

(4) 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 (3) of this section.

(5) Annually on the anniversary date of the permit, 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 (3) of this section, except that the applicant shall pay only the base fee. 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 any extension 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.

(6) Fees received under this section shall be credited to the Common School Fund for use by the division in administration of ORS 196.600 to 196.905, 196.990 and 541.990 and as otherwise required by law. [Formerly 541.620 and then 196.685]

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

(2) Notwithstanding the provision of subsection (1) of this section, the Director of the Division of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife. [Formerly 541.622 and then 196.690]

196.825 Conditions of permit; consultation with other agencies; hearing; appeal. (1) The Director of the Division of State Lands shall issue a permit to remove material from the beds or banks of any waters of this state applied for under ORS 196.815 if the director determines that the removal described in the application will not be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 196.805.

(2) The director shall issue a permit applied for under ORS 196.815 for filling waters of this state if the director determines that the proposed fill would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(3) In determining whether or not a permit shall be issued, the director shall consider all of the following:

(a) The public need for the proposed fill and the social, economic or other public benefits likely to result from the proposed fill. When the applicant for a fill 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 is not accomplished.

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

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

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

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

(g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill is to take place.

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

(4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent use only if the fill 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, 196.830 and subsections (1) and (2) of this section. In formulating such conditions the director may consult with the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the State Soil and Water Conservation Commission, the Director of Agriculture, the State Parks and Recreation Director, the State Marine Director, the Director of Transportation, the Director of the Economic Development Department, the Wa-

Dam Safety File