

**OREGON REVISED STATUTES
274.400 through 274.412****BEDS OF STREAMS, LAKES AND BAYS**(Ownership)

274.400 Definition for ORS 274.400 to 274.412. As used in ORS 274.400 to 274.412, "board" means the State Land Board. [1995 c.471 §2]

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

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

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

(b) The board has made a declaration under ORS 274.406 that contemplates the assertion of such title. [1995 c.471 §3]

274.404 Administrative determination of navigable waterway; rules; procedure. (1) On or before July 1, 1996, the State Land Board shall adopt by rule a procedure that is consistent with ORS 274.400 to 274.412 by which the board and the Department of State Lands shall make a final administrative determination as to whether a waterway or part of a waterway is navigable, and if so, the extent of the interest claimed by the State of Oregon in the navigable portion of the waterway.

(2) The rules adopted under subsection (1) of this section shall incorporate the following procedures that the board and the department shall follow:

(a) The board may direct the department to make a determination of navigability if there is sufficient economic justification or if there is a broad and substantial public interest. If the board so directs, the department shall conduct a study to make the determination.

(b) The department shall provide prompt public notice to affected property owners that the department is beginning the study.

(c) Upon completion of a study directed under paragraph (a) of this subsection, the department shall prepare and submit to the board a draft report setting forth the department's findings and conclusions as to whether the waterway or part of the waterway under study is navigable and, if so, the extent of the State of Oregon's interest in the waterway or part of the waterway.

(d) The department shall provide appropriate prior public notice to affected property owners and other interested parties concerning the draft report. The notice shall provide an opportunity for a public hearing in the area of the affected waterway and an opportunity for the public to submit written comments on the draft report and to submit testimony or other evidence concerning the navigability of the affected waterway or part of the waterway or the State of Oregon's interest in the waterway or part of the waterway.

(e) Following the public hearing, the board may adopt the draft report submitted by the department if substantial evidence in the record supports the report's findings and conclusions, or the board may refer the report to the department for further action as determined by the board. [1995 c.471 §4]

274.406 Declaration of state's claim; effect. (1) Upon the adoption of a report by the State Land Board under ORS 274.404 (2)(e), the board shall declare the nature and extent of the state's claim to any interest that remains or is vested in the State of Oregon with respect to any land or waterway described in the report.

(2) Except as it may be modified upon review pursuant to ORS 274.412, a declaration made by the board pursuant to subsection (1) of this section shall be binding upon the State of Oregon with respect to the interest, if any, of the State of Oregon in any land or waterway described in the declaration.

(3) Nothing contained in this section is intended to affect the ability of a court of competent jurisdiction to make a determination with respect to a private claim to or interest in real property. [1995 c.471 §5]

274.408 Public notice of claim; content. Immediately following a declaration made by the State Land Board pursuant to ORS 274.406, the board shall:

(1) Cause reasonable public notice of the declaration to be given to interested parties. The notice shall:

(a) Describe the land or waterway affected and the nature and extent of the state's claim. Such notice need not describe the land or waterway in legal terms, but by the use of common descriptions or maps shall be designed to identify the land or waterway in a manner intelligible to the layperson and useful in establishing the exact location of the state claim in relation to existing legal descriptions.

(b) Advise that any person aggrieved by the declaration may seek judicial review of the declaration pursuant to ORS 274.412.

(2) Send to each owner of record of land described in the declaration a copy of the declaration made with respect to the land and a statement advising such owner that any aggrieved party may seek judicial review of the declaration pursuant to ORS 274.412. [1995 c.471 §6]

274.410 [Renumbered 274.525]

274.412 Judicial review of declaration of state's claim. Any person who is aggrieved by a declaration of the State Land Board made pursuant to ORS 274.406 may seek judicial review of the declaration in the manner provided in ORS chapter 183 for judicial review of final orders in other than contested cases. For purposes of ORS 183.484 (2), the date three days after the date of mailing of notice under ORS 274.408 (2) shall be considered the date the order is served on the owner. [1995 c.471 §7]

OREGON ADMINISTRATIVE RULES

CHAPTER 121, DIVISION 121

DEPARTMENT OF STATE LANDS

NAVIGABILITY DETERMINATIONS

141-121-0000

Applicability

(1) These rules, authorized by [ORS 274 .400](#) through [274. 412](#), prescribe the procedure which the Land Board and the Division will follow to assert title to land underlying Oregon's waterways from the date of rule adoption.

(2) These rules do not apply to:

(a) Those parts of waterways which have had their ownership determined through adjudication by a court having jurisdiction to determine title to real property in Oregon; and

(b) All tidally influenced waters.

Stat. Auth.: [ORS 273 .041](#) - [ORS 273 .185](#) & [ORS 274 .400](#) - [ORS 274 .412](#)

Stats. Implemented: [ORS 274 .400](#) - [ORS 274 .412](#)
Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0010

Definitions

(1) "Affected Property Owners" refers to those people listed in the records of the county assessor as owners of property fronting, abutting or underlying, or having a recorded easement allowing access to a waterway segment at the time that the Division undertakes a navigability study of the subject waterway.

(2) "Broad And Substantial Public Interest" exists when the Land Board, after considering the public's right to the use of a waterway segment and the authority of the state and local governments, determines that an administrative determination of navigability is required to:

(a) Help resolve conflicts between property owners, between users (including recreational users), or

between users and affected property owners of a waterway segment;

(b) Facilitate management or protection of a waterway segment (for example, its environmental components or scenic, historic and cultural values); and/or

(c) Facilitate and promote commerce.

(3) "Declaration" is a final decision of the Land Board concerning the nature and extent of the state's claim to the bed and banks underlying the waterway segment under consideration.

(4) "Division" means the Oregon Division of State Lands.

(5) "Land Board" means the Oregon State Land Board.

(6) "Navigable" and "Navigability" are defined by the criteria established by federal courts having jurisdiction to determine the extent of state ownership of land underlying a waterway segment.

(7) "Navigability Study" is the process of collecting, evaluating, and preparing a report relating to the use and characteristics of a waterway segment in order to determine if it is navigable.

(8) "Person" is an individual, special interest group, political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation.

(9) "Requester" is any person requesting that the Land Board direct the Division to conduct a navigability study.

(10) "Sufficient Economic Justification" exists when the Land Board decides that a determination of navigability will result in revenue accruing to the Common School Fund from a leasable use (as defined by Division administrative rules) of the waterway segment or underlying land (for example, the placement of marinas or log rafts, or the extraction of aggregate).

(11) "Title" is fee simple ownership to property, in this case, the bed and banks underlying a waterway segment.

(12) "Waterway" refers for the purposes of these rules to any discrete, identifiable body of water and its bed and banks in Oregon including, but not limited to, rivers, streams, and lakes.

Stat. Auth.: [ORS 273](#) .041 - [ORS 273](#) .185 & [ORS 274](#) .400 - [ORS 274](#) .412

Stats. Implemented: [ORS 274](#) .400 - [ORS 274](#) .412
Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0020

Request For A Navigability Study

(1) Only the Land Board can direct the Division to undertake a navigability study.

(2) All requests to undertake a navigability study shall be submitted to the Division in writing and shall, at a minimum, include the following information:

(a) The name and specific segment (identified through the use of river miles or other clearly locatable geographic place names or features) of the waterway segment for which a navigability study is requested;

(b) Discussion and evaluation of the substantial economic justification for, and/or broad and substantial public interest in support of a navigability study;

(c) Description of any use conflicts, contact with local, state and federal authorities, and efforts to resolve problems; and

(d) Available evidence that the subject waterway segment is or is not likely to be navigable.

(3) Navigability study requests which are incomplete will be returned to the requester by the Division with the deficiencies noted in writing. The Division shall not act on requests until all information required in OAR 141-121-0020(2) is provided.

(4) The Division shall give public notice of receipt of a complete request to undertake a navigability study of a particular waterway segment. This notice shall be published in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located. The notice shall be sent to persons requesting such notices and other interested persons (for example, local government, watershed councils, etc.).

(5) The Division shall refer all complete navigability study requests to the Land Board. The Division shall fully describe the request and give the Division's recommendation(s) based on its evaluation of the following considerations:

(a) Whether sufficient economic justification and/or broad and substantial public interest exists to justify such a study;

(b) If other alternative means exist to resolve the use conflicts identified in the study request;

(c) The relative importance of the issue(s) as compared with other study requests;

(d) The cost of conducting the required study; and

(e) The Division's workload and the availability of funding.

(6) The Division shall ask the Land Board to direct it to undertake a navigability study, postpone undertaking the study, reject the request, or provide it with other instructions.

Stat. Auth.: [ORS 273](#) .041 - [ORS 273](#) .185 & [ORS 274](#) .400 - [ORS 274](#) .412

Stats. Implemented: [ORS 274](#) .400 - [ORS 274](#) .412
Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0030

Process For Conducting A Navigability Study

A navigability study shall consist of the following actions in the order presented:

(1) If the Land Board directs the Division to conduct a study, the Division shall give public notice that it will undertake the study. This notice shall be called a "Notice Of Initiation Of Navigability Study" and shall:

(a) Describe the purpose of the study and the location of the waterway segment under consideration;

(b) Request that any persons having information relevant to the study contact the Division;

(c) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located; and

(d) Be sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.).

(2) If the Land Board decides to reject a request to undertake a study, the Division shall provide written notice of the Land Board's decision to the requester.

(3) A draft navigability study of the waterway segment shall be prepared by the Division for public review and comment. This report shall contain the Division's proposed draft findings and conclusions as to whether or not the waterway segment is navigable.

(4) The Division shall give public notice of the completion of the Draft Navigability Report. This notice shall be called "Notice Of Availability Of Draft Navigability Study Report" and shall:

(a) Present the Division's proposed draft findings and conclusions as to whether the subject waterway is navigable;

(b) Describe how the public may obtain a copy of the Draft Navigability Report, comment on, and/or present additional evidence concerning the study;

(c) Give the date(s), time(s), and location(s) of public hearings concerning the study, and the public comment period;

(d) Give the date and time of the Land Board meeting at which additional public testimony will be heard;

(e) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the land underlying the subject waterway segment is located; and

(f) Be sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.). The Division shall also send a copy of the Draft Navigability Study to county public libraries in the area of the subject waterway segment.

(5) The Division shall hold at least one hearing in the area of the waterway segment to obtain public input.

(6) After the public hearings have been held, the Division shall analyze the input received and shall submit the following information to the Land Board:

(a) The Draft Navigability Report;

(b) A summary of all input received by the Division in response to the Draft Navigability Report; and

(c) The Division's draft findings and conclusions as to whether the subject waterway segment is navigable, citing information in the hearing record to support and/or refute the conclusion(s) made. This information shall be presented to the Land Board at a scheduled meeting. The Division's recommendations shall be made available to the public at least seven (7) calendar days prior to the Land Board meeting. The public shall be given an opportunity at this meeting to submit additional testimony to the Land Board. The comment period shall close seven (7) calendar days after this Land Board meeting, unless extended by an action of the Land Board.

(7) The Division shall consider and summarize all the input and testimony received and shall prepare a Final Navigability Report.

Stat. Auth.: [ORS 273 .041](#) - [ORS 273 .185](#) & [ORS 274 .400](#) - [ORS 274 .412](#)

Stats. Implemented: [ORS 274 .400](#) - [ORS 274 .412](#)
Hist.: LB 4-1996, f. & cert. ef. 6-14-96

141-121-0040

Adoption Of Navigability Report

(1) The Division shall select a date and time when it will present the Final Navigability Report to the Land Board, and shall prepare a meeting notice. The notice shall:

(a) Briefly describe the findings and conclusions of the Final Navigability Report and advise people how to obtain a copy;

(b) Be published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area in which the waterway segment is located; and

(c) Be sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.). The Division shall also send a copy of the Draft Navigability Study to county public libraries in the area of the subject waterway segment.

(2) The Land Board shall consider the evidence in the record and the Division's findings and conclusions as contained in the Final Navigability Report, and shall make a decision concerning the nature and extent of the state's claim to the land underlying the waterway segment. Based on the information provided, the

Land Board may adopt the findings and conclusions contained in the Final Navigability Report if substantial evidence in the record supports the report's findings and conclusions.

(3) If the Land Board adopts the findings and conclusions contained in the Final Navigability Report, it shall issue a written declaration which:

(a) States the nature and extent of the state's claim to the land underlying the subject waterway segment;

(b) Clearly describes the location of the land claimed by the state using common descriptions or maps designed to identify the land or waterway segment in a manner intelligible to the lay person and useful in establishing the exact location of the state claim in relation to existing legal descriptions;

(c) Advises that any person aggrieved may seek judicial review of the declaration subject to the provisions of [ORS 183.310](#) to [183.550](#);

(d) Is published not less than once each week for three (3) successive weeks in a statewide newspaper, and also a newspaper of general circulation in the area the waterway segment is located; and

(e) Is sent to affected property owners, persons who request such notices, and other interested persons (for example, local government, watershed councils, etc.).

Stat. Auth.: [ORS 273 .041](#) - [ORS 273 .185](#) & [ORS 274 .400](#) - [ORS 274 .412](#)

Stats. Implemented: [ORS 274 .400](#) - [ORS 274 .412](#)

Hist.: LB 4-1996, f. & cert. ef. 6-14-96