

DSL Enforceable Policy Summary

as of October, 2021

POLICY SOURCE	ENFORCEABLE POLICY	GENERALLY IMPLEMENTED BY:
<p>ORS Chapter 196 (Removal-Fill) Link to ORS Chapter 196 <i>Statute Edition 2017 approved in Program</i></p>	<p>.583 Requirement to share geological data regarding territorial sea floor</p> <p>.682 Permits required for removal or fill; conditions on issuance of permit</p> <p>.687 Regulation of alteration or fill of artificially created wetlands</p> <p>.800 Definitions for ORS 196.600 to 196.905</p> <p>.805 Policy</p> <p>.810 Permit required to remove material from bed or banks of waters; status of permit; exceptions; rules</p> <p>.812 Large woody debris; rules</p> <p>.815 Application for permit; rules; fees; disposition of fees</p> <p>.816 General permits allowing removal of certain amount of material for maintaining drainage; rules; waiver of fees</p> <p>.817 General permits; rules</p> <p>.818 Wetland delineation reports; review by Department of State Lands; fees; rules</p> <p>.825 Criteria for issuance of permit; conditions; consultation with public bodies; hearing; appeal</p> <p>.830 Estuarine resource replacement as condition for fill or removal from estuary; considerations; other permit conditions</p> <p>.845 Investigations and surveys</p> <p>.850 Waiving permit requirement in certain cases; rules; notice; review; fees; disposition of fees</p> <p>.855 Noncomplying removal of material or filling as public nuisance</p> <p>.880 Fill under permit presumed not to affect public rights; public rights extinguished</p> <p>.905 Applicability; rules</p>	Removal-Fill Permit
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196.583 Requirement to share geological data regarding territorial sea floor. Any person authorized by a public body, as defined in ORS 174.109, to develop energy resources in Oregon’s territorial sea, shall share any geological and geophysical data, including bathymetry, backscatter, seismic reflection and sample data, generated by the person regarding Oregon’s territorial sea floor with the Oregon territorial sea mapping project at Oregon State University.

196.682 Permits required for removal or fill; conditions on issuance of permit.

(1) Except where otherwise provided by the order approving the plan, individual permit applications shall be required for removal or fill, or both, in areas subject to an approved wetland conservation plan. If individual permit applications are to be reviewed under the authority of the Director of the Department of State Lands, then application fees and review procedures shall be in accordance with ORS 196.815, 196.825 and 196.835. In lieu of the substantive standards for permit issuance in ORS 196.825 (3), the Department of State Lands shall issue a permit if the removal or fill, or both, is

consistent with the wetland conservation plan or can be conditioned to be consistent with the plan. The department shall condition any such permit as necessary to ensure that the project:

- (a) Is properly designed or configured to minimize the need for alterations to waters of this state;
 - (b) Is the minimum size necessary to reasonably provide for the proposed use;
 - (c) Complies with applicable provisions of the acknowledged comprehensive plan and land use regulations for the area;
 - (d) Is designed to minimize impacts from implementing the project; and
 - (e) Is conditioned to ensure wetland creation, restoration, enhancement or preservation measures are implemented to fully replace impacted resources.
- (2) In any order approving a plan that authorizes any fill or removal or both, without the necessity of subsequently obtaining an individual permit, the director shall condition such approval as necessary to ensure that the project complies with the conditions of subsection (1) of this section and clearly delineates the wetland area in which fill or removal, or both, is to occur.

196.687 Regulation of alteration or fill of artificially created wetlands.

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

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

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

- (a) Shall not be implemented or enforced; and
- (b) Has no legal effect.

(4) The provisions of this section do not apply to land used to mitigate the loss of wetlands.

(5) If the Department of State Lands assumes responsibility under 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, ORS 196.600 to 196.905 shall apply to artificially created wetlands described in subsections (1) and (2) of this section.

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

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is

removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(2) "Estuary" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) “Removal” means:

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

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

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

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

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

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

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

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

(3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 196.600 to 196.905 without due process of law.

196.810 Permit required to remove material from bed or banks of waters; status of permit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any public body, as defined in ORS 174.109, entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 196.600 to 196.905.

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

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

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

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

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

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

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

(2) Poses a risk of harm to transportation facilities including, but not limited to, culverts, bridges and roads located near or within the beds or banks of any waters of this state;

(3) Prevents or obstructs navigation within the beds or banks of any waters of this state; or

(4) Meets conditions for the removal of large woody debris as specified in rules of the Director of the Department of State Lands.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) For the purposes of this subsection:

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

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

(C) "Commercial operator" means any person undertaking a project having financial profit as a goal;

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

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

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

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

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

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

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

(8) The director shall issue an order revising the fees specified in this section on January 1 of each year, beginning in 2009, based on changes in the Portland-Salem, OR-WA Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor. The director shall round the amount of each fee to the nearest dollar. The revised fees shall take effect January 1 and apply for that calendar year.

196.816 General permits allowing removal of certain amount of material for maintaining drainage; rules; waiver of fees. Notwithstanding ORS 196.810, the Department of State Lands may establish by rule a general permit that allows the removal of no more than 100 cubic yards of material from waters of this state, including in essential indigenous anadromous salmonid habitat, for the purpose of maintaining drainage and protecting agricultural land. The department may waive the fees specified in ORS 196.815 for removal taking place under the provisions of this section.

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

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

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

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

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

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

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

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

(4) Any person proposing to conduct an action under a general permit shall pay the applicable fee required under ORS 196.815 for individual permit applications.

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

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

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

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

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

(3) The department shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

196.825 Criteria for issuance of permit; conditions; consultation with public bodies; hearing; appeal.

(1) The Director of the Department of State Lands shall issue a permit applied for under ORS 196.815 if the director determines that the project described in the application:

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

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

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

(a) The landowner's consent;

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

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

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

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

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

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

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

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

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

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

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

(i) Whether the applicant has provided all practicable mitigation to reduce the adverse effects of the proposed fill or removal in the manner set forth in ORS 196.800. In determining whether the applicant

has provided all practicable mitigation, the director shall consider the findings regarding wetlands set forth in ORS 196.668 and whether the proposed mitigation advances the policy objectives for the protection of wetlands set forth in ORS 196.672.

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

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

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

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

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

(7) Any applicant whose application for a permit or authorization has been deemed incomplete or has been denied, or who objects to any of the conditions imposed under this section by the director, may, within 21 days of the denial of the permit or authorization or the imposition of any condition, request a hearing from the director. Thereupon the director shall set the matter down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

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

(a) Determine whether an application is complete within 30 days from the date the Department of State Lands receives the application. If the director determines that an application is complete, the director shall distribute the application for comment pursuant to subsection (5) of this section. If the

director determines that the application is not complete, the director shall notify the applicant in writing that the application is deficient and explain, in the same notice, the deficiencies.

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

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

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

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

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

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

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

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

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

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

(12) As used in this section:

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

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

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

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

(C) The fee required under ORS 196.815;

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

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

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

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

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

(c) "Linear facility" includes any railway, highway, road, pipeline, water or sewer line, communication line, overhead or underground electrical transmission or distribution line or similar facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Nothing in this section is intended to limit the authority of the director to impose conditions on a permit under ORS 196.825.

193.845 Investigations and surveys. In considering applications for permits, the Director of the Department of State Lands may cause investigations or surveys to be made of the location of the work contemplated to determine whether such removal or filling is consistent with ORS 196.805 and 196.825.

196.850 Waiving permit requirement in certain cases; rules; notice; review; fees; disposition of fees.

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

(a) Are substantially similar in nature;

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

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

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

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

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

(a) A clear description of the proposal; and

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

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

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

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

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

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

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

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

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

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

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

196.855 Noncomplying removal of material or filling as public nuisance. The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 196.825, or in a manner contrary to the conditions set out in the permit, or in a manner contrary to the conditions set out in an order approving a wetland conservation plan, is a public nuisance.

196.880 Fill under permit presumed not to affect public rights; public rights extinguished. If the Director of the Department of State Lands issues a permit to fill pursuant to ORS 196.600 to 196.905, it shall be presumed that such fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights to lands created by the fill shall be considered extinguished.

196.905 Applicability; rules. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions

for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A dwelling:

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

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

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

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

(c) Activities that:

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

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

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

(15) As used in this section:

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

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

(c) "Replacement" means the construction of a new structure that is substantially similar in size, sited in a substantially similar location and constructed in place of a previously existing structure.

273.551 Mining and drilling leases on state lands; fee. (1) The Department of State Lands, as to any land or mineral and geothermal resource rights subject to its jurisdiction and control and without restricting, limiting or repealing any other powers and authority which it has, after consultation with the State Department of Geology and Mineral Industries and with concurrence of any state agency acting for the state with respect to surface rights in the subject land, may execute leases and contracts for the mining of gold, silver, copper, lead, cinnabar, gas and oil, or other valuable minerals or the exploration and development of geothermal resources upon conditions agreed upon by the Department of State Lands and the lessee.

(2) All leases may be without limitation as to time; but the department may cancel any lease upon failure by the lessee to exercise due diligence in the prosecution of the prospecting, development or continued operation of the mine or well, and shall insert in every such lease appropriate provisions for such cancellation.

(3) The authority granted by this section shall include the execution of leases and contracts covering submersible and submerged lands, as defined in ORS 274.005, the leasing of which is not otherwise expressly authorized by statute.

(4) Leases and contracts executed under this section are not sales within the purview of ORS 270.100.

(5) The department may charge a reasonable fee, to be paid by the applicant, for making necessary investigations before the execution of any such lease.

(6) This section does not apply to permits or leases under ORS 274.705 to 274.860.

273.553 South Slough National Estuarine Research Reserve; agreement between Oregon and federal government; rules. (1) It is the policy of the State of Oregon to maintain the South Slough of Coos Bay, from Valino Island southward, inclusive, as a national estuarine research reserve, acquired as the South Slough Estuary Sanctuary pursuant to chapter 415, Oregon Laws 1975, as the first estuarine sanctuary in the United States to be created under Section 312 of the Coastal Zone Management Act of 1972 (P.L. 92-583) and redesignated as the South Slough National Estuarine Research Reserve by federal law (P.L. 99-272). The management policy for the reserve is to:

(a) Maintain the integrity of the estuary;

(b) Protect the estuary from uses and activities, both within and beyond its boundaries, that may alter or affect the ecosystem and its natural dynamic processes; and

(c) Preserve the area for long-term scientific and educational uses.

(2) Responsibility for completing purchase of the South Slough National Estuarine Research Reserve is vested with the Department of State Lands. The department acts for the State of Oregon in any transaction respecting the purchase of acreage for the reserve on or after October 4, 1977.

(3) Except as necessary to achieve the policy set forth in subsection (1) of this section and any standards established in the Coastal Zone Management Act of 1972 (P.L. 92-583) or any rules, regulations or agreements adopted pursuant thereto, the reserve is open to the public. However, to protect the estuarine ecosystems, public use of the reserve may be limited and controlled by the South Slough National Estuarine Research Reserve Management Commission in consultation with any technical management team established pursuant to an agreement between the State of Oregon and the Office of Ocean and Coastal Resource Management of the National Oceanic and Atmospheric Administration of the United States Department of Commerce. The commission shall adopt rules to carry out the intent of this subsection.

(4) The South Slough National Estuarine Research Reserve Management Commission shall administer the reserve, subject to any agreement respecting the reserve between the State of Oregon and the federal Office of Ocean and Coastal Resource Management.

(5) The agency that acquired title to the reserve shall cause title to be cleared in the name of the State of Oregon

273.554 South Slough National Estuarine Research Reserve Management Commission; powers; rules; fees; membership; procedures; expenses. (1) For the purpose of providing for the administration of the South Slough National Estuarine Research Reserve in a manner consistent with the provisions of ORS 273.553, there is created the South Slough National Estuarine Research Reserve Management Commission. The commission shall have the authority, in accordance with the policies formulated by the State Land Board, to:

(a) Conduct the day-to-day operation and management of the South Slough National Estuarine Research Reserve with the administrative support of the Department of State Lands;

(b) Appoint a manager and other staff necessary to carry out this section; and

(c) Apply for, receive and expend moneys from the federal government and from this state or any agency thereof for the purpose of carrying out this section.

(2) In accordance with applicable provisions of ORS chapter 183, the commission may adopt rules necessary to:

(a) Carry out the commission's responsibilities pursuant to ORS 273.553; and

(b) Implement a system of fees to recover the costs of carrying out the management established in ORS 273.553, including fees for use of facilities at the reserve, fees for research activities conducted at the reserve, visitor activities fees and parking fees.

(3) The commission shall consist of nine members appointed by the Governor as follows:

(a) A representative of common schools in the area of the reserve;

(b) One authorized representative of the Coos County Board of Commissioners;

(c) One authorized representative of the governing body of the Oregon International Port of Coos Bay;

(d) The Director of the Department of State Lands or a designee thereof;

(e) One authorized representative of the federal Office of Ocean and Coastal Resource Management;

(f) Two representatives with an interest in marine science, one from the University of Oregon Institute of Marine Biology at Charleston and one from Oregon State University;

(g) One member selected from the general public at large; and

(h) One representative of Oregon Indian tribes appointed after consultation with the Commission on Indian Services.

(4) The members appointed by the Governor under subsection (3)(a), (f), (g) and (h) of this section shall serve for terms of four years and members appointed under subsection (3)(b) and (c) of this section shall serve for terms of two years. The Director of the Department of State Lands or the designee of the director, if appointed in place of the director, shall serve as the permanent chairperson of the commission. The commission shall select one of its members as vice chairperson. The chairperson and vice chairperson shall have duties and powers necessary for the performance of the functions of such offices as the commission determines. The vice chairperson shall act as the chairperson of the commission in the absence of the chairperson. The vice chairperson shall serve for a term of one year, subject to reelection by the commission.

(5) Each member of the commission shall have one vote, except that the member who is the authorized representative of the federal Office of Ocean and Coastal Resource Management shall be a nonvoting member. A majority of the commission constitutes a quorum for the transaction of business.

(6) Members of the commission are not entitled to compensation, but in the discretion of the State Land Board may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties, subject to laws regulating travel and other expenses of state officers and employees.

273.775 Definitions for ORS 273.775 to 273.790. (1) "Mineral" includes oil, gas, sulfur, coal, gold, silver, copper, lead, cinnabar, iron, manganese and other metallic ore, and any other solid, liquid or gaseous material or substance excavated or otherwise developed for commercial, industrial or construction use from natural deposits situated within or upon state lands, including mineral waters of all kinds.

(2) "Geothermal resources" shall have the same meaning given in ORS 522.005.

273.780 Retention of mineral and geothermal resource rights by state; exploration permit or lease; sale or exchange. (1) Mineral and geothermal resource rights in real property owned by any state agency and mineral and geothermal resource rights retained as an interest in lands previously sold, granted or otherwise conveyed by the state or any agency thereof are property of the State of Oregon. Except as provided in ORS 273.785 and 273.787, proceeds therefrom shall accrue to the Common School Fund, and the State Land Board is declared to be the state agency acting for the state in any transaction respecting such mineral and geothermal resource rights.

(2) In addition to applicable requirements of ORS chapter 522, such mineral and geothermal resource rights shall be subject to exploration permit or lease by the Department of State Lands, in accordance with rules and conditions established by law or adopted by the department.

(3) Except as provided in ORS 273.787, the mineral and geothermal resource rights shall be retained by the state in the absence of a finding by the State Land Board upon adequate facts presented to it that their sale or exchange is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the conservation of lands under its jurisdiction under sound techniques of land management.

273.785 Application of ORS 273.551 and 273.775 to 273.790; rules. ORS 273.551 and 273.775 to 273.790 do not apply to:

(1) Soil, clay, stone, sand and gravel acquired or used by state agencies for the purpose of constructing or repairing roads or other state facilities, or the proceeds from those materials.

(2) Mineral or geothermal resource rights or proceeds from those rights acquired by the State Fish and Wildlife Commission pursuant to an agreement with the federal government under 16 U.S.C. 669 to 669i (P.L. 75-415).

(3) Mineral or geothermal resource rights or proceeds from those rights if other disposition is required by federal rules or regulations or any agreement entered into at the time of acquisition of the mineral or geothermal resource rights by the state.

(4) Proceeds of mineral and geothermal resource rights acquired by the state pursuant to ORS 530.010 and 530.030, other than those distributed under ORS 530.110 (1)(c).

(5) Mineral or geothermal resource rights or proceeds from those rights acquired after January 1, 1974, for the state by the Department of Veterans' Affairs pursuant to ORS 88.720, 406.050 (2), 407.135 or 407.145. After consultation, the Department of State Lands and the Department of Veterans' Affairs shall enter into an interagency agreement governing consultation between them concerning mineral and geothermal resource values on properties acquired for the state by the Department of Veterans' Affairs. The Department of Veterans' Affairs shall adopt rules relating to the release of mineral and geothermal rights on such properties.

(6) Mineral or geothermal resource rights or proceeds from those rights given by a donor to any public university or office, department or activity under the control of the State Board of Higher Education that are acquired or held for the state by the State Board of Higher Education pursuant to ORS chapters 351 and 567. In managing mineral or geothermal resource leases, the State Board of Higher Education shall consult with the Department of State Lands in accordance with an interagency agreement established by the department and the State Board of Higher Education governing consultation between the department and the State Board of Higher Education and governing management of the mineral or geothermal resources.

(7) Mineral or geothermal resource rights or proceeds from those rights acquired and held by the Department of Transportation. In managing mineral or geothermal resource leases, the Department of Transportation shall enter into an intergovernmental agreement with the Department of State Lands

governing consultation between the departments and governing management of the mineral or geothermal resources.

(8) Mineral or geothermal resource rights or proceeds from those rights acquired and held by the Housing and Community Services Department.

274.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Department" means the Department of State Lands.

(2) "Director" means the Director of the Department of State Lands.

(3) "Line of ordinary high water" means the line on the bank or shore to which the high water ordinarily rises annually in season.

(4) "Line of ordinary low water" means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(5) "Land" includes water, water rights, easements of every nature and all appurtenances to land.

(6) "Material" includes gravel, rock, sand and silt, but does not include hard minerals subject to ORS 274.610, or oil, gas and sulfur subject to ORS 274.705 to 274.860.

(7) "Submerged lands," except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal.

(8) "Submersible lands," except as provided in ORS 274.705 means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable, within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal.

274.025 Jurisdiction over submersible and submerged lands generally. (1) The title to the submersible and submerged lands of all navigable streams and lakes in this state now existing or which may have been in existence in 1859 when the state was admitted to the Union, or at any time since admission, and which has not become vested in any person, is vested in the State of Oregon. The State of Oregon is the owner of the submersible and submerged lands of such streams and lakes, and may use and dispose of the same as provided by law.

(2) No person shall acquire any right, title or interest in or to the submersible and submerged lands of any such navigable lakes, or any part thereof, by reliction or otherwise, or by reason of the lowering or drainage of the waters of such lakes, except as provided by statute.

274.040 Sale or lease of submersible lands; easements; occupation of submerged and submersible lands for water works. (1) Except as provided in ORS 274.043, in ORS 274.085 for leases of submersible lands acquired as an investment for the Common School Fund, in ORS 274.530 (1) for leases of submersible lands of less than one year's duration, in ORS 274.530 (3) for licenses of less than three years' duration and in subsections (2) and (3) of this section, submersible lands owned by the State of

Oregon may be leased only to the highest bidder, bidding at least the minimum amount designated by the Department of State Lands under subsection (6) of this section for the lease of any such lands, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However, any owner of lands abutting or fronting on such submersible lands shall have the preference right to lease the lands unless the submersible lands are occupied by a person claiming the right of occupancy under a conveyance recorded before January 1, 1981, from the present owner or predecessor in interest of lands abutting or fronting the submersible lands. If so, the occupant of the submersible lands shall have the preference right to lease the lands. An easement or license related to utility service on the submersible lands does not establish a preference right under this subsection. The lands shall be leased for the amount designated by the department under subsection (6) of this section as the minimum amount for the lease of any such lands. The preferences provided in this subsection apply to any lease of submersible land for one year or more offered or issued under ORS 274.530. The preferences provided in this subsection do not apply to any lease offered or issued by the department under ORS 274.705 to 274.860. The preference for the owner of lands provided in this subsection does not apply to the renewal of an existing lease where the lessee is in compliance with all the terms and conditions of the lease.

(2) Submersible lands owned by the State of Oregon that are determined by the State Land Board to be available for sale may be sold only to the highest bidder, after being advertised not less than once each week for two successive weeks in one or more newspapers of general circulation in the county in which the lands are situated. However:

(a) No such lands shall be sold for less than for a fair appraised value as determined by an appraiser appointed by the department.

(b) All sales of such submersible lands shall be approved by the State Land Board.

(c) Any owner of lands abutting or fronting on such submersible lands shall have the preference right to purchase such lands for the fair appraised value provided that the sale of such lands be approved by the State Land Board.

(3)(a) The department may grant, to any person holding a permit from the Water Resources Director authorizing the impoundment for beneficial use of the waters of any lake or stream, easements over submerged and submersible lands for flowage and storage of waters, and for the construction, maintenance and operation of any structures or facilities necessary for the use of the water under the terms of the permit upon payment of just compensation by the grantee.

(b) In addition to the authority of the department under paragraph (a) of this subsection to grant easements over submerged and submersible lands, a person holding a water right permit, water right certificate, proposed or final order approving a water right permit or court decree evidencing a water right may occupy state-owned submerged and submersible lands for the construction, maintenance and operation of any structure or facility necessary for the use of water if the proposed use under the permit, certificate, order or decree is for irrigation or domestic use. The department may not charge for the occupation of state-owned submerged and submersible lands pursuant to this paragraph, nor may the department require that a person obtain written documentation to substantiate the permission granted under this paragraph. Upon request by the Department of State Lands, the Water Resources Department shall provide information to the Department of State Lands regarding any change of use of

the water right. A person may continue to occupy state-owned submerged and submersible lands pursuant to this paragraph until:

(A) The water right permit is canceled pursuant to ORS 537.260;

(B) The water right is canceled pursuant to ORS 540.641; or

(C) The water is no longer being applied to irrigation or domestic use.

(c) An easement or the permission granted under this subsection may not be construed to be a sale or lease of the submerged and submersible lands within the meaning of subsections (1) and (2) of this section.

(d) A person granted an easement or permission to use or occupy state-owned submerged and submersible lands under this subsection shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

(4) All easements or the permission granted pursuant to subsection (3) of this section shall be subject to conditions that will ensure the safety of the public and the preservation of economic, scenic and recreational values and to lawful rules promulgated by state agencies affected by the activities of the grantee.

(5) Nothing in this section affects the provisions of ORS 509.505, 509.510, 511.606 to 511.806, 622.270 or 622.320 to 622.350.

(6) The Department of State Lands shall designate the minimum acceptable amount for the lease of any submerged and submersible lands otherwise authorized by law, other than any lease offered or issued by the department under ORS 274.705 to 274.860.

(7) For the purpose of sale, the value of state-owned submerged and submersible lands shall be determined by an appraiser appointed by the department.

(8) The act of any person entering into an agreement with the department under this section or ORS 274.530 for the lease of submerged and submersible lands shall not be considered a waiver by such person of any claim of ownership in the submerged and submersible lands described in the agreement.

274.043 Exemptions from leasing requirements; rules; registration; use without charge; use with charge; indemnification. (1) A privately owned float or dock occupying an area of 200 square feet or less is exempt from the leasing requirements of ORS 274.040 if:

(a) The structure belongs to the immediately adjacent riparian landowner; and

(b) The float or dock is uncovered, unenclosed and open on all sides.

(2) A privately owned float or dock constructed prior to September 29, 1991, and exempted under ORS 274.042 (1989 Edition) is exempt from the provisions of ORS 274.040.

(3) Any float or dock described in subsections (1) and (2) of this section shall be registered with the Department of State Lands.

(4) The department may authorize the following uses of state-owned submerged and submersible lands without charge:

(a) Structures on state-owned submerged and submersible lands maintained by a drainage district organized under the provisions of ORS chapter 547.

(b) Riprap, as defined in ORS 196.815, used to stabilize the banks along state-owned submerged and submersible lands.

(c) Rights of way established prior to November 1, 1981, for any county road over state-owned submerged and submersible lands, and rights of way established prior to November 1, 1981, for any city street over state-owned submerged and submersible lands.

(d) Voluntary habitat restoration work on state-owned submerged and submersible lands. For purposes of this paragraph, voluntary habitat restoration work does not include:

(A) Activities undertaken to satisfy any actual or potential legal obligation, or for which the entity completing the habitat restoration work receives compensation of any kind.

(B) Habitat restoration work completed by an entity to satisfy an environmental mitigation obligation, or to generate, sell or obtain credit as an offset against actual or potential natural resource damages liability.

(5) The department is entitled to charge, in accordance with rules adopted by the department, for the use of state-owned submerged and submersible lands for any environmental mitigation credit, or settlement of or credit obtained as an offset against natural resource damages liability, acquired by any party for habitat restoration work on state-owned land.

(6) The uses described in subsections (4) and (5) of this section must be registered in accordance with rules adopted by the department. Any person issued a registration to use or occupy state-owned submerged and submersible lands under subsections (4) and (5) of this section shall indemnify and hold harmless the state from all liability and claims arising from or attributable to the use or occupation.

(7) The department by rule may authorize the use of specific state-owned submerged or submersible lands without charge if the department determines that the use is minimally intrusive to any public rights of navigation, fishery or recreation.

274.060 Regulation of harbor improvements; oyster beds; public easement in submerged and submersible lands. (1) Nothing in ORS 274.040 prevents the Legislative Assembly from providing for regulation of the building of wharves or other improvements in any bay, harbor or inlet of this state, subject to ORS 780.060, or grants the exclusive right to any person to use the natural oyster beds of this state.

(2) The grantee of any submerged or submersible lands under ORS 274.040 shall hold the same subject to the easement of the public, under the provisions and restrictions of law, to enter thereon and remove oysters and other shellfish therefrom.

274.400 Definition for ORS 274.400 to 274.412. As used in ORS 274.400 to 274.412, "board" means the State Land Board.

274.402 Exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterway. (1) The State Land Board has exclusive jurisdiction to assert title to submerged or submersible lands in navigable waterways on behalf of the State of Oregon.

(2) The board shall not in any manner assert title to submerged or submersible lands in any waterway in this state unless either:

(a) A court having jurisdiction to determine title to real property in Oregon has determined that the waterway or part of the waterway is navigable and that determination is final; or

(b) The board has made a declaration under ORS 274.406 that contemplates the assertion of such title.

274.425 Definition for ORS 274.430 to 274.520. As used in ORS 274.430 to 274.520, “meandered lake” means a lake wholly or partly within this state that has been meandered by the United States surveys.

274.430 State ownership of meandered lakes; status as navigable and public waters. (1) All meandered lakes are declared to be navigable and public waters. The waters thereof are declared to be of public character. The title to the submersible and submerged lands of such meandered lakes, which are not included in the valid terms of a grant or conveyance from the State of Oregon, is vested in the State of Oregon.

(2) ORS 274.430 to 274.450 shall not apply to any nonnavigable lakes lying within the boundaries of any duly organized and incorporated drainage district which was in existence on January 1, 1921.

(3) Nothing in this section impairs the title of any upland or riparian owner to or any vested rights in land which was added prior to May 25, 1921, by natural accretion or reliction to the lands of such upland owner.

274.440 Acquisition of future rights to meandered lakes denied; extension of riparian ownership; lands overflowed by high water. (1) There are no vested rights in or to any future accretion or reliction to the lands of any upland or riparian owner on any meandered lake. No person shall acquire any right, title or interest in or to the submerged or submersible lands of any such lakes, or any part thereof, by reliction, accretion or otherwise, or by reason of the lowering or drainage of the waters of such lakes, except as provided by statute.

(2) Upon drainage of meandered lakes, the title of owners of land riparian to such lakes drained under any law shall extend to so much of the submersible and submerged lands reclaimed by such drainage as is required to fill out the least fractional subdivision or subdivisions of any section owned by such riparian owners and which is rendered fractional by the meander line of such lake; and the title of such owners shall be so limited when the receding lake waters, because of such drainage, uncover the submersible and submerged lands. Where by reason of natural accretion or reliction such fractional subdivision or subdivisions of such upland owners were filled out thereby prior to May 25, 1921, such upland owners shall hold to the line of such lands as extended by the natural accretion or reliction.

(3) Submersible and submerged lands covered at ordinary high water at ordinarily recurring seasons by the waters of meandered lakes, or from which the waters of any such lakes have not at ordinarily high water permanently receded, are not considered to be accreted or relicted lands, but the same and all accretions and relicctions occurring or formed over any of the lands of the State of Oregon, as

provided by ORS 274.430, are the property of the State of Oregon, and may be by it leased, sold or managed in the manner provided by law.

274.525 City use of stream bed material. (1) Any city of the State of Oregon bordering on a navigable stream may dredge out and use material from submersible and submerged lands of the stream, owned by the State of Oregon and in front of such city, for the purpose of filling in or reclaiming the submersible lands within such city, under the rules of the Department of State Lands. The consent of the appropriate agency of the United States Government shall be first obtained by such city.

(2) Any contractor who has entered into a contract with any such city to fill in or reclaim any of its submersible lands may dredge and use such material in the same manner as may be done by such city.

274.530 Lease or license of stream beds for removal of material; rules for measurement of volume removed. (1) The Department of State Lands may, after notice of competitive bidding, and following such competitive bidding, lease or license submersible and submerged lands of navigable streams owned by the State of Oregon for the purpose of removing material therefrom. Competitive bid requirements may be waived for leases of less than one year's duration. No lease shall be made for a lump sum but only on a basis of the price per cubic yard or ton for the material removed.

(2) The department may prescribe by rule the manner in which the volume in cubic yards or the weight in tons for the material removed shall be determined.

(3) Notwithstanding subsections (1) and (2) of this section, the department may enter into a license for the removal of material from submersible and submerged lands of navigable streams owned by the State of Oregon based on a competitive market rate that reflects fair market value.

(4) The department shall, prior to any competitive bidding notice, establish prebid qualifications that include but are not limited to the following:

(a) The minimum yardage amount of material that must be removed for each year for which the lease is valid.

(b) Evidence that all bidders have an established market, as provided by each bidder.

274.550 Removal of material without payment of royalties; eligible material and uses. (1) A person may remove material from submersible and submerged lands owned by the State of Oregon without payment of royalties to the Department of State Lands if the material is:

(a) Removed for channel or harbor improvement or flood control;

(b) Used for filling, diking or reclaiming land owned by the state or any political subdivision as defined in ORS 271.005 and located not more than two miles from the bank of the stream;

(c) Used for the creation, maintenance or enhancement of fish or wildlife habitat;

(d) Used for the maintenance of public beaches; or

(e) Contaminated with hazardous material, as defined in ORS 466.605, provided that the person gives the department written notice of the removal at least 30 days prior to disposal.

(2) A person does not have to pay royalties to the state for the following uses of material, if the person provides at least 30 days' written notice to the department of the intended use:

(a) The filling of any property up to an elevation of one foot above the line of ordinary high water of a waterway by a state agency or political subdivision, as defined in ORS 271.005.

(b) The material is used solely for a public purpose by a political subdivision, as defined in ORS 271.005.

(3) A person may not remove any material from the place it was first deposited or use the material as an article of commerce without providing, prior to the removal of the material, written notification to the department and payment of any royalties for the material as determined by the department.

(4) In addition to the purposes enumerated in subsection (1) of this section, any person may take material for the exclusive use of the person to the extent of not more than 50 cubic yards or the equivalent weight in tons in any one year. However, before taking the material, the person shall first notify the department.

(5) Upon the removal of material from submersible or submerged lands not exempt from the payment of royalties, royalties in an amount established by the department must be paid to the department. (6) For purposes of this section:

(a) "Article of commerce" means any material, other than material used for upland disposal or contaminated material put to beneficial use, that is bought, sold or exchanged in any manner for goods or services and that otherwise would have to be acquired from alternative sources.

(b) "Reclaiming land" means raising the elevation of a portion of land within a 100-year floodplain to not more than one foot of elevation higher than the highest elevation of the 100-year floodplain, or protecting land otherwise in the 100-year floodplain by the construction of dikes or other flood control improvements.

274.560 Lease terms; bond or security; prohibited lease or purchase option; monthly reports and payments; rules.

(1) The Department of State Lands may enter into contract of lease for purposes of ORS 274.525 to 274.590 with such stipulations protecting the interest of the state as the department may require, and may require a bond with a surety company authorized to transact a surety business in this state, as surety, or other form of security, to be given by the lessee for performance of such stipulations, and providing for forfeiture for nonpayment or failure to operate under the contract. No contract shall be entered into giving any person an option of leasing or purchasing the property of the State of Oregon. The lessee in all such contracts shall report monthly to the department the amount of material taken under the contract and pay to the department the amount of royalty thereon provided in the contract.

(2) The department shall adopt rules to establish criteria to determine when security is required.

274.705 Definitions for ORS 274.705 to

274.860. As used in ORS 274.705 to 274.860, unless the context requires otherwise:

(1) "Filled lands" includes submerged and submersible lands reclaimed artificially through raising such lands above the highest probable elevation of the tides to form dry land, by placement of a fill or deposit of earth, rock, sand or other solid imperishable material.

(2) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subsection (4) of this section, including condensate originally in the gaseous phase in the reservoir.

(3) "Lease" means an oil, gas and sulfur lease issued pursuant to ORS 274.705 to 274.860.

(4) "Oil" means crude petroleum oil and all other hydrocarbons, regardless of gravity, which are produced in liquid form by ordinary production methods, but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.

(5) "Person," in addition to the meanings defined by ORS 174.100, includes quasi-public corporations, political subdivisions and governmental agencies and instrumentalities.

(6) "Structure" means any construction works, including but not limited to derricks, pipelines, lines for the transmission and distribution of electricity, telephone lines, wharves, piers, slips, warehouses and units designed to act as groins, jetties, seawalls, breakwaters or bulkheads.

(7) "Tidal submerged lands" means lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of this state as heretofore or hereafter established.

274.710 Jurisdiction of department over tidal submerged lands; easements; leases for oil, gas and sulfur. (1) The Department of State Lands has exclusive jurisdiction over all ungranted tidal submerged lands owned by this state, whether within or beyond the boundaries of this state, heretofore or hereafter acquired by this state:

(a) By quitclaim, cession, grant, contract or otherwise from the United States or any agent thereof; or

(b) By any other means.

(2) All jurisdiction and authority remaining in the state over tidal submerged lands as to which grants have been or may be made is vested in the department.

(3) Notwithstanding ORS 273.551, the department shall administer and control all tidal submerged lands described in subsections (1) and (2) of this section under its jurisdiction, and may lease such lands and submersible lands and dispose of oil, gas and sulfur under such lands and submersible lands in the manner prescribed by ORS 274.705 to 274.860. However, submerged and submersible lands lying more than 10 miles easterly of the 124th West Meridian shall be subject to leasing for oil, gas and sulfur under ORS 273.551, rather than under ORS 274.705 to 274.860.

(4) Notwithstanding any other provision of ORS 274.705 to 274.860, the department may not permit any interference other than temporary interference with the surface of the ocean shore, as defined in ORS 390.615. The department may, however:

(a) Grant easements underlying that part of the surface of the ocean shore owned by the state at such times and at such places as the department finds necessary to permit the extraction and transportation of oil, gas or sulfur from state, federal or private lands; and

(b) Issue oil and gas leases underlying the ocean shore under the same terms and conditions as provided in ORS 274.705 to 274.860.

274.715 Sulfur leases. ORS 274.705 to 274.860 shall apply equally to the exploration and leasing of lands subject thereto for the production of sulfur.

274.725 Scope of leases and permits; persons ineligible.

(1) Any interests in lands, or lands in fee simple, acquired by the Department of State Lands by purchase, donation, lease condemnation or otherwise, may be made available to any lessee of the state for the purposes contained in ORS 274.705 to 274.860 and upon such terms as may be determined by the department.

(2) No permit or lease shall be granted to any person then in violation of any laws or rules applicable to ORS 274.705 to 274.860.

274.735 Application for survey permit; effect of permit; rules.

(1) The Department of State Lands upon application by any person may permit geological, geophysical and seismic surveys, including the taking of cores and other samples for purposes related to exploration for oil, gas and sulfur on lands subject to ORS 274.705 to 274.860. However:

(a) Such permits shall be nonexclusive and shall not give any preferential rights to any oil, gas and sulfur lease.

(b) The Department of State Lands in consultation with the State Department of Geology and Mineral Industries may grant permission for the taking of cores and other samples.

(b) After consultation with the State Fish and Wildlife Commission, the Department of State Lands shall include such rules and regulations in the permit as are necessary to protect the fish and wildlife resources.

(2) Each application under this section must contain at least the following information:

(a) A description of the areas where the applicant proposes to conduct a survey.

(b) The name and address of the applicant.

(c) Such other relevant information as the Department of State Lands requires.

274.740 Issuance of survey permit; renewal; reports.

(1) Upon compliance of an applicant with ORS 274.735, the Department of State Lands may issue to the applicant a permit to conduct a geological, geophysical and seismic survey, including the taking of cores and other samples, in areas of the lands subject to ORS 274.705 to 274.860 that are described on the permit. The department

may prohibit such surveys on any area if, in consultation with the State Department of Geology and Mineral Industries, it determines that a lease, if applied for, should not be granted as to such areas. The Department of State Lands shall include in a permit conditions and payments proper to safeguard the interests of the state.

(2) Permits issued under this section may not exceed two years, and may be renewed for like periods upon application to the department and upon showing due compliance with applicable laws and regulations.

(3) The department shall require the permittee to provide the State Fish and Wildlife Commission with complete information with respect to the area or areas of proposed operations, type of exploration and a schedule showing the period or periods during which such explorations will be conducted. Such information shall be treated as confidential unless released by the permittee.

274.745 Drilling logs and records.

(1) Records of drilling conducted by a permittee under ORS 274.740 shall be filed by the permittee with the State Department of Geology and Mineral Industries as prescribed by ORS 520.095.

(2) The Department of State Lands may require, as a condition to the issuance of any lease under ORS 274.705 to 274.860, that the lessee make available to the Department of State Lands, or the State Department of Geology and Mineral Industries, upon request, all factual and physical exploration results, logs and records resulting from the operations under the lease.

274.760 Considerations involved in granting lease or easement. After the public hearing the Department of State Lands shall determine whether the granting of an easement or an invitation for bidding to lease the area under consideration would be in the public interest. In such determination the department shall consider whether an easement or a lease or leases of the area under consideration would:

(1) Be detrimental to the health, safety, or welfare of persons residing in, owning real property, or working in the neighborhood of such areas;

(2) Interfere with the residential or recreation areas to an extent that would render such areas unfit for recreational or residential uses or unfit for park purposes;

(3) Destroy, impair or interfere with the aesthetic and scenic values of the Oregon coast, or other affected area;

(4) Create any air, water or other pollution;

(5) Substantially endanger marine life or wildlife;

(6) Substantially interfere with commerce or navigation; and

(7) Protect state lands from drainage of oil and gas.

274.770 Prohibited drilling requirements. In leasing lands subject to ORS 274.705 to 274.860, the Department of State Lands may not discriminate between bidders by requiring drilling from:

(1) Upland or littoral drill sites;

(2) Sites on filled land, whether contiguous or noncontiguous to the littoral lands or uplands; or

(3) Any pier, platform or other fixed or floating structure in, on or over lands subject to ORS 274.705 to 274.860, with respect to which this state or any other owner thereof has consented to use.

274.790 Royalties.

(1) The Department of State Lands shall specify in the notice described by ORS 274.765 and in the lease the rate of royalty paid under such lease which royalty shall not be less than 12-1/2 percent of gross production, or the value thereof, produced and saved from the leased lands and not used by lessee for operations thereon or for injection therein. Such royalty shall, at the department's option, be paid in kind or in value, and be computed after an allowance for the actual cost of oil treatment or dehydration of not to exceed five cents per barrel of royalty oil so treated or dehydrated.

(2) The royalty for sulfur produced under ORS 274.705 to 274.860 shall not be less than \$1 per long ton.

(3) The State of Oregon shall have a lien upon all production for unpaid royalties.

274.805 Drill sites. Unless otherwise determined by the Department of State Lands, each well drilled pursuant to the terms of the lease may be drilled or slant drilled to and into the subsurface of the lands covered by the lease from upland or littoral drill sites owned or controlled by the state or owned by or available to the lessee, or from drill sites located upon any filled lands heretofore or hereafter filled, whether contiguous or noncontiguous to the littoral lands or uplands, or from any pier heretofore or hereafter constructed owned by or available to the lessee and available for such purpose, or from platforms or other fixed or floating structures in, on or over the lands covered by the lease or otherwise available to the lessee.

274.810 Commencement of drilling; operational requirements. Subject to the lessee's right to surrender, the lessee shall commence operations for the drilling of a well within five years from date of the lease and commence production within three years of discovery of oil, gas or sulfur in paying quantities, unless the Department of State Lands shall have, for cause, granted an extension of time for such act. In addition, the lease shall have such exploratory, drilling and producing requirements as the Department of State Lands in consultation with the Department of Geology and Mineral Industries deems necessary to encourage the exercise of due diligence on the part of lessee.

274.820 Water contamination or pollution.

(1) Avoidable pollution or avoidable contamination of the ocean and of the waters covering lands subject to ORS 274.705 to 274.860, avoidable pollution or avoidable contamination of the beaches or land underlying the ocean or waters covering lands subject to ORS 274.705 to 274.860, or any substantial impairment of and interference with the enjoyment and use thereof, including but not limited to bathing, boating, fishing, fish and wildlife production, and navigation, shall be prohibited, and the lessee shall exercise a high degree of care to provide that no oil, tar, residuary product of oil or any refuse of any kind from any well or works shall be permitted to be deposited on or pass into the waters of the ocean, any bay or inlet thereof, or any other waters covering lands subject to ORS 274.705 to 274.860. However, this section does not apply to the deposit on or passage into such waters of water not containing any hydrocarbons or vegetable or animal matter.

(2) For the purposes of this section, “avoidable pollution” or “avoidable contamination” means pollution or contamination arising from:

- (a) The acts or omissions of the lessee or its officers, employees or agents; or
- (b) Events that could have been prevented by the lessee or its officers, employees or agents through the exercise of a high degree of care.

274.825 Nonconflicting use of leased lands. The State of Oregon reserves the right to permit reasonable nonconflicting uses, including seismic surveys but excluding core hole drilling, on lands under lease as long as:

- (1) Such uses do not unreasonably impair or interfere with operations of the lessee; and
- (2) Requirement is made that the permittee indemnify the lessee against any damage caused by such use.

274.830 Protecting lands from drainage. The lessee shall at all times proceed with due diligence to protect the leasehold from drainage by wells on lands not owned by the state.

274.835 Conformance to laws and regulations; periodic negotiations. It shall be a continuing condition of such lease that the lessee shall conform to all applicable laws of the State of Oregon and all duly promulgated rules and regulations pursuant thereto in effect at the date of the invitation for bids in pursuance of which the lease was awarded. Periodic mutual negotiations between lessee and lessor may be carried out to make conditions, rules and regulations current as warranted by changes in environment or operational methods.

274.840 Continuation of lease after cessation of production. In the event production on the leasehold shall cease at any time or from time to time, before or after the expiration of the primary term of the lease, the lease shall nevertheless continue in full force and effect if the lessee shall, within six months after the cessation of production or within such longer period of time as the Department of State Lands may authorize, commence and thereafter prosecute with reasonable diligence drilling, deepening, repairing, redrilling or other operations for the restoration of production of oil, gas or sulfur from the leased lands.

274.850 Cancellation of lease; partial retention of leasehold; removal of equipment. The Department of State Lands shall reserve and may exercise the authority to cancel any lease upon which oil, gas or sulfur has not been discovered in paying quantities, upon failure of the lessee after 30 days’ written notice and demand for performance to exercise due diligence and care in the prosecution of the prospecting or development work in accordance with the terms of the lease. After discovery of oil, gas or sulfur in paying quantities on lands subject to any lease, such lease may be forfeited and canceled only by appropriate judicial proceedings upon failure of the lessee after 90 days’ written notice and demand for performance to comply with any of the provisions of the lease or of laws or regulations applicable thereto and in force at the date of the invitation for bids in pursuance of which the lease was awarded; provided, however, that in the event of any such cancellation, the lessee shall have the right to retain under such lease any and all drilling or producing wells as to which no default exists, together with a parcel of land surrounding each such well and such rights of way through the leased lands as may

be reasonably necessary to enable such lessee to drill and operate such retained well or wells. In the event of the cancellation of any lease, the lessee shall have a reasonable time within which to remove all property, equipment and facilities owned or used by the lessee in connection with operations under the lease.

274.855 Restoration of leasehold to original condition. Upon any partial or total termination, surrender or forfeiture of its permit or lease, the Department of State Lands may require that the permittee or lessee, within a reasonable time, restore that portion of the premises that is visible at extreme low tide to substantially its original condition.

274.860 Protection and location of filled lands. Under a lease entered into by the Department of State Lands pursuant to ORS 274.705 to 274.860, the fill constituting filled lands may be retained in place or protected by bulkheads, seawalls, revetments or similar enclosures and may be placed at any location approved by the Department of State Lands, in consultation with the Department of Geology and Mineral Industries, the State Fish and Wildlife Commission and other interested agencies, boards and commissions.

274.867 (currently numbered 274.879) Wave energy; financial assurance; plan for decommissioning; rules.

(1) In accordance with applicable provisions of ORS chapter 183, the Director of the Department of State Lands may adopt rules for the authorization of wave energy facilities or devices.

(2) An owner or operator of a facility or device sited within Oregon's territorial sea, as defined in ORS 196.405, that converts the kinetic energy of waves into electricity shall maintain cost estimates of the amount of financial assurance that is necessary, and demonstrate evidence of financial assurance, for:

(a) The costs of closure and post-closure maintenance of the facility or device, excluding the costs of removing anchors, cables or any other equipment that is not required to be removed from beneath the submerged lands in Oregon's territorial sea under subsection (9) of this section; and

(b) Any corrective action required to be taken at the site of the facility or device. (3) The cost estimates required by subsection (2) of this section must be prepared by a person qualified by experience and knowledge to prepare such cost estimates. (4) The financial assurance requirements established by subsection (2) of this section may be satisfied by any one or a combination of the following:

(a) Insurance;

(b) Establishment of a trust fund;

(c) A surety bond; or

(d) A letter of credit.

(5) In adopting rules to implement the provisions of this section, the director may specify policy or other contractual terms, conditions or defenses necessary to establish evidence of financial assurance.

(6)(a) Prior to the time that operation of a facility or device described in subsection (2) of this section is authorized, the owner or operator of the facility or device must provide the director with a plan for decommissioning the facility or device after the permanent cessation of use of that facility or device for the conversion of the kinetic energy of waves into electricity. The plan for decommissioning the facility or device must include, but need not be limited to:

(A) Information regarding the anticipated useful life of the facility or device;

(B) The cost estimates required by subsection(2) of this section;

(C) The evidence of financial assurance required by subsections (2) and (4) of this section;

(D) A description of the method and schedule for updating the costs of decommissioning the facility or device;

(E) A description of the anticipated methods that will be used to close the facility or device, engage in post-closure maintenance and take any corrective action required at the site of the facility or device; and

(F) Any other information required by the director by rule. (b) By January 31 of each subsequent calendar year, the owner or operator of the facility or device must update the information required under this subsection with the Department of State Lands.

(7) An owner or operator shall provide evidence of financial assurance before beginning corrective action at the site of a facility or device described in subsection (2) of this section.

(8) An owner or operator shall establish provisions satisfactory to the director for disposing of any excess moneys received or interest earned on moneys received for financial assurance.

(9)(a) An owner or operator of a facility or device described in subsection (2) of this section must initiate removal of all equipment related to that facility or device, excluding anchors, cables and any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea, within 12 months after the permanent cessation of use of that facility or device for the conversion of the kinetic energy of waves into electricity.

(b) Notwithstanding paragraph (a) of this subsection, an owner or operator of a facility or device described in subsection (2) of this section may be required to remove anchors, cables or any other equipment that lies at least one meter beneath submerged lands in Oregon's territorial sea if removal is deemed necessary by the director, in consultation with the owner or operator, and is permitted by the applicable requirements of federal regulatory agencies.

(c) All equipment required to be removed under this subsection must be removed within two years after the permanent cessation of use of the facility or device for the conversion of the kinetic energy of waves into electricity.

(d) The director may extend the deadlines under this subsection if the owner or operator of the facility or device can show good cause and has undertaken a good faith effort to remove the equipment as required by this subsection.

274.885 Lease of kelp fields. The Department of State Lands may lease submerged lands owned by the State of Oregon for the purpose of harvesting kelp and other seaweed after consultation with the State Fish and Wildlife Commission.

274.890 Time allowed lessee for survey and erection of plant; filing copy of survey with department. The first lease issued to an applicant under ORS 274.885 to 274.895 with respect to any submerged lands may allow the applicant six months in which to make a practical survey of the field which the applicant has leased, and another 12 months in which to erect a plant and commence operation. The lessee shall, within six months of the time of obtaining the lease, make or cause to be made a practical survey showing the amount and condition of kelp within the territory described in the lease, and shall file a copy of the survey with the Director of the Department of State Lands within six months. Upon the failure of the lessee so to do, the lease shall be canceled by the Department of State Lands.

274.895 Removing kelp without lease. Except in the case of a person harvesting or removing less than 2,000 pounds of wet kelp each year for the purposes of human consumption for the person's personal use, a person may not harvest or remove any kelp or other seaweed from any submerged lands owned by the State of Oregon unless the person has first obtained a lease from the Department of State Lands.

274.905 Definitions for ORS 274.905 to 274.940. As used in ORS 274.905 to 274.940, unless the context requires otherwise:

(1) "New lands" means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian lands on the same side of the body of water, which have been created upon submersible or submerged lands by artificial fill or deposit. "New lands" does not include bridges, wharves and similar structures constructed upon submersible or submerged lands by other than artificial fill or deposit.

(2) "Public body" means the State of Oregon or any port organized under the laws of this state or any dock commission of any city of this state.

274.920 Creation of new lands upon submersible or submerged lands. No one other than the United States, while engaged in the promotion of navigation, shall artificially create new lands by fill or deposit upon submersible or submerged lands without the approval of the owner of such lands and the owner of the adjoining or opposite upland on the same side of the body of water.

274.940 Reservation of new lands. Notwithstanding ORS 274.905, 274.915 to 274.925, 274.929, 274.932 and 274.937, the Department of State Lands may reserve new lands from sale, transfer or lease where upon notice and hearing it determines that the public interest requires such lands to be preserved for recreation, conservation of fish and wildlife or the development of navigation facilities, but in case of such reservation the adjoining or opposite upland or riparian owner shall be allowed reasonable access across such reserved new lands to navigable water.