

# Senate Bill 847

Sponsored by Senators BAERTSCHIGER JR, JOHNSON; Senators HANSELL, OLSEN, THOMSEN, WHITSETT, Representative WITT

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Exempts prior converted croplands from definition of "waters of this state" for purposes of removal fill program. Directs that certification by Natural Resources Conservation Service that land is prior converted cropland is conclusive and binding upon Department of State Lands for purposes of completing wetlands delineation determination.

## A BILL FOR AN ACT

1  
2 Relating to wetlands; amending ORS 196.800, 196.818 and 196.905.

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

4 **SECTION 1.** ORS 196.800 is amended to read:

5 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

6 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug  
7 and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of  
8 material is removed in constructing the new channel or if it would require more than 50 cubic yards  
9 of material to completely fill the old channel.

10 (2) "Estuary" means:

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

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

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

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

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

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

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

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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 of this state.

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

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

5 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-  
6 tion;

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

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

10 (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute func-  
11 tions and values for the waters of this state.

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

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

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

18 (13) "Removal" means:

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

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

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

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

31 **(b) "Waters of this state" does not mean lands certified as prior converted cropland by**  
32 **the Natural Resources Conservation Service of the United States Department of Agriculture,**  
33 **or its successor agency.**

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

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

42 **SECTION 2.** ORS 196.800, as amended by section 1, chapter 516, Oregon Laws 2001, section 8,  
43 chapter 253, Oregon Laws 2003, section 15, chapter 738, Oregon Laws 2003, section 3, chapter 849,  
44 Oregon Laws 2007, section 19, chapter 343, Oregon Laws 2009, and section 2, chapter 198, Oregon  
45 Laws 2013, is amended to read:

1 196.800. As used in ORS 196.600 to 196.905, unless the context requires otherwise:

2 (1) "Channel relocation" means a change in location of a channel in which a new channel is dug  
3 and the flow is diverted from the old channel into the new channel.

4 (2) "Estuary" means:

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

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

12 (3) "Fill" means the deposit by artificial means of material at one location in any waters of this  
13 state.

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

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

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

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

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

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

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

29 (b) Minimizing the effect by limiting the degree or magnitude of the action and its implementa-  
30 tion;

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

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

34 (e) Compensating for the effect by creating, restoring, enhancing or preserving substitute func-  
35 tions and values for the waters of this state.

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

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

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

42 (13) "Removal" means:

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

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

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

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

9 **(b) "Waters of this state" does not mean lands certified as prior converted cropland by**  
10 **the Natural Resources Conservation Service of the United States Department of Agriculture,**  
11 **or its successor agency.**

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

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

20 **SECTION 3.** ORS 196.818 is amended to read:

21 196.818. (1) A person or governmental body requesting a permit under ORS 196.810 shall submit  
22 a wetland delineation report to the Department of State Lands for a determination of:

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

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

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

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

29 (3) The department shall:

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

32 (b) Give priority to the review of a wetland delineation report that is submitted with or in ad-  
33 vance of an application for a permit required under ORS 196.810 if the permit would authorize ac-  
34 tivities on the land parcel that is the subject of the wetland delineation report.

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

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

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

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

1 years.

2 **(6) Certification by the Natural Resources Conservation Service of the United States**  
3 **Department of Agriculture, or its successor agency, that land subject to the wetland deline-**  
4 **ation report is prior converted cropland is conclusive and binding upon the Department of**  
5 **State Lands for purposes of making the determination required under subsection (1) of this**  
6 **section.**

7 [(6)] **(7)** The Department of **State Lands** may waive or suspend the requirements of this section  
8 for the purpose of issuing an emergency authorization under ORS 196.810.

9 [(7)] **(8)** The fee described in subsection (2) of this section is in addition to any permit applica-  
10 tion fee required under ORS 196.815. A person or governmental body submitting a revised report to  
11 replace a previously rejected report must pay an additional nonrefundable fee of \$100.

12 [(8)] **(9)** Delineations made pursuant to this section, and determinations made under this section,  
13 must comport with:

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

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

19 [(9)] **(10)** The director shall issue an order revising the fee specified in subsection (2) of this  
20 section on January 1 of each year, based on changes in the Portland-Salem, OR-WA Consumer Price  
21 Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the  
22 United States Department of Labor. The director shall round the amount to the nearest dollar. The  
23 revised fee shall take effect January 1 and apply for that calendar year.

24 [(10)] **(11)** Fees received under this section shall be credited to the Common School Fund for use  
25 by the department in administration of ORS 196.600 to 196.905.

26 **SECTION 4.** ORS 196.905 is amended to read:

27 196.905. (1) Nothing in ORS 196.600 to 196.905 applies to filling the beds of the waters of this  
28 state for the purpose of constructing, operating and maintaining dams or other diversions for which  
29 permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which  
30 preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.610.

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

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

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

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

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

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

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

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

1 use pursuant to ORS 215.203.

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

8 [(7)] (6) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the rees-  
9 tablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C.  
10 3831 as in effect on January 1, 2010.

11 [(8)] (7) The exemptions in subsections (3) to [(7)] (6) of this section do not apply to any fill or  
12 removal that involves changing an area of wetlands to a nonfarm use.

13 [(9)] (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the main-  
14 tenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drain-  
15 age ditches, irrigation ditches and tile drain systems, provided that:

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

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

20 [(10)] (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for mainte-  
21 nance, including emergency reconstruction of recently damaged parts, of currently serviceable roads  
22 or transportation structures such as groins and riprap protecting roads, causeways and bridge  
23 abutments or approaches.

24 [(11)] (10) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the  
25 beds or banks of any waters of this state conducted as part of a surface mining operation, that is  
26 the subject of a memorandum of agreement between the Department of State Lands and the State  
27 Department of Geology and Mineral Industries in which the State Department of Geology and Min-  
28 eral Industries is assigned sole responsibility for permitting as described in ORS 517.797.

29 [(12)] (11) The Department of State Lands may adopt a rule that exempts from the requirement  
30 to obtain a permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have  
31 only minimal adverse impact on waters of this state.

32 [(13)] (12) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change  
33 in the point of diversion to withdraw surface water for beneficial use if the change in the point of  
34 diversion is necessitated by a change in the location of the surface water and authorized by the  
35 Water Resources Department.

36 [(14)] (13) As used in this section:

37 (a) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,  
38 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
39 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
40 are managed for commercial agricultural purposes.

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

43 **SECTION 5.** ORS 196.905, as amended by section 6, chapter 516, Oregon Laws 2001, section 13,  
44 chapter 253, Oregon Laws 2003, section 4, chapter 342, Oregon Laws 2009, section 2, chapter 16,  
45 Oregon Laws 2011, and section 4, chapter 406, Oregon Laws 2011, is amended to read:

1 196.905. (1) Notwithstanding the exemptions in subsections (3) to [(8)] (7) of this section, a permit  
2 under ORS 196.600 to 196.905 is required for any fill or removal of material in or from the waters  
3 of this state when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31 *[(6)] (5) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the rees-*  
32 *tablishment of crops under federal conservation reserve program provisions set forth in 16 U.S.C.*  
33 *3831 as in effect on January 1, 2010.*

34 *[(7)] (6) The exemptions in subsections (3) to [(6)] (5) of this section do not apply to any fill or*  
35 *removal that involves changing an area of wetlands or converted wetlands to a nonfarm use.*

36 *[(8)] (7) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the main-*  
37 *tenance or reconstruction of structures such as dikes, dams, levees, groins, riprap, tidegates, drain-*  
38 *age ditches, irrigation ditches and tile drain systems, provided that:*

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

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

43 *[(9)] (8) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for temporary*  
44 *dams constructed for crop or pasture irrigation purposes that are less than 50 cubic yards, provided*  
45 *the following conditions are satisfied:*

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

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

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

8 ~~[(10)]~~ (9) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for mainte-  
9 nance, including emergency reconstruction of recently damaged parts, of currently serviceable roads  
10 or transportation structures such as groins and riprap protecting roads, causeways and bridge  
11 abutments or approaches.

12 ~~[(11)]~~ (10) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for the  
13 maintenance of access roads constructed to move mining equipment, subject to the following condi-  
14 tions:

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

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

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

20 ~~[(12)]~~ (11) Nothing in ORS 196.600 to 196.905 applies to removal or filling, or both, within the  
21 beds or banks of any waters of this state conducted as part of a surface mining operation that is the  
22 subject of a memorandum of agreement between the Department of State Lands and the State De-  
23 partment of Geology and Mineral Industries in which the State Department of Geology and Mineral  
24 Industries is assigned sole responsibility for permitting as described in ORS 517.797.

25 ~~[(13)]~~ (12) The department may adopt a rule that exempts from the requirement to obtain a  
26 permit under ORS 196.800 to 196.900 voluntary habitat restoration projects that have only minimal  
27 adverse impact on waters of this state.

28 ~~[(14)]~~ (13) Nothing in ORS 196.800 to 196.900 applies to removal or filling, or both, for a change  
29 in the point of diversion to withdraw surface water for beneficial use if the change in the point of  
30 diversion is necessitated by a change in the location of the surface water and authorized by the  
31 Water Resources Department.

32 ~~[(15)]~~ (14) As used in this section:

33 (a)(A) "Converted wetlands" means agriculturally managed wetlands that, on or before June 30,  
34 1989, were brought into commercial agricultural production by diking, draining, leveling, filling or  
35 any similar hydrologic manipulation and by removal or manipulation of natural vegetation, and that  
36 are managed for commercial agricultural purposes.

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

39 (b) "Harvesting" means physically removing crops or other agricultural products.

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

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

45 (B) Rock crushing activities that result in the loss of natural drainage characteristics, the re-



1 duction of water storage and recharge capability, or the overburdening of natural water filtration  
2 capacity.

3 (d) "Seeding" means the sowing of seed or placement of seedlings to produce crops or other  
4 agricultural products.

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