



The Oregon Administrative Rules contain OARs filed through April 13, 2007

DEPARTMENT OF AGRICULTURE

DIVISION 82

OYSTER, CLAM AND MUSSEL LEASES

603-082-0010

Purpose

The purpose of this division is:

- (1) To establish procedures, standards and requirements to be used by the department to determine if a new plat application that proposes to lease and use state lands located in coastal estuaries for the commercial cultivation of oysters, clams or mussels is consistent with ORS 622.210 to 622.360.
- (2) Establish procedures, standards and requirements for the sale, lease, assignment, conveyance, relinquishment or other transfer of shellfish plats.
- (3) Establish procedures, standards and requirements for the withdrawal of unproductive and abandoned lands.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.210 - .ORS 662.360

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0020

Definitions

For purposes of OAR 603-082-0010 through 603-082-0100, the definitions in ORS 183.310 and 622.210 apply. In addition:

- (1) "Claimant" means a person or agency that claims control of a plat granted by the department under ORS 622.210 to 622.992.
- (2) "Cultivation" means the process of growing or farming cultured oysters, clams or mussels with the primary intent to make a profit in money. Cultivation includes activities associated with bed or site preparation, seeding, grow out and harvesting and includes methods that:
 - (a) Are or may be used on an operation of a similar nature;
 - (b) Are or may become generally accepted, reasonable and prudent in conjunction with the commercial production of oysters, clams or mussels; and
 - (c) Comply with applicable laws.
- (3) "Cultivator" means any person cultivating oysters, clams or mussels on or within a plat.
- (4) "Department" means the State Department of Agriculture.
- (5) "Impact" means the actual, expected or predictable results upon navigation, fish and wildlife habitat, recreational activities, commerce or other public uses.
- (6) "Plat" means an area:
 - (a) The department has found to be available and classified as suitable for oyster, clam or mussel cultivation, pursuant to ORS 622.250; and
 - (b) The department has granted to an applicant for oyster, clam or mussel cultivation pursuant to ORS 622.250.
- (7) "Public trust values" include commerce, navigation, fishing and recreation.
- (8) "State land" means submerged and submersible lands within the boundaries of the State of Oregon.
- (9) "Submerged lands" are lands lying below the line of ordinary low water of all title navigable and tidally influenced water within the State of Oregon.
- (10) "Submersible lands" are lands lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the State of Oregon.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.210 - .ORS 662.360

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0030

Application Requirements

- (1) Applicants for new oyster, clam or mussel plats shall complete and submit an application form prescribed and provided by the department including the following supplemental information:

- (a) A legal description of the area applied describing the boundaries of the area and specifying its acreage.
- (b) A map of sufficient detail to allow the area applied for to be readily identified.
- (c) An application fee as established by ORS 622.250(1).
- (d) An affidavit of publication indicating fulfillment of subsection (2) of this section.

(2) The applicant shall cause notice of the application to be published once a week for two consecutive weeks in a newspaper of general circulation in each county where any area is applied for, or any part thereof, is located. The notice must state the name of the applicant, the type of operation the applicant proposes to conduct, and a general and legal description of the area. The notice shall also state that any comments regarding the proposed plat may be submitted to the department.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.230

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0040

Plat Application Review

Upon receipt of an application for an oyster, clam or mussel lease, an applicant shall be eligible for an authorization of a plat if the director determines that:

- (1) The application is complete pursuant to OAR 603-082-0030. If an application is determined to be incomplete, the department shall notify the applicant of exactly what information is missing within 45 days of the receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete on receipt of the missing information.
- (2) The subject area is suitable for cultivation or can be rendered suitable for cultivation with conditions imposed by the department in the final order and grant certificate.
- (3) In the case of an application for the cultivation of clams or mussels, the proposed plat shall involve an oyster plantation claim or plat that was in effect on June 1, 1997. The proposed clam or mussel plat area may include not more than 20 percent of the lands subject to the existing oyster claim or plat and shall include not less than one acre.
- (4) The proposed plat will not restrict the rights of the public to use the waters of the state in a normal and customary manner.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.230, ORS 622.250 & ORS 622.320

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0050

Classifying Lands Suitable for Cultivation

- (1) In determining if an area is suitable for cultivation of oysters, clams or mussels, the department shall consider the following:
- (a) Consistency with local land use regulations, plans and zoning requirements and with the Statewide Planning Goals.
 - (b) Consistency with applicable local, state or federal laws.
 - (c) Certification or approval status by the department for harvest intended for human consumption.
 - (d) Compatibility with existing commercial fishing and shellfish operations including crabbing, shrimping and clamming.
 - (e) Impacts on fish and wildlife habitat.
 - (f) Impacts on navigation.
 - (g) Compatibility with recreational activities, commerce or other public uses or public trust values.
 - (h) Evidence that the land is owned by the state.
 - (i) If the land is available for shellfish cultivation.
- (2) The department shall consult with appropriate local, state and federal agencies to determine whether lands proposed by an applicant are suitable for shellfish cultivation. A local, state or federal agency may request in writing to receive notice of new plat applications.
- (3) The classification of state lands for cultivation for a specific proposed plat area may occur concurrent with the processing and review of an application for a new plat.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.240, ORS 622.250

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0060

Action by the Director

- (1) The director may issue a proposed order approving, approving with conditions or denying a plat application. The director may grant or deny an application no later than the 90th day from after the date of publication of the notice referred to in OAR 603-082-0030(2). The 90 day time period may be extended for a reasonable period of time at the request of the applicant and approval of the department.
- (2) The proposed order shall include or be accompanied by the following:
- (a) A caption with the name of the department, the name of the claimant and a case number if used;
 - (b) A statement describing the purpose and effect of the proposed order, and the factual and legal basis for it, including citation to the statutes and rules relied upon;

- (c) A statement of the claimant's right to challenge the proposed order by requesting a hearing, and that the request must meet the following requirements:
- (A) A request for hearing must identify the matter appealed by the claimant's name, the date of the proposed order and the department's case number, if any;
 - (B) A request for a hearing must explain how the claimant considers the proposed order to be legally or factually incorrect.
 - (C) To be timely, a request for a hearing must be received by the department by the close of business on the 30th day after the date of the proposed order.
- (d) A statement of additional rights and risks of the claimant, including at least the following:
- (A) A statement informing the claimant that if a request for hearing is not received by the department by the established date, the claimant will have waived the right to a hearing and the proposed order will be final.
 - (B) A hearing in response to a request will be limited to the issues raised in the request;
 - (C) The claimant has the right to be represented by an attorney, but if the claimant is an agency, a corporation or an unincorporated association, the claimant must be represented by an attorney.
- (e) How to get more information and the department staff member and address or facsimile number to which a request for hearing must be sent.
- (f) A hearing shall be conducted pursuant to ORS 183.415 et seq.
- (3) Upon final approval of a plat, a boundary survey shall be prepared and submitted to the department before a Grant Certificate is issued. A professional surveyor licensed in Oregon shall conduct the survey.
- (4) The boundary corners of existing and new plats shall be plainly and distinctly marked out by a means that does not obstruct navigation.

Stat. Auth.: ORS 561.190 & ORS 622.320

Stats. Implemented: ORS 622.250

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0070

Transfer of Plats

- (1) Sales, leases, assignments, conveyances, relinquishments and other transfers of oyster plantations and claims, or parts thereof, or of plats for the cultivation of oysters, clams or mussels may be made by reference to the plat filed as provided in ORS 622.210 to 622.300 and 622.320. The heirs, successors, assignees and lessees of those plats are entitled to continued possession of such plats by compliance with ORS 622.210 to 622.300 and 622.320.
- (2) A person proposing to sell, lease, assign, convey, relinquish or otherwise transfer an oyster plantation claim or a plat for the cultivation of oysters, clams or mussels shall provide the department notice of such

transaction within 30 days of the effective date of the transaction.

(3) The filing of such a notice, if other than a relinquishment, shall be accompanied by a claim or plat certificate reissuance fee established in ORS 622.340(3) for each affected claim or plat.

(4) The failure to provide the notice required by subsection (2) of this section shall result in the department holding the lessor of record of the claim or plat responsible for compliance with the provisions of ORS 622.210 to 622.360 and all provisions of the lease grant certificate.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.340

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0080

Annual Fees and Taxes

(1) Persons using state lands for cultivating oysters, clams or mussels shall pay annual cultivation fees and use taxes quarterly to the department. Fees and taxes become delinquent 30 days after the end of the quarter. Use taxes shall be in the amount established by ORS 622.290(1).

(2) Annual cultivation fees and use taxes shall be assessed in lieu of property taxes, lease fees or rental charges for the use of lands upon which oysters, clams or mussels are grown and harvested.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.290

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0090

Withdrawal of Unproductive and Abandoned Lands

(1) The rules of procedure in OAR 603-082-0090 are in addition to the procedural requirements of the Attorney General's Model Rules of Procedure, codified at OAR 137-003-0501 to 137-003-0692. In the case of conflict, this division controls over the Model Rules, unless the Model Rules establish a mandatory requirement.

(2) The director may issue a proposed order withdrawing any portion of a plat from a claimant if the director finds the portion of the plat is unproductive or abandoned as described in ORS 622.280 and OAR 603-082-0090(3). The proposed order shall include or be accompanied by the following:

(a) A caption with the name of the department, the name of the claimant and a case number if used;

(b) A short and plain statement describing the purpose and effect of the proposed order, and the factual and legal basis for it, including citation to the statutes and rules relied upon;

(c) A statement of the claimant's right to challenge the proposed order by requesting a hearing, and that the request must meet the following requirements:

- (A) A request for hearing must identify the matter appealed by the claimant's name, the date of the proposed order and the department's case number, if any;
- (B) A request for a hearing must explain how the claimant considers the proposed order to be legally or factually incorrect.
- (C) To be timely, a request for a hearing must be received by the department by the close of business on the 30th day after the date of the proposed order.
- (d) A statement of additional rights and risks of the claimant, including at least the following:
- (A) A statement informing the claimant that if a request for hearing is not received by the department by the established date, the claimant will have waived the right to a hearing and the proposed order will be final.
- (B) A hearing in response to a request will be limited to the issues raised in the request;
- (C) The claimant has the right to be represented by an attorney, but if the claimant is an agency, a corporation or an unincorporated association, the claimant must be represented by an attorney.
- (e) How to get more information and the department staff member and address or facsimile number to which a request for hearing must be sent.
- (f) A hearing shall be conducted pursuant to ORS 183.415 et seq.
- (3) Pursuant to ORS 622.280, a plat or portion of a plat may be found to be unproductive or abandoned under any of the following circumstances:
- (a) If more than one-half the lands in the plat are unproductive for a period of three years or more after the filing of the plat under chapter 675, Oregon Laws 1969. Lands are unproductive when
- (A) The claimant fails to pay the fees or use taxes referred to in ORS 622.290, unless the department determines that there was reasonable cause for such failure.
- (B) Evidence shows that cultivated oysters, clams or mussels have not been produced or harvested for a period of three years.
- (b) If any portion of a plat is not marked in the manner provided by ORS 622.320, that portion of the plat may be considered abandoned.
- (c) If any portion of a plat is held by a claimant for purposes other than oyster, clam or mussel cultivation, that portion of the plat may be considered abandoned.
- (d) Evidence indicates that the plat is being used in a manner contrary to the conditions imposed on the plat as indicated in the Final Order and Grant Certificate.
- (e) When the claimant requests in writing that their rights, claims and leases to any portion of a plat be terminated by the department.
- (4) Lands may not be found to be abandoned if the reason for unproductiveness is any of the following:

- (a) Restrictions imposed by governmental health authorities;
- (b) The unavailability of seed; or
- (c) Infestation of the plat by pest or disease.

(5) Nothing in this rule affects any oyster cultivation right acquired prior to January 1, 1982, pursuant to chapter 675, Oregon Laws 1969.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.280 & ORS 622.310

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

603-082-0100

Scheduling, Notice and Conduct of Hearings

(1) The department shall provide notice of the hearing containing at least the following information:

(a) If the claimant or the claimant's representative fails to appear at the time and place specified for the hearing, the department's file or files on the matter automatically become part of the record as prima facie evidence in support of the Order, and the Hearing Officer will decide the case based on that record;

(2) A hearing in response to a timely request shall be limited to the issues raised in the request. Evidence and argument shall not be taken on issues not raised in the claimant's request for appeal.

Stat. Auth.: ORS 561.190

Stats. Implemented: ORS 622.210 - ORS 622.360

Hist.: DOA 11-2003, f. & cert. ef. 2-27-03

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