge of archaeology or anthropology;

(b) To a qualified archaeologist to salvage such material from unavoidable destruction; or

(c) To a qualified archaeologist sponsored by a recognized institution of higher learning, private firm or an Indian tribe as defined in ORS 97.740.

(3) Any archaeological materials, with the exception of Indian human remains, funerary objects, sacred objects and objects of cultural patrimony, recovered by a person granted a permit under subsection (2) of this section shall be under the stewardship of the State of Oregon to be curated by the Oregon State Museum of Anthropology unless:

(a) The Oregon State Museum of Anthropology with the approval from the appropriate Indian tribe approves the alternate curatorial facilities selected by the permittee;

(b) The materials are made available for nondestructive research by scholars; and

(c)(A) The material is retained by a recognized scientific, educational or Indian tribal institution for whose benefit a permit was issued under subsection (2)(a) of this section;

(B) The governing board of a public university listed in ORS 352.002, with the concurrence of the appropriate Indian tribe, grants approval for material to be curated by an educational facility other than the institution that collected the material pursuant to a permit issued under subsection (2)(a) of this section; or

(C) The sponsoring institution or firm under subsection (2)(c) of this section furnishes the Oregon State Museum of Anthropology with a complete catalog of the material within six months after the material is collected.

(4) The Oregon State Museum of Anthropology shall have the authority to transfer permanent possessory rights in subject material to an appropriate Indian tribe.

(5) Except for sites containing human remains, funerary objects and objects of cultural patrimony as defined in ORS 358.905, or objects associated with a prehistoric Indian tribal culture, the permit required by subsection (1) of this section or by ORS 358.920 shall not be required for forestry operations on private lands for which notice has been filed with the State Forester under ORS 527.670.

(6) As used in this section:

(a) "Private firm" means any legal entity that:

(A) Has as a member of its staff a qualified archaeologist; or

(B) Contracts with a qualified archaeologist who acts as a consultant to the entity and provides the entity with archaeological expertise.

(b) "Qualified archaeologist" means a person who has the following qualifications:

(A) A post-graduate degree in archaeology, anthropology, history, classics or other germane discipline with a specialization in archaeology, or a documented equivalency of such a degree;

(B) Twelve weeks of supervised experience in basic archaeological field research, including both survey and excavation and four weeks of laboratory analysis or curating; and

(C) Has designed and executed an archaeological study, as evidenced by a Master of Arts or Master of Science thesis, or report equivalent in scope and quality, dealing with archaeological field research.

(7) Violation of the provisions of subsection (1)(a) of this section is a Class B misdemeanor. [Formerly 273.705; 1993 c.459 §12; 1995 c.543 §7; 1995 c.588 §2; 2015 c.767 §171]

390.237 Removal without permit; exceptions. In addition to the provisions of ORS 273.241, if any individual or institution excavates or removes from the land designated in ORS 390.235 any materials of archaeological, historical, prehistorical or anthropological nature without obtaining the permit required in ORS 390.235, all materials and collections removed from such lands, with the exception of native Indian human remains, funerary goods, sacred objects and objects of cultural patrimony, which shall go directly to the appropriate Indian tribe, are under the stewardship of the State of Oregon and shall be assigned to the Oregon State Museum of Anthropology with the expressed approval of the appropriate Indian tribe. [Formerly 273.711; 1993 c.459 §13; 1995 c.543 §10]

OCEAN SHORES; STATE RECREATION AREAS

(General Provisions)

390.605 Definitions. As used in ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770, unless the context requires otherwise:

(1) "Improvement" includes filling a portion of the ocean shore, removal of material from the ocean shore or a structure, appurtenance or other addition, modification or alteration constructed, placed or made on or to the land.

(2) "Ocean shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800.

(3) "State recreation area" means a land or water area, or combination thereof, under the jurisdiction of the State Parks and Recreation Department used by the public for recreational purposes. [Formerly 274.065 and then 390.710; 1989 c.904 §23; 1999 c.373 §2]

390.610 Policy. (1) The Legislative Assembly hereby declares it is the public policy of the State of Oregon to forever preserve and maintain the sovereignty of the state heretofore legally existing over the ocean shore of the state from the Columbia River on the north to the Oregon-California line on the south so that the public may have the free and uninterrupted use thereof.

(2) The Legislative Assembly recognizes that over the years the public has made frequent and uninterrupted use of the ocean shore and recognizes, further, that where such use has been legally sufficient to create rights or easements in the public through dedication, prescription, grant or otherwise, that it is in the public interest to protect and preserve such public rights or easements as a permanent part of Oregon's recreational resources.

(3) Accordingly, the Legislative Assembly hereby declares that all public rights or easements legally acquired in those lands described in subsection (2) of this section are confirmed and declared vested exclusively in the State of Oregon and shall be held and administered as state recreation areas.

(4) The Legislative Assembly further declares that it is in the public interest to do whatever is necessary to preserve and protect scenic and recreational use of Oregon's ocean shore. [1967 c.601 §§1,2(1),(2),(3); 1969 c.601 §4]

390.615 Ownership of Pacific shore; declaration as state recreation area. Ownership of the shore of the Pacific Ocean between ordinary high tide and extreme low tide, and from the Oregon and Washington state line on the north to the Oregon and California state line on the south, excepting such portions as may have been disposed of by the state prior to July 5, 1947, is vested in the State of Oregon, and is declared to be a state recreation area. No portion of such ocean shore shall be alienated by any of the agencies of the state except as provided by law. [Formerly 274.070 and then 390.720]

390.640 Permit required for improvements on ocean shore; exceptions. (1) In order to promote the public health, safety and welfare, to protect the state recreation areas recognized and declared by ORS 390.610 and 390.615, to protect the safety of the public using such areas, and to preserve values adjacent to and adjoining such areas, the natural beauty of the ocean shore and the public recreational benefit derived therefrom, it is necessary to control and regulate improvements on the ocean shore. Unless a permit therefor is granted as provided by ORS 390.650, no person shall make an improvement on any property that is within the ocean shore.

(2) This section does not apply to permits granted pursuant to ORS 390.715, or to rules adopted or permits granted under ORS 390.725.

(3) This section does not apply to continuous extensions of densely vegetated land areas that were, as of August 22, 1969, both seaward of the line established by ORS 390.770 and above the 16-foot contour. The elevation mentioned in this subsection refers to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947.

(4) This section does not apply to the removal, filling or alteration of material on the ocean shore where those activities are regulated under a state-assumed permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as amended. [1967 c.601 §5; 1969 c.601 §7; 1973 c.642 §14; 1999 c.373 §3]

390.650 Improvement permit procedure; fee; waiver or reduction. (1) Any person who desires a permit to make an improvement on any property subject to ORS 390.640 shall apply in writing to the State Parks and Recreation Department on a form and in a manner prescribed by the department, stating the kind of and reason for the improvement.

(2) Upon receipt of a properly completed application, the State Parks and Recreation Department shall provide notice of the proposal by causing notice of the application to be posted at or near the location of the proposed improvement. The notice shall include the name of the applicant, a description of the proposed improvement and its location and a statement of the time within which interested persons may file a request with the department for a hearing on the application. The department shall give notice of any application, hearing or decision to any person who files a written request with the department for such notice.

(3) Within 30 days after the date of posting the notice required in subsection (2) of this section, the applicant or 10 or more other interested persons may file a written request with the State Parks and Recreation Department for a hearing on the application. If such a request is filed, the department shall set a time for a hearing to be held by the department. The department shall cause notice of the hearing to be posted in the manner provided in subsection (2) of this section. The notice shall include the time and place of the hearing. After the hearing on an application or, if a hearing is not requested, after the time for requesting a hearing has expired, the department shall grant the permit if approval would not be adverse to the public interest. ORS chapter 183 does not apply to a hearing or decision under this section.

(4) In acting on an application, the State Parks and Recreation Department shall take into consideration the matters described by ORS 390.655. The department shall act on an application within 60 days after the date of receipt or, if a hearing is held, within 45 days after the date of the hearing.

(a) The decision of the department shall include written findings setting forth the specific reasons for the approval or denial and, if the application is approved, any conditions the department considers necessary to maintain the standards established under ORS 390.655.

(b) A copy of the written findings shall be furnished to the applicant at the time of approval or denial of the application by the department as provided in this subsection.

(5) Subsections (2) and (3) of this section do not apply to an application for a permit for the repair, replacement or restoration, in the same location, of an authorized improvement or improvement existing on or before May 1, 1967, if the repair, replacement or restoration is commenced within three years after the damage to or destruction of the improvement being repaired, replaced or restored occurs.

(6) The State Parks and Recreation Department may, upon application therefor, either written or oral, grant an emergency permit for a new improvement, dike, revetment, or for the repair, replacement or restoration of an existing, or authorized improvement where property or property boundaries are in imminent peril of being destroyed or damaged by action of the Pacific Ocean or the waters of any bay or river of this state. Said permit may be granted by the department without regard to the provisions of subsections (1), (2), (3), (4) and (5) of this section. Any emergency permit granted hereunder shall be reduced to writing by the department within 10 days after granting the same with a copy thereof furnished to the applicant.

(7) Except as provided by subsection (8) of this section, each application under subsection (1) of this section shall be accompanied by a fee to cover, in part, the expenses of the department in investigating, reviewing and issuing the improvement permits. The application fee for each permit shall be:

(a) \$400 for any project for which the construction value is less than \$2,500.

(b) \$400 for any project for which the construction value is equal to or greater than \$2,500, plus an additional amount equal to three percent of the construction value over \$2,500.

(8) The department may waive or reduce the fee required by subsection (7) of this section for an application submitted by a public body, as that term is defined by ORS 174.109, or tribal government if the primary purpose of the improvement is:

(a) Restoring, conserving or protecting the natural, resource, scenic, recreational, cultural or economic values of the ocean shore;

(b) Restoring native beach or dune habitat contributing to the recovery of sensitive species, including state and federally listed threatened or endangered species; or

(c) Improving native biological values of the ocean shore.

(9) Fees received under this section shall be deposited into a subaccount of the State Parks and Recreation Department Fund. Such fees are continuously appropriated to the department for the purpose of carrying out the ocean shore program.

(10) As used in this section, "construction value" includes but is not limited to the costs of labor and equipment rental. For a project involving only the movement of sand or similar material on the ocean shore, "construction value" shall equal the costs of labor, fees and equipment rental. [1967 c.601 §6; 1969 c.601 §10; 1979 c.186 §21; 1999 c.373 §4; 2003 c.25 §1]

390.655 Standards for improvement permits. The State Parks and Recreation Department shall consider applications and issue permits under ORS 390.650 in accordance with standards designed to promote the public health, safety and welfare and carry out the policy of ORS 390.610, 390.620 to 390.676, 390.690 and 390.705 to 390.770. The standards shall be based on the following considerations, among others:

(1) The public need for healthful, safe, aesthetic surroundings and conditions; the natural scenic, recreational and other resources of the area; and the present and prospective need for conservation and development of those resources.

(2) The physical characteristics or the changes in the physical characteristics of the area and suitability of the area for particular uses and improvements.

(3) The land uses, including public recreational use if any, and the improvements in the area, the trends in land uses and improvements, the density of development and the property values in the area.

(4) The need for recreation and other facilities and enterprises in the future development of the area and the need for access to particular sites in the area. [1969 c.601 §11; 1979 c.186 §22]

390.661 Improvement without permit or contrary to permit conditions as public nuisance. The improvement on any property within the ocean shore without a permit issued under ORS 390.650, or in a manner contrary to the conditions set out in the permit, is a public nuisance. [1999 c.373 §12]

390.663 Investigation of violation within ocean shore; cease and desist order; enforcement of order by state and local police. (1) If the State Parks and Recreation Director determines that any improvement is being made on property within the ocean shore without a permit issued under ORS 390.650, or in a manner contrary to the conditions set out in the permit, the director may:

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 390.620 to 390.676, as soon as possible.

(b) For the purpose of investigating conditions relating to such improvements, through the employees or the duly authorized representatives of the State Parks and Recreation Department, enter at reasonable times upon any private or public property.

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

(d) Publish findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 390.620 to 390.676.

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

(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 390.620 to 390.676 or of any rule or final order of the director under ORS 390.620 to 390.676 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon. In any such proceedings, the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings brought by the director shall set forth, if applicable, the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

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

(3) An order under subsection (2) of this section:

(a) May be entered without prior notice or hearing.

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

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

(d) Shall not be stayed during the pendency of a hearing conducted under subsection (4) of this section.

(4) If a person subject to an order under subsection (2) of this section files a timely demand for hearing, the director shall hold a contested case hearing according to the applicable provisions of ORS chapter 183. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the department.

(5) Neither the director nor any duly authorized representative of the department shall be liable for any damages a person may sustain as a result of a cease and desist order issued under subsection (2) of this section.

(6) The state and local police shall cooperate in the enforcement of any order issued under subsection (2) of this section and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under subsection (2) of this section, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the director's order in the same manner as with an order of that court.

(7) As used in this section, "violation" means making an improvement on property within the ocean shore without a permit or in a manner contrary to the conditions set out in a permit issued under ORS 390.650. [1999 c.373 §13]

390.666 Revocation, suspension or nonrenewal of improvement permit. If the State Parks and Recreation Director finds that a person or governmental body holding a permit issued under ORS 390.650 is making an improvement on property within the ocean shore contrary to the conditions set out in the permit, the director may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after giving notice and opportunity for a hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. [1999 c.373 §14]

390.669 Action by state or any person to abate public nuisance; temporary restraining order or preliminary injunction; compensation to public. (1) In addition to any enforcement action taken under ORS 390.663, civil proceedings to abate alleged public nuisances under ORS 390.661 may be instituted in the name of the State of Oregon upon relation of the State Parks and Recreation Director or by any person in the person's name.

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

(3) The director may institute an action in the name of the State of Oregon for a temporary restraining order or preliminary injunction if a threatened or existing public nuisance under ORS 390.661 creates an emergency that requires immediate action to protect the public health, safety or welfare. The director shall not be required to furnish a bond in such proceeding.

(4) The State Parks and Recreation Commission, the State Parks and Recreation Director and the employees or duly authorized representatives of the State Parks and Recreation Department shall not be liable for any damages a defendant may sustain as a result of an injunction, restraining order or abatement order issued under this section.

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

(6) In any action brought under this section, the plaintiff may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from an existing public nuisance under ORS 390.661. Any money received by the plaintiff under this subsection shall be deposited in an account of the State Parks and Recreation Department for use by the department in administering the ocean shore program. [1999 c.373 §15]

390.678 Motor vehicle and aircraft use regulated in certain zones; zone markers; proceedings to establish zones. (1) The State Parks and Recreation Department may establish zones on the ocean shore where travel by motor vehicles or landing of any aircraft except for an emergency shall be restricted or prohibited. After the establishment of a zone and the erection of signs or markers thereon, no such use shall be made of such areas except in conformity with the rules of the department.

(2) Proceedings to establish a zone:

(a) May be initiated by the department on its own motion; or

(b) Shall be initiated upon the request of 20 or more landowners or residents or upon request of the governing body of a county or city contiguous to the proposed zone.

(3) A zone shall not be established unless the department first holds a public hearing in the vicinity of the proposed zone. The department shall cause notice of the hearing to be given by publication, not less than seven days prior to the hearing, by at least one insertion in a newspaper of general circulation in the vicinity of the zone.

(4) Before establishing a zone, the department shall seek the approval of the local government whose lands are adjacent or contiguous to the proposed zone. [Formerly 390.668]

390.705 Prohibition against placing certain conduits across recreation area and against removal of natural products. No person shall:

(1) Place any pipeline, cable line or other conduit across and under the state recreation areas described by ORS 390.635 or the submerged lands adjacent to the ocean shore, except as provided by ORS 390.715.

(2) Remove any natural product from the ocean shore, other than fish or wildlife, agates or souvenirs, except as provided by ORS 390.725. [1969 c.601 §20]

390.715 Permits for pipe, cable or conduit across ocean shore, state recreation areas and submerged lands. (1) The State Parks and Recreation Department may issue permits under ORS 390.650 to 390.659 for pipelines, cable lines and other conduits across and under the ocean shore, state recreation areas and the submerged lands adjacent to the ocean shore, upon payment of just compensation by the permittee. A permit issued under this subsection is not a sale or lease of tide and overflow lands within the scope of ORS 274.040.

(2) Whenever the issuance of a permit under subsection (1) of this section will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of the permit until the permittee obtains from the private owner an easement, license or other written authorization that meets the approval of the State Parks and Recreation Department, except as to the compensation to be paid to the private owner.

(3) All permits issued under this section are subject to conditions that will ensure safety of the public and the preservation of economic, scenic and recreational values and to rules promulgated by state agencies having jurisdiction over the activities of the grantee or permittee. [1969 c.601 §22; 2005 c.300 §1; 2007 c.71 §101]

390.725 Permits for removal of products along ocean shore; rules. (1) Removal of natural products such as fish or wildlife, agates or small amounts of driftwood from a state recreation area as defined in ORS 390.605 for personal, noncommercial use is not subject to the provisions of ORS 390.650.

(2) The collection of natural products for the purpose of trade, sale or resale shall be subject to the permit provisions and standards of ORS 390.650 and 390.655. Permits shall provide for the payment of just compensation by the permittee as provided by rule adopted under subsection (4) of this section.

(3) No archaeological object associated with an archaeological site, as those terms are defined in ORS 358.905, shall be removed from the ocean shore except as provided in ORS 358.920 and 390.235.

(4) Rules or permits shall be made or granted by the State Parks and Recreation Department only after consultation with the State Fish and Wildlife Commission, the State Department of Geology and Mineral Industries and the Department of State Lands. Rules and permits shall contain provisions necessary to protect the areas from any use, activity or practice inimicable to the conservation of natural resources or public recreation.

(5) The terms, royalty and duration of a permit under this section are at the discretion of the State Parks and Recreation Department. A permit is revocable at any time in the discretion of the department without liability to the permittee.

(6) Whenever the issuance of a permit under this section will affect lands owned privately, the State Parks and Recreation Department shall withhold the issuance of such permit until such time as the permittee shall have obtained an easement, license or other written authorization from the private owner, which easement, license or other written authority must meet the approval of the department, except as to the compensation to be paid to the private owner. [1969 c.601 §23; 1999 c.373 §7]

390.729 Permits for operation of all-terrain vehicles on ocean shore. (1) A person may not operate a Class I all-terrain vehicle on the ocean shore unless the person obtains a permit from the State Parks and Recreation Department as provided in this section.

(2) The department may issue a permit for the operation of a Class I all-terrain vehicle on the ocean shore if the operator of the vehicle holds a permit issued under ORS 390.570, if the vehicle has a current operating permit issued under ORS 390.580 and if the vehicle will be used to meet the transportation needs of:

- (a) Individuals with disabilities;
- (b) Emergency response or emergency aid workers; or
- (c) Biologists, wildlife monitors or other natural resources workers.

(3) Application for a permit issued under this section shall be in a form determined by the department. The department shall specify the information to be contained in the application, the renewal period and the manner in which the permit must be displayed.

(4) The department may not charge for a permit issued under this section. [2005 c.300 §3]

390.760 Exceptions from vegetation line. ORS 390.640 does not apply to any state-owned land or to headlands and other lands located at an elevation of more than 16 feet and seaward of a line running between the following designated and numbered points which are more particularly described by ORS 390.770. The elevation mentioned in this section refers to the United States Coast and Geodetic Survey Sea-Level Datum of 1929 through the Pacific Northwest Supplementary Adjustment of 1947. **[NOTE: Point designation and number can be found in online edition]**

390.770 Vegetation line described. Except for the areas described by ORS 390.760, ORS 390.640 applies to all the land located along the Pacific Ocean between the Columbia River and the Oregon-California boundary between extreme low tide and the lines of vegetation as established and described according to the Oregon State Plane Coordinate System of 1927, as follows:

Beginning near the south jetty of the Columbia River in section 35 of township 9 north, range 11 west of the Willamette Meridian in Clatsop County, Oregon, at a point on the Oregon State Plane Coordinate System of 1927, north zone, located at y-coordinate 951,840 and x-coordinate 1,112,374, hereby designated point number Cl-7-1; thence from point number Cl-7-1 southerly along the Pacific Coast by a series of straight lines connecting the following designated, numbered and described points in consecutive order to the Oregon-California boundary line near the section line between section 26 of township 41 south, range 13 west of the Willamette Meridian in Curry County, Oregon, and section 32 of township 19 north, range 1 west of the Humboldt Meridian in Del Norte County, California, at a point on the Oregon State Plane Coordinate System of 1927, south zone, located at y-coordinate 143,339 and x-coordinate 991,832, hereby designated point number Cu-7-634. **[NOTE: Description in total can be found in online edition]**

SCENIC WATERWAYS

390.805 Definitions for ORS 390.805 to 390.925. As used in ORS 390.805 to 390.925, unless the context requires otherwise:

(1) "Related adjacent land" means all land within one-fourth of one mile of the bank on the side of Waldo Lake, or a river or segment of river within a scenic waterway, except land that, in the State Parks and Recreation Department's judgment, does not affect the view from the waters within a scenic waterway.

(2) "Scenic easement" means the right to control the use of related adjacent land, including airspace above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains the right to uses of the land not specifically restricted by the easement.

(3) "Scenic waterway" means Waldo Lake, or a river or segment of river that has been designated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes related adjacent land. [1971 c.1 §2; 1981 c.787 §55; 1983 c.334 §1; 1983 c.642 §10; 1989 c.904 §25; 1995 c.79 §203; 2001 c.104 §132]

390.826 Designated scenic waterways. The following lakes and rivers, or segments of rivers, and related adjacent land are designated as scenic waterways:

(1) The Metolius Scenic Waterway which includes the Metolius River from Metolius Springs downstream to its confluence with Candle Creek.

(2) The Klamath Scenic Waterway which includes the Klamath River from the John Boyle Dam powerhouse downstream to the Oregon-California border.

(3) The Clackamas Scenic Waterway which includes:

(a) The segments of the Clackamas River from the boundary of the Olallie Lake Scenic Area, as constituted on December 8, 1988, downstream to the North Fork Reservoir, and from immediately below the River Mill Dam downstream to the bridge at Carver;

(b) The South Fork Clackamas River from its confluence with an unnamed tributary near the western boundary of Section 7, Township 5 South, Range 5 East, Willamette Meridian, downstream to the confluence of the South Fork Clackamas River with the Clackamas River; and

(c) The North Fork Clackamas River from its source downstream to the North Fork Reservoir.

(4) The McKenzie Scenic Waterway which includes:

(a) The segments of the McKenzie River from Clear Lake downstream to Carmen Reservoir, from Tamolitch Falls downstream to Trail Bridge Reservoir and from Trail Bridge Dam downstream to Paradise Campground; and

(b) The segments of the South Fork McKenzie River from the boundary of the Three Sisters Wilderness, as constituted on December 8, 1988, downstream to Cougar Reservoir, and from immediately below Cougar Dam downstream to its confluence with the McKenzie River.

(5) The Deschutes Scenic Waterway which includes the segments of the Deschutes River from Little Lava Lake downstream to Crane Prairie Reservoir, from the gaging station immediately below Wickiup Dam downstream to General Patch Bridge, from Harper Bridge downstream to the Central Oregon Irrigation District's diversion structure (near river mile 171), from Robert Sawyer Park downstream to Tumalo State Park, from Deschutes Market Road Bridge downstream to Lake Billy Chinook Reservoir (excluding the Cline Falls hydroelectric facility near river mile 145), and from immediately below the existing Pelton reregulating dam downstream to the confluence of the Deschutes River with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(6) The Santiam Scenic Waterway which includes the Little North Fork of the Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the boundary of the Willamette National Forest, as constituted on September 20, 1985.

(7) The John Day Scenic Waterway which includes:

(a) The John Day River from its confluence with Parrish Creek downstream to Tumwater Falls;

(b) The North Fork John Day River from the boundary of the North Fork John Day Wilderness (near river mile 76), as constituted on December 8, 1988, downstream to the northern boundary of the south one-half of Section 20, Township 8 South, Range 28 East, Willamette Meridian;

(c) The Middle Fork John Day River from its confluence with Crawford Creek (near river mile 71) downstream to the confluence of the Middle Fork John Day River with the North Fork John Day River; and

(d) The South Fork John Day River from the Post-Paulina road crossing (near river mile 35) downstream to the northern boundary of the Murderer's Creek Wildlife Area, as constituted on December 8, 1988 (near river mile 6).

(8) The Illinois Scenic Waterway which includes the Illinois River from its confluence with Deer Creek downstream to its confluence with the Rogue River.

(9) The Rogue Scenic Waterway which includes the segments of the Rogue River from the boundary of Crater Lake National Park, as constituted on December 8, 1988, downstream to the boundary of the Rogue River National Forest, as constituted on December 8, 1988 (near river mile 173), and from the confluence of the Rogue River with the Applegate River downstream to Lobster Creek Bridge.

(10) The Umpqua Scenic Waterway which includes the segments of the North Umpqua River from the boundary of the Mt. Thielsen Wilderness, as constituted on December 8, 1988, downstream to Lemolo Reservoir, and from the Soda Springs Dam powerhouse downstream to its confluence with Rock Creek (near Idleld Park).

(11) The Nestucca Scenic Waterway which includes:

(a) The Nestucca River from immediately below the McGuire Dam downstream to its confluence with East Creek (near Blaine); and

(b) Walker Creek from its source downstream to its confluence with the Nestucca River.

(12) The Wallowa-Grande Ronde Scenic Waterway which includes:

(a) The Grande Ronde River from its confluence with the Wallowa River downstream to the Oregon-Washington border; and

(b) The Wallowa River from its confluence with the Minam River downstream to the confluence of the Wallowa River with the Grande Ronde River.

(13) The Minam Scenic Waterway which includes the Minam River from Minam Lake downstream to its confluence with the Wallowa River.

(14) The Elk Scenic Waterway which includes:

(a) The Elk River from the confluence of the North Fork Elk River and South Fork Elk River downstream to the Elk River fish hatchery;

(b) The North Fork Elk River from its source downstream to its confluence with the South Fork Elk River; and

(c) The South Fork Elk River from its source downstream to its confluence with the North Fork Elk River.

(15) The Owyhee Scenic Waterway which includes:

(a) The South Fork Owyhee River from the Oregon-Idaho border downstream to Three Forks; and

(b) The Owyhee River from Crooked Creek (near river mile 118) downstream to the mouth of Birch Creek (near river mile 76).

(16) The North Fork of the Middle Fork Willamette Scenic Waterway which includes the North Fork of the Middle Fork Willamette River from Waldo Lake downstream to a point one mile upstream from the railroad bridge near the town of Westfir.

(17) The Waldo Lake Scenic Waterway which includes Waldo Lake in Lane County. [1989 c.2 §2 (enacted in lieu of 390.825)]

390.835 Highest and best use of waters within scenic waterways; prohibitions; authority of various agencies; water rights; conditions; recreational prospecting; placer mining. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

- (A) The right is necessary to prevent the livestock from watering in or along the stream bed;
- (B) The applicant cannot reasonably obtain water from any other source; and
- (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section shall not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

- (A) Mitigation is provided in accordance with subsection (10) of this section; or
- (B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, “measurably reduce” means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) No placer mining shall be permitted on waters within scenic waterways other than recreational placer mining.

(15) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) No provision of this section shall be construed to exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining, other than recreational prospecting not requiring a permit, shall not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) “Prospecting” means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) “Recreational placer mining” includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. “Recreational placer mining” does not include recreational prospecting that does not require a permit.

(d) “Wet perimeter” means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2; 1985 c.673 §177; 1989 c.320 §1; 1993 c.99 §1; 1995 c.223 §1; 1995 c.719 §1; 1997 c.223 §1; 1997 c.478 §1; 2001 c.499 §1]

Note: Operation of the amendments to 390.835 by section 8, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval is set forth for the user’s convenience.

390.835. (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water impoundment facility may not be constructed on waters within scenic waterways. A water diversion facility may not be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, “emergency circumstances” exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission’s duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

- (A) The applicant cannot reasonably obtain water from any other source;
 - (B) Denial of the water right would result in loss of reasonable expectations for use of the property; and
 - (C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.
- (e) If the water right is for livestock consumption, an additional finding that:

- (A) The right is necessary to prevent the livestock from watering in or along the stream bed;
- (B) The applicant cannot reasonably obtain water from any other source; and
- (C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section do not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

- (A) Mitigation is provided in accordance with subsection (10) of this section; or
- (B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) This subsection does not limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, “measurably reduce” means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) Placer mining is not permitted on waters within scenic waterways, other than recreational placer mining.

(15) A person may not be required to obtain a permit for recreational prospecting or other nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) This section does not exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining may not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) “Bed” means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

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

Note: Sections 3 and 4, chapter 499, Oregon Laws 2001, provide:

Sec. 3. In order to make recommendations to better achieve the objectives and enhance the effectiveness of the Oregon Scenic Waterways System, the State Parks and Recreation Department shall complete a review of the system administered under ORS 390.805 to 390.925, including a review of the studies pertaining to the effects of recreational placer mining within scenic waterways. At the request of the State Parks and Recreation Department, the Department of State Lands, the Water Resources Department, the State Department of Fish and Wildlife, the State Marine Board and the Department of Environmental Quality shall assist in the review. The State Parks and Recreation Department may also request interested public parties to assist in the review. [2001 c.499 §3]

Sec. 4. Notwithstanding ORS 390.835, a permit or temporary permit for dredging issued by the Department of State Lands for the purpose of recreational placer mining within a scenic waterway is not valid after December 31, 2003, if the review described in section 3 of this 2001 Act has been completed and reported to the Seventy-second Legislative Assembly or, if the review has not been completed and reported to the Seventy-second Legislative Assembly, after December 31, 2005. [2001 c.499 §4]

390.845 Administration of scenic waterways and related adjacent lands; limitations on use; condemnation; rules. (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the State Parks and Recreation Department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the aesthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture and the affected counties and with the concurrence of the Water Resources Commission, the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS chapter 183. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the aesthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules of the department, of the related adjacent land or unless department approval of such use is obtained as provided in subsection (4) or (5) of this section. The department wherever practicable shall require the sharing of land and airspace by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway;

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless the department's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other

structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the department written notice of such proposed use at least one year prior thereto and has submitted to the department with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the department under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the department shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the department determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land that the owner may immediately proceed with the proposed use as described to the department. If the department determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the department. During such period:

(a) The department and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the department impair substantially the natural beauty of the scenic waterway; or

(b) The department may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The department, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the department or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the department and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the department or the owner.

(6) With the concurrence of the Water Resources Commission, the department may institute condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the department determines would, if carried out, impair substantially the natural beauty of a scenic waterway unless the department and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the department of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the rules of the department or any agreement entered into by the department pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the department, impairs substantially the natural beauty of a scenic waterway, if the department has not been given at least one year's advance written notice of such use and if there is not in effect department approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after December 3, 1970, unless the department has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the department has given approval for such improvement under subsection (4) or (5) of this section. If the person owned the land on December 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person shall receive no less for the land than its value on December 3, 1970. The

department shall not acquire by condemnation a scenic easement in land. When the department acquires any related adjacent land that is located between a lake or river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the lake or river necessary to use, store or divert such waters as the owner has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the department, shall be provided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805 to 390.925.

(9) The department shall furnish to any member of the public upon written request and at expense of the member a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United States, another state agency or local governmental agency, the department may enter into agreement with the tribe or the federal, state or local agency for the administration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to 390.925. [1971 c.1 §5; 1971 c.459 §1; 1973 c.756 §2; 1981 c.236 §3; 1983 c.334 §4]