

May 16, 2008 Final For Land Board Consideration

DEPARTMENT OF STATE LANDS

DIVISION 125

[ADMINISTRATIVE] RULES FOR AUTHORIZING SPECIAL USES ON STATE-OWNED TRUST AND NON-TRUST LAND

141-125-0100 Purpose And Applicability

- (1) These rules:
 - (a) Apply to the management of state-owned Trust and Non-Trust Land [*exclusive of rangeland for rangeland purposes and state-owned submerged and submersible lands*] for special uses.
 - (b) Establish a process for authorizing such uses through the granting of leases, **licenses** and [*permits*], **short term access authorizations (hereafter collectively referred to as a special use authorization)**.
 - (c) Do not apply to the granting of proprietary authorizations [*leases and permits*] for uses **specifically** governed by other **Department** [*Division*] administrative rules, [*for example OAR 141-082-0000 through 141-082-0210 (Rules for Leasing and Registration of Structures on, and Uses of State-Owned Submerged and Submersible Land); OAR 141-122-0010 through 141-122-0120 (Rules for Granting Easements [and Temporary Use Permits] on Trust and Non-Trust Land; and OAR 141-110-0000 through 141-110-0180 (Rules for Management of Rangeland)*].
- (2) A special use is one not governed by other **Department** [*Division*] administrative rules. Special uses include, but are not limited to, using state-owned **land (including historically filled land)** [*upland*] for:
 - (a) Agriculture;
 - (b) Communications facilities;
 - [(c)] [*Wind farms*];
 - (c) Industrial, business, [*and*] commercial **and residential** purposes;
 - (d) Native seed harvesting;
 - (e) Scientific experiments **and demonstration projects**;
 - (f) **Conventions**, [*and*] sporting and other events;
 - (g) [*Residences and*] Recreational cabins;
 - (h) **Commercial** outfitting and guiding services; [*and*]
 - (i) Motion picture filming and set construction;
 - (j) **Renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations and biomass generating facilities**;

- (k) Removal of semiprecious stones, petrified wood and fossils for commercial purposes;
 - (L) Parking lots;
 - (m) Materials and equipment storage;
 - (n) Warehouses;
 - (o) Marine service and repair facilities on state-owned upland;
 - (p) Resorts and recreational facilities;
 - (q) Golf courses;
 - (r) Upland quarries;
 - (s) Geological investigations;
 - (t) Liquified natural gas receiving plants;
 - (u) Grazing on land other than that designated as rangeland;
 - (v) Removal of juniper and other trees, plants or biomass for commercial use; and
 - (w) Removal of sunken logs, woody debris and abandoned pilings for their commercial value.
- (3) The Director may determine [*what*] other uses and developments similar to those specified in OAR 141-125-0100(2) **that** are also subject to [*authorization by*] a special use [*lease or permit*] **authorization** and these rules.

141-125-0110 Definitions

- (1) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.
- (2) "Applicant" is any person applying for a special use **authorization** [*lease or permit*].
- (3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.
- (4) **"Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of the Common School Fund's real estate assets.**
- (5) "Authorized Area" is the area of state-owned land **defined in the special use authorization for which a use is authorized** [*which the Division allows a development to occupy or person to use through a lease or permit*].
- (6) **"Biomass" refers to renewable organic matter such as agricultural crops and residue, wood and wood waste, animal and human waste, aquatic plants and organic components of municipal and industrial wastes.**
- (7) **"Biomass Generating Facility" includes, but is not limited to the furnaces, boilers, combustors, digesters, gasifiers, turbine systems**

- and other related equipment used to produce electricity, steam, heat, or biofuel from biomass.**
- (8) **“Commercial” means a use that results in or is associated with any monetary consideration or gain.**
- (9) **“Commercial Electrical Energy Generating Installation”**
- (a) **Is any electrical energy generating facility:**
- (a) **Operated as a commercial venture (as contrasted to being operated as a demonstration project);**
- (b) **Connected to the regional power grid and used to meet local or regional demand for electricity; or**
- (c) **Used to meet all or part of the electricity demand by a person who may otherwise have to purchase the electricity produced by the facility from another source.**
- (b) **Does not include any solar, wind or hydroelectric devices operated by a person who uses them to generate electricity for their home and who sells excess self-generated electricity back to a utility under a net metering agreement.**
- (10) "Communications Facility" consists of the towers, antennas, dishes, buildings[,] and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross state-owned land to serve a communications facility, however, are governed by the administrative rules for granting easements on state-owned land.
- (11) **“Comparative compensatory payment” is the amount of money paid to the owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant’s requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.**
- (12) **“Compensation” or “Compensatory Payment” is the amount of money paid for a special use authorization to the Department for the use of Department-managed land.**
- (13) **“Construction Period” as applied to wind and solar energy projects is the time during which construction of the commercial electrical energy generating installation is underway.**
- (14) "Cropshare" is a method of determining the [*annual leasehold rental fee*] **compensation to be paid by** [*charged of*] a lessee for the use of state-owned land for agricultural purposes **in which** [. *A cropshare approach is typically based on*] the owner of the land **receives** [*receiving*] a pre-agreed percentage of the value of the crop at the time it is harvested or sold.
- (15) **“Demonstration Project” is a limited duration activity of less than three years designed primarily to investigate or test the economic**

and technological viability of a concept or use of state-owned land under a license granted by the Department.

- (16) **“Department”** [*Division*] means the **Department** [*Division*] of State Lands.
- (17) "Development" is any structure (for example, a communications or cellular tower, shed or barn, fence, irrigation system, **wind turbine, solar mirror** or recreational cabin) authorized by the **Department** [*Division*] on an area of state-owned land managed by the **Department** [*Division*].
- (18) "Director" means the Director of the **Department** [*Division*] of State Lands or designee.
- (16) [*Fair Market Rental Value* is the annual amount in cash a willing tenant would pay, and a willing landlord would charge for the same or similar lands for the highest and best use of the property.]
- (19) **“Historically Filled Lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible land by artificial fill or deposit, and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible land by other than artificial fill or deposit.**
- (20) "Industrial, Business and Commercial Purpose" are uses of state-owned land not governed by other **Department** [*Division*] administrative rules. Such uses include, but are not limited to **office buildings**, manufacturing facilities, retail stores, outfitting and guide facilities and restaurants.
- (21) "Lease" is a written authorization issued by the **Department** [*Division*] to a person to use a specific area of state-owned land for a special use under specific terms and conditions. **The term of a lease is** for [*a term of*] one [(1)] to [*thirty* (] 30 [)] years.
- (22) **“Lessee” refers to any person having a special uses lease granted by the Department authorizing a special use on state-owned land managed by the Department.**
- (23) "**License** [*Permit*]" is a written authorization issued by the **Department** [*Division*] to a person allowing the **non-exclusive**, short-term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use **license** [*permit*] has a maximum term of **less than three years** [*one (1) year and does not convey any proprietary or other rights of use to the holder other than those specifically granted in the permit authorization*].
- (24) **“Licensee” refers to any person having a special use license granted by the Department authorizing a special use on state-owned land managed by the Department.**
- (25) **“Materials and Equipment Storage” means the storage of logs, hay, containers, automobiles, coal, machinery or other items or materials on state-owned land (exclusive of rock, sand, gravel and silt derived**

- from state-owned submerged and submersible land which are governed by other administrative rules).**
- (26) "Non-Trust Land" is land owned [*and*] or managed by the **Department [Division]** other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.
- (27) **"Operation Period" as applied to wind, solar and biomass energy projects begins when the delivery of electricity from the commercial electrical generating installation begins.**
- (28) **"Outfitting and Guiding Services" [as provided in OAR 250-016-0001(7),] include, but are not limited to commercial businesses involved in leading, protecting, instructing, training, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone for use in outdoor recreational activities does not constitute commercial outfitting and guiding services.**
- (29) "Person" **includes individuals, corporation, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe** [*is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon*].
- (30) **"Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area.**
- (31) **"Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).**
- (32) "Rangeland" [*as defined in OAR 141-110-0020(29)*] is state land designated and managed by the **Department [Division]** for rangeland purposes.
- (33) "Rangeland Purpose" [*as defined in OAR 141-110-0020(33)*] is the use of rangeland for livestock grazing [*and*] or conservation use.
- (34) "Recreational Cabin" is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).
- (35) **"Semiprecious Stones" are gemstones having a commercial value that is less than precious stones such as diamonds, rubies, emeralds and sapphires. Semiprecious stones include, but are not**

- limited to amethyst, garnet, jade, sunstone, topaz, tourmaline and zircon.
- (36) **“Short Term Access Authorization” is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-125-0210.**
- (37) **“Solar Energy Installation” includes, but is not limited to the photovoltaic panels, mirrors, power towers, heat engines, generators, transformers, inverters, parabolic troughs and other equipment required to produce electricity from solar energy.**
- (38) "Special Use" is a use of state-owned land not **specifically** governed by other **Department** [Division] administrative rules. Special uses **are listed in OAR 141-125-0100(2) and (3).** [*include, but are not limited to using state-owned upland for agriculture; communications facilities; wind farms; industrial, business and commercial purposes; native seed harvesting; scientific experiments; sporting and other events; and recreational cabins. The Director may determine that other uses are most appropriately governed by these rules.*]
- (39) **“Special Use Authorization” is a lease, license or short term access authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions.**
- (40) "State **Owned** Land" [or "State-Owned Land"] is land owned [and/] or managed by the **Department** [Division] or its agents and includes Trust and Non-Trust Land.
- [(21)] [*"Structure" means anything placed, constructed, or erected on state-owned land.*]
- (41) **“Submerged Land” means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.**
- (42) **“Submersible Land” means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.**
- (43) **“Sunken Log, Woody Debris and Abandoned Piling Salvage” means the retrieval of sunken logs, woody debris and abandoned pilings lying on, or partially or wholly embedded in state-owned land underlying Oregon’s rivers and lakes that are removed for their commercial value.**
- (44) **“Territorial Sea” has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.**
- (45) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or

obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

- (46) **“Upland Quarry” is a site on state-owned land from which rock, boulders, sand, gravel, silt or soil is removed for use for commercial and non-commercial purposes.**
- (47) "Wind Farm" is **a facility consisting of wind turbines interconnected by an electrical collection system.** *[an area where numerous towers have been constructed, each of which has a wind-powered turbine installed at its top to generate electricity].*
- (48) **“Wind Turbine” is a machine that converts the force of the wind into electrical energy. A wind turbine usually consists of one or more moving blades connected to an electrical generator that is mounted on a tower.**

141-125-0120 Policies

- (1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the **Department** *[Division]*, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."
- (2) All Trust Land **will** *[shall]* be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.
- (3) The **Department** *[Division shall]* **will** follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a special use **authorization** *[lease or permit]* on state-owned land.
- (4) The use of state-owned land for the placement of communications facilities is recognized by the **Department** *[Division]* as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.
- (5) Each individual use of, or development placed on state-owned land **will** *[shall]* constitute a separate discrete activity subject to payment of compensation as required by these or other applicable **Department** *[Division]* rules, or as determined by the Director.
- (6) Uses of, and developments placed **in, on or over** state-owned land pursuant to a special use *[lease or permit]* **authorization will** *[shall]* conform with local (including *[local]*) comprehensive land use planning and zoning ordinance requirements), state, and federal laws.
- [(7)] *[The Division shall administer these rules to ensure to the greatest extent possible that persons applying for and holding a special use lease or permit receive timely, consistent, predictable and fair treatment.]*

- (7) The **Department** [*Division shall*] **will** not grant a special use [*lease or permit*] **authorization** if it determines that the proposed use or development **would unreasonably impact** [*substantively impairs*] uses or developments proposed or already in place within the requested area. Such a determination will be made by the **Department** [*Division*] after consulting with holders of leases, **licenses**, permits and easements **granted by the Department** in the requested area, and other interested persons.
- (8) All uses subject to these rules must be authorized by a special use [*lease or permit*] **authorization** issued by the **Department** [*Division*]. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.
- (9) The **Department** [*Division*] may:
- (a) Conduct field inspections to determine if uses of, and developments **in, on or over** state-owned land are authorized by, or conform with the terms and conditions of a special use [*lease or permit*] **authorization** and, if not,
 - (b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a special use [*lease or permit*] **authorization** are either brought into compliance with the requirements of these rules or removed.
- (10) [*To the extent required by law,*] The **Department** [*Division shall*] **will** honor the terms and conditions of any existing valid lease **or license for a special use granted by the Department** including any that entitle the lessee **or licensee** to renewal **if the holder of the authorization has complied with all terms and conditions of the authorization and applies to the Department for a renewal as prescribed in these rules.**
- (11) **Holders of a license to conduct a demonstration project for a land-based (that is, not on state-owned submerged and submersible land) wind farm or solar energy installation will be given the first right to apply for a lease for the area authorized under the license.**
- (12) **The Department may, at its discretion, deny a special use authorization if the applicant's financial status or past business practices, or both, indicate that the applicant may not:**
- (a) **Be able to fully meet the terms and conditions of a special use authorization offered by the Department; or**
 - (b) **Use the land applied for in a way that meets the provisions of OAR 141-125-0120.**
- (13) **Notwithstanding the provisions of ORS 274.885, the Department will not allow or authorize the removal of kelp or other seaweed for commercial purposes.**
- (14) **Notwithstanding the provisions of these rules, the Department may:**
- (a) **Initiate projects involving special uses of, or developments in, on or over the land it manages by itself or in conjunction with other persons;**

- (b) **Request proposals for special uses of, or developments on land it manages and select and award a lease through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-125-0120; and**
- (c) **Negotiate and accept compensation in the form of services in lieu of monetary payments provided for in these rules.**

141-125-0130 Application Requirements for a Lease or License

- (1) Any person wanting to use state-owned land for any of the purposes described in OAR 141-125-0100 **(2) and (3) must [shall]:**
 - (a) Apply **in writing** to the **Department** [*Division*] for a [*special use*] lease or **license** [*permit*] using a form provided by the **Department** [*Division*]; and
 - (b) Submit a non-refundable application processing fee payable to the **Department** [*Division*] to cover the administrative costs of processing the application and issuing the authorization.
- (2) The application processing fee for a [*special use*] lease **or license is [shall be] \$750 [five hundred dollars (\$500)].**
- (3) Unless otherwise allowed by the Director [*in writing*], a fully completed application **for a lease or license must [shall]** be submitted to the **Department** [*Division*] at least [*one hundred and eighty (180)*] **calendar** days prior to the proposed use or placement of a development subject to these rules **in, on or over** state-owned land.

**141-125-0140 [Special Use] Lease or [and] License [Permit]
Application Review and Approval Process**

- (1) Upon receipt of an application for a [*special use*] lease or **license** [*permit*], the **Department** [*Division shall will*] determine:
 - (a) If the application is complete;
 - (b) If the subject area is available for the requested use; [*and*]
 - (c) What method will be used to determine the amount of compensation payable to the **Department** [*Division*] pursuant to OAR 141-125-0150 **and 0160;**
 - (d) **If a lease or license under these rules is the required form of authorization, and**
 - (e) **If additional information is required concerning the:**
 - (A) **Proposed use of the state land; and**
 - (B) **Applicant's financial status, or past business or management practices, or both.**
- (2) The **Department** [*Division*] will then advise the applicant of its determination concerning each of the **five** [*three*] factors in OAR 141-125-0140(1). Applications determined by the **Department** [*Division*] to be incomplete, or for an area in which the use would be incompatible will be

- returned to the applicant with a written explanation of the reason(s) for rejection.
- (3) If an application rejected for incompleteness is resubmitted within [*ninety*] [(90)] calendar days from the date the **Department** [*Division*] returned it to the applicant (as determined by the date of postmark) **with all deficiencies noted by the Department corrected**, no additional application fee will be assessed.
- (4) **If more than one application for a specific area is received by the Department for the same or conflicting uses subject to authorization by a lease, the Department may:**
- (a) **Determine which proposed use best fulfills the policies specified in OAR 141-125-120, and accept and proceed with that application and deny the others; or**
- (b) **If neither use is determined by the Department to be demonstrably better, make the subject area available to the public by auction.**
- (5) Upon acceptance by the **Department** [*Division*], the application will be circulated to various local, state and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and easement holders for review and comment. As a part of this review, the **Department** [*Division shall*] **will** specifically request comments concerning:
- (a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;
- (b) Conformance of the proposed use with [*other*] local, state, and federal laws and rules;
- (c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;
- (d) Conformance with the policies described in OAR 141-125-01**20** of these rules; **and**
- (e) Potential conflicts of the proposed use with existing **or proposed uses of the requested area** [*leases, permits or easement holders*].
- (6) If the application is for a communications facility, the **Department** [*Division shall*] **will** request comments from the Federal Communications Commission, Public Utility Commission **of Oregon**, and any other persons owning **or** leasing communications facilities who advise the **Department** [*Division*] that they want to receive such applications.
- (7) After receipt of [*agency and public*] **comments** concerning the proposed use, the **Department** [*Division shall*] **will** advise the applicant in writing:
- (a) If changes in the use or the requested lease or **license** [*permit*] area are necessary to respond to [*agency or public*] **the comments received**;
- (b) If additional information is required from the applicant, including but not limited to a survey of:

- (A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or
- (B) Archaeological and historic resources within the requested area.
- (c) If the area requested for **the** lease or **license** [*permit*] will be authorized for use by the applicant through a lease or **license** [*permit*], **and**
- (d) **Whether the subject area will be** [*or*] made available to the public through competitive bidding pursuant to OAR 141-125-0150. **Only requests for leases may be subject to competitive bidding.**
- (8) If the **Department** [*Division*] decides to issue a [*special use*] lease [*or permit*] to the applicant without competitive bidding, **or a license**, the **Department will notify the applicant in writing of** [*written notice will also indicate*]:
 - (a) The amount of compensation pursuant to OAR 141-125-0160 that the applicant **must** [*shall*] remit to the **Department** [*Division*] to obtain the authorization;
 - (b) Any insurance and [*or*] surety bond required by the **Department** [*Division*] pursuant to the requirements of OAR 141-125-0180; and
 - (c) A draft copy of the [*special use*] lease or **license** [*permit*].
- (9) The **Department** [*Division shall*] **will** not grant a [*special use*] lease or **license** [*permit*] to an applicant until:
 - (a) **It has received all fees and compensation specified in these rules, and evidence of any required insurance and [*or*] surety bond; and**
 - (b) [*In addition, no authorization will be given until*] **The** [*applicant has met the*] requirements of OAR 141-125-0170(4) of these rules **have been met;**
- (10) **In addition to the provisions of OAR 141-125-0140(9), a special use authorization issued by the Department will not be valid until the holder has received all other authorizations required by the Department (such as a Removal-Fill Permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the state-owned land in the manner requested.**
- (11) The Director may refer any applications for a [*special use*] lease or **license** [*permit*] to the Land Board for review and approval.
- (12) **If an application is received and accepted by the Department for a lease on state-owned submerged and submersible land, the Department will, pursuant to the requirements of ORS 274.040, offer a preference right to lease to the eligible party as defined in OAR 141-125-0110(30) and (31), hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right:**
 - (a) **If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or**

- combined group of single-ownership parcels perpendicular to the thread of the stream creating a single lease parcel that fronts and abuts the upland ownership.**
- (b) **If the proposed lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of the adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.**
- (c) **In accordance with the proposed use(s), the Department will calculate in a manner consistent with OAR 141-125-0160 a minimum annual compensatory payment for each lease parcel.**
- (d) **The Department will notify each preference right holder in writing that a lease application has been approved by the Department and provide 30 calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual compensatory payment.**
- (e) **If the preference right holder has accepted the offer of a preference right to lease and has executed the lease form and all other documents and remitted the required minimum annual lease rental payment within the required 30 calendar day period, the Department will execute the lease.**
- (f) **If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to ORS 274.040 and hold a public auction pursuant to OAR 141-125-0150. The highest qualified bidder will be awarded the lease. The minimum bid amount will be set by the Department.**

141-125-0150 Competitive Bidding Process

- (1) **Except as provided in OAR 141-125-0120(10) and OAR 141-125-0140(11), the Department [Division shall] will** determine on a case-by-case basis if an area requested for a [*special use*] lease **will** [*shall*] be offered to the public through competitive bidding. This decision **will** [*shall*] be made after considering:
- (a) Whether the area requested for a [*special use*] lease [*or permit*] is **for a use located on** Trust or Non-Trust Land;
- (b) The nature of the use and length of authorization requested;
- (c) The availability of reliable data regarding the **comparative compensatory payments** [*fair market rental value of the subject parcel*] for the proposed use; and

- (d) Whether other applications are received by the **Department** [Division] to use the same area requested for the same or competing uses.
- (2) **The Department will give Notice of Parcel Availability and provide an opportunity for applications to be submitted if it [If the Division]:**
- (a) **Determines that the greatest public benefit and/or trust obligations of the Department [Division] would be best served by offering the subject area through competitive bidding, or**
- (b) **Is required to offer all or part of the subject area for competitive bid because the preference right holder did not exercise their preference right to take a lease.**
- [it shall give Notice of Leasehold Availability and provide an opportunity for applications to be submitted].*
- (3) The Notice of **Parcel** [Leasehold] Availability **will** [shall] state:
- (a) The location and size of the subject area;
- (b) The use[(s)] approved by the **Department** [Division] for the subject area;
- (c) The type of auction and minimum acceptable bid amount;
- (d) What developments, if any, on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the **Department** [Division]; and
- (e) The deadline for submitting a completed application to the **Department** [Division].
- (4) The Notice of **Parcel** [Leasehold] Availability **will** [shall] be:
- (a) Published at the applicant's **or, if more than one applicant, applicants' expense, with the cost being divided equally among the applicants,** not less than once each week for two [(2)] successive weeks in a newspaper of general circulation in the county **or counties** [(ies)] in which the subject parcel is located;
- (b) Posted on the **Department's** [Division] internet web site; and
- (c) Sent to persons indicating an interest in the subject parcel.
- (5) The highest qualified bidder **will** [shall] be awarded the lease at auction subject to satisfaction of the requirements of OAR 141-125-0140(9) and 141-125-0170(4) of these rules. However, the **Department** [Division shall] **will** have the right to reject any and all bids submitted.
- (6) **The Department may offer parcels for which no application has been received to the public through a competitive bidding process. When doing this the Department will follow the competitive bidding process provided in OAR 141-125-0150(3) through (5) and be responsible for the expenses of publishing the required notices.**

141-125-0160 Compensation

- (1) *[In establishing]* **To establish the amount of compensation or minimum bid at auction, the Department will:** *[the amount of annual compensation or minimum bid at auction the Division shall]:*
- (a) Adhere to the policies contained in OAR 141-125-0120(1) and (2) of these rules, **and**
 - (b) Whenever practicable, base the amount **on comparative compensatory payments for publicly or privately-owned parcels located as close as possible to the state-owned land requested by an applicant** *[of annual compensation on the fair market rental value received by property owners for similar property used in a similar manner].*
- (2) **In the event that reliable data concerning comparative compensatory payments are not available, the Department will select another method of determining the amount of compensatory payment or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop or product value, or percent of product produced.**
- (3) **For the uses indicated in OAR 141-125-0160(4) through OAR 141-125-0160(11), the Department will determine the amount of compensatory payment owed by the holder of a special use lease or license using the method(s) indicated.**
- (4) **Agricultural Uses**
[(c)] **As an alternative to basing the amount of compensation due for an agricultural use on comparative compensatory payments, the Department may, at its discretion, use** *[When employing]* a cropshare approach. *[for an agricultural use, establish the]* **If this methodology is used, the** state's share **will** *[to]* be no less than *[twenty-five percent]* **25 percent** [%] of the value received **by the holder of a special use lease or license** in payment for each crop harvested from the authorized area *[: and].*
- (5) **Communications Facilities**
(a)*[(d)]**[Require]* The holder of a special use lease **or license** for a communications facility **must** *[to annually]* remit to the **Department on a basis provided in the authorization** *[Division]* both:
- (A) The full amount of the base annual compensation **determined by the Department to be the comparative compensatory payment for similar communications facilities;** *[required by their lease,]* and
 - (B) A payment equal to *[twenty-five percent]* **25 percent** [%] of the rental received by the lessee during the **previous 12 month period** *[calendar year]* from sublessees **and sublicensees** using the subject facility authorized by the lease **or license**.

- (b) If the holder of a lease or license for a communications facility allows other persons to use the facility (for example, to place or attach antennas, microwave dishes, or other signal broadcasting or receiving equipment on the site or to a tower), the holder of the authorization must record and report data concerning the number sublessees and sublicensees, and the amount of compensation received from them to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.
- (6) Upland Quarry
- (a) The holder of a special use lease or license for an upland quarry must remit to the Department:
- (A) Eight percent of the gross revenue received by the lessee or licensee from the sale of the rock, boulders, sand, gravel, silt or soil removed by the lessee or licensee, or
- (B) The compensation rate in effect at the time of removal as provided in OAR 141-014 (Rules for Authorizing Leases and Licenses for the Removal or Use of Rock, Sand, Gravel and Silt Derived from State-Owned Submerged and Submersible Land) for “shorecast dredge spoils” if the lessee or licensee uses the rock, boulders, sand, gravel, silt or soil.
- (b) Data concerning the quantity of rock, boulders, sand, gravel, silt or soil removed and sold, and the revenue received from any sales will be recorded and reported by the lessee or licensee to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.
- (c) In addition to the compensation required under OAR 141-125-0160(6)(a), the holder of a special use license or lease for an upland quarry is required to pay the compensation due for any easements (for example, roads leading into the quarry and power lines crossing state land) or other forms of authorization required by Department rules.
- (7) Semiprecious Stones, Petrified Wood and Fossils
Any person removing semiprecious stones, petrified wood or fossils for commercial purposes must remit to the Department within 30 calendar days of the removal of any semiprecious stones, petrified wood and fossils:
- (a) Compensatory payment in the amount of 10 percent of the market value of the semiprecious stones, petrified wood and fossils; and
- (b) Photocopies of the evidence used by the lessee or licensee to determine the market value of the semiprecious stones,

petrified wood and fossils removed. This evidence must accompany the payment of compensation owed. Documentation suitable to the Department includes, but is not limited to a sales receipt (if the material is sold to another party); an appraisal by a gemologist or mineral dealer; or advertisements for the sale of similar material in lapidary magazines or trade journals.

- (8) Retrieval of Sunken Logs, Woody Debris and Abandoned Pilings
- (a) The holder of a special use license or lease to retrieve sunken logs, woody debris and abandoned pilings from state-owned submerged and submersible land for their commercial value must remit to the Department 10 percent of the gross revenue received by the lessee or licensee from the sale of any logs or lumber products produced from the logs.
- (b) Data concerning the quantity of lumber recovered or sold and revenue received from any sales must be recorded and reported by the lessee or licensee to the Department on a basis to be set by the Department and included as a provision of the license or lease.
- (c) In addition to the compensation required under OAR 141-125-0160(8)(a), the holder an special use lease or license to retrieve sunken logs, woody debris and abandoned pilings must also pay the compensation due for any easements (for example, storage of logs on state-owned land) or other forms of authorization required by the Department.
- (9) Wind Turbines/Wind Farms
- (a) The holder of a special use lease or license must remit to the Department:
- (A) During the demonstration project period the greatest of:
- (i) \$500;
- (ii) \$5.00 per acre of land within the authorized area;
or
- (iii) The comparative compensatory payment received by other landowners for similar demonstration projects.
- (B) During the construction period a one-time installation fee equal to \$3,000 times the number of megawatts of nameplate rated capacity for each wind turbine to be installed as a part of that phase of the development.
- (C) During the operation period:
- (i) 2.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine during from the start of the operation through year 10;

- (ii) 3.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 11 through year 15;
 - (iii) 4.0 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 16 until the termination of the operation of that turbine.
 - (D) During the decommissioning period:
An amount to be determined by the Director based on the compensation which could reasonably be expected to be received by the Department for the use of the land encumbered by the wind power project.
 - (b) Notwithstanding the provisions of OAR 141-125-0160(9)(a), the director reserves the right to establish another rate of compensation to be charged by the Department during the construction and operation periods based on factors unique to an operation (for example, distance of the operation from major transmission lines and variability of the wind) and comparative compensatory payments.
 - (c) The lessee or licensee will record and report the amount of electricity generated by each wind turbine and wind farm under lease as well as the gross revenue resulting from that generation on a basis to be determined by the Department and included as a provision of the lease. Gross revenue is defined as all revenues earned through the sale of the electricity by the lessee to purchasers.
 - (d) In the event the lessee or licensee consumes all, or a portion of the electricity generated by the wind turbine and wind farm, the Department will establish a value for that electricity based on what the lessee or licensee would have to pay a utility for the equivalent amount of electricity delivered to the lessee's or licensee's point of demand as well as information provided by the lessee.
 - (e) In addition to the compensation required under OAR 141-125-0160(9)(a) and (b), the holder of a lease or license for a wind turbine and wind farm is required to pay to the Department the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
- (10) Solar Energy Installation
- (a) The holder of a special use lease or license for a solar energy installation must remit to the Department:
 - (A) During the demonstration project period the greatest of:
 - (i) \$500;
 - (ii) \$5.00 per acre of land within the authorized area;
 - or

- (iii) The comparative compensatory payment received by other landowners for similar demonstration projects.
 - (B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.
 - (b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.
 - (c) In addition to the compensation required under OAR 141-125-0160(10)(a) and (b), the holder of a special use lease or license for solar energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
- (11) Biomass Generating Facility
- (a) The holder of a special use lease or license for a commercial electrical energy generating installation using biomass must remit to the Department:
 - (A) During the demonstration project period the greatest of:
 - (i) \$500,
 - (ii) \$5.00 per acre of land within the authorized area,
or
 - (iii) The comparative compensatory payment received by other landowners for similar demonstration projects.
 - (B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.
 - (b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.
 - (c) In addition to the compensation required under OAR 141-125-0160(11)(a), the holder of a special use lease for biomass generating facility is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
 - (d) If the biomass used to fuel a generating facility is obtained from state-owned land, the Director will determine the amount of compensation owed by the lessee for the use of this material.

- (12)(2)** Regardless of the type of use that is subject to a special use authorization, the amount of annual compensation received by the Department [Division shall] will not be less than:
- (a) [Five hundred dollars (] \$500 [)] per year for all [special use] leases except those for communications facilities;
 - (b) [Seven hundred and fifty dollars (] \$750 [)] per year for special use leases for communications facilities; [and]
 - (c) [One hundred dollars (] \$100 [)] per year for [special use] licenses [permits]; or
 - (d) The minimum bid when the lease is awarded through public auction.
- [(3)] [In the event that reliable data concerning fair market rental value are not available, the Division shall select another method of determining the amount of annual compensation, or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop value, or percent of product produced.]
- (13)** Communications facilities located on Non-Trust Land outside of the designated limits of a city may be [are] exempt from the mandatory compensation payments specified in OAR 141-125-0160(5)(1)(d) and (2) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities must [shall] apply for and obtain a lease or license from the Department [Division].

141-125-0170

General Terms and Conditions

- (1) The term of a special use lease [shall] will not exceed [thirty (] 30 [)] years unless otherwise approved by the Director. The Department [Division] will [shall] determine the length of a [special use] lease based on the nature of the use intended for the requested site. The Department [Division] may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Department [Division].
- (2) The term of a [special use] license [permit shall] will [not exceed] be less than three years [one (1) year]. A [special use] license [permit] may, upon receipt by the Department of a written request, [at the discretion of the Division], be renewed up to two [(2)] times at the discretion of the Department for a maximum term of one [(1)] year each time.
- (3) [Special use] Leases and licenses [permits shall] will be offered by the Department [Division] for the minimum [amount of] area determined by the Department [Division] to be required for the requested use.
- (4) [Pursuant to the requirements of ORS 291.045, a] A special use[s lease] authorization issued by the Department [Division shall] will be on a form supplied by the Department [Division] that has been approved for legal sufficiency by the Department of Justice pursuant to [the requirements of] ORS 291.045 to 291.047 (Public Contract Approval).

- (5) The **holder of a lease or license** [*lessee or permittee*] may request the **Department** [*Division to*] close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, **developments** and/or crops from harm.
- (6) The **Department** [*Division*] or its authorized representative(s) **will** [*shall*] have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious [*weed*] **plant** or pest abatement, or for wildfire control.
- (7) The **holder of a special use authorization** [*lessee or permittee shall*] **must** dispose of all waste in a proper manner and **must** [*shall*] not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.
- (8) **Unless otherwise agreed to in writing as a provision of the authorization, the holder of a special use authorization** [*A lessee or permittee*] may not interfere with lawful public use of an authorized area, or obstruct free transit across state land, or intimidate or otherwise threaten or harm public users of state land.
- (9) **The holder of a special use authorization** [*The lessee or permittee*] **must** [*shall*] cooperate **and comply** with:
- (a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention and control of noxious **plants** [*weeds*]. The **Department** [*Division*] will rely on the Oregon Department of Agriculture for information concerning which noxious **plants** [*weeds*] present on an authorized area require corrective action by the lessee or **licensee** [*permittee*], or the Oregon Department of Agriculture or its agents;
 - (b) The Oregon Department of Agriculture and the **Department** [*Division*] in the management of plant pests and diseases; and
 - (c) The **Department** [*Division*] and other agencies in the detection, prevention and control of wildfires on an authorized area.
- (10) **Unless otherwise agreed to in writing in the special use authorization, the holder** [*upon the expiration or termination*] of [*a special use lease or permit*] **the authorization**, [*the holder of the lease or permit shall*] **must** remove any or all developments as directed by the **Department** [*Division*] within [*sixty () 60 ()*] calendar days of the date of **the expiration or** termination of the [*lease or permit*] **authorization**. [*Any developments remaining on the area authorized by the lease or permit after the sixty (60) day period shall become the property of the Division*]. If the **holder of the special use authorization** [*lessee or permittee*] **refuses** to remove the subject developments, the **Department** [*Division*] may remove them and charge the **holder** [*lessee or permittee*] for doing so.
- (11) The holder of a special use **authorization** [*lease or permit shall*] **will** not allow any other use to be made of, or occur on the site or facility that is not specifically authorized:
- (a) By that [*lease or permit*] **authorization**; or
 - (b) By the **Department** [*Division*] in writing prior to the use.

- (12) The holder of a special use authorization must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to insect or animal infestation, soil erosion or the growth of noxious plants.
- (13) The holder of a special use authorization must maintain all buildings, machinery, equipment and similar structures and improvements located within the authorized area in a good state of repair as determined by the Department.
- (14) If requested by the Department, an applicant for a special use authorization must present evidence to the Department prior to the use that they have obtained:
- (a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use;
 - (b) Any authorization that may be required to obtain access or to cross land belonging to a person other than the Department to undertake the use; and
 - (c) A surety bond and comprehensive or commercial general liability insurance required by the Department.
- (15) The Department may require that a person who is granted a:
- (a) Special use license by the Department to conduct an investigation or demonstration project using wind, solar energy or biomass to generate electricity to provide the results obtained from the investigation or demonstration project, or both, to the Department, or
 - (b) Short term access authorization by the Department for scientific or research purposes to provide the data obtained or developed from the investigation (for example, geological core logs or biological surveys) to the Department.
- (16) The holder of a lease or license will indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area. Additionally, the Department may require that the holder of a short term access agreement also provide the same indemnification contingent on the use of the authorized area requested.
- (17) A holder of a lease or license that provides for a renewal must reapply to the Department using a form provided by the Department and remit the required application processing fee to the Department. Unless otherwise allowed by the Director, this form must be received by the Department along with the required application processing fee at least 180 calendar days prior to the expiration of the lease or license for which renewal is requested.

141-125-0180 Insurance and Bond

- (1) The **Department** [Division], **in the exercise of its reasonable discretion**, may require **the holder of a special use authorization** [a lessee or permittee] to obtain insurance in a specified amount if the use, in the opinion of the **Department** [Division], constitutes a risk to public safety, or to the State of Oregon.
- (2) The **Department** [Division] may request that the applicant **for, or the holder of a special use authorization** [, lessee or permittee] provide information concerning the use of the area to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the **Department** [Division] in determining the appropriate amount of insurance coverage based on the nature of the use.
- (3) The **Department** [Division] may, at its discretion, require that **the holder of a special use authorization** [a lessee or permittee] obtain a surety or bid bond in an amount specified by the **Department** [Division] (or a cash deposit [or certificate of deposit which has the equivalent face or cash-] in **an amount equal to the** [value as] the surety bond and which names the State of Oregon as co-owner) to **ensure that they will perform in accordance with** [secure performance of] all terms and conditions of an [lease] **authorization**.

141-125-0190 Termination of a Special Use Lease, License or [Permit] Short Term Access Authorization For Default

- (1) If the **holder of a special use authorization** [lessee or permittee] fails to comply with these rules or **the terms and conditions of the authorization**, [other lease terms and conditions,] or otherwise violates laws **governing** [covering] their use of **the** [his/her] authorized area, the **Department** [Division shall] **will** notify the **holder of the authorization** [lessee or permittee] in writing of the default and demand correction within a specified time frame.
- (2) If the **holder of a special use authorization** [lessee or permittee] fails to correct the default within the time frame specified, the **Department** [Division] may:
 - (a) Modify or terminate the [lease or permit] **authorization**; and[/or]
 - (b) Request the Attorney General to take appropriate legal action against **the holder of the authorization** [lessee or permittee].

141-125-0200 Assignment of Special Use [Leases and Permits] Authorizations; Subleasing

- (1) A [special use] lease in good standing is [freely] assignable.
- (2) [Special use] **Licenses** [permits] **and short term access authorizations** are non-assignable.
- (3) To assign a [special use] lease, the lessee **must** [shall] submit a:

- (a) Notice of proposed assignment on a form provided by the **Department [Division] at least 60 calendar days prior to the date that the assignment is to occur**; and
- (b) Non-refundable assignment processing fee of **\$750** [two hundred and fifty dollars (\$250)] payable to the **Department [Division]**.
- (4) [The Division shall make every effort to complete its review of such proposed assignments within [thirty (30) calendar days of receipt of the notice.] The **Department [Division]** may request additional information concerning the proposed assignment.
- (5) A lessee **or licensee** wanting to offer a sublease **or sublicense** to another person **must** [shall]:
 - (a) Obtain prior written authorization from the **Department [Division]** by applying to the **Department [Division]** on a form provided by the **Department at least 60 calendar days prior to the date that the sublease or sublicense is desired** [and];
 - (b) Submit **a non-refundable sublease or sublicense review fee of \$250 along with the application form**; [to the Division the amount provided in OAR 141-125-0160 [(1)(d)(B)] at the end of each calendar year] **and**
 - (c) **If the lease or license is for a communications facility, submit to the Department the amount provided in OAR 141-125-0160(5)(a)(B) for each sublessee or sublicensee at the end of each calendar year.**

141-125-0210[0215]Short Term Access Authorization Application Requirements, Review and Approval Process

- (1) **A short term access authorization is required for any use of state-owned land that is not specifically governed by other Department administrative rules. Examples of types of uses that may require a short term access authorization are:**
 - (a) **An academic research or educational project;**
 - (b) **A scientific experiment that requires the exclusive use of a parcel of land;**
 - (c) **Collection of geologic or vegetative samples; and**
 - (d) **Removal of juniper for non-commercial purposes.**
 - (e) **Other uses or developments determined by the Director based on their impacts on state-owned land.**
- (2) **A short term access authorization is granted by the Department for a specific length of time to be determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose.**
- (3) **Any person wanting a special use short term access authorization must:**
 - (a) **Apply in writing to the Department using a form provided by the Department; and**

- (b) Submit a fully completed application to the Department at least 30 calendar days (unless otherwise allowed by the Director) prior to the proposed use.
- (4) Upon receipt of an application the Department will determine:
 - (a) If the application is complete;
 - (b) If the subject area is available for the requested use; and
 - (c) If additional information is required concerning the proposed use of the state land, or the applicant's financial status, or past business and management practices.
- (5) Upon acceptance by the Department, the Department will review the application to determine, among other considerations:
 - (a) The impacts of the proposed use on the environment, habitat, and other uses of the requested area, and the magnitude of these impacts;
 - (b) The need for the proposed use within the requested area; and
 - (c) Conformance of the proposed use with the policies provided in OAR 141-125-0120.
- (6) The Department reserves the right to:
 - (a) Require that the applicant obtain written approvals from local, state and federal government agencies indicating that the proposed use conforms with local, state and federal laws and rules as well as the local comprehensive land use plan and zoning ordinances; and
 - (b) Circulate the application for review and comment pursuant to the provisions of OAR 141-125-0140 to obtain additional information to use in making its decision whether to grant the requested short term access authorization.
- (7) The Department will then advise the applicant of its determination concerning each of the three factors in OAR 141-125-0210(5). Applications determined by the Department to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.
- (8) If an application rejected for incompleteness is resubmitted by the applicant within 30 calendar days from the date the Department returned it to the applicant (as determined by the date of postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.

141-125-0215 [0210] Enforcement Actions; Civil Penalties and Other Remedies [Unauthorized Uses and Penalties]

- (1) Upon the Director's own initiative, or in response to a complaint, the Director may investigate a suspected violation of a special use authorization or the alleged unauthorized use of state land to determine if use of the state land conforms with the terms and

- conditions of a special use authorization, or to determine if the use is not authorized.**
- (2) **In conducting the inspection relative to suspected or alleged violations of a special use authorization issued by the Director, the Director, or the Director's agent, may enter onto private property of the holder of the authorization in order to determine if a violation has occurred.**
- (3) **Upon a determination that a violation of the special use authorization has occurred or that an unauthorized use of state land has occurred, the Director may exercise the remedies set forth in the special use authorization, any other remedies available at law, or impose civil penalties consistent with OAR 141-125-0215(4), below.**
- (4) **The unauthorized use of state-owned submerged and submersible land or a violation of a special use authorization granted under these rules authorizing the use of state-owned submerged and submersible land are a violation of ORS 274.040 and OAR 141-082. In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty pursuant to ORS 274.992, ORS 274.994, and OAR 141-082-0130 for the unauthorized use of state-owned submerged and submersible land, or for the violation of a special use authorization granted under these rules authorizing the use of state-owned submerged and submersible land.**
- [(1)] *[Uses and developments subject to, but not authorized by a special use lease or permit issued by the Division constitute a trespass and must be removed as directed unless otherwise authorized in writing by the Division.]*
- [(2)] *[In addition to any other penalties provided or permitted by law, the placement of any development on, or use of state-owned land without the required Division authorization as described in these rules, or which is otherwise not in compliance with these rules shall constitute a trespass and be prosecuted pursuant to governing law.]*

141-125-0220 Reconsideration of Decision

- (1) An applicant for a special use [*lease or permit*] **authorization**, or any other person adversely affected by the issuance or denial of special use [*lease or permit*] **authorization** on state-owned land may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision:
- (a) Such a request **must** [*shall*] be received by the Director no later than [*thirty* (] 30 [)] calendar days after the date of delivery of the decision.
- (b) The Director **will** [*shall*] review the request within [*sixty* (] 60 [)] calendar days after the date of delivery of the request.

- (c) If the Director made the decision of concern, s/he may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.
 - (d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the special use **authorization** [*lease or permit*] issuance or denial be **affirmed** [*modified*] based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.
- (2) If the Director recommends initiating a contested case proceeding, the **Department** [*Division shall*] **will** select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.