



Oregon

Kate Brown, Governor

Public Wi-Fi logon: LandsDSL

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

STATE LAND BOARD

October 11, 2016

10:00 am – Noon

Department of State Lands

Land Board Room

775 Summer Street NE

Salem, OR 97301-1279

Kate Brown

Governor

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

AGENDA

Consent Items

1. a. Request for approval of the minutes of the June 14, 2016 State Land Board meeting.
- b. Request for approval of a permanent bridge easement over the northern segment of Columbia Slough in Multnomah County.
- c. Request for approval of a permanent bridge easement over the southern segment of Columbia Slough (aka Buffalo Slough) in Multnomah County.
- d. Request for approval of a permanent bridge easement over Isthmus Slough in Coos County.
- e. Request for approval of a permanent easement for an electrical utility line over state trust land in Tillamook County.
- f. Request for approval to initiate the review and determination of the potential sale of 1.96 acres of state-owned filled lands located in Curry County.
- g. Request for approval to initiate the review and determination of the potential sale of subsurface mineral and geothermal rights on approximately 46 acres of property located in Wheeler County.
- h. Request for approval to initiate the review and determination of the potential sale of subsurface mineral and geothermal rights on approximately 63.1 acres of property located in Marion County.

Action Items

2. Request for approval to sell one state-owned trust parcel with approximately 0.68 acres in Marion County to the surrounding property owner through a direct sale.
3. Request for approval to sell one state-owned trust parcel with approximately 70.6 acres in Lincoln County to The Wetlands Conservancy through a direct sale.
4. Request for adoption of amendments to the administrative rules governing the management of, and issuing of leases, licenses and registrations for structures on, and uses of state-owned submerged and submersible land (OAR 141-082-0250 to OAR 141-082-0340).

Informational Items

5. Biennial report on the Aquatic Resource Management Program.
6. Other.

This meeting will be held in a facility that is accessible for persons with disabilities. If you need assistance to participate in this meeting due to a disability, please notify Lorna Stafford at (503) 986-5224 or lorna.stafford@state.or.us at least two working days prior to the meeting.

Public Testimony - The State Land Board places great value on information received from the public. The Board accepts both oral and written comments on **consent and action agenda items only**.

When providing testimony, please:

- Provide written summaries of lengthy, detailed information
- Recognize that substance, not length, determines the value of testimony or written information
- Endorse rather than repeat the testimony of others

Written comments may be submitted before or during the meeting for consideration by the Board. Please bring 10 copies for distribution. To speak at the meeting, you must sign in on the sheet provided at the information table located near the meeting room's entrance. The standard time limit is three minutes for each individual. The Board cannot accept testimony on a topic for which a public hearing has been held and the comment period has closed.



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State Land Board

State Land Board

**Regular Meeting
October 11, 2016
Agenda Item 1b**

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval to grant a permanent easement for an existing bridge on NE 33rd Drive in Portland crossing the northern segment of Columbia Slough in Multnomah County (Appendix A).

ISSUE

Whether the State Land Board should approve a request from the City of Portland Bureau of Transportation (PBOT) for a permanent easement to operate, maintain repair, and replace an existing road bridge across the northern segment of Columbia Slough in Multnomah County.

AUTHORITY

Article VIII, Section 5 of the Oregon Constitution; requiring the Land Board to “manage lands 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.”

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-122-0010 to 141-122-0130; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

BACKGROUND

The Portland Bureau of Transportation (PBOT) submitted a complete easement application for the bridge crossing. The application was circulated to adjoining property owners, various state and federal resource and permitting agencies, and tribal entities. No significant comments were received from the circulation.

The described bridge on NE 33rd Drive in Portland has been in place since at least June of 1920 without authorization. The Columbia Slough is tidally influenced and therefore, state-owned. This type of use on, or over a state-owned waterway requires an easement.

PBOT completed and returned the signed Certificate of Approval and Conveyance for the draft easement (Appendix B).

Pursuant to OAR 141-122-0060(7)(c), a compensatory payment of \$100 is required for the easement area, which was paid on December 22, 2014.

RECOMMENDATION

The Department recommends that the State Land Board approve the granting of a permanent easement to the City of Portland Bureau of Transportation to operate, maintain, repair and replace a bridge on, over, under or across the Columbia Slough in Multnomah County.

APPENDICES

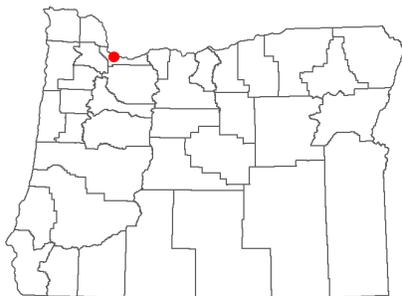
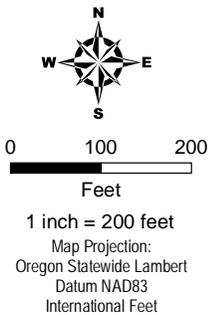
- A. Site Map
- B. Draft Easement (55874-EA)

State of Oregon Department of State Lands



55874-EA
Portland Bureau of Trans.
NE 33rd Dr and Columbia Slough

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



 Authorization Area

This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

State of Oregon
Department of State Lands
775 Summer St, NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL
Date: 9/26/2016

STATE OF OREGON
Department of State Lands

EASEMENT NO. 55874-EA

RWA #7530

S & S Bridge

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of \$ 100.00 , hereby grants to GRANTEE,

NAME of GRANTEE:
City of Portland
Bureau of Transportation

ADDRESS:
1120 SW 5th Avenue, Rm 800
Portland, OR 97204-1914

an easement and right to construct, maintain, operate and replace an existing bridge over, upon, and across the following particularly described property situated in Multnomah County, Oregon, more particularly described as follows:

An easement 100 feet wide, over, upon, and across state-owned submerged and submersible land of the northern segment of Columbia Slough, located in Section 12, Township 1 North, Range 1 East of the Willamette Meridian, said easement being 50 feet on each side from the center line more particularly described as follows:

Commencing at an iron rod at the southeast corner of Lot 15 along the westerly line of NE 33rd Drive as described in the duly recorded Plat of "Ayers Addition", situated in Sections 12 and 13, T1N, R1E, W.M., in the City of Portland, County of Multnomah, State of Oregon;

thence 40 feet east to the center line of said NE 33rd Drive to the Point of Beginning;

thence in a northerly direction following said center line approximately 1,050 feet, more or less, to a point 30 feet west of an iron pipe at the northwest corner of Lot 31 in said Plat of "Sunderland Acres".

Containing 0.25 acres, more or less, and as shown on the attached Exhibit "A".

This legal description provided by the City of Portland Bureau of Transportation.

TO HAVE AND TO HOLD the same unto GRANTEE for perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional non-conflicting easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.

2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
 - a) Changing the type of use authorized by this easement;
 - b) Expanding the number of authorized developments or uses;
 - c) Changing the authorized area; and/or
 - d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.
3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.
4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.
5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
 - a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
 - b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.
7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.
8. GRANTEE shall obtain a surety bond in the amount of N/A to ensure compliance with the terms and conditions of this easement.
9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.
10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the

easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.

11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: N/A.
12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.
13. If this easement authorizes the use of state-owned submerged and/or submersible land:
 - a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
 - b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.
14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.
16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.
17. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.

This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

**CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)**

_____, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from _____, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this ____ day of _____, 20__.

_____,
Grantee

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20__, before me personally appeared _____, who being duly sworn stated that he/she is the _____ of _____, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.

NOTARY PUBLIC FOR OREGON
My commission Expires: _____



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

State Land Board

**Regular Meeting
October 11, 2016
Agenda Item 1c**

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval to grant a permanent easement for an existing bridge on NE 33rd Drive in Portland crossing the southern segment of Columbia Slough, sometimes also known as Buffalo Slough, in Multnomah County (Appendix A).

ISSUE

Whether the State Land Board should approve a request from the City of Portland Bureau of Transportation (PBOT) for a permanent easement to operate, maintain repair, and replace an existing road bridge across the southern segment of Columbia Slough in Multnomah County.

AUTHORITY

Article VIII, Section 5 of the Oregon Constitution; requiring the Land Board to “manage lands 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.”

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-122-0010 to 141-122-0130; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

BACKGROUND

The Portland Bureau of Transportation (PBOT) submitted a complete easement application for the bridge crossing. The application was circulated to adjoining property owners, various state and federal resource and permitting agencies, and tribal entities. No significant comments were received from the circulation.

The described bridge on NE 33rd Drive in Portland has been in place since at least June of 1920 without authorization. The Columbia Slough is tidally influenced and therefore, state-owned. This type of use on, or over a state-owned waterway requires an easement.

PBOT completed and returned the signed Certificate of Approval and Conveyance for the draft easement (Appendix B).

Pursuant to OAR 141-122-0060(7)(c), a compensatory payment of \$100 is required for the easement area, which was paid on May 29, 2015.

RECOMMENDATION

The Department recommends that the State Land Board approve the granting of a permanent easement to the City of Portland, Bureau of Transportation, to operate, maintain, repair and replace a bridge on, over, under or across the southern segment of Columbia Slough, sometimes known as Buffalo Slough, in Multnomah County.

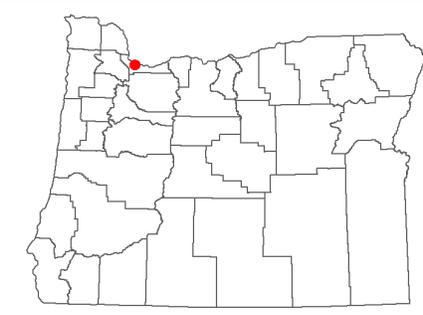
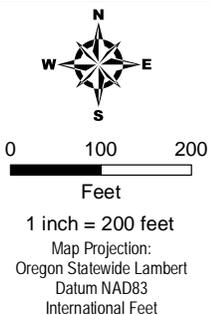
APPENDICES

- A. Site Map
- B. Draft Easement (57578-EA)

State of Oregon Department of State Lands



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



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Date: 9/26/2016

STATE OF OREGON
Department of State Lands

EASEMENT NO. 57578-EA

RWA #7530

S & S Bridge

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of \$ 100.00 , hereby grants to GRANTEE,

NAME of GRANTEE:
 City of Portland
 Bureau of Transportation

ADDRESS:
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an easement and right to construct, maintain, operate and replace an existing bridge over, upon, and across the following particularly described property situated in Multnomah County, Oregon, more particularly described as follows:

An easement 100 feet wide, over, upon, and across state-owned submerged and submersible land of the southern segment of Columbia Slough, also sometimes known as Buffalo Slough, located in Section 13, Township 1 North, Range 1 East of the Willamette Meridian, said easement being 50 feet on each side from the center line more particularly described as follows:

Commencing at an iron rod at the southeast corner of Lot 15 along the westerly line of NE 33rd Drive as described in the duly recorded Plat of "Ayers Addition", situated in Section 13, T1N, R1E, W.M., in the City of Portland, County of Multnomah, State of Oregon;

thence 40 feet east to the center line of said NE 33rd Drive to the Point of Beginning;

thence in a northerly direction following said center line approximately 1,050 feet, more or less, to a point 30 feet west of an iron pipe at the northwest corner of Lot 31 in said Plat of "Sunderland Acres".

Containing 0.25 acres, more or less, and as shown on the attached Exhibit "A".

This legal description provided by the City of Portland Bureau of Transportation.

TO HAVE AND TO HOLD the same unto GRANTEE for perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional non-conflicting easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.

2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
 - a) Changing the type of use authorized by this easement;
 - b) Expanding the number of authorized developments or uses;
 - c) Changing the authorized area; and/or
 - d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.
3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.
4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.
5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
 - a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
 - b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.
7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.
8. GRANTEE shall obtain a surety bond in the amount of N/A to ensure compliance with the terms and conditions of this easement.
9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.

10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.
11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: N/A.
12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.
13. If this easement authorizes the use of state-owned submerged and/or submersible land:
 - a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
 - b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.
14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.
16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.
17. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.

This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

WITNESS the seal of the Department of State Lands affixed this _____ day of _____, 20__.



STATE OF OREGON, acting by and through its Department of State Lands

DSL Authorized Signature/Printed Name

STATE OF OREGON)
)ss
County of Marion)

This foregoing instrument was acknowledged before me this ____ of _____, 20 , by _____, the _____ of the Department of State Lands.

Signature
My commission Expires _____, 20__.

CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)

_____, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from _____, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this ____ day of _____, 20__.

_____,
Grantee

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20__, before me personally appeared _____, who being duly sworn stated that he/she is the _____ of _____, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.

NOTARY PUBLIC FOR OREGON
My commission Expires: _____



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

State Land Board

**Regular Meeting
October 11, 2016
Agenda Item 1d**

Kate Brown
Governor

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval to grant a permanent easement for an existing bridge and larger use area for that bridge on Coos River Highway OR 241 in Coos Bay crossing Isthmus Slough in Coos County (Appendix A).

ISSUE

Whether the State Land Board should approve a request from the Oregon Department of Transportation (ODOT) for a permanent easement to operate, maintain, repair, and replace an existing bridge across Isthmus Slough in Coos County.

AUTHORITY

Article VIII, Section 5 of the Oregon Constitution; requiring the Land Board to “manage lands 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.”

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-122-0010 to 141-122-0130; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

BACKGROUND

The Oregon Department of Transportation (ODOT) submitted an easement application for the bridge crossing. The application was circulated to adjoining property owners, various state and federal resource and permitting agencies, and tribal entities. No significant comments were received from the circulation. ODOT has applied for an

Administrative Conditional Use Permit through Coos County. Their application with the county has been deemed complete, but has a 150-day review period.

The existing bridge currently has a 40-year easement for an 80-foot wide crossing (APP 23178) that will expire November 12, 2040. ODOT, in their planning phase for maintenance and repairs of the bridge, has requested a permanent, 100-foot wide easement that will allow for the bridge and any future maintenance. The request for the unusually large use area takes into account the dolphins on both sides of the bridge that hold lights for safety and protect the support columns from flood debris and ships. Woody debris routinely builds up in this area and requires regular removal. The existing easement width does not cover the dolphins.

Also due to the bridge location and it being a mechanical bridge, it requires more maintenance than most ODOT bridges. Isthmus Slough is tidally influenced and therefore state-owned. This type of use on or over a state-owned waterway requires an easement.

Pursuant to OAR 141-122-0060(2)(a) no compensation is required.

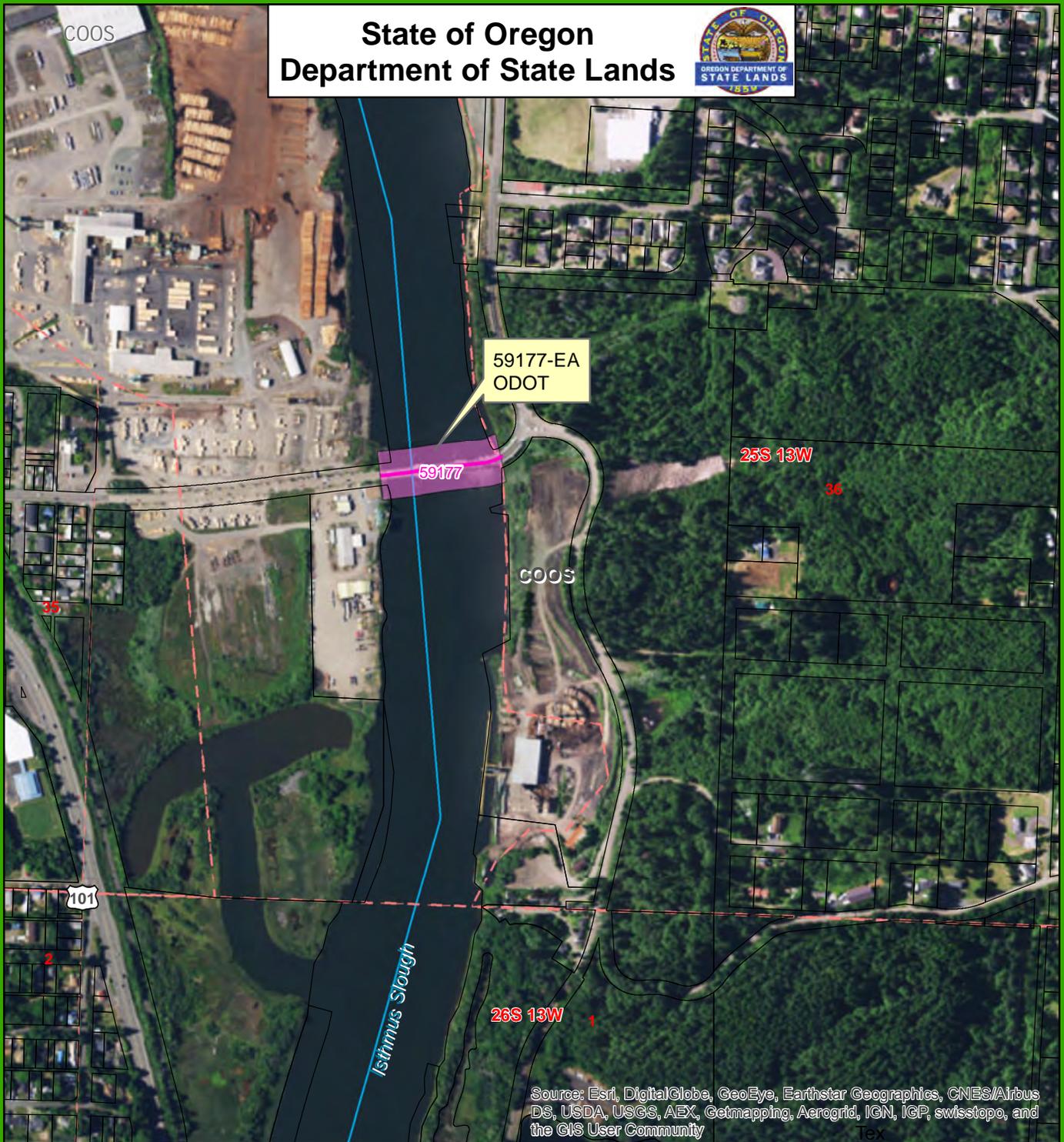
RECOMMENDATION

The Department recommends that the State Land Board approve the granting of an enlarged, permanent easement (Appendix B) to the Oregon Department of Transportation to operate, maintain, repair and replace a bridge on, over, under or across Isthmus Slough in Coos County.

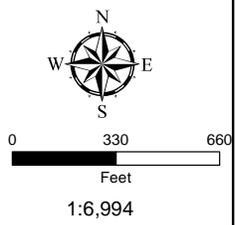
APPENDICES

- A. Site Map
- B. Draft Easement (59177-EA)

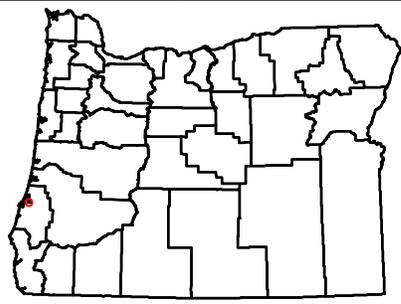
State of Oregon
Department of State Lands



Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet



Vicinity Map

- Legend**
- Coos_tax_16
 - Description Lines
 - Authorization Area

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Appendix A

State of Oregon
Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL

Date: 7/7/2016

DRAFT

STATE OF OREGON Department of State Lands

EASEMENT NO. 59177-EA S&S Bridge

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of \$0.00, hereby grants to GRANTEE,

NAME of GRANTEE:	ADDRESS:
State of Oregon, by and through its Department of Transportation	3500 NW Stewart Pkwy Roseburg, OR 97470

an easement and right to construct, maintain, operate and replace a bridge over, upon, and across the following particularly described property situated in Section 36, Township 25 South, Range 13 West of the Willamette Meridian in Coos County, Oregon, more particularly described in the attached Exhibits A1, A2 and A3.

This easement terminates and replaces that existing 40-year easement granted to the Oregon Department of Transportation from the Division of State Lands in 2001 and recorded on June 18, 2001 in Coos County, Instrument 2001-6344.

TO HAVE AND TO HOLD the same unto GRANTEE in perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.
2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
 - a) Changing the type of use authorized by this easement;
 - b) Expanding the number of authorized developments or uses;
 - c) Changing the authorized area; and/or
 - d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the administrative rules governing the granting of easements or other GRANTOR requirements.
3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.

4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.
5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
 - a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
 - b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.
7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.
8. GRANTEE shall obtain a surety bond in the amount of \$N/A to ensure compliance with the terms and conditions of this easement.
9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.
10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.
11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: as needed.
12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions

of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.

13. If this easement authorizes the use of state-owned submerged and/or submersible land:
 - a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
 - b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.
14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.
16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.
17. If a crossing listed in this easement is later found to have a valid easement from the GRANTOR, then the easement with the latest expiration date will be the "prevailing easement."
18. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.

This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

WITNESS the seal of the Department of State Lands affixed this _____ day of _____, 20 .



STATE OF OREGON, acting by and through its Department of State Lands

DSL Authorized Signature/Printed Name

STATE OF OREGON)
)ss
County of Marion)

This foregoing instrument was acknowledged before me this _____ day of _____, 20__, by _____, the _____ of the Department of State Lands.

Signature
My commission Expires _____, 20__.

Permanent Easement for Highway Right of Way Purposes

A parcel of land lying in the N $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 36, Township 25 South, Range 13 West, W.M., Coos County, Oregon; the said parcel being all state-owned submerged land lying between the lines of ordinary low water on the Easterly and Westerly banks of Isthmus Slough included in a strip of land 200 feet in width, 100 feet on each side of the center line of the relocated Coos River Highway, which center line is described as follows:

Beginning at Engineer's center line Station "CR"63+00.00, said station being 1586.23 feet North and 105.89 feet West of the Southwest corner of Section 36, Township 25 South, Range 13 West, W.M.; thence North 89°14'58" East 141.60 feet to Engineer's center line Station "CR"64+41.60 Back equals Engineer's center line Station "CR"12+93.02 Ahead; thence North 89°14'58" East 38.42 feet; thence on a 2864.79 foot radius curve left (the long chord of which bears North 84°56'26" East 430.47 feet) 430.88 feet; thence North 80°37'55" East 1083.45 feet; thence on a 205.07 foot radius curve left (the long chord of which bears North 28°13'24" East 324.99 feet) 375.15 feet to Engineer's Center Line Station "CR"32+20.93 Back equals Engineer's center line Station "CR"32+20.30 Ahead.

Bearings are based on the Oregon Coordinate Reference System 1983(2011 adjustment, epoch 2010) Oregon Coast zone.

This parcel of land contains 2.16 acres, more or less.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

DIGITAL SIGNATURE

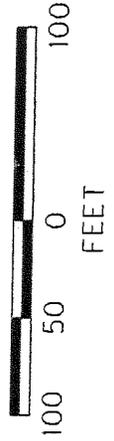
OREGON
JANUARY 9, 2001
MARSHALL R. WAGSTAFF
49476

RENEWS: 6/30/2016

Exhibit A-1

N1/2 SW1/4 SEC. 36, T. 25 S., R. 13 W., W.M.

SCALE 1" = 100'



"CR" 27°56'23" CL.
 R = 205.07'
 T = 104°49'00"
 T = 266.37'

N 703433.436
 E 404098.126
 P.O.I. Ah.

"CR" 32+20.30 P.O.I. Bk.
 "CR" 32+20.93 P.T. Bk.

"CR" 28+45.78 P.C.

"CR" 25+00

"CR" 30+00

"CR" 31+12.15 P.I.
 N 703190.447
 E 404207.253

OLIVE BARBER RD.

002

Oregon Department of Transportation
 Instr. No. 2001 06344

N 80°37'55" E

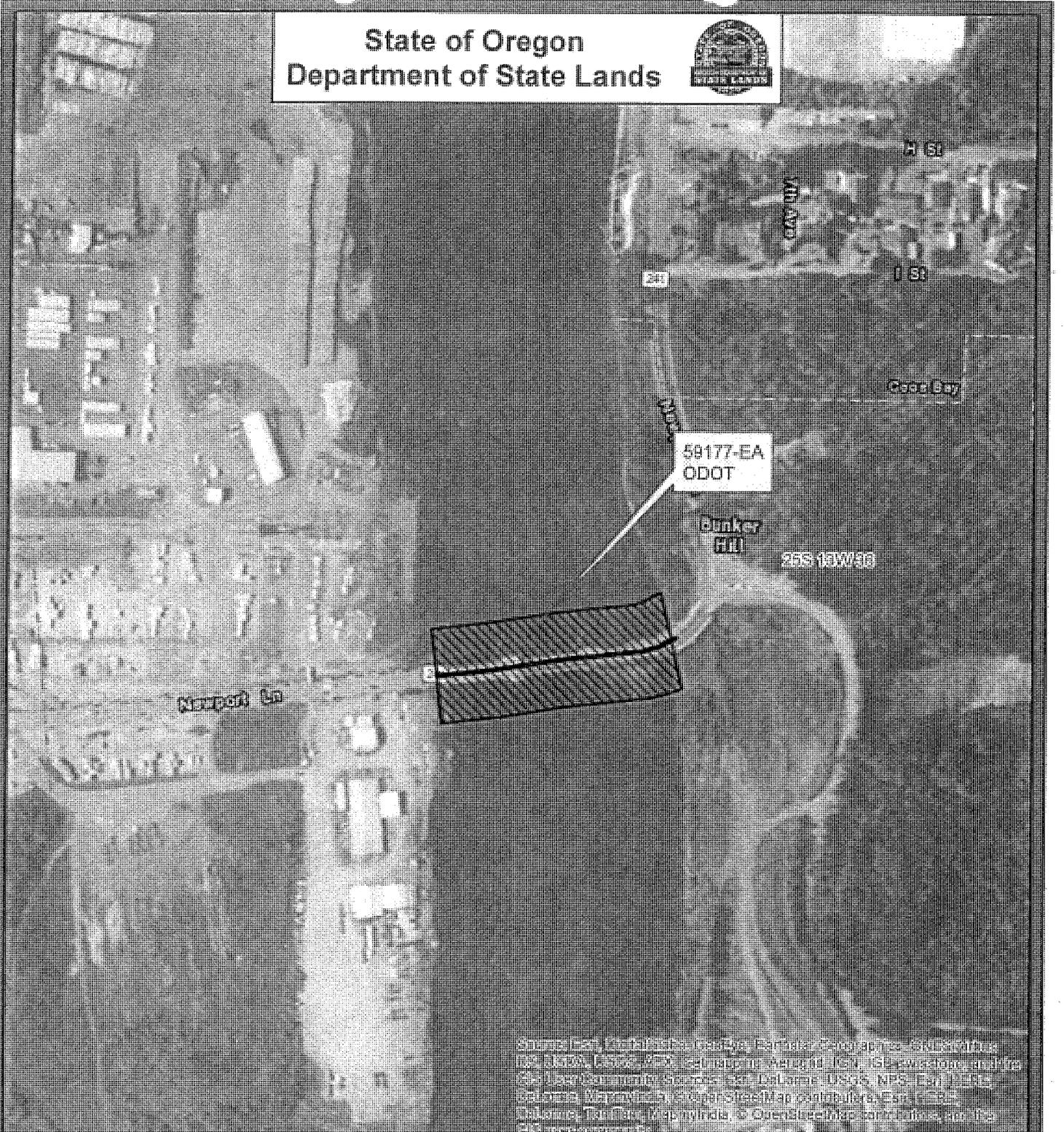
Permanent Easement for Highway Right of Way Purposes
 2.16 Ac. ±

State of Oregon, by and through
 its Department of State Lands

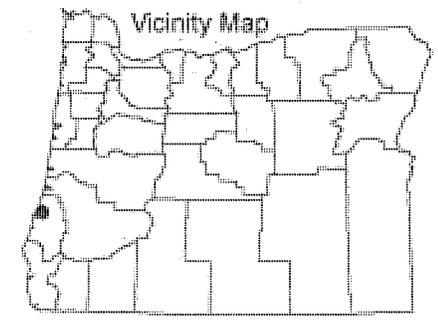
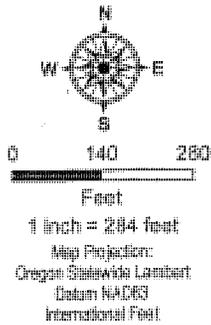
OREGON DEPARTMENT OF TRANSPORTATION
RIGHT OF WAY
 ENGINEERING
 Exhibit A-2

Section	0R241: Isthmus Slough Bridge Rehabilitation	Scale	1" = 100'
Highway	Coos River Highway	Date	NOV. 23, 2015
County	Coos County	File	9099 002
Purpose	Permanent Easement	See Drawing 11B-8-16	

State of Oregon
Department of State Lands



Source: Esri, DeLorme, GeoEye, "GeoEye", IGN, Intermap, Inc., Swire, GEBCO, USGS, AeroGRID, IGN, Esri, Mapbox, and others. Imagery provided by Mapbox, © OpenStreetMap contributors, Esri, DeLorme, GeoEye, "GeoEye", IGN, Intermap, Inc., Swire, GEBCO, USGS, AeroGRID, IGN, Esri, Mapbox, and others. Imagery provided by Mapbox, © OpenStreetMap contributors, Esri, DeLorme, GeoEye, "GeoEye", IGN, Intermap, Inc., Swire, GEBCO, USGS, AeroGRID, IGN, Esri, Mapbox, and others.



Legend

- Description Line
- ▨ Authorization Area

This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

Exhibit A-3

State of Oregon
Department of State Lands
775 Summer St, NE, Suite 100
Salem, OR 97301
503-988-5200
www.oregon.gov/DSL
Date: 6/10/2018

CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)

State of Oregon, by and through its Department of Transportation, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from State of Oregon, by and through its Department of State Lands, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this 23 day of August, 2016.

State of Oregon, by and through its
Department of Transportation,
Grantee

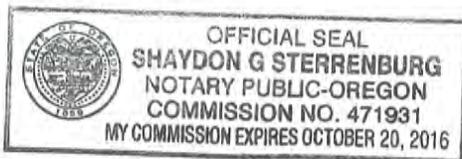
By: Deborah Timms Bohannon

Name: Deborah Timms Bohannon

Title: Right of Way Program Manager

STATE OF OREGON)
) ss.
County of Douglas)

On this 23rd day of August, 2016, before me personally appeared Deborah Timms Bohannon who being duly sworn stated that he/she is the R/W Program Mgr of Oregon Department of Transportation, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.



Shaydon G Sterrenburg
NOTARY PUBLIC FOR OREGON
My commission Expires: 10/20/16



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

State Land Board

Kate Brown

Governor

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

State Land Board

Regular Meeting

October 11, 2016

Agenda Item 1e

SUBJECT

Request for approval to grant a permanent easement for an electrical utility line and associated pad-mounted utility cabinet on 0.33 acres in Tillamook County (Appendix A).

ISSUE

Whether the State Land Board should approve a request from the Tillamook People's Utility District (TPUD) for a permanent easement to maintain the electrical utility crossing State Trust Land (Township 03 North, Range 10 East, Section 29, Tax Lot 4600).

AUTHORITY

Article VIII, Section 2 and Section 5 of the Oregon Constitution; requiring the Land Board to "manage lands 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."

ORS 273.171; relating to the duties and authority of the Director.

OAR 141-122-0010 to 141-122-0130; establishing procedures for granting easements and rights-of-way on trust and non-trust lands and requiring Land Board approval of easements granted in perpetuity.

BACKGROUND

The Tillamook People's Utility District (TPUD) submitted a complete easement application for this use. This easement application was circulated to adjoining property

owners, various state and federal resource and permitting agencies, and tribal entities. No comments were received.

The Department acquired the property subject to this easement in 2014, via a land exchange with the Oregon Department of Transportation (ODOT). The Department received an easement application from the TPUD in 2015, along with an easement appraisal that did not fully meet the trust obligation of fair market value for 100% of the easement encumbrance. After further discussions with the TPUD they responded in agreement to pay the full fair market value of the easement crossing. The Department has determined a fair market value of \$18,500 for the price of this easement, based on an appraisal of the property.

Pursuant to OAR 141-122-0060(1), a compensatory payment of \$18,500 will be paid for the easement area prior to fully executing the requested easement. With State Land Board approval, once payment is received the document will be signed by the Department Director for authorization.

RECOMMENDATION

The Department recommends that the State Land Board approve the granting of a permanent easement (Appendix B) to the Tillamook People's Utility District to maintain and operate the electrical utility line on, over, under or across the State Trust Land.

APPENDICES

- A. Site Map
- B. Draft Easement 57402-EA

State of Oregon Department of State Lands



Tillamook
County

57402-EA
Tillamook Public Utility District
3N 10W Sec. 29AD TL# 4600
Manzanita, Oregon

3N 10W

Manzanita

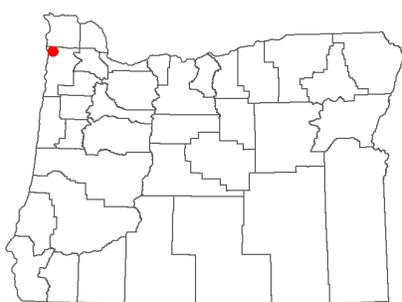
29

Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, ICP, swisstopo, and the GIS User Community, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors, and the GIS user community



0 50 100
Feet

1 inch = 100 feet
Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet



 Authorization Area

This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

State of Oregon
Department of State Lands
775 Summer St, NE, Suite 100
Salem, OR 97301
503-986-5200
www.oregon.gov/DSL
Date: 9/26/2016

STATE OF OREGON
Department of State Lands

EASEMENT NO. 57402-EA
Utility Easement

The STATE OF OREGON, by and through its Department of State Lands, GRANTOR, for and in consideration of \$18,500.00, hereby grants to GRANTEE,

NAME of GRANTEE:
Tillamook People's Utility District

ADDRESS:
1115 Pacific Ave.
PO Box 433
Tillamook, OR 97141

an easement and right to construct, maintain, operate and replace a buried utility line and pad-mounted utility cabinet over, upon, and across the following particularly described property situated in Tillamook County, Oregon, more particularly described as follows:

Township 03 North, Range 10 West, Section 29AD, Taxlot 4600, secured by a Bargain and Sale Deed; and recorded as instrument No. 2014-003759, T.C.D.R. for the placement of the electrical facilities within a 30-foot by 30 foot square beginning at the southwest corner and a 10-foot strip along the western property line of said property as shown in Exhibit "A"

Containing .0332 acres or 1447.90 square feet, more or less, and as shown on the attached Exhibit "A".

This description is used to establish the approximate location and extent of the area subject to this Department of State Lands authorized use and was not prepared by a licensed surveyor. All locations, bearings, and distances were developed in the Oregon Coordinate Reference System Standard; Oregon Statewide Lambert Conformal Conic, NAD 1983, International Feet, GRS 1980 Spheroid.

TO HAVE AND TO HOLD the same unto GRANTEE in perpetuity, subject to the following conditions:

1. GRANTOR has the right to grant additional easements within the area authorized by this easement subject to the provisions of the administrative rules governing the granting of easements.
2. GRANTEE shall obtain prior written approval from GRANTOR prior to:
 - a) Changing the type of use authorized by this easement;
 - b) Expanding the number of authorized developments or uses;
 - c) Changing the authorized area; and/or
 - d) Permitting other persons to utilize the easement for uses and developments requiring separate written authorization by GRANTOR pursuant to the

administrative rules governing the granting of easements or other GRANTOR requirements.

3. The easement area shall remain open to the public for recreational and other non-proprietary uses unless restricted or closed to public entry by the State Land Board or GRANTOR.
4. GRANTOR and/or its authorized representative(s) shall have the right to enter into and upon the easement area at any time for the purposes of inspection or management.
5. Except as expressly authorized in writing by the Department, GRANTEE shall not:
 - a) Cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation, or
 - b) Remove any sand and gravel, or other mineral resources for commercial use or sale, that occur in the easement area except as expressly authorized in writing by GRANTOR.

Routine right-of-way maintenance including vegetation trimming shall be allowed.

6. GRANTEE shall compensate GRANTOR for the fair market value of any commercially valuable timber or sand and gravel resources in the easement area that must be removed during or after placement of the authorized use, or which cannot be developed because of the authorized use.
7. GRANTEE shall conduct all operations within the easement area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to soil erosion, or the introduction or spread of noxious weeds or pests. Upon completion of construction, GRANTEE shall reclaim disturbed lands to a condition satisfactory to GRANTOR.
8. GRANTEE shall obtain a surety bond in the amount of \$N/A to ensure compliance with the terms and conditions of this easement.
9. The right to use this easement shall automatically terminate if it, or the development authorized by GRANTOR, is not used within five (5) consecutive years of the date this easement was granted, pursuant to the provisions of the administrative rules governing the granting of easements.
10. Unless otherwise approved in writing by GRANTOR, GRANTEE shall remove all cables, pipes, conduits, roads, and other developments placed by GRANTEE on the easement, and shall restore the surface of the easement area to a condition satisfactory to GRANTOR within one (1) year following termination of use or expiration of this easement.
11. GRANTEE shall inspect the condition of the area authorized by this easement and the developments authorized by this easement on a frequency of: as needed.

12. GRANTOR shall have the right to stop operation of the use authorized by this easement for noncompliance with the conditions of this easement, the provisions of the administrative rules governing the granting of easements, and/or any lawful requirement by a regulatory agency of this STATE.
13. If this easement authorizes the use of state-owned submerged and/or submersible land:
 - a) Construction in navigable waters shall conform to the standards and specifications set by the U.S. Army Corps of Engineers and the U.S. Coast Guard for the use authorized by this easement.
 - b) Any blasting which may be necessary, or in-water placement, maintenance, or repair of the authorized use shall be performed according to the laws of this STATE, including strict adherence to Oregon Department of Fish & Wildlife in-water work windows.
14. GRANTEE shall pay to GRANTOR the current market value, as determined by GRANTOR, for any unnecessary and non-approved damages to state-owned lands caused by construction or maintenance of the easement.
15. GRANTEE shall pay all assessments that may be legally charged on public lands which are levied against the property subject to this easement, whether or not such assessments have been levied against the easement area or STATE by the assessing agency.
16. GRANTEE shall use the authorized easement area only in a manner or for such purposes that assure fair and non-discriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender or national origin.
17. This easement is freely transferable. However, no transfer may increase the burden on the easement area or detract from the value of the underlying state-owned land.

This easement does not convey an estate in fee simple of the lands used for a right-of-way. This grant is for an easement only, and title remains in the State of Oregon.

WITNESS the seal of the Department of State Lands affixed this _____ day of _____, 20__.



STATE OF OREGON, acting by and through its Department of State Lands

DSL Authorized Signature/Printed Name

STATE OF OREGON)
)ss
County of Marion)

This foregoing instrument was acknowledged before me this _____ of _____, 20 , by _____, the _____ of the Department of State Lands.

Signature
My commission Expires _____, 20__.

**CERTIFICATE OF APPROVAL OF CONVEYANCE
(ORS 93.808)**

_____, Grantee, hereby approves and accepts, pursuant to ORS 93.808, the grant of an interest in real property from _____, Grantor, as described in the instrument to which this Certificate is attached.

A copy of this Certificate may be affixed to, and recorded with, the instrument described above.

DATED this ____ day of _____, 20__.

_____,
Grantee

By: _____

Name: _____

Title: _____

STATE OF OREGON)
) ss.
County of _____)

On this _____ day of _____, 20__, before me personally appeared _____, who being duly sworn stated that he/she is the _____ of _____, Grantee, and acknowledged the foregoing instrument to be the voluntary act of said Grantee and that he/she executed the foregoing instrument under authority granted by said Grantee.

NOTARY PUBLIC FOR OREGON
My commission Expires: _____



Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregonstatelands.us

State Land Board

State Land Board

Kate Brown

Governor

Regular Meeting

October 11, 2016

Agenda Item 1f

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

SUBJECT

Request for approval to initiate the review and determination of the potential sale of 1.96 acres of state-owned filled lands located in Curry County (Appendix A).

ISSUE

Whether the State Land Board should authorize the Department to initiate the review and determination of the sale of state-owned filled lands in Curry County (Township 33 South, Range 15 West, Section 5, Tax Lot 200).

AUTHORITY

Article VIII, Section 2 and 5 of the Oregon Constitution; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 274.915; relating to the sale, lease or trade of submersible and submerged lands.

ORS 274.960 through 274.985; pertaining to investigation of state's interest.

OAR 141-068; relating to the sale, exchange or reservation of new lands.

BACKGROUND

In 1999, the Port of Port Orford obtained a permit under file number 20291-LS to fill lands for the purpose of construction and expansion of a dock because their existing structure was rapidly deteriorating and in need of constant repair. The permit allowed for 100,000 cubic yards of fill to be placed over state-owned submerged or submersible land for the replacement and extension of the pile supported dock. The Port completed the dock expansion project and did not pursue purchasing the New Lands within the

first year of creation as allowed by ORS 274.932. The Port had a waterway lease for the original dock which expired in 2015, and the Port was advised that a Special Use Lease would be required since the dock was no longer over open water but over state-owned filled land. At this time the Port was also informed that they could submit an application to purchase the filled land as an alternative to leasing it. On May 1, 2015 DSL received an *Application to Purchase* the 1.96 acres of state-owned filled land from the Port of Port Orford.

RECOMMENDATION

The Department recommends that the State Land Board approve the initiation of the review and determination of the sale of 1.96 acres of state-owned filled lands in Township 33 South, Range 15 West, Section 5, Tax Lot 200 of Curry County.

APPENDICES

A. Site Map



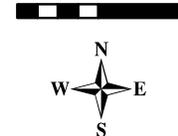
EXHIBIT A
Filled Land Sale Application 57847-LS
T33S, R15W, Sec. 05, Tax Lot 200
1.96 Acres of Filled Land Sale Area
Curry County

-  Filled Lands Sale Area
-  Tax Lot 200
-  Townships
-  Sections



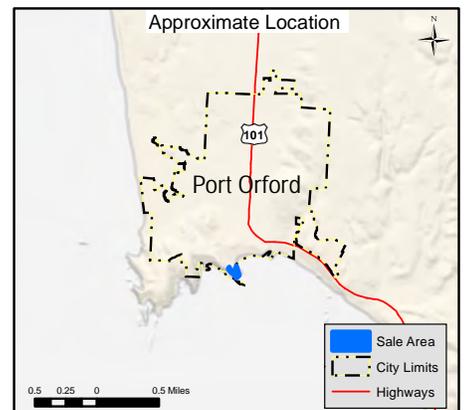
This map depicts the approximate location and extent of a Department of State Lands, Land Management Division authorization for use. This product is for informational purposes only and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

0.02 0.01 0 0.02 Miles



Map Projection:
 Oregon Statewide Lambert
 Datum NAD83
 International Feet

State of Oregon
 Department of State Lands
 1645 NE Forbes Rd. Suite 112
 Bend, OR 97701
 503-986-5200
www.oregon.gov/DSL
 September 15, 2016





Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

State Land Board

State Land Board

Kate Brown
Governor

**Regular Meeting
October 11, 2016
Agenda Item 1g**

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval to initiate the review and determination of the potential sale of subsurface mineral and geothermal rights on approximately 46 acres of DSL owned minerals located in Wheeler County.

ISSUE

Whether the State Land Board should authorize the Department to initiate the review and determination of the sale of approximately 46 acres of mineral and geothermal rights held by the State Land Board located in Wheeler County (Township 7 South, Range 25 East, Section 33, Tax Lot 1301).

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.775 – 273.790; Mineral and Geothermal Resource Rights

OAR 141-067-0320; relating to procedures for the sale, exchange, or release and transfer of mineral and geothermal resources.

SUMMARY

On August 15, 2016 DSL received an application from Carol L. Dumler, for the release of approximately 46 acres of mineral and geothermal rights held by the State Land Board below her surface ownership (Appendix A). The applicant is in the process of selling the surface ownership and requests the estate to be whole to complete the sale.

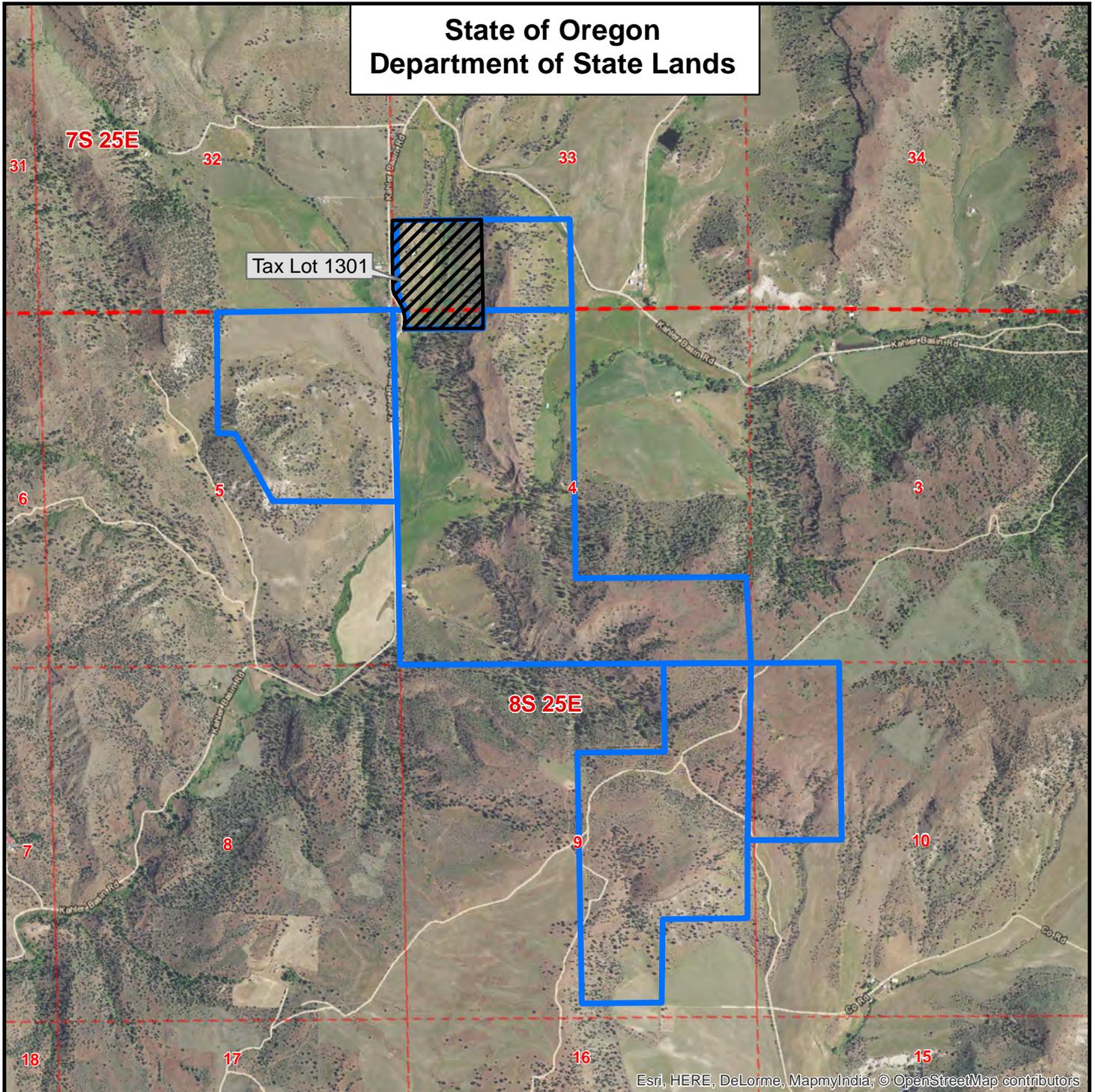
RECOMMENDATION

The Department recommends that the Land Board approve the initiation of the review and determination of the of the sale of mineral and geothermal resources rights for this property located in Wheeler County (Township 7 South, Range 25 East, Section 33, Tax Lot 1301).

APPENDICES

A. Site map

State of Oregon
Department of State Lands



Esri, HERE, DeLorme, MapmyIndia, © OpenStreetMap contributors

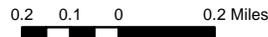
EXHIBIT A

59377-LS Mineral Sale
T7S, R25E, Sec. 33, Tax Lot 1301
46 Acres
Wheeler County

-  Mineral Requested
-  DSL Owned Minerals
-  Townships
-  Sections

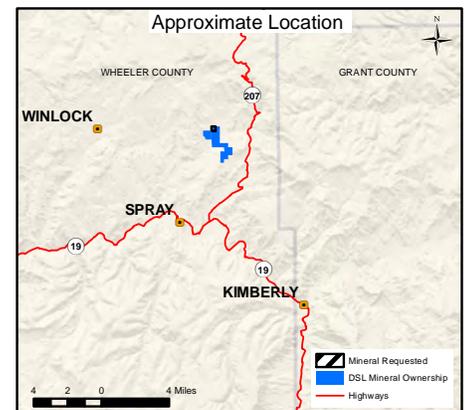


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Map Projection:
 Oregon Statewide Lambert
 Datum NAD83
 International Feet

State of Oregon
 Department of State Lands
 1645 NE Forbes Rd. Suite 112
 Bend, OR 97701
 503-986-5200
www.oregon.gov/DSL
 September 15, 2016





Oregon

Kate Brown, Governor

Department of State Lands

775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

State Land Board

Kate Brown
Governor

State Land Board

Regular Meeting
October 11, 2016
Agenda Item 1h

Jeanne P. Atkins
Secretary of State

Ted Wheeler
State Treasurer

SUBJECT

Request for approval to initiate the review and determination of the potential sale of subsurface mineral and geothermal rights on approximately 63.1 acres of property located in Marion County.

ISSUE

Whether the State Land Board should authorize the Department to initiate the review and determination of the sale of approximately 63.1 acres of mineral and geothermal rights held by the State Land Board located in Marion County (Tax Lot 00901, T7S, R1E, W.M., Section 7).

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.775 – 273.790; Mineral and Geothermal Resource Rights

OAR 141-067-0320; relating to procedures for the sale, exchange, or release and transfer of mineral and geothermal resources.

SUMMARY

On October 1, 2015, DSL received an application from Silverton Rock Farm for the release of approximately 63.1 acres of mineral and geothermal rights held by the State Land Board (Appendix A) below their surface ownership. The applicant had recently purchased the property along with adjacent parcels for the express purpose of developing a rock quarry, believing they had purchased all mineral rights, as well.

DSL staff became aware of the issue while reviewing land use action notices from Marion County, and informed the landowner of the state's subsurface ownership. The Department initially proposed a lease to allow the joint development of the adjacent private and state-owned resources. The landowner declined to enter into a lease, contending that paying the state royalty rates would make the proposed operation economically unviable.

It was subsequently determined that the state's mineral ownership was improperly dropped from the land title in the mid-1940s, and a rock quarry was established at approximately the same time with operations continuing until 1996. The current landowner proposes to reopen that quarry and eventually expand onto the adjoining parcel where the state does not own mineral rights. One avenue to a potentially mutually agreeable outcome for the state-owned property is for the Department to consider a sale of its mineral rights to reunite the current split estate.

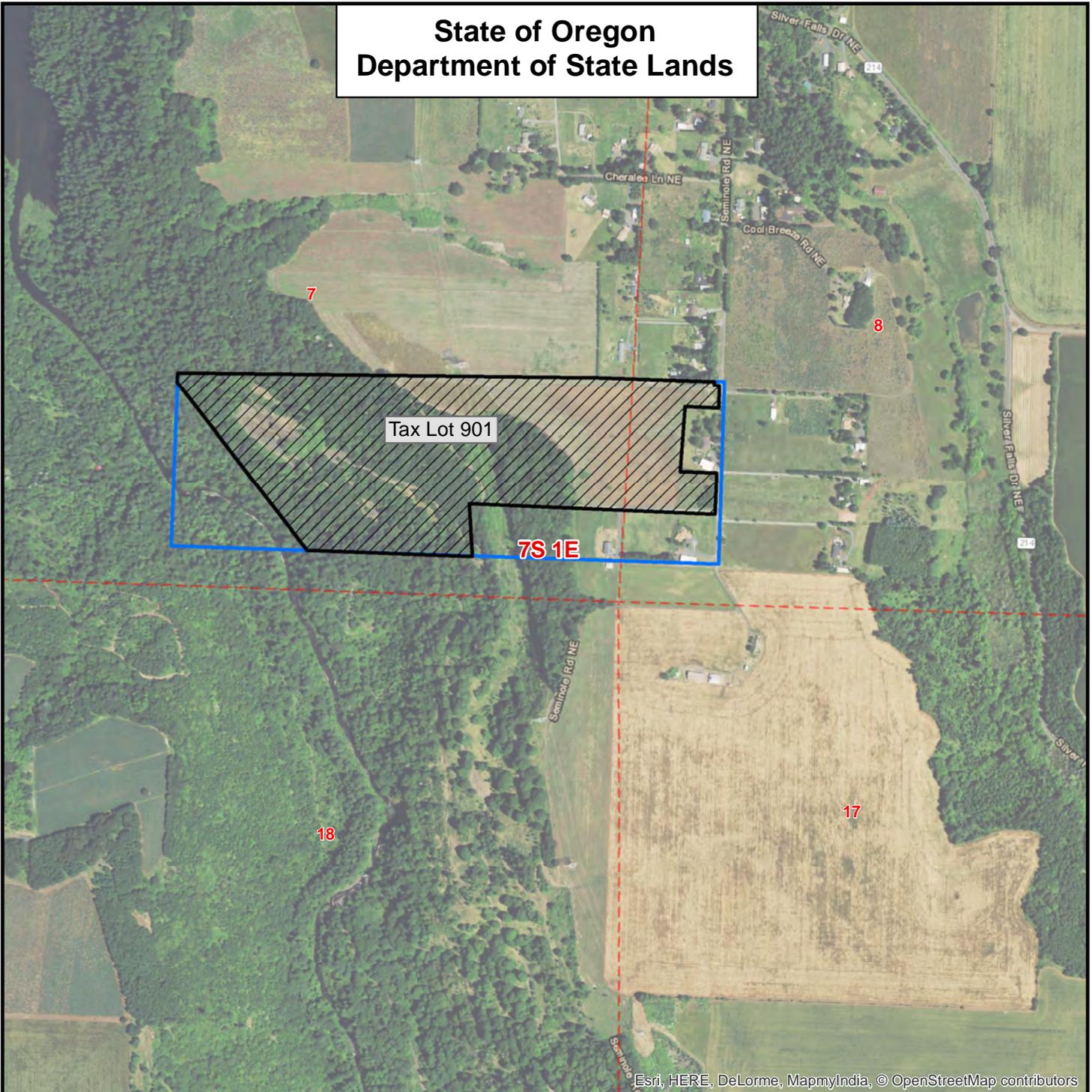
RECOMMENDATION

The Department recommends that the State Land Board approve the initiation of the review and determination of the sale of mineral and geothermal resources rights for this property located in Marion County (Township 7 South, Range 1 East, Section 7, Tax Lot 00901).

APPENDICES

A. Site map

**State of Oregon
Department of State Lands**



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Exhibit A

**Mineral Sale Application 58495-LS
T07S, R1E Sec. 07, Tax Lot 901
63 Acres
Marion County**

-  Minerals Requested, TL 901
-  DSL Mineral Ownership
-  Sections

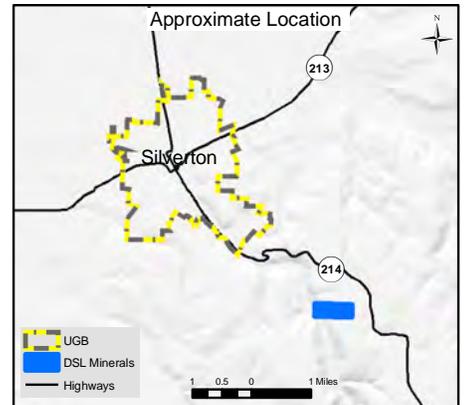


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Map Projection:
Oregon Statewide Lambert
Datum NAD83
International Feet

State of Oregon
Department of State Lands
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www.oregon.gov/DSL
September 15, 2016





Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

Kate Brown

Governor

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

State Land Board

Regular Meeting

October 11, 2016

Agenda Item 2

SUBJECT

Request for approval to sell one state-owned trust parcel with approximately 0.68 acres in Marion County to the surrounding property owner through a direct sale.

ISSUE

Whether the State Land Board should authorize the potential sale of one parcel, excepting the subsurface interest, applying the principles for real property transactions and the implementation strategies in the 2012 Real Estate Asset Management Plan.

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 273.281 and ORS 273.285; relating to the payment for state lands.

ORS 273.413; relating to disposition of unsuitable lands, sale and use of proceeds, procedures.

OAR 141-067; relating to the sale, exchange and purchase of state land, including subsurface mineral rights.

Real Estate Asset Management Plan (REAMP) adopted by the Land Board in February 2012.

SUMMARY

Isolated Bare Land Parcel

There is one bare land parcel with approximately 0.68 acres identified for potential sale in Marion County (Appendix A). The parcel received approval to initiate formal due diligence for potential sale at the October 13, 2015 State Land Board meeting. This had been identified as a possible sale parcel due to individual characteristics such as isolated location as an in-holding, steep slopes, poor soils, no access and lack of utility. The tract has two sewer easements and is isolated from street access by railroad right-of-way. The property lies within the park boundaries for the City of Salem's Minto Brown Park.

Agency and Public Review

Notice was sent to the adjacent landowners to inform them of the potential sale of the parcel. Local, state and federal agencies and tribal interests were also notified and given the opportunity to offer information concerning their areas of interest. No comments on the sale were received.

This parcel was evaluated against factors listed in the 2012 Real Estate Asset Management Plan relative to lands being considered for possible sale or exchange (p.20). See Appendix B for that evaluation and Appendix C for a summary of the agency's findings as a result of these evaluations. The principal factors influencing the agency's recommendation include the following:

- Small, isolated tracts or in-holdings within another major ownership
- Poor physical attributes for revenue enhancement
- Management costs in comparison to actual/potential returns

The property has been appraised by the Department to determine its market value.

RECOMMENDATION

The Department recommends that the State Land Board authorize the Department to sell, through a direct land sale to the City of Salem, one bare land parcel, excepting the subsurface interest, as shown in Appendix A for the total appraised amount of \$5,575.

APPENDICES

- A. Map of the parcel
- B. Land Evaluation Form
- C. Intent to Finalize

State of Oregon
Department of State Lands



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Exhibit A
Land Sale Application 56935-LS
T07S, R03W Sec. 28 DD TL 600
Approx. 0.68 Acres
Marion County



 DSL Sale Parcel
 Sections

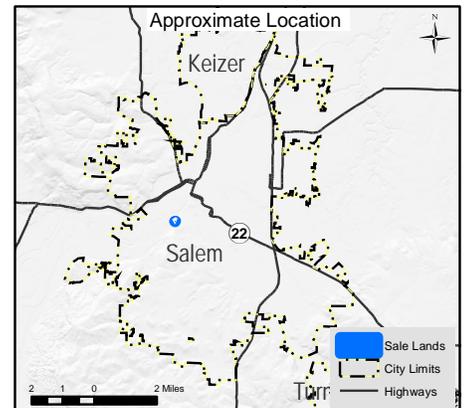
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0.02 0.01 0 0.02 Miles



Map Projection:
Oregon Statewide Lambert
Datum NAD83
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May 15, 2016



LAND EVALUATION FORM

1. Evaluation completed in: Office Field
2. Parcel Name: Minto Brown 3. County: Marion 4. Map & Tax Lot: 7S 3W, Sec. 28DD, Tax Lot 600 5. Site #: 2729
6. LAS #: 56935 7. GIS Acres: 0.68 8. DSL Land Class: ICR 9. REAMP Category: 4
10. Certified Forest: Yes No
11. Leased: No Yes Lease #: N/A Type of Use: N/A
12. Ownership Type: Surface and Subsurface 13. Mineral Rights: No Yes
14. Adjacent Property Owners & Use: Sec. 28DD, Tax Lot 300 M. Helen Volz 50% & Volz Family Trust 50%, 550 Meyers St S, Salem, OR 97302; Sec. 28DD Tax Lot 301 and Sec. 33A, Tax Lot 100 City of Salem, 555 Liberty St. SE, Salem, OR 97301
15. Zoning: RS-Single Family Residential
16. Developable Parcel: No Yes 17. Minimum acres required for home site 0.06
18. Lot of Record: No Yes
19. Potential for Zone Change/Partition: N/A
20. Wildlife Overlay: N/A
21. Cultural-Historic: Parcel Reviewed: No Yes
22. Previously Field Surveyed: No Yes Partially Date Surveyed:
23. Cultural Resources Identified in field? (if yes, consult with staff archaeo): No Yes
24. Probability of Cultural Resources: None Low Medium High
25. Threatened/Endangered Species: Field Survey Completed: No/Not Needed Yes Species: N/A
26. Water Rights: No Yes Water Right Info: N/A
27. Irrigation District: In City Limits
28. Depth of Nearby Wells: 15' to 303'
29. On-site/Distance to Existing Electrical Service and what type: 0.25 mile
30. Electrical service provider/PUD Name: Salem Electric
31. Potential for Alternative Energy: Low (4.5 m/s) wind power; low for solar(distance to electrical, small lot); no geothermal per NREL national maps.
32. Access: No Legal Access (approx.. 0.25 mile to road), no physical access and has railroad ROW between nearest road and property.
33. Legal Access: No Yes Gov't Maintained Road: No Yes Road Name/# N/A
34. Easements (to/from whom and what type): Two sewer Easements granted to the City of Salem (One easement covers the west half while the other is 15' wide along the eastern boundary)
35. Interior Roads/Trails/Condition: None
36. Known Property Boundaries/Corner Survey Markers: Railroad ROW to East
37. Nearest DSL Parcel (direct): 2.25 miles to north
38. Topography/Shape of Parcel: West-facing Steep Slope (steepest along eastern boundary) Class 2 & 4/ rectangular
39. Vegetation Cover (dominant species, condition, % coverage): Native grasses, Himalayan Blackberry, deciduous trees, 95% coverage

- 40. Site Structures/Improvements:** None
- 41. View Site/Water Features/Other amenities:** Water View of Willamette Slough
- 42. Evidence of Prior Impacts/Activities (wildfire, crops, historic home site):** N/A
- 43. Lease History:** When the City of Salem established Minto Brown Park boundaries around this parcel, DSL began to ask for a land sale or lease. After a trespass letter was sent, the City of Salem submitted a lease application. They agreed to the lease as a temporary measure until the land sale could be completed.
- 44. Current Use:** Bare Land w/ buried sewer lines & railroad ROW
- 45. Agriculture/Timber Potential:** N/A
- 46. Soil Type:** 55% Cloquato Silt loam, 20% Jory Silty clay loam 2-7 percent slopes; 25% Nekia silty clay loam, 20 to 30 percent slopes.
- 47. NRCS Soil Class:** Class 2 & 4 **48. MB & G Forest Rating:** N/A
- 49. Age of Timber:** N/A **50. Timber Volume:** N/A
- 51. Estimated Timber Value:** \$ 0
- 52. Site Index:** N/A **53. Type of Timber:** N/A
- 54. % Annual timber volume increase:** N/A
- 55. Fire District/Protection Area:** City of Salem
- 56. Property Expenses (fire protection costs):** \$0 **57. Other Holding Costs:** \$N/A
- 58. Assessor's RMV:** \$2,850 **59. Tax Year:** 2015-16
- 60. Estimated Market Value:** \$5,575 **61. Source:** Appraisal
- 62. Known/Proj. AUMs:** N/A **63. Annual Lease Amt.:** \$ \$500/yr.
- 64. 20 year Investment Return based on timber/lease income:** \$6,425
- 65. Rate of Return on Asset Value (%):** 5.24%
- 66. Present Value based on Current/Projected Income:** \$4,112
- 67. Potential developments necessary to increase marketability/land value (ie access, utilities):** None
- 68. Est. Annual Income after Development (Improvements/Land-Use Action):** N/A
- 69. Highest and Best Use Conclusion:** Because the property's access is so limited by topography and the railroad right-of-way, it is doubtful the property will ever have street access. The easements on the property further limit the property's ability to be developed. The property's highest and best use is as recreational water-view property.
- 70. Comments:** This property is within the Minto Brown Park Boundary and is a small, isolated undevelopable property. The only reason the City was given a lease was because the City was reluctant to purchase the property.
- 71. Originators:** Clara Taylor **Date:** 8/23/16
- 72. Reviewer:** Shawn Zumwalt **Date:** 09/08/16

INTENT TO FINALIZE – Real Property Transaction
Department of State Lands
State of Oregon

Applicant: City of Salem

Property Name: Minto Brown

Application Number: 56935-LS Parcel Number: 2729

Type of Application LAND SALE

Authority: ORS 273 AND 274
OAR 141-67 AND 141-73

Legal Description Township 07S, Range 03W, Section 28, Tax Lot 600, Willamette Meridian, Marion County

REAMP/Area Asset Plan Consistency: Selling property is Consistent with REAMP as an isolated unleased parcel with no other income generating potential in the near term or long term.

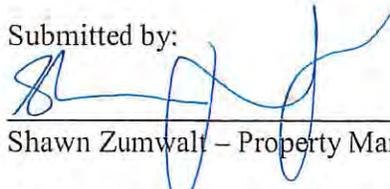
Agency/Public Comments Summary: None

Department Finding: Recommend for approval of Direct Land Sale

Final Finding and Staff Recommendation: Recommend for sale.

DOJ Legal Sufficiency Review Needed? Yes – emailed to DOJ No

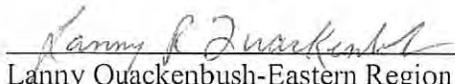
Submitted by:



 Shawn Zumwalt – Property Manager

9/8/2016
 Date

The findings presented above have been reviewed and considered and the requirements of applicable statutes have been satisfied. It is the finding of this Department that it is in the best interest to the state to proceed with this action under the authority of ORS 273.055.



 Lanny Quackenbush-Eastern Region Manager

9/9/2016
 Date



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State Land Board

State Land Board

Kate Brown

Governor

**Regular Meeting
October 11, 2016
Agenda Item 3**

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

SUBJECT

Request for approval to sell one state-owned trust parcel with approximately 70.6 acres in Lincoln County to The Wetlands Conservancy through a direct sale.

ISSUE

Whether the State Land Board should authorize the direct sale of one 70.6-acre parcel in Lincoln County, in fee simple, applying the principles for real property transactions and the implementation strategies in the 2012 Real Estate Asset Management Plan.

AUTHORITY

Oregon Constitution, Article VIII, Sections 2 and 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS 273.055; relating to the power to acquire and dispose of real property.

ORS 273.171; relating to the duties and authority of the Director.

ORS 273.281 and ORS 273.285; relating to the payment for state lands.

ORS 273.413; relating to disposition of unsuitable lands, sale and use of proceeds, procedures.

OAR 141-067; relating to the sale, exchange and purchase of state land, including subsurface mineral rights.

Real Estate Asset Management Plan (REAMP) adopted by the Land Board in February 2012.

SUMMARY

Isolated Timberland Parcel

There is one 151.4-acre timberland parcel with approximately 70.6 acres identified for potential sale in Lincoln County (Appendix A). The parcel received approval to initiate a review and determination at the April 13, 2010 State Land Board meeting to conduct formal due diligence for potential sale. The land adjacent to the east and south of the parcel is owned by FND ORE, LLC and has a conservation easement on the land.

The Wetlands Conservancy contacted the Department in 2010, as a potential purchaser due to the parcel's potential as a conservation parcel. The Wetlands Conservancy owns several other preserves in the area. After the timber and land was appraised in 2010, The Wetlands Conservancy withdrew from the sale because of the high cost of the timber.

In late 2015, the Wetlands Conservancy contacted the Department to purchase a portion of the property that surrounds the two estuarine areas bordering the parcel. Of the 70.6 acres identified, the parcel has close to 30 acres of saltwater marsh, 14 acres of riparian area and 27 acres of timberland. The timber is primarily 80 to 100 years old. The two estuarine areas are to be linked by a 12-foot wide path along the southwestern border. A partition for conservation purposes is permitted under Lincoln County zoning ordinance and would be sought, if the direct sale is approved.

Agency and Public Review

Notice was sent to the adjacent landowners to inform them of the potential sale of the parcel. Local, state and federal agencies and tribal interests were also notified and given the opportunity to offer information concerning their areas of interest.

In 2010, ODFW noted the parcel's estuarine location and expressed concern for the fish and wildlife habitat supported by the parcel. Two bald eagle nests have been found within 2 miles of the parcel. ODFW expressed concern that the parcel provides the oldest forest stand in the area adjacent to a tidal marsh. No other comments were received.

This parcel was evaluated against factors listed in the 2012 Real Estate Asset Management Plan relative to lands being considered for possible sale or exchange (p.20). See Appendix B for that evaluation and Appendix C for a summary of the agency's findings as a result of these evaluations. The principal factors influencing the agency's recommendation include the following:

- Small, isolated tracts or in-holdings within another major ownership
- Poor physical attributes for revenue enhancement
- Management costs in comparison to actual/potential returns

The property was also reviewed for mineral value by DOGAMI and determined to have no or low value potential for most subsurface minerals and geothermal potential. It was also noted that it is unknown if there is any uranium/thorium, coal, oil or gas. The mineral rights were appraised with the surface rights.

The property has been appraised by the Department to determine its market value for the potential direct sale. The entire parcel was valued at \$715,000 by an updated appraisal in 2016, and the two separate parcels were valued at \$218,000 and \$460,000 for the 70.6-acre and 80.8-acre parcels, respectively. Adding the value of the two parcels together leaves a value gap of \$37,000 due to additional roads required for access and the awkward shapes of the parcels.

The Wetlands Conservancy would pay \$218,000 plus the value gap of \$37,000 for a total of \$255,000 for the 70.6-acre parcel. This will allow to the Department to ensure this direct sale will result in retaining the fair market value for the Common School Fund, as compared to the value of the two parcels when considered as a whole.

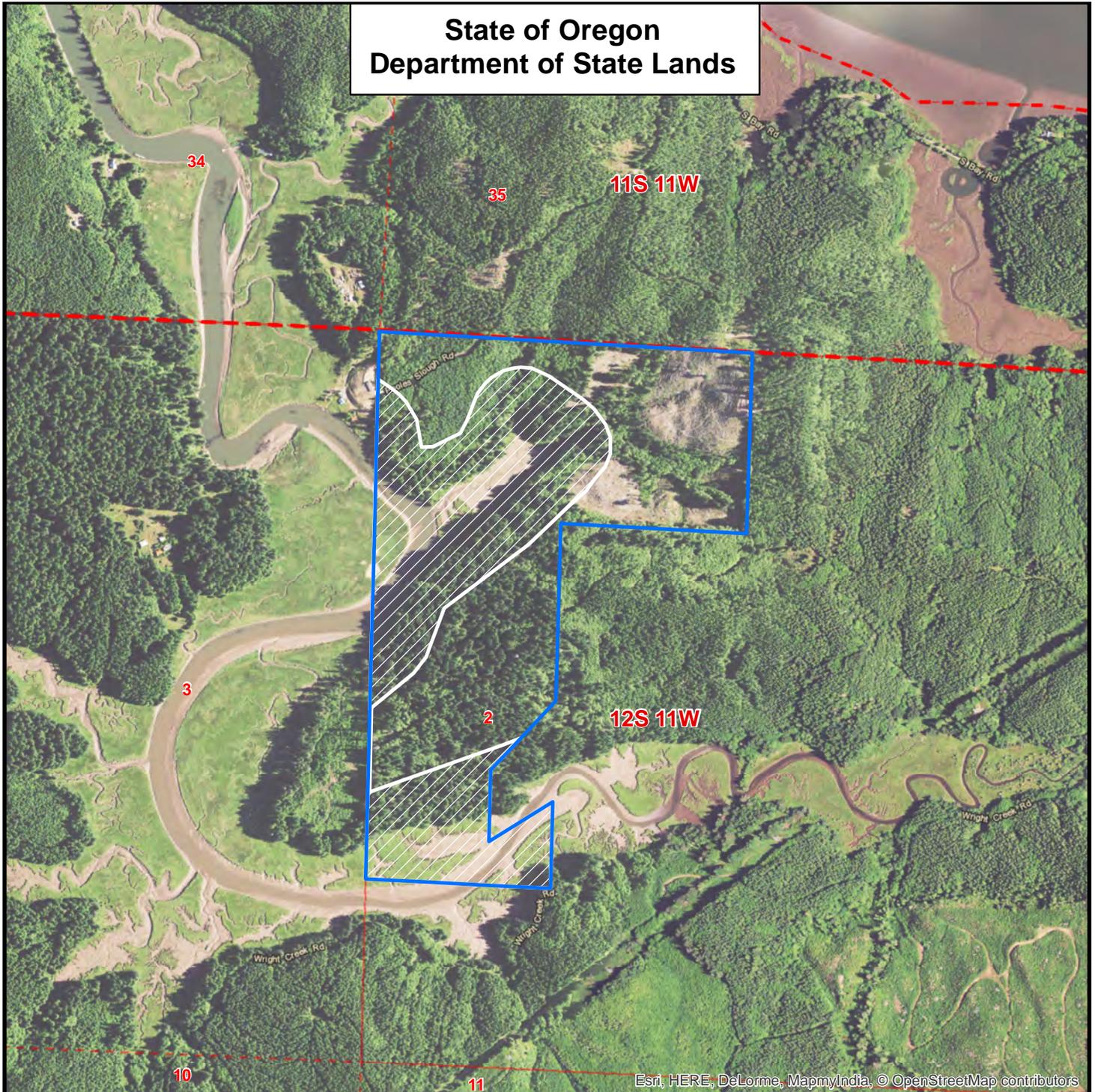
RECOMMENDATION

The Department recommends that the State Land Board authorize the Department to sell, through a direct land sale to The Wetlands Conservancy, one bare land parcel, as shown in Appendix A for the total appraised amount of \$255,000.

APPENDICES

- A. Map of the parcel
- B. Land Evaluation Form
- C. Intent to Finalize

State of Oregon
Department of State Lands



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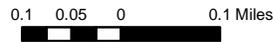
EXHIBIT A

**Land Sale Application 56209-LS
T12S, R11W, "Parcel A"
Approx. 70.6 Acres
Lincoln County**

-  DSL Ownership
-  Sale Area, "Parcel A"
-  Townships
-  Sections

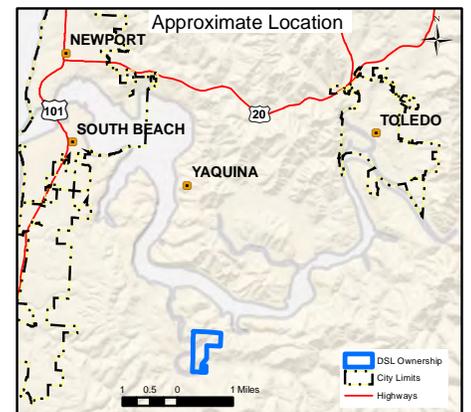


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State of Oregon
Department of State Lands
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Bend, OR 97701
503-986-5200
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September 23, 2016



LAND EVALUATION FORM

1. Evaluation completed in: Office Field
2. Parcel Name: Poole's Slough 3. County: Lincoln 4. Map & Tax Lot: 12S 11W, Sec. 2, Tax Lot 1400 5. Site #: 47
6. LAS #: 56209 7. GIS Acres: 70.6 acres 8. DSL Land Class: FORS 9. REAMP Category: 4
10. Certified Forest: Yes
11. Leased: No Yes Lease #: N/A Type of Use: N/A
12. Ownership Type: Surface and Subsurface 13. Mineral Rights: No Yes
14. Adjacent Property Owners & Use: West-William Freeman 126 Yaquina Bay Rd., Newport, OR 97365-timberland; JF & MH Schirmer Revocable Living Trust, Patricia Roessel, Trustee, 15000S. Beaton Rd., Oregon City, OR 97045-timberland; South-Fred Vaneck for FND ORE LLC, Pacific Forest Trust, 1001 Oreilly Ave., San Fransisco, CA 94129-conservation; East-Fred Vaneck for FND ORE LLC, Pacific Forest Trust, 1001 Oreilly Ave., San Fransisco, CA-Conservation; North-James Schirmer, 5285 S. Bay Rd., Toledo, OR 97391-Rural Residential.
15. Zoning: TC-Timber Conservation; MW-Marine Waterway (around tidal area)
16. Developable Parcel: No Yes 17. Minimum acres required for home site N/A
18. Lot of Record: No Yes
19. Potential for Zone Change/Partition: Yes, only for conservation purposes
20. Wildlife Overlay: N/A
21. Cultural-Historic: Parcel Reviewed: No Yes
22. Previously Field Surveyed: No Yes Partially Date Surveyed: N/A
23. Cultural Resources Identified in field? (if yes, consult with staff archaeo): No Yes
24. Probability of Cultural Resources: None Low Medium High
25. Threatened/Endangered Species: Field Survey Completed: No/Not Needed Yes
Species: Point Reyes bird beak, none found
26. Water Rights: No Yes Water Right Info: N/A
27. Irrigation District: N/A
28. Depth of Nearby Wells: 36'-83'
29. On-site/Distance to Existing Electrical Service and what type: .1 mile to northwest
30. Electrical service provider/PUD Name: Central Electric PUD
31. Potential for Alternative Energy: Good for wind speed (9-9.5 m/s); not applicable for geothermal; low for solar (3.75 kWh/m/Day); low for Biomass (50-100 thousand Tonnes/yr.) per NREL
32. Access: Previous logging occurred through temporary access obtained through neighbor's property
33. Legal Access: No Yes Gov't Maintained Road: No Yes Road Name/# N/A
34. Easements (to/from whom and what type): Waterline Easement to Seal Rock Water District; Roadway to adjacent western neighbor.
35. Interior Roads/Trails/Condition: Gravel/Dirt/Fair
36. Known Property Boundaries/Corner Survey Markers: N/A
37. Nearest DSL Parcel (direct): 8 miles to northeast

- 38. Topography/Shape of Parcel:** irregular shape, two nodes connected by 12' wide path; steep slopes down to flat tidal marshland
- 39. Vegetation Cover (dominant species, condition, % coverage):** 80-100 yr, Doug-fir, alder and sitka spruce, none on tidal marshland
- 40. Site Structures/Improvements:** None
- 41. View Site/Water Features/Other amenities:** Poole's Slough Estuary
- 42. Evidence of Prior Impacts/Activities (wildfire, crops, historic home site):** None
- 43. Lease History:** N/A
- 44. Current Use:** Timberland
- 45. Agriculture/Timber Potential:** Timber
- 46. Soil Type:** Fendall-Templeton silt loam and Templeton-Fendall silt loam soils
- 47. NRCS Soil Class:** 6 **48. MB & G Forest Rating:** 6
- 49. Age of Timber:** 3-100 years **50. Timber Volume:** 605 Net MBF
- 51. Estimated Timber Value:** \$ \$165,012
- 52. Site Index:** 125 **53. Type of Timber:** Doug-Fir
- 54. % Annual timber volume increase:** 2.28%
- 55. Fire District/Protection Area:** ODF Fire Protection, Coos District
- 56. Property Expenses (fire protection costs):** \$0.00 **57. Other Holding Costs:** \$0
- 58. Assessor's RMV:** \$106,530 **59. Tax Year:** 2015
- 60. Estimated Market Value:** \$218,000 **61. Source:** Appraisal/Timber Cruise
- 62. Known/Proj. AUMs:** N/A **63. Annual Lease Amt.:** \$ N/A
- 64. 20 year Investment Return based on timber/lease income:** N/A
- 65. Rate of Return on Asset Value (%):** N/A
- 66. Present Value based on Current/Projected Income:** N/A
- 67. Potential developments necessary to increase marketability/land value (ie access, utilities):** N/A
- 68. Est. Annual Income after Development (Improvements/Land-Use Action):** N/A
- 69. Highest and Best Use Conclusion:** Timberland
- 70. Comments:** The property also has important estuarine, wildlife and conservation value.
- 71. Originators:** Clara Taylor **Date:** 9/26/16
- 72. Reviewer:** SZ, AR **Date:** 9/26/16

INTENT TO FINALIZE – Real Property Transaction
Department of State Lands
State of Oregon

Applicant: The Wetlands Conservancy

Property Name: Poole's Slough

Application Number: 56209 Parcel Number: A portion of 47

Type of Application LAND SALE

Authority: ORS 273 AND 274
OAR 141-67 AND 141-73

Legal Description Township 12S, Range 11W, Section 2, Tax Lot 1400, Willamette Meridian, Lincoln County

REAMP/Area Asset Plan Consistency: Selling property is consistent with REAMP as an isolated unleased property with no income generating potential in the near or longterm.

Agency/Public Comments Summary: ODFW objected to selling the property due to its estuarine location with fish and wildlife habitat.

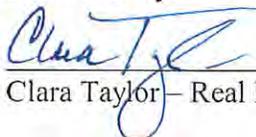
Department Finding: Recommend for approval of Direct Land Sale

Final Finding and Staff Recommendation:

The portion of the property being purchased by The Wetlands Conservancy has very limited opportunity to generate income for the CSF. The parcel's isolated location makes the property more expensive to manage and it has no legal access. Staff recommends a direct sale of the portion of the property, in fee simple after a partition has been obtained through Lincoln County.

DOJ Legal Sufficiency Review Needed? Yes – emailed to DOJ No

Submitted by:


 Clara Taylor – Real Property Analyst

9/26/2016
 Date

The findings presented above have been reviewed and considered and the requirements of applicable statutes have been satisfied. It is the finding of this Department that it is in the best interest to the state to proceed with this action under the authority of ORS 273.055.


 Lanny Quackenbush-Eastern Region Manager

September 26, 2016
 Date



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

State Land Board

Kate Brown

Governor

Regular Meeting

October 11, 2016

Agenda Item 4

Jeanne P. Atkins

Secretary of State

Ted Wheeler

State Treasurer

SUBJECT

Request for adoption of amendments to the administrative rules governing the management of, and issuing of leases, licenses and registrations for structures on, and uses of state-owned submerged and submersible land (OAR 141-082-0250 through OAR 141-082-0340).

ISSUE

Whether the State Land Board should adopt amendments to OAR 141-082-0250 through OAR 141-082-0340.

AUTHORITY

Oregon Constitution, Article VIII, Section 5; pertaining to the Common School Fund and land management responsibilities of the State Land Board.

ORS Chapter 183; Administrative procedures and rules of state agencies.

ORS Chapter 273; State Lands Generally.

ORS Chapter 274; Submerged and Submersible Lands.

BACKGROUND

On February 11, 2014, the State Land Board authorized the Oregon Department of State Lands (Department) to amend its rules governing the management of, and issuing of leases, licenses, and registrations for structures on, and uses of state-owned submerged and submersible land. These rules were last amended in 2012.

Since the last revision, Department staff has identified relatively minor changes needed to the rules such as changing "and/or" throughout the rules to "and," correcting numbering at several locations, and adding minor clarifying language. For example, at -

0305(2) “Percent of Gross Method,” we propose adding, “actual annual” to read, “...the percent of the actual annual gross include...” The proposed changes will both clarify various provisions of the rules and definitions of terms, as well as streamline rule implementation.

Furthermore, the Department received a petition on December 1, 2014, from Marine Salvage Consortium Inc. to change the rent formula of the marine industrial/marine service use classification on state-owned submerged and submersible lands. The Department declined the petition due to the fact that the rules were already under review. Instead, the Marine Salvage Consortium Inc. was invited to participate in the rulemaking process by being a member of the rules advisory committee.

Also, House Bill 2463 (Appendix A) was introduced and passed during the 2015 legislative session. This bill established a process for seizure of abandoned and derelict structures on state-owned submerged and submersible lands and created the Submerged Lands Enhancement Fund. Language was incorporated into specific sections of these proposed rule amendments for dealing with abandoned and derelict structures, as well as for utilizing moneys from the newly created Submerged Lands Enhancement Fund.

The final waterway rules for State Land Board consideration and a summary of the proposed changes in the rules are attached as Appendices B and C, respectively.

PUBLIC INVOLVEMENT

Rules Advisory Committee (RAC)

A RAC was convened in November of 2015 to review and make comments on the proposed amendments to the rules. Members of the RAC consisted of:

- Senator Betsy Johnson, Oregon Legislature
- Stan Tonneson, Waterfront Organizations of Oregon & Waterway Lessee
- Ronald Hahn, Waterway Lessee
- Tricia Smith, Represented the Common School Fund Beneficiaries
- LeAnn Bailey, Petitioner & Waterway Lessee
- Mark Landauer, Oregon Public Ports Association
- Charlie Plybon, Surfrider, Public-at-Large
- Than Monk, Public-at-Large

The RAC met four times over a period of five months as they assisted the Department in preparing a draft rule for public comment.

Public Notice

A Notice of Proposed Rulemaking Hearing was sent to all current waterway authorization holders, interested parties and posted on the Department's website. Furthermore, the Statement of Need and Fiscal Impact required by the Oregon Secretary of State was sent to the Rules Advisory Committee for their review and comment as well as posted on the agency website.

Public Hearings

The Department held four public hearings on the proposed rule amendment. The hearings were held in Tillamook on May 18, 2016; Salem on May 19, 2016; North Bend on May 24, 2016; and Klamath Falls on May 25, 2016. A summary of the public comments received on the rulemaking is attached as Appendix D.

RECOMMENDATION

The Department recommends that the State Land Board adopt the proposed amendments to the administrative rules governing the management of, and issuing of leases, licenses and registrations for structures on, and uses of state-owned submerged and submersible land (OAR 141-082-0250 to 141-082-0340).

APPENDICIES

- A. House Bill 2463
- B. Final Waterway Rules for Land Board Consideration
- C. Summary of Changes in Rules
- D. Summary of Public Comments Received

78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

Enrolled
House Bill 2463

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of State Lands)

CHAPTER

AN ACT

Relating to submerged lands enhancement.

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

SECTION 1. As used in sections 1 to 5 of this 2015 Act:

(1) "Abandoned structure" means a structure that has been left without authorization on, under or over state-owned submerged or submersible lands.

(2) "Abandoned vessel" has the meaning given that term in ORS 830.908.

(3) "Derelict structure" means a structure that is on, under or over state-owned submerged or submersible lands and that is:

(a) Sunk or in imminent danger of sinking due to its dilapidated condition;

(b) Obstructing a waterway;

(c) Endangering life or property; or

(d) In dilapidated condition such that it is in danger of becoming an environmental hazard as evidenced by instances of leaking fuel, sewage or other pollutants.

(4) "Derelict vessel" has the meaning given that term in ORS 830.908.

(5) "Marine debris" means any manufactured or processed solid material that:

(a) Persists in the marine environment; and

(b) Is disposed of or abandoned, either with intention or unintentionally, in any waters of which the submersible or submerged lands belong to the State of Oregon.

(6) "Owner" means a person who has a property interest in a structure or vessel.

SECTION 2. (1) The Department of State Lands is authorized to seize a structure on, under or over state-owned submerged or submersible lands if:

(a) The department determines, after providing notice and opportunity for a hearing, that the structure is an abandoned structure or a derelict structure; and

(b) The owner of the structure has failed to correct the problems identified in the notice within 20 days or a longer reasonable time as specified in the notice provided under the rules adopted under section 5 of this 2015 Act or within any additional time that may be granted by the department.

(2)(a) The notice required under subsection (1) of this section must:

(A) Identify, with specificity, the department's proprietary interest in and jurisdiction over the state-owned submerged or submersible lands that the structure is on, under or over;

(B) Identify any person that the department has determined may have a potential interest in the structure or the land upon which the structure is located; and

(C) Be delivered by certified mail, return receipt requested, to any person with a potential interest in the structure or the land upon which the structure is located, as determined by the department after diligent investigation.

(b) As used in this subsection, "diligent investigation" includes but is not limited to a search of the county property records.

(3) The department may remove, salvage, store and dispose of structures seized under this section.

(4)(a) Nothing in this section affects the ability of the department to:

(A) Investigate and prosecute trespasses on and damage to state lands under ORS 273.185; or

(B) Immediately seize without notice a structure that presents a hazard to navigation or an imminent threat to public health or safety.

(b) If the department seizes a structure without notice under this subsection and the department wishes to salvage or dispose of the structure, the department shall provide notice as provided for in the rules adopted under section 5 of this 2015 Act.

SECTION 3. (1) Except as may otherwise be provided by the Department of State Lands by rule, the owner of an abandoned structure or derelict structure is liable to the department for all costs arising out of removal, salvage, storage and disposal of a structure seized under sections 1 to 5 of this 2015 Act. Any order imposing liability for the costs is an order other than a contested case and is subject to review under ORS 183.484.

(2) If the department sells a structure seized under sections 1 to 5 of this 2015 Act, the liability imposed under this section shall be reduced by the net proceeds of the sale.

(3) Except as may otherwise be provided by the department by rule, an owner of a structure whose only interest in the structure is a security interest is not liable for costs arising out of removal, salvage, storage and disposal of a structure under sections 1 to 5 of this 2015 Act.

SECTION 4. (1) The Submerged Lands Enhancement Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Submerged Lands Enhancement Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Department of State Lands for the purposes specified in this section.

(2) Notwithstanding ORS 273.105, the fund shall consist of:

(a) No more than 20 percent of the moneys collected by the department per biennium pursuant to the department's granting of leases, easements, registrations and other permissions to use or occupy state-owned submerged or submersible lands; and

(b) Moneys collected by the department under subsection (5) of this section.

(3) Moneys in the Submerged Lands Enhancement Fund may be used to pay the expenses of the department associated with management and enhancement activities on state-owned submerged and submersible lands, including but not limited to:

(a) Removal, salvage, storage and disposal of abandoned or derelict structures under section 2 of this 2015 Act;

(b) Removal and disposal of marine debris;

(c) Assistance with the salvage, towing, storage and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.948; and

(d) Engagement in activities to improve water quality, watershed enhancement and fish and wildlife habitat on submerged and submersible lands.

(4) The department may use moneys in the fund to provide funding to a state agency, county, city, water improvement district, watershed council, park and recreation district, port district, federally recognized Indian tribe or nonprofit organization to assist the department in completing any of the management and enhancement activities provided for in subsection (3) of this section.

(5) The department may recover payments made from the fund from an owner of a structure or vessel who is liable for the costs of removal, salvage, storage and disposal of a

structure under section 3 of this 2015 Act. The department shall deposit all moneys recovered under this subsection into the fund.

SECTION 5. The Department of State Lands shall adopt rules to carry out the provisions of sections 1 to 5 of this 2015 Act. The rules shall, at a minimum, include procedures:

(1) For providing notice and opportunity for a hearing prior to the seizure of abandoned or derelict structures under sections 1 to 5 of this 2015 Act; and

(2) Related to the manner by which requests to the department for the use of moneys in the Submerged Lands Enhancement Fund may be made and evaluated by the department.

SECTION 6. Sections 1 to 5 of this 2015 Act are added to and made a part of ORS chapter 274.

Passed by House April 28, 2015

Received by Governor:

Repassed by House July 2, 2015

.....M.,....., 2015

Approved:

.....
Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2015

.....
Tina Kotek, Speaker of House

.....
Kate Brown, Governor

Passed by Senate June 15, 2015

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

.....M.,....., 2015

.....
Jeanne P. Atkins, Secretary of State

DEPARTMENT OF STATE LANDS

DIVISION 82

RULES GOVERNING THE MANAGEMENT OF, AND ISSUING OF LEASES, LICENSES AND REGISTRATIONS FOR STRUCTURES ON, AND USES OF STATE- OWNED SUBMERGED AND SUBMERSIBLE LAND

141-082-0250 Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of leases, public facility licenses and registrations (hereafter collectively referred to as waterway use authorizations) for a wide variety of commercial, non-commercial, and public uses in, on, under or over state-owned submerged and submersible land.

(b) Do not apply to the granting of:

(A) Easements on state-owned submerged and/or submersible land governed by Division 122 of the Department's administrative rules;

(B) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land governed by Division 87 of the Department's administrative rules;

(C) Authorizations for the removal or use of rock, sand, gravel and silt from state-owned submerged and/or submersible land governed by Division 14 of the Department's administrative rules;

(D) Authorizations for special uses of state-owned submerged and/or submersible land such as for short term access; the conduct of scientific experiments and the removal of sunken logs governed by Division 125 of the Department's administrative rules;

(E) Authorizations for ocean energy conversion devices and fiber optic and other cables in, on or over the Territorial Sea governed by Divisions 140 and 83 of the Department's administrative rules;

(F) Authorizations for remediation and habitat restoration activities governed by Division 145 of the Department's administrative rules; and

(G) Authorizations for uses and structures specifically governed by any other chapter of the Department's administrative rules.

(c) Provide that all uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the Department pursuant to these rules.

(2) The Director may determine other uses and structures similar to those specified in OAR 141-082-0265 that are subject to a specific authorization under these rules.

141-082-0255 Definitions

(1) "**Abandoned Structure**" means a structure that has been left without authorization on, under or over state-owned submerged or submersible lands.

(2) "**Abandoned Vessel**" means a vessel that has been left without authorization on public or private land, the waters of this state, or any other water.

(3) **“Actual Annual Gross Income”** means the gross revenue received by a lessee during the prior lease year from the authorized use(s) of state-owned submerged and submersible land, including but not limited to the rental of boat slips, boat rental, launch fees or from associated incidental services within the authorized area.

(4) **“Adjacent Riparian Owner”** or **“Riparian Owner”** means a person holding recorded title to property that fronts or abuts state-owned submerged and submersible land.

(5) **“Adjacent Riparian Property”** or **“Adjacent Riparian Tax Lot”** means the non-state-owned portion of a tax lot that fronts or abuts state-owned submerged and submersible land.

(6) **“Annual Lease Compensation”** means the amount of compensation a lessee pays to the Department for the use of an authorized area.

(7) **“Applicant”** is any person applying for a waterway use authorization.

(8) **“Appraised Value”** means an estimate of current fair market value of a parcel (expressed in dollars per square foot) derived by a state certified appraiser or a salaried public employee of the federal government, the State of Oregon, or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee as defined in ORS 674.110(2)(h).

(9) **“Aquaculture”** means the culture, farming, or harvesting of food fish, shellfish, and other plants (exclusive of kelp which is governed by Division 125 of the Department’s administrative rules) and animals in fresh or salt-water areas. Aquaculture practices include, but are not limited to, the hatching, seeding or planting, cultivating, feeding, raising, and harvesting of planted or natural species so as to maintain an optimum yield, and the processing of plants or animals.

(10) **“Assessed Value”** means the current value in dollars per square foot assigned to the land within the adjacent riparian tax lot or comparable tax lot by the county tax assessor.

(11) **“Assignment”** or **“Assign”** means a transfer by the lessee with the Department’s approval of the rights of use and occupancy of the leasehold to another person.

(12) **“Authorization”** or **“Waterway Use Authorization”** means a lease, registration or public facility license granted by the Department to an applicant conveying a right to limited use of a specific area of state-owned submerged and submersible land for a specific purpose for a fixed period of time.

(13) **“Authorized Area”** is the area of state-owned submerged and submersible land defined in the waterway use authorization for which a use is authorized.

(14) **“Boat House”** means a covered or enclosed structure used to store, shelter, or protect a boat or boats and boating equipment. A structure containing a dwelling does not qualify as a boat house. A boathouse may include an unenclosed recreation area, or a roof that is:

(a) Used as a viewing platform, for sunbathing, or for other related short-term recreational uses;

(b) Surrounded by a railing or other safety device;

(c) Accessible from the lower deck by a permanent or temporary stairway; or

(d) Used to gain access to a waterslide.

- (15) **“Boat Lift”** is a device that is used to lift a boat from the water for out-of-water moorage or storage; movement to another location; or to enable maintenance to be conducted on the watercraft.
- (16) **“Boat Ramp”** is a specific area that has been improved through the placement of a concrete pad or strips, steel mats, rails, gravel or other similar durable material that is used for the launching of boats into a waterway.
- (17) **“Commercial Marina”** is a marina, the operation of which results in, or is associated with any monetary consideration or gain.
- (18) **“Commercial Use”** means an activity conducted on, within, or over state-owned submerged and submersible land that results in, or is associated with any monetary consideration or gain, including but not limited to: offices, stores, hotels, banks, marinas, restaurants, or retail service outlets.
- (19) **“Compensation”** or **“Compensatory Payment”** is the amount of money paid by an applicant for, or holder of an authorization to the Department for the use of Department-managed land.
- (20) **“Consent Agreement”** is a document used when rights under a Waterway Use Authorization are held as collateral for repayment of a loan. The Department of State Lands must authorize the agreement prior to final loan approval.
- (21) **“Department”** means the Department of State Lands.
- (22) **“Derelict Structure”** means a structure that is on, under or over state-owned submerged or submersible lands and that is:
- (a) Sunk or in imminent danger of sinking due to its dilapidated condition;
 - (b) Obstructing a waterway;
 - (c) Endangering life or property; or
 - (d) In dilapidated condition such that it is in danger of becoming an environmental hazard as evidenced by instances of leaking fuel, sewage or other pollutants.
- (23) **“Derelict Vessel”** means a vessel that is on the waters of this state and that is:
- (a) Sunk or in imminent danger of sinking;
 - (b) Obstructing a waterway;
 - (c) Endangering life or property; or
 - (d) In such a dilapidated condition that it is in danger of becoming a significant environmental hazard as evidenced by repeated and documented instances of leaking, fuel, sewage or other pollutants.
- (24) **“Diking District”** means a public body organized under the provisions of ORS Chapter 551 for the purposes of improving by diking or damming the lands contained therein which are subject to overflow by tidewater or by freshets.
- (25) **“Director”** means the Director of the Department of State Lands or designee.
- (26) **“Dock/Float”** means an individual, unenclosed, structure which may either be secured to the adjacent or underlying land or that floats that is used for mooring boats and for similar recreational uses such as sunbathing or as a swimming platform. A structure does not lose its designation as a dock/float if it has an unenclosed recreation area, or includes a second level that may be used for a recreational purpose such as a viewing platform or sunbathing deck.
- (27) **“Dolphin”** is a cluster of piles or piling which is bound together.

- (28) **“Drainage District”** means a public body organized under the provisions of ORS Chapter 547 for the purpose of having swamp, wet or overflowed lands or irrigated lands reclaimed and protected by drainage or otherwise from the effects of water for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience and welfare or of public utility or benefit.
- (29) **“Dwelling”** means a structure designed or occupied as the permanent or temporary living quarters which is equipped with, but not limited to, any or a combination of sleeping cooking, bathing, toilet and heating facilities.
- (30) **“Flat Rate Method”** means a manner of calculating annual compensation based on a fixed dollar amount per square foot of leasehold area that varies by use classification.
- (31) **“Floating Home”** means a moored floating structure that is used as a dwelling.
- (32) **“Floating Recreational Cabin”** is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, not physically connected to any upland utility services (for example, water, sewer, or electricity), and used only periodically or seasonally.
- (33) **“Gangway”** means a walkway or access ramp which connects, and is used exclusively for the purpose of traversing from the upland to the first structure or use subject to an authorization by the Department such as a dock/float, marina, floating home, or boat house.
- (34) **“Goods or Merchandise”** means products and raw materials transported in pursuit of trade, business, and/or economic gain. Goods and merchandise does not include passengers or materials used by a vessel for its maintenance, alteration, or operation.
- (35) **“Government Functions”** are activities federal, state or local government agencies are assigned to perform to protect the health and safety of the public they serve. A ship, boat or vessel exclusively engaged in, or currently inactive but dedicated to, helping to maintain public health and safety is said to be performing a government function.
- (36) **“Highest Qualified Bidder”** is a person who provides the highest bid at an auction and who submits a complete application to, and meets all the requirements of the Department for an authorization as provided in OAR 141-082-0280.
- (37) **“Historical Vessel”** or **“Historical Structure”** is a vessel or structure listed or eligible for listing on the National Register of Historic Places as determined by the State Historic Preservation Office. In addition, these structures or vessels are owned by non-profit organizations for which their primary purpose is youth-oriented, historical, educational, or scientific purposes.
- (38) **“Holder”** is the person who has been issued a waterway use authorization under these rules.
- (39) **“Incidental Services”** include, but are not limited to restrooms, showers, minor boat and motor repair facilities; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; small office for marina management; club house and/or meeting room; vending machines; small retail area for marine, fishing and other outdoor supplies and equipment; ice, packaged beverages and foods; limited service restaurants; and temporary restaurants.

(40) **“Industrial Use”** means an activity conducted on, under, within, or over state-owned submerged and submersible land for business purposes that involves wholly or in part the fabrication, assembly, processing, or manufacture of products, structures or vessels from raw materials or fabricated parts, or that provides services such as, but not limited to storage, warehouses, factories, or shipyards.

(41) **“Lease”** for the purposes of these rules, is a valid, enforceable contract executed by the Department and signed by the lessee allowing the use of a specific area of state-owned submerged and submersible land for a specific use under the terms and conditions of the lease and these rules.

(42) **“Lease Anniversary Date”** means the date the lease was initially entered into and on which, in subsequent years, the annual lease compensation is due.

(43) **“Limited Duration Use”** means any temporary or infrequent use of state-owned waterways, with no long term or extended use intended. Limited Duration Use includes any commercial use of state-owned submerged or submersible land which is not more than a fourteen (14) consecutive day period in any one (1) location. Commercial use may include, but is not limited to, barge staging to facilitate movement of goods and services. For purposes of this section, “location” means, for example, an area necessary to moor at a dolphin or piling that is used by a vessel as it temporarily stops on its passage to its final location to off-load goods and services. Limited Duration Use also includes any non-commercial use of state-owned submerged or submersible land which is not more than thirty (30) calendar days during any contiguous 12-month time period, within a distance of five miles.

(44) **“Limited Service Restaurant”** means a business serving only pre-wrapped or pre-prepared food products, and nonperishable beverages as defined in ORS 624.010(5).

(45) **“Line of Ordinary High Water”** as defined in ORS 274.005, means the line on the bank or shore to which the high water ordinarily rises annually in season.

(46) **“Line of Ordinary Low Water”** as defined in ORS 274.005, means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(47) **“Log Boom Area”** means a water surface area bounded by floating, connected logs or other devices, used for confining loose logs, grading and sorting logs, making log rafts, or to feed whole or partially processed wood products to a mill.

(48) **“Log Raft”** means a group of loose or bundled logs which can be stored or moved on water.

(49) **“Log Raft Storage Area”** means the unbounded water surface area used for mooring and storing log rafts, usually marked by piles and dolphins to which the rafts are fastened.

(50) **“Marina”** means a small harbor, boat basin, or moorage facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial and/or charter fishing boats.

(51) **“Marine Debris”** means any manufactured or processed solid material that:

(a) Persists in the marine environment; and

(b) Is disposed of or abandoned, either with intention or unintentionally, in any waters of which the submersible or submerged lands belong to the State of Oregon.

(52) **“Marine Industrial/Marine Service”** means structures or uses which are commercial or industrial in nature and which need to be located in or adjacent to water

areas because the use requires water access. Such uses include, but are not limited to: ship, tugboat, barge and workboat moorage and storage; used for industrial uses such as vessel repair facilities; aquaculture facilities; sea water desalination, mineral extraction, and processing facilities.

(53) **“Mooring Buoy”** means a floating device anchored to the bed of a waterway to which a boat is fastened through the use of lines or ropes for the purpose of mooring the boat in a stationary position in the water.

(54) **“Multi-Family Dock”** means a non-commercial dock, maintained and owned in common by two or more families, and where no dues or fees are required to be paid for use of the dock. A multi-family dock is not an ownership-oriented facility.

(55) **“Navigation Aids”** are structures or devices such as navigation buoys, channel markers, beacons, approach and landing lights, and radio navigation and landing aids, etc., placed in, on or over or along a waterway, by or with the consent of appropriate public agencies, to aid persons engaged in navigation of a waterway or aviation.

(56) **“Non-Marine Uses”** means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to water areas. Such structures and uses include, but are not limited to: multi-family residences, hotels, motels, residences, restaurants, offices, retail stores, manufacturing plants, and warehouses.

(57) **“Non-Commercial”** means a use which does not result in and/or is not associated with any monetary consideration or gain. For example, a use which includes the renting, leasing, or sale of space would not qualify as "non-commercial."

(58) **“Non-Commercial Marina”** is one that is neither operated for, nor is associated with any monetary consideration or gain.

(59) **“Not for Profit”** refers to an association or group organized for purposes other than generating profit, such as an educational, charitable, scientific, or other organization qualifying under Section 501(c) of the Internal Revenue Code. In addition, organizations such as soil and water conservation districts and watershed councils may, at the discretion of the Department, also qualify as a non-profit organization for the purposes of these rules.

(60) **“Owner”** means a person who has a property interest in a structure or vessel.

(61) **“Ownership-Oriented Facility”** means non-commercial facilities where the access and privilege to use is limited to a membership group of persons who pay dues or fees of some type to maintain membership and to operate the facility.

(62) **“Person”** includes individuals, corporations, 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, not for profit organizations, or Indian Tribe.

(63) **“Pile” or “Piling”** is a wood, steel, or concrete beam driven or jettied into the bed or bank of a waterway to secure a floating structure, log raft, or boat.

(64) **“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 preference right does not apply to the renewal of an existing lease where the lessee is in compliance with all the terms and conditions of the lease.

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 lease area.

(65) **“Preference Right Holder”** means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).

(66) **“Processing Facility”** means a structure or vessel where the cleaning, freezing, canning, preserving and storing of fish, crustaceans, or other forms of aquatic life are conducted.

(67) **“Protective Boom”** or **“Shear Boom”** refers to logs or similar floating devices attached to each other to protect a structure or bank from floating debris, erosion or wave action.

(68) **“Public Agency”** or **“Government Agency”** means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.

(69) **“Public Facility License”** is a form of authorization issued by the Department for structures owned, operated, and maintained, or uses made, by a public agency such as transient use docks/floats, boat ramps, boat landings and/or viewing structures where no or minimal entry or use fees are charged; and navigation aids.

(70) **“Public Trust Use(s)”** means those uses embodied in the Public Trust Doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of Public Trust Uses include, but are not limited to, short term moorage, camping, bank fishing, picnicking, and boating.

(71) **“Recreation Area”** means an area of an authorized structure dedicated to day use recreation.

(72) **“Redetermination”** or **“Redetermine”** means, for the purposes of these rules, a revision, conducted in accordance with the administrative rulemaking process (ORS Chapter 183), of lease compensation using the methods, formulas, classifications or other factors as specified in OAR 141-082-0305.

(73) **“Registration”** is a form of authorization issued by the Department allowing a qualifying structure or use to occupy state-owned submerged and submersible land.

(74) **“Residential Use”** means an activity conducted on, in, or over state-owned submerged and submersible land devoted to, or available for single or multiple dwelling units, single-family homes, floating homes, apartments or condominiums.

(75) **“Restaurant”** means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, and also includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities or temporary restaurants as defined in ORS 624.010(9)(10).

(76) **“Riparian Land Value Method”** means a manner of calculating the annual lease rental payment by multiplying the assessed value times five percent times the area of the leasehold for each use classification.

(77) **“Rip Rap”** as defined in ORS 196.815(2)(e)(D), means the facing of a streambank with rock or similar substance to control erosion.

(78) **“State Land Board”** means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law. The Department is the administrative arm of the State Land Board.

(79) **“Structure”** means anything placed, constructed, or erected on, in, under or over state-owned submerged and submersible land that is associated with a use that requires a waterway use authorization. Structures include boat houses, floating homes and other structures secured to a pier or piling; except vessels, it cannot be both.

(80) **“Sublease”** means a subordinate lease between the lessee and a third party of all or part of the authorized area, where the lessee remains contractually and primarily liable under the lease with the Department.

(81) **“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.

(82) **“Submersible Land”** means land 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 boundaries of the State of Oregon.

(83) **“Temporary Restaurant”** means the same as ORS 624.010.

(84) **“Tide gate”** means a device mounted to a bridge or culvert to regulate the tidal flow or water level on the inside of the gate.

(85) **“Use”** means an activity with or without associated structures on state-owned submerged and submersible land that requires a waterway use authorization under these rules.

(86) **“Use Classification”** means the specific category of similar uses and structures subject to authorization described in OAR 141-082-0305.

(87) **“Vessel”** means a boat or small vehicle that is used for traveling on water. A vessel is not a structure as defined in this subsection (#79).

(88) **“Voluntary Habitat Restoration Work”** means the same as set forth in ORS 274.043(4)(d). Voluntary habitat restoration work does not include:

- (a) Activities undertaken to satisfy any actual or potential legal obligation;
- (b) Activities for which the person undertaking the work receives compensation of any kind to do the work; or
- (c) Work completed by an entity to satisfy an environmental mitigation obligation or to generate, sell or obtain credit as an offset against actual or potential natural resource damages liability.

(89) **“Water Sport Structures”** means water ski buoys, jumps and ramps, kayak race gates, and other such devices used in association with a water recreational sport. Such devices are typically temporary in nature, and not permanently attached to a piling, dolphin, or other fixed object.

(90) **“Wharf”** or **“Wharves”** as defined in ORS 780.040 and as used in these rules means a structure constructed or maintained by the owner of any land lying upon any navigable stream or other like water, and within the corporate limits of any incorporated town or within the boundaries of any port, that extends into the navigable stream or other like water beyond the low-water mark so far as may be necessary for the use and accommodation of any ships, boats or vessels engaged exclusively in the receipt and discharge of goods or merchandise or in the performance of governmental functions

upon the navigable stream or other like water. A “wharf” does not include new lands created upon submersible or submerged lands by artificial fill or deposit.

(91) **“Wharf Certification”** means a written certification from the Department that a structure is a wharf as defined in ORS 780.040 and as used in these rules.

141-082-0260 General Provisions

(1) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the Department, as the administrative arm of the State Land Board.

(2) The State Land Board, through the Department, has a constitutional responsibility to manage *"the lands 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"* pursuant to Article 8, Section 5(2) of the Oregon Constitution.

(3) State-owned submerged and submersible land is managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as *“public trust rights.”*

(4) No person is allowed to place a structure or vessel on, or make use of state-owned submerged and submersible land, regardless of the length of time the structure may have existed on, or the use may have occurred on the land, without the required authorization described in these rules, unless the structure or use is exempt from such authorization by law or these rules. Ownership of state-owned submerged and submersible land cannot be obtained by adverse possession regardless of the length of time the structure or use has been in existence.

(5) All uses of state-owned submerged and submersible land must conform to local (including local comprehensive land use planning and zoning ordinance requirements), state and federal laws.

(6) The Department shall not authorize a proposed use or structure if it:

(a) Is inconsistent with local, state, or federal laws;

(b) Is not in compliance with these rules;

(c) Would result in an unreasonable interference with the public trust rights of commerce, navigation, fishing and recreation;

(d) Would have unacceptable impacts on public health, safety or welfare, or result in the loss of, or damage to natural, historical, cultural or archaeological resources;

(e) Is prohibited by a State Land Board or Department-adopted area closure, use restriction, or waterway management plan (such as the Lower Willamette River Management Plan; a Total Maximum Daily Load Plan; or the Oregon Territorial Sea Plan);

(f) Is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192); or

(g) If it extends from the bank of a waterway for a distance that exceeds 25 percent of the width of the waterway, unless authorized by the Director. In determining whether to authorize a structure that extends in excess of 25 percent of the width of the waterway, the Director shall consider:

(A) Whether the structure alone, or in combination with existing structures within the waterway, would unreasonably interfere with the public trust rights of commerce, navigation, fishing and recreation;

(B) Whether the physical conditions of the land or waterway requires a structure in excess of 25 percent of the width of the waterway in order to engage in the proposed use.

(7) No applicant for, or person holding an authorization from the Department shall request from any government agency a change in the zoning for, or approved uses of a parcel of state-owned submerged and submersible land without first applying to, and receiving written approval from the Department to request such a change.

(8) When a use or structure subject to written authorization from the Department becomes exempt from written authorization, compensation, or both, by a change in the law or in these rules the holder may terminate the written authorization or allow the written authorization to expire by its terms. If the written authorization is terminated, the holder is not entitled to receive any reimbursement from the Department for any compensation or other fees paid by the holder to the Department under the written authorization prior to expiration or termination.

(9) All references in these rules to "state-owned submerged and submersible land" include state-owned submerged lands or submersible lands or both.

141-082-0265 Types of Uses and Required Authorizations

(1) All uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the Department pursuant to these rules.

(2) Uses and structures requiring leases include, but are not limited to:

(a) Aquaculture facilities;

(b) Marine industrial/marine service uses;

(c) Floating homes, floating home moorages, and other dwellings;

(d) Fish or other processing facilities, sea water desalination and mineral extraction facilities;

(e) Log raft, log storage or log booming areas;

(f) Historical vessel moorages;

(g) Commercial and non-commercial marinas;

(h) Multi-family docks not qualifying for registration;

(i) Non-marine uses (for example, restaurants, warehouses, offices, motels, etc.);

(j) Individual non-commercial docks/floats, boathouses, and floating recreational cabins not qualifying for registration or public facility license;

(k) Commercial, industrial or residential uses;

(l) Water taxi, cruise ship and tour boat moorages;

(m) Ownership-oriented facilities; and

(n) Other similar uses and structures not exempted by statute or these administrative rules, and determined by the Director to be subject to lease.

(3) Uses and structures requiring a registration are:

(a) Non-commercial structures including docks/floats, multi-family docks, boat lifts, and/or boat houses of 2,500 square feet or less; measurement excludes calculation of associated gangways, pilings, dolphins, mooring buoys, protective and shear booms and boat ramps;

(b) Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated, pilings, dolphins, recreational use mooring buoys, and protective booms;

(c) Water sport structures unless authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application for Special Use Device Permits);

(d) Rip-rap, pilings, dolphins, and private boat ramps;

(e) Structures constructed by a drainage or diking district;

(f) Tide gates;

(g) Rights of way established prior to November 1, 1981 for any county road or city street;

(h) Voluntary habitat restoration work; and

(i) Other similar structures or uses determined by the Director to be eligible for registration.

(4) Uses and structures that are eligible for a public facility license are publicly-owned, operated and maintained:

(a) Boat ramps/landings;

(b) Viewing structures;

(c) Fishing piers;

(d) Recreational boating, transient docks/floats;

(e) Structures, piers, docks/floats owned, operated by, or under contract to a government agency as long as they are in active service and used exclusively by the government agency to perform the function of that agency; and

(f) Navigation aids placed by public agencies including approach and landing lights, and radio navigation and landing aids for aviation.

(5) Limited Duration uses are exempt from authorization under these rules.

141-082-0270 Wharf Certification

(1) Any person owning a wharf located on state-owned submerged and submersible lands must certify that the structure is a wharf. The certification of the wharf shall be on a form provided by the Department. There is no fee associated with submission of a wharf certification.

(2) Upon receipt of a wharf certification form, the Department shall review it for completeness. If the structure is a wharf as defined in ORS 780.040 and in these rules, the Department shall issue to the owner a written certification that the structure is a wharf. There is no compensation due the Department for a wharf certification.

(3) In applying the definition of a wharf as set forth in ORS 780.040 and in these rules, the following criteria will apply, where appropriate:

- (a) A “government function,” as used in this section, is an activity engaged in by federal, state or local government agencies in order to protect the health and safety of the public they serve;
- (b) A ship, boat or vessel owned by a federal, state, or local government agency is engaged in a government function if it is exclusively dedicated to the performance of a government function and is either currently engaged in the performance of a government function (such as a ship owned or under contract to a government agency such as the United States Navy, United States Coast Guard, United States Army Corps of Engineers, or a fire, police or sheriff’s department), or if not currently engaged in the performance of a government function, is able to be quickly activated to perform the function for which it is dedicated (such as a United States Maritime Administration Ready Reserve Force ship).
- (c) A structure used to load and unload passengers from a ship, boat or vessel transporting passengers (such as a passenger ferry, cruise ship, or tour boat) is not a structure engaged in the receipt and discharge of goods or merchandise.
- (4) A wharf certification is valid for a term of ten years from the date it is issued. Upon expiration of a wharf certification, the owner thereof must recertify that the structure is a wharf as set forth above.
- (5) If the Department does not certify the structure as a wharf, the owner thereof must obtain the appropriate authorization from the Department in compliance with these rules. Unauthorized structures must be removed pursuant to OAR 141-082-0310.
- (6) A wharf certified in compliance with these rules may be repaired or replaced without prior notice to the Department. However, the owner of the wharf must notify the Department in writing describing the repair or replacement within 90 calendar days of making such repairs or replacement.
- (7) The Department must be notified in writing of any:
- (a) Change in the location, size, or use of the wharf at least 90 calendar days prior to such change;
- (b) Change in ownership of the wharf as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.
- (c) Change in ownership of the wharf by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision.
- Failure of the owner to notify the Department of a change in the location, size, use, or the ownership of the wharf within the time provided shall result in the automatic termination of the wharf certification.
- (8) The Department shall provide a copy of the wharf certification to the appropriate county official in the county where the wharf is located.
- (9) If a structure is used in part as a wharf and in part for a use or uses that are subject to authorization under these rules, the owner must obtain the appropriate authorization for such use or uses from the Department in compliance with these rules.

141-082-0275 Application Requirements for a Lease or Public Facility License

(1) Any person wanting to use state-owned submerged and submersible land that is subject to a lease or public facility license must, using a form provided by the Department, apply for and obtain the required authorization prior to using the submerged and submersible land.

(2) All applications for a lease or public facility license must be fully completed and accompanied by a non-refundable fee payable to the Department in the amount of \$750.

141-082-0280 Lease and Public Facility License Application Review Process

(1) Upon receipt of an application for a lease or public facility license to use state-owned submerged and submersible land, the Department shall review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application shall be deemed accepted by the Department.

(2) If an application for a lease or public facility license is determined by the Department to be incomplete, the Department shall notify the applicant of the additional information required. If a rejected application is resubmitted within 120 calendar days from the date the Department returned the application, no additional application fee shall be assessed.

(3) If more than one application for a specific area is received by the Department, the Department shall determine which proposed use best fulfills the general provisions specified in OAR 141-082-0260. The Department shall then accept and proceed with that application and deny the others.

(4) Notwithstanding the provisions of OAR 141-082-0260(6)(a), the Department may accept an application for a use or structure that is not currently allowed under local land use laws, or that requires a conditional use permit from the local government agency, if the applicant is actively pursuing in good faith a change to the local land use laws or a conditional use permit that would enable the use to occur, provided the Department has approved the change under OAR 141-082-0260(7).

(5) The Department may reject an application for a lease or public facility license if:

(a) The applicant's financial status or past business/management practices or experience indicates that they may not:

(A) Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the Department; or

(B) Use the land applied for in a way that meets the provisions of OAR 141-082-0260(2) and (3).

(b) The applicant is in default on any other authorization granted to them by the Department.

(6) Following acceptance of an application for a lease, the Department shall offer a preference right to lease to the eligible party as defined in OAR 141-082-0255(56) and (57), hereafter referred to as the preference right holder. The Department shall take the following steps to offer a preference right:

(a) If the riparian property adjacent to the proposed lease area consists of tax lots having different owners, the Department shall subdivide the requested lease area into smaller parcels by extending lines from the boundaries of, or within the boundaries of the adjacent riparian tax lots, beginning at the point on which the boundaries intersect with the line of state-ownership perpendicular to the thread of the stream so that there is a separate area offered for each adjacent riparian tax lot under separate ownership.

(b) If the riparian property adjacent to the proposed lease area consists of a single tax lot, or two or more contiguous tax lots owned by the same person, the Department shall extend the boundaries of the single tax lot or combined group of tax lots beginning at the point on which the boundaries intersect with the line of ordinary high water, perpendicular to the thread of the stream creating a single lease area.

(c) For applications to use state-owned submerged and submersible land within a cove or lake, the Department shall apply generally accepted surveying principles to determine the amount of lease area subject to the preference right of an adjacent riparian owner.

(d) Following identification of the preference right holder, or holders, the Department shall provide written notice to each preference right holder that a lease application has been accepted by the Department. Within 30 calendar days from the date of written notice from the Department, each preference right holder must provide the Department written notice of the preference right holder's intent to exercise the preference right to lease the proposed lease area, and submit a new application for a lease to the Department for the use applied for or any other use.

(e) Upon receipt of an application from a preference right holder, the Department shall review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the preference right holder's application shall be deemed accepted by the Department.

(f) Upon acceptance of a preference right holder's application, the Department shall process the application as set forth in OAR 141-082-0280(8) – (11), below.

(g) If the preference right holder does not exercise the preference right, or if the preference right holder's application is rejected, or if application is accepted but the preference right holder fails to execute a lease with the Department within 120 calendar days of the date of the preference right holder's notice of intent to the Department to exercise the preference right, the preference right holder shall be deemed to have waived the preference right and the Department shall process the application initiating the offering of the preference right as set forth in OAR 141-082-0280(7) – (11), below.

(7) If the preference right holder waives the preference right, the Department shall put the lease out for competitive bid pursuant to the requirements of ORS 274.040, and in accordance with the following process:

(a) The Department shall prepare and publish an advertisement for bids. The minimum bid amount shall be set by the Department.

(b) A bidder may bid on the use applied for in the application initiating the offering of the preference right or any other use that conforms to the provisions of these rules and that requires an annual lease compensation rate equal to or greater than the minimum bid amount. The highest bidder shall be awarded the right to lease, subject to compliance with the provisions of these rules.

(c) Following the closing of bids, the Department shall provide written notice to the highest bidder of the award and of the right to enter into a lease with the Department. Within 30 calendar days from the date of written notice from the Department, the person notified must provide the Department written notice of the bidder's intent to enter into a lease for the proposed lease area, submit a new application for a lease for the use that was the subject of the bid, and submit a bid deposit in a sum equal to one-half of the annual lease compensation for the use that was the subject of the bid. The purpose of the bid deposit is to ensure the bidder enters into a lease with the Department.

(d) Upon receipt of the application, the Department shall review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application shall be deemed accepted by the Department. Upon acceptance of the application, the Department shall process the application as set forth in OAR 141-082-0280(8) – (12), below.

(e) If the bidder awarded the right to lease does not exercise the right to lease, or if the bidder's application is rejected, or if the application is accepted but the bidder fails to execute a lease with the Department within 120 calendar days of the date of the bidder's notice of intent to the Department to exercise the right to lease, the right to lease shall be deemed to have been waived. If bidder's right to lease is waived, the bidder's bid deposit will be forfeited to the Department and the Department shall offer the right to enter into a lease to the next highest bidder according to the procedures set forth in OAR 141-082-0280(7).

(f) If the bidder enters into a lease with the Department, the amount of the bid deposit shall be applied to the first annual lease compensation payment.

(8) Except as provided in OAR 141-082-0280(9), the Department shall notify the appropriate city or county planning department, pertinent state and federal agencies, federally recognized tribal governments, ports and all lessees and adjacent riparian property owners (as available from the local county assessor's office records) of the application and request review and comment. The Department may require the applicant to respond to comments where applicable.

(9) The Department may provide notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The Department shall make paper copies of an application available to any person upon request.

(10) The Department shall not request review and comment on an application to obtain a lease or public facility license as provided in OAR 141-082-0280(8) if the use or structure:

- (a) Has already received the necessary city or county approvals;
- (b) Has been subjected to public comment during a prior circulation, and

(c) Has not changed in terms of the size of the authorized area or use of that area since the time those approvals were given.

(11) Based on the evaluation of the application and the comments received, the Department shall:

- (a) Approve the application and continue to process the lease or public facility license;
- (b) Require that the applicant modify and resubmit the application; or
- (c) Deny the application.

(12) The Authorized Area shall include all state-owned submerged and submersible lands not available for public trust uses including the area between moorage slips, boat wells and all gangways; except those uses qualifying as a registration.

(13) In the event the Department cannot readily determine the limits/boundaries of the authorized area requested from the description provided by the applicant or, if in the judgment of the Department, a dispute may arise concerning the description, the Department may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The applicant will be responsible for any costs of the survey.

141-082-0285 General Lease and Public Facility License Conditions and Form

(1) The Department shall only offer a standard form of lease or public facility license that has been approved by the Department of Justice.

(2) Subject to the terms of an existing lease or public facility license or as otherwise agreed by the Department, the applicant shall have ninety (90) calendar days from the date of offer to execute a lease or public facility license with the Department. The Department may revoke the offer after ninety days, at which time the applicant may re-apply for the proposed use in accordance with OAR 141-082-0275.(3) Unless otherwise approved by the Director, the initial term for a lease or public facility license for state-owned submerged and submersible land shall not exceed 15 years. The length of the initial term for a lease or public facility license shall be determined by the Department and shall be based on:

- (a) Whether the proposed use is reasonably expected to exist for the time period requested by the applicant;
- (b) Requirements imposed by financial institutions as a condition of project financing; and

(c) The general provisions contained in these rules.

(4) The Department may include in a lease or public facility license, the right of the holder of a lease or public facility license to renew the authorization for an additional term not to exceed 15 years, subject to the requirements of OAR 141-082-0290.

(5) The Department may require an applicant or holder of a lease to obtain a surety bond or other form of financial assurance acceptable to the Department to ensure that the lessee will perform in accordance with all terms and conditions of the lease. The surety bond amount shall be determined by the Department and shall be reasonable and within generally accepted business practices. A certificate of deposit in an amount

equal to the amount required for a surety bond and that names the State of Oregon as co-owner may be substituted in lieu of a bond.

(6) State-owned submerged and submersible land shall remain open to Public Trust Uses.

(a) Notwithstanding the provisions of OAR 141-088, a holder may close all or a portion of the authorized area to Public Trust Uses, or restrict Public Trust Uses within all or a portion of the authorized area, provided the closure or restriction is:

(A) Reasonably necessary to protect persons and property from harm arising from holder's authorized use of the submerged and submersible land;

(B) Limited in duration; and

(C) Limited in scope.

(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard, or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, holder shall consult with the United States Coast Guard and the Oregon Marine Board prior to implementing the closure or restriction. Holder shall comply with all requirements imposed by the United States Coast Guard and the Oregon Marine Board.

(c) The holder must provide written notice to the Department no less than fourteen (14) days prior to the implementation of any closure or restriction. The written notice must identify the need for, the scope of, and the duration of the closure or restriction, and must certify that holder has consulted with the United States Coast Guard and the Oregon Marine Board regarding the closure or restriction, if required under OAR 141-082-0285(5)(b).

(d) The Department, in its sole discretion, may at any time require holder to terminate or modify the closure or restriction. The Department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088.

(7) The holder may restrict public use of holder-owned property or structures authorized under a lease or public facility license.

(8) The Department or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management.

(9) The holder shall not encumber the rights held under a Waterway Use Authorization, nor mortgage or grant a security interest in the holder's interest in the Waterway Use Authorization without prior written consent of the Department. Written consent shall be applied for on a form provided by the Department.

(10) The holder shall pay a non-refundable fee of \$375 for each request for DSL's approval of a consent agreement.

141-082-0290 Lease and Public Facility License Renewal

(1) Notwithstanding any provisions in the lease or public facility license to the contrary, the holder of a lease or public facility license containing a right to renew, shall exercise the right to renew as set forth below.

- (2) The holder of a lease or public facility license shall exercise the right to renew not less than 90 calendar days prior to the expiration of the then current term of the lease or public facility license. If the holder of a lease or public facility license fails to renew within the time required, the lease or public facility license shall terminate at the expiration of the current term.
- (3) To exercise the right to renew, the holder of a lease or public facility license must submit to the Department:
- (a) A written statement, on a form provided by the Department:
 - (A) Notifying the Department of the holder's intent to renew;
 - (B) Certifying that the uses or structures that are the subject of the lease or public facility license are consistent with local, state, or federal law; and
 - (C) Certifying that the existing uses and structures are consistent with those authorized under the lease or public facility license.
 - (b) A non-refundable renewal fee of \$375 payable to the Department if:
 - (A) No changes in size or use have been made within the leasehold area, and
 - (B) The application was received within 90 days of expiration of the lease
 - (c) If changes in use or size have been made within the leasehold area, then a non-refundable \$750 application fee is required.
 - (4) Upon receipt of the written statement and renewal fee, the Department shall determine, in its sole discretion, whether:
 - (a) The right to renew was exercised not less than 90 calendar days prior to the expiration of the then current term of the lease or public facility license;
 - (b) The lessee or licensee has fully complied with the terms of their authorization, the applicable statutes, or Oregon Administrative Rules; and
 - (c) The holder of the lease or public facility license has fully complied with any other authorization granted to them by the Department.
 - (5) If the Department determines that the renewal complies with the requirements of OAR 141-082-0290(4), the Department shall provide written notice to the holder that the lease or public facility license has been renewed for the additional term stated in the notice. As a condition of renewal, the Department shall have the right to require amendment to the terms and conditions of the lease at the time of renewal. If the lease or public facility license contains a provision requiring that the annual compensation be re-determined on renewal, the written notice from the Department shall include the new annual compensation rate.
 - (6) If the Department determines that the renewal does not comply with the requirements of OAR 141-082-0290(4), the Department shall provide written notice to the holder that the lease or public facility license that the lease or public facility license shall not be renewed. In that event, the lease or public facility license shall terminate at the expiration of the current term.
 - (7) If the lease or public facility license does not contain a right to renew, the holder of the lease or public facility license may apply for a new lease or public facility licenses as provided in these rules.

141-082-0295 Lease and Public Facility License Modifications for Size and Use

(1) Change in Use: The holder of a lease or public facility license may not change the authorized use without prior written authorization from the Department. The holder shall submit an application to the Department that includes certification indicating that the proposed change is consistent with local, state, or federal law. The holder shall submit an application to the Department on a form provided by the Department together with an application fee of \$750.

(2) Reconfiguration of existing Uses and Structures: The holder of a lease or public facility license may change the internal arrangement of the uses or structures within an authorized area without prior written authorization from the Department. However, the holder must provide the Department written notice of the change no less than 90 days after the change. The written notice to the Department must include a drawing with dimensions and photographs documenting the change.

(3) Increase in area: The holder of a lease or public facility license may not increase the authorized area without prior written authorization from the Department. The holder shall submit an application to the Department that includes certification indicating that the proposed expansion is consistent with local, state, or federal law. The holder shall submit an application to the Department on a form provided by the Department together with an application fee of \$750.

(4) Decrease in area: The holder of a lease or public facility license may reduce the size of the authorized area without prior written authorization from the Department. However, the holder must provide the Department written notice of the reduction in the size of the authorized area, and an administrative fee of \$375, no less than 90 days after the change. The written notice to the Department must include a drawing with dimensions and photographs documenting the change.

(5) The Department will process and review all applications for changes of the authorized use or for an increase in the authorized area under a lease or public facility license in the same manner as a new lease or public facility license application as specified in these rules.

141-082-0300 Subleasing and Assignment of Leases and Public Facility Licenses

(1) Subleasing

(a) The holder of a lease may not sublease any portion of the authorized area without the prior written consent of the Department, unless subleasing is specifically permitted under the lease or by these rules. The Department may terminate a lease where any

portion of the authorized area has been sublet without the Department's written consent.

(b) Notwithstanding any provisions in the lease to the contrary, the holder of a lease shall comply with the process set forth below in subleasing any portion of an authorized area where Department's consent is required by the lease or by these rules. In order to sublease any portion of an authorized area where the Department's consent is required, the holder must submit an application to the Department, on a form provided by the Department, together with a copy of the proposed sublease for review and approval and a non-refundable application fee of \$750 payable to the Department. The application, proposed sublease, and application fee must be submitted to the Department no less than 60 calendar days prior to the date of the proposed subletting.

(c) The holder of a lease may grant a sublease to another person without prior consent of the Department when:

(A) The lease specifically authorizes subleasing without the Department's prior written consent, or

(B) The sublease authorizes use of less than the entire authorized area and the use allowed under the sublease is included in the authorized use of the lease (for example, the rental of boat slips).

(2) Assignment of a Lease

(a) The holder of a lease shall not assign the lease without the prior written consent of the Department, unless assignment without the Department's consent is specifically permitted under the lease or by these rules.

(b) Notwithstanding any provisions in the lease to the contrary, the holder of a lease shall comply with the process set forth below in assigning the lease where the Department's consent to assignment is required by the lease or by these rules. In order to assign a lease where the Department's consent is required by the lease or by these rules, the holder of a lease must submit an application to the Department, on a form provided by the Department, together with a non-refundable application fee of \$750 payable to the Department. The application and application fee must be submitted to the Department no less than 60 calendar days prior to the date of the proposed assignment.

(c) The Department may reject an application for assignment of a lease if the Department determines, in its sole discretion, that:

(A) The proposed assignee's financial status or past business/management practices or experience indicates that they may not be able to fully meet the terms and conditions of a lease;

(B) The proposed assignee is in default on any other authorization granted to them by the Department.

(d) If the application for assignment is approved by the Department, the Department shall prepare an assignment form for the signature of the lessee, the proposed assignee, and the Department. The assignment shall be effective on the date of signature by all parties.

(e) As part of the consideration for the Department's consent to the assignment, the Department shall have the right to require amendment to the terms and conditions of the lease prior to the assignment.

(f) Lessee shall remain liable for the performance of all obligations under the lease following assignment, unless the Department consents, in its sole discretion and in writing, to release lessee from liability.

(g) To assign a lease to a spouse or child on the death of the holder, the spouse or child must submit an application to the Department, on a form provided by the Department. There is no application fee associated with the assignment of a lease to the holder's spouse or child on the death of the holder.

(3) Assignment of a Public Facility License

(a) The holder of a public facility license shall not assign the public facility license without the prior written consent of the Department, unless assignment without the Department's consent is specifically permitted under the public facility license or by these rules.

(b) In order to assign a public facility license where Department's consent is required by the public facility license or by these rules, the holder of a public facility license must submit an application to the Department, on a form provided by the Department.

(c) There is no application fee required for an assignment of a public facility license to another public agency.

(d) If the application for assignment is approved by the Department, the Department shall prepare an assignment form for the signature of the licensee, the proposed assignee, and the Department. The assignment shall be effective on the date of signature by all parties.

(e) As part of the consideration for the Department's consent to the assignment, the Department shall have the right to require amendment to the terms and conditions of the license prior to the assignment.

(f) Licensee shall remain liable for the performance of all obligations under the license following assignment, unless the Department consents, in its sole discretion and in writing, to release licensee from liability.

141-082-0305 Lease Compensation Formulas, Methods and Annual Lease Compensation Adjustments

(1) The Department has established three methods to determine the compensation owed for the use of state-owned submerged and submersible land. For some uses, more than one method is available.

(2) The three methods are termed the:

(a) "**Flat Rate Method**" (which is determined by multiplying the number of square feet of an area requested, or that has been authorized, by a specific rate unique to the use).

(b) "**Riparian Land Value Rate Method**" (which is based on a percent of the assessed value of the upland adjacent to the area which has been requested, or that has been authorized).

(c) "**Percent of Gross Method**" (which is based on the percent of the actual annual gross income received by the lessee from using the area that has been requested, or that has been authorized).

- (3) Regardless of which method (OAR 141-082-0305(2)(a), (b) or (c)) is used, under no circumstances shall the compensation owed be less than the base minimum rate, set forth in OAR 141-082-0305(6).
- (4) For many use classifications, an applicant has the option of choosing among the above three methods to determine the compensation owed for their use of state-owned submerged and submersible land. Under the circumstances identified in OAR 141-082-0305(7), the Department shall choose the method to be used to determine the compensation owed to the Department for a use of state-owned submerged and submersible land.
- (5) Once an applicant or the Department has selected a method of determining compensation, that method shall remain in effect for the entire term of the lease unless there is a change in the use.
- (6) The base minimum annual compensation for any lease shall be the greater of:
- (a) \$0.0085 per square foot times the lease area or three hundred and fifty dollars (\$406) which is rate in effect in July 2016. The base minimum annual compensation rates shall be increased by three percent each year on July 1st; or
 - (b) The annual compensation resulting from a competitive the bid award.
- (7) In the event the lessee and the Department cannot agree on the method of calculating the annual compensation or any aspect of the method to be used, the annual compensation owed by the lessee shall be determined by the Department using the flat rate method which shall remain in effect until such time as the a new rate is implemented at the next lease anniversary date. If, during the term of the lease, the lessee and the Department reach agreement on the method of compensation, the new lease rate shall be implemented on the next lease anniversary date.
- (8) The annual compensation for individual non-commercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages shall be calculated based on the area encompassed by the perimeter of the structures, excluding gangways, protective booms, pilings, and dolphins.
- (9) The following eight use classifications and related lease compensation formulas described in OAR 141-082-0305(9)(a) through (h) shall be used to establish annual lease compensation payments or minimum bid, whichever is applicable, subject to the base minimum annual lease compensation payment established in OAR 141-082-0305(6). For the riparian land value method described below, utility, railroad or publicly-owned land shall not be used for establishing the assessed or appraised value [AV] unless the assessed value is readily available and reflective of comparable similarly situated tax lots. If not, the assessed or appraised value [AV] of privately owned comparable tax lots shall be substituted. In cases where the adjacent riparian tax lot is less than 100 feet deep, the Department shall assume the adjacent riparian tax lot has a depth of 100 feet and calculate the assessed or appraised value [AV] based on this derived area.

Formula Factors:

AV = Assessed value or appraised value (as defined in OAR 141-082-0255(6) and (8) of these rules) whichever is less except as stated in OAR 141-082-0305(14) and (15).

LA = Authorized lease area in square feet of state-owned submerged and submersible land.

AC = Annual compensatory payment

Uses and Compensation Determination Methodologies:

(a) **Commercial marinas and docks, and commercial floating home moorages.**

The annual lease compensation payment calculation is the lesser of the:

- (A) Flat rate method of \$0.0289 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Three percent of actual annual gross income; or
- (C) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(b) **Non-commercial marinas and docks,** The annual lease compensation payment calculation is the lesser of the:

- (A) Flat rate method of \$0.0289 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(c) **Non-commercial floating home moorages** including those operated by ownership-oriented organizations. The annual lease compensation calculation is the lesser of the:

- (A) Flat rate method of \$0.0289 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(d) **Individual floating homes and similar structures and uses.** The annual lease compensation calculation is the lesser of the:

- (A) Flat rate method of \$0.0289 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(e) **Historical vessels or structures not eligible for registration.** The annual lease compensation is \$338 (which shall increase each year on July 1st by three percent) per structure or combination of structures at a single location or facility.

(f) **Log boom areas, log raft storage areas.** The annual lease compensation calculation is the lesser of the:

- (A) Flat rate method of \$0.0144 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(h) **Marine industrial and marine service commercial uses/structures.** The annual compensation payment calculation is the lesser of the:

- (A) Flat rate method of \$0.4960 per square foot (which shall increase each year on July 1st by three percent) x LA; or
- (B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.

(i) **Non-Marine Uses.** The annual compensation payment calculation is the lesser of the:

(A) Flat rate method of \$0.5793 per square foot (which shall increase each year on July 1st by three percent) x LA; or

(B) Riparian land value method of AV x LA x five percent = AC.

(10) The above described flat rate method factors (OAR 141-082-0305(9)(a) through (h)) are those in effect in July 2017. Each flat rate method factor shall be increased by three percent every year on July 1st. Annual lease compensation shall be billed on the basis of the adjustments described in OAR 141-082-0305(9). For any newly executed lease, the applicable flat rate that shall be applied is that which is in effect at the time of the execution of the lease. The annual compensatory payment for executed leases shall also be adjusted/redetermined annually on each lease anniversary date by increasing the annual lease compensation payment by three percent. This annual compensatory payment adjustment/redetermination for executed leases shall not apply to those calculated based on actual annual gross income.

(11) Compensation rates for each use within each authorized area shall be calculated by the Department on a square foot basis of state-owned submerged and submersible land as applicable for each use classification (for example, non-commercial marina), and based on the lessee's choice of rate calculation methods except as noted in OAR 141-082-0305(7) above. More than one use (known as a mixed use) may be permitted by the Department within an authorized area. Compensation rates shall be calculated for each use area based on the most applicable use classification, as specified in OAR 141-082-0305(9)(a) through (h), and added together to derive the total annual compensation payment or minimum bid for the entire leasehold. Compensation for each use classification is subject to the base annual minimum compensation as specified in OAR 141-082-0305(6).

(12) Documentation supporting the annual reporting statement submitted to the Department by a lessee must be available upon request by the Department if the lessee reports annual compensation based on three percent of actual annual gross income.

(13) The Department shall notify lessees in writing of the new annual compensatory payment not less than 60 calendar days in advance of the lessee's lease anniversary date.

(14) In calculating the initial annual compensatory payment using the riparian land value method, a lessee or lease applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Department, a comparable tax lot. The Department reserves the right to evaluate, review, and challenge the appraisal. If required, the appraisal shall be conducted at the lessee or lease applicant's expense and prepared by a state-certified appraiser. The Department shall provide instructions to the appraiser prior to conducting the appraisal. In the event of a dispute between the Department and the lessee or lease applicant, the value shall be determined through the three-appraiser method specified in ORS 274.929(3).

(15) If in the process of using the riparian land value method for calculating the initial annual compensation payment, the AV is found to be artificially depressed due to the presence of hazardous materials or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by

the Department as the basis for calculating the initial annual lease compensatory payment.

(16) The Director reserves the right to establish a rate of compensation due to the Department for all other structures and uses that do not fit into any of the above categories, or which are unique. However, the rate of compensation shall not be less than the base minimum annual compensatory payment as defined by OAR 141-082-0305(6).

141-0820-0310

Removal of Abandoned and Derelict Structures

(1) The Department is authorized to seize a structure on, under or over state-owned submerged or submersible lands, if;

(a) The Department determines, after providing notice and opportunity for a hearing, that the structure is an abandoned structure or a derelict structure; and

(b) The owner of the structure has failed to correct the problems identified in the notice within 20 days or a longer reasonable time as specified in the notice or within any additional time that may be granted by the department.

(2) (a) The notice required under subsection (1) of this section must be delivered by certified mail, return receipt requested, to any person with an interest in the structure or the land upon which the structure is located, as determined by the Department after diligent investigation. "Diligent investigation" shall include the following:

(A) A search of the county real property records to identify the record owner of the submerged or submersible lands where the structure is located, and the record owner of the adjacent upland.

(B) Additional investigation warranted by the circumstances.

b) The notice required under subsection (1) of this section must:

(A) Be delivered to the record owner of the submerged or submersible lands where the structure is located, if the record owner is not the State of Oregon.

(B) Be delivered to the record owner of the adjacent upland.

(C) Identify, with specificity, the Department's proprietary interest in and jurisdiction over the state-owned submerged or submersible lands where the structure is located.

(D) If the record owner of the submerged or submersible lands is not the State of Oregon, identify the Department's basis for asserting State ownership of the submerged or submersible lands, and state that the recipient has the right to contest the State's claim of ownership.

(3) The Department shall contact the property owner(s) who own riparian land that is adjacent to where the abandoned or derelict structure is located.

(4) Any person with an interest in the structure must, within 20 days of service of the notice, either (a) provide written notice to the Department of their intent to authorize or

remove the structure or (b) request a hearing. The notice must be on a form provided by the Department.

(5) If a person with an interest in the structure wants to obtain an authorization from the Department, the owner of the structure must submit a complete application within 30-days of service of the notice.

(a) Submission of an application under this section does not ensure that an authorization would be issued.

(b) If an application is submitted, the Department may not seize the structure while the application is under review.

(6) If a person with an interest wishes to remove the structure, that person must do so within 90 days of notice, or as otherwise agreed to by the Department.

(7) If a person with an interest in the structure wants to challenge the actions proposed in the notice, the person may request a hearing.

(a) The hearing request must be received by the Department within 20 days of service of the notice.

(b) The request must indicate if the person contends that the structure is not abandoned or derelict, or indicate such other specific grounds on which seizure is challenged

(c) Upon receipt of a request for a hearing, the Department shall suspend further action to seize the structure until the Director issues the Department's Final Order.

(8) Upon receipt of a request for a hearing, the Department shall process the hearing request as follows:

a) The Department shall refer the matter to the Office of Administrative Hearings for a contested case hearing.

b) The Administrative Law Judge shall issue a proposed order, making a recommendation for the Department's Final Order.

(9) After the hearing:

a) The Director shall issue a Final Order, which is an order in a contested case and is subject to review under ORS 183.482.

b) If the Department determines after a hearing that seizure of the structure is not warranted under the law, the Department shall immediately release custody of the structure to the owner who requested the hearing and may not charge the owner any costs incurred by the Department in removal, salvage, storage or disposal of the structure.

c) If the Department determines after a hearing that seizure of the structure is warranted, the Department may seize the structure and remove, salvage or dispose of it, as the Department deems appropriate.

d) The Department shall mail a written statement of the Department's Final Order to all persons who requested a hearing under this section.

(10) If the owner fails to either; (a) submit an application for an authorization, (b) remove the structure or (c) request a hearing within the time allowed in the notice, the Department's Notice shall become a Final Order by Default and the Department may immediately seize the abandoned or derelict structure. The Department may remove, salvage, store or dispose of any structure seized under this section.

(11) Nothing in these rules affects the ability of the Department to:

- (a) Investigate and prosecute trespasses on and damage to state lands under ORS 273.185; or
- (b) Immediately seize without notice a structure that presents a hazard to navigation or an imminent threat to public health or safety.
- (1) If the Department seizes a structure without notice under this subsection and the Department decides to salvage or dispose of the structure, the Department shall provide notice as provided for in OAR 141-0820-0310 (2).
- (12) The owner of an abandoned or derelict structure is liable to the Department for all costs arising out of removal, salvage, storage and disposal of a structure seized under this rule. However, an owner of a structure whose only interest in the structure is a security interest is not liable for costs arising out of the removal, salvage, storage or disposal of a structure under these rules. Any order imposing liability for the costs is an order other than a contested case and is subject to review under ORS 183.484.
- (13) If the Department sells a structure seized under this rule, the liability imposed upon the owner shall be reduced by the net proceeds of the sale.
- (14) For removal or seizure of abandoned and derelict vessels, the Department shall follow the process outlined in ORS 830.

141-082-0311

Submerged Lands Enhancement Fund

- (1) The Submerged Lands Enhancement Fund (fund) is a fund established in the State Treasury separate from the General Fund. Interest earned by the Submerged Lands Enhancement Fund shall be credited to the fund. Moneys out of the fund are intended to be used to enhance, improve or protect state-owned submerged and submersible lands.
- (2) The fund shall consist of:
 - (a) Moneys recovered by the Department for payments made from the fund from the owner of an abandoned or derelict structure.
 - (b) Up to 20 percent of the revenue collected by the Department per biennium pursuant to the Department's granting of leases, easements, registrations, and other permissions to use or occupy state-owned submerged or submersible lands.
- (3) Moneys in the Submerged Lands Enhancement Fund may be used to pay the expenses of the Department associated with management and enhancement activities on state-owned submerged and submersible lands, including but not limited to:
 - (a) Removal, salvage, storage and disposal of abandoned or derelict structures;
 - (b) Removal and disposal of marine debris;
 - (c) Assistance with the salvage, towing, storage and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.948.
 - (d) Engagement in activities to improve water quality, watershed enhancement and fish and wildlife habitat on submerged and submersible lands.
- (4) The Department shall select and prioritize projects for funding using an application review team consistent with requirements specified in this rule.

Eligibility Requirements

(1) The Department may use moneys in the fund to provide funding to the following entities to assist the Department in completing any of the management or enhancement activities on state owned submerged or submersible land provided for in subsection 3 above;

- (a) State agency,
- (b) County,
- (c) City,
- (d) Water improvement district,
- (e) Watershed council,
- (f) Park and recreation district,
- (g) Port district,
- (h) Federal recognized Indian tribe, or
- (i) Non-profit organization.

Application Requirements

(1) Depending on availability of funds, the Department shall periodically solicit applications for requesting moneys from the Submerged Lands Enhancement fund for eligible activities.

(2) Entities are limited to those identified in OAR 141-082-NEW CITE(1). Applications must be submitted to the Department consistent with these rules and by the deadline established by the Department.

(3) Applications for funding shall be submitted using forms provided by the Department and provide the following information;

- (a) Applicant name and contact information.
- (b) Participating partners, if any.
- (c) Project name.
- (d) Detailed description of purpose and need for project.
- (e) Relevancy to protect Public Trust Values (recreation, commerce, fisheries and navigation).
- (f) Project location.
- (g) Local jurisdiction approval.
- (h) Project schedule including times of project beginning and completion.
- (i) Amount of funding requested.
- (j) Itemized budget.
- (k) Confirmation of contributing match.

Application Review and Project Evaluation

(1) The Department shall use an application review team to assist in the review and evaluation of eligible projects, prioritize funding requests and recommend funding allocation. Members of the review team may include, but are not limited to:

- (a) Oregon Department of Fish and Wildlife,
- (b) Oregon Department of Environmental Quality
- (c) Oregon Marine Board
- (d) Non-Profit Organization

(2) The application review team shall make funding recommendations to the Director based on the following criteria;

- (a) Significance of benefit to state owned land.
- (b) Protection or enhancement of Public Trust Values.
- (c) Capacity of applicant to perform the work.
- (d) Likelihood of project success.
- (e) Ability to meet match obligation.

(3) Limitations of Use of Submerged Lands Enhancement Funds;

- (a) Activities associated with compensatory mitigation requirements shall not be funded.
- (b) 25% match is required for projects not initiated by the Department (may be in-kind or cash).
- (c) Activities must be associated with management or enhancement of state-owned submerged or submersible lands consistent with these rules.

141-082-0315 Civil Penalties

(1) The unauthorized use of state-owned land managed by the Department constitutes a trespass.

(2) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not less than \$50 per day, and not more than \$1,000 per day of violation of any provision of these rules or ORS 274 that occurs on state-owned submerged **and** submersible lands pursuant to ORS 274.992.

(3) The Director shall give written notice of a civil penalty incurred under OAR 141-082-0315(2) by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to the following:

- (a) The particular section of the statute, rule, or written authorization involved;
- (b) A short and clear statement of the matter asserted or charged;
- (c) A statement of the party's right to request a hearing within 20 calendar days of the date of service of the notice;
- (d) The time allowed to correct a violation; and
- (e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-082-0315(3). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.

(5) The amount of a civil penalty shall not be less than \$50 per day, or more than \$1,000 per day for violation of an authorization issued under ORS 274.040 or violation of any administrative rule adopted under ORS 274.040.

(6) In imposing a penalty under OAR 141-082-0315 of these rules, the Director shall consider the following factors as specified in ORS 274.994:

- (a) The past history of the person incurring a penalty with regard to other trespasses on state-owned land managed by the Department and the willingness of the person to take all feasible steps or procedures necessary or appropriate to correct any violation;
 - (b) Any prior violations of statutes, rules, orders and authorizations pertaining to submerged and submersible lands;
 - (c) The impact of the violation on public trust uses of commerce, navigation, fishing and recreation; and
 - (d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.
- (7) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-082-0315 shall become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.
- (8) If a civil penalty is not paid as required by OAR 141-082-0315, interest shall accrue at the maximum rate allowed by law.

141-082-0320 Registration of Structures and Uses

- (1) Structures and uses subject to registration under this section are set forth in OAR 141-082-0265(3).
- (2) The Director may determine that other structures and uses similar to those specified in OAR 141-082-0265(3) are also subject to registration and the rules governing registrable structures and uses. If the Director determines that a structure or use is registrable, s/he shall assign an appropriate fee.
- (3) A person who fails to apply for and obtain a registration, or who fails to renew an expired registration, for a structure or use subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

141-082-0325 Registration Requirements and Provisions

- (1) All persons:
 - (a) Owning or placing structures on, or using state-owned submerged and submersible land in a way that is subject to registration under these rules must register the structure or use with the Department.
 - (b) Changing the location of a registered structure or use must notify the Department in writing 90 calendar days prior to such placement, or change in location.
 - (c) Making any modifications, including a change in size of the registered structure or a change in the registered use must notify the Department 90 calendar days prior to making such a modification.
- (2) Except as provided in OAR 141-082-0325(3), an applicant for a registration must use a form provided by the Department and submit a registration form for all registrable structures or uses.
- (3) A single registration form may be used to apply for a registration for all dikes, rip-rap, tide gates, erosion control barriers and other structures that occupy state-owned submerged and submersible land if they are located within:
 - (a) The jurisdiction of, and actively maintained by a diking or drainage district, or

- (b) Contiguous parcels owned by the same person and maintained by that person.
- (4) Except as provided in OAR 141-082-0335(2), each registration must be accompanied by a fee payment in the amount indicated in OAR 141-082-0335 of these rules.
- (5) The Department shall not issue a registration where the Department determines that the use or structure:
 - (a) Will unreasonably interfere with the public's right to use the waterway and state-owned submerged and submersible land for fishing, navigation, commerce, and recreation;
 - (b) Will not comply with all applicable local, state, and federal laws including the local comprehensive plan and zoning requirements.
- (6) Prior to issuance of a registration to use or occupy state-owned submerged and submersible land for the uses described in OAR 141-082-0265(3) (e), (f), (g) and (h) of these rules, the applicant, as a condition of their authorization and as required by ORS 274.043(6), must indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation. The applicant's obligation to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation must be in writing on a form provided by the Department.

141-082-0330 Registration Terms and Conditions

- (1) A registration issued by the Department shall be for a term of five years for all structures and uses.
- (2) Unless otherwise prohibited by law, any registered structure or use in compliance with these rules may be repaired or replaced in a manner consistent with the requirements of OAR 141-082-0325, and remain authorized under the original registration issued by the Department. However, any person making such repairs to a structure that changes its use or the area it occupies, or who replaces a structure entirely, must notify the Department in writing within 90 calendar days of making such repairs or replacement as a condition of the registration.
- (3) The Department must be notified in writing of any:
 - (a) Change in the location or size of a registered structure or use 90 calendar days prior to such change;
 - (b) Change in ownership of a registered structure or use as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.
 - (c) Change in ownership by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision. Failure to notify the Department of a change in the location, size, or the ownership of, a registered structure or use within the time provided shall result in the automatic termination of the registration.
- (4) Registrations for privately-owned structures and uses subject to registration must be renewed every five years. An owner who fails to renew an expired registration for a structure or use subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

(5) The Department may condition a registration to ensure compliance with law or these rules. The Department may modify the conditions of a registration, or terminate a registration, if during the term of the registration the Department determined that the structures or uses do not comply with law or these rules.

(6) The Department shall provide a copy of the registration to the appropriate county official in the county where the registered structure is located.

141-082-0335 Fees

(1) Except as provided in OAR 141-082-0335(2), the fee for a registration is as follows:

(a)

\$250 on and after January 1, 2017 for a dock/float or boat house 1,000 square feet or less in size (measurement excludes calculation of associated gangways, dolphins, pilings and protective booms); and any boat ramp not associated with another authorized waterway structure.

(b)

\$500 on and after January 1, 2017 for a dock/float or boat house from 1,001 square feet to 2,000 square feet in size (measurement excludes calculation of associated gangways, dolphins, pilings and protective booms).

(c)

\$600 on and after January 1, 2017 for a dock/float or boat house from 2,001 square feet to 2,500 square feet in size. Measurement excludes calculation of associated gangways, dolphins, pilings and protective booms.

(d)

\$700 on and after January 1, 2017 for a floating recreational cabin. Measurement excludes calculation of pilings, dolphins, mooring buoys, and protective booms.

(e)

\$250 on and after January 1, 2017 for a water sport structure, pilings, or a boat ramp not associated with another authorized waterway structure.

(2) No fee or other compensation is required for registering or renewing a registration for the following uses or structures:

(a) Erosion control structures, Rip-rap and tide gates.

(b) Structures maintained by a diking or drainage district.

(c) Rights of way established prior to November 1, 1981 for any county road or city street.

(d) Voluntary habitat restoration work.

(3) The fee for structures or uses not listed above that are subject to registration under these rules as determined by the Director under OAR 141-082-0265(3)(i) shall be determined on a case by case basis and be not less than \$250.

141-082-0340 Appeals

(1) An applicant for an authorization, or any other person adversely affected by a decision by the Department concerning an authorization, closure of, or restriction to the

use of state-owned submerged and submersible land may appeal the decision to the Director.

(a) Such an appeal must be received by the Director no later than 30 calendar days after the delivery of the decision.

(b) The Director shall decide the appeal within 60 calendar days after the date of delivery of the appeal.

(c) The Director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

(2) When an applicant for an authorization to use state-owned submerged and submersible land or any other person adversely affected by a decision of the Department concerning an authorization has exhausted the appeal process before the Director, s/he may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

DRAFT

May 2016

DEPARTMENT OF STATE LANDS**INFORMATION CONCERNING:****PROPOSED RULES GOVERNING THE MANAGEMENT OF, AND
ISSUING OF LEASES, LICENSES, AND REGISTRATIONS FOR
STRUCTURES ON, AND USES OF STATE-OWNED SUBMERGED AND
SUBMERSIBLE LAND**Introduction

We have prepared this memorandum to:

- Give you a quick overview of the changes we are proposing to make to the current rules governing the issuance of authorizations to use OF state-owned submerged and submersible land, and
- Answer some of the questions we are asked most often about these proposed rules.

Summary of Proposed Changes by Section**141-082-0250 Purpose and Applicability**

- Added reference to new division of rules

141-082-0255 Definitions

- Added a definition for “abandoned structures”
- Added a definition for “abandoned vessel”
- Added a definition for “consent agreement”
- Added a definition for “derelict structure” and “derelict vessel”
- Clarified the definition of “dock/float”
- Clarified the definition of “historical vessel” or “historical structure”
- Added a definition for “limited duration use”
- Added a definition for “marine debris”
- Clarified the definition for “marine industrial/marine service”
- Clarified the definition of “multi-family dock”
- Clarified the definition of “non-marine uses”
- Added a definition for “owner”
- Clarified the definition of “structure”
- Deleted the definition of “transient use”
- Added a definition for “vessel”

141-082-0260 General Provisions

- Clarified that state-ownership could be submerged lands, submersible lands or both.

141-082-0265 Types of Uses and Required Authorizations

- Clarified what to measure when determining use area.
- Clarified specific uses requiring a registration.

141-082-0270 Wharf Certification

- No change

141-082-00275 Application requirements for a Lease or Public Facility License

- No change

141-082-0280 Lease and Public Facility License Application Review Process

- Clarified which tribal governments would be notified.
- Added language regarding Environmental Justice notification.
- Clarifies area considered to be the “Authorized Area”.
- Clarifies the department will not provide certain information for boundary surveys.

141-082-0285 General Lease and Public Facility License Conditions and Form

- Establishes a timeframe in which the applicant shall have to execute a lease or license.
- Clarifies financial instruments that may be used.
- Added language that clarifies state-owned land (leaseholds) may be used as collateral.
- Establishes fee for processing consent agreements.

141-082-0290 Lease and Public Facility License Renewal

- Clarifies when the renewal fee will be \$375 vs \$750.

141-082-0295 Lease and Public Facility License Modifications for Size and Use

- Clarifies when a modification is necessary based on the activity.
- Clarifies when a fee is required and what the fee is, \$375 vs \$750.

141-082-0300 Subleasing and Assignment of Leases and Public Facility Licenses

- Minor edits.

141-082-0305 Lease Compensation Formulas, Methods and Annual Lease Compensation Adjustments

- Updates fee schedule.
- Removes redundancy in rule language.

141-082-0310 Removal of Unauthorized Structures

- Establishes new process to remove Abandoned and Derelict structures.
- Added new language related to funding removal of unauthorized structures.

141-082-0311 Submerged Lands Enhancement Fund

- Established use of Submerged Lands Enhancement Fund.
- Establishes a process for requesting funds from the Submerged Lands Enhancement Fund.

141-082-0315 Civil Penalties

- No changes

141-082-0320 Registration Requirements and Provisions

- No changes

141-082-0325 Registration Terms and Conditions

- No changes

141-082-0335 Fees

- Updated fee schedule.
- Clarified what is included in registration area

141-082-0340 Appeals

- No changes

OAR 141-082 Rulemaking Public Comments

PUBLIC COMMENTS RECEIVED and AGENCY RESPONSE

During the public comment period, May 1, 2016 through June 7, 2016, the Department received 22 written and oral comments on the proposed amendments to these rules.

Commenters:

Emails were submitted by:

- Nicole Miranda, Port of Portland
- John Brett, private individual
- 6 form emails

Testimony was provided by:

- Janice Laviolette, Kelly's Brighton Marina
- Mike Skindon, Port of Garibaldi
- Stevie Burden, City of Wheeler
- John Kelsey, private individual
- Daryl Reavis, private individual
- Dianne Harrison, private individual
- Ray Driscoll, private individual

Letters were submitted by:

- Surfrider Foundation
- Travis Harrison, private individual

Comments received during the public comment period include:

- One comment stated "we have no comment."
- One comment received related to DSL providing written survey instructions.
- One comment received related to authorizations required for pilings, dolphins, and private boat ramps.
- 2 comments received related to impacts of dredging.

- 3 comments received relating to increase in fees.
- 2 comments relating to Ten Mile Lake.
- 9 comments relating to definition of transient use, ensure Public Trust Doctrine is not violated.
- One comment relating to the definition of “abandoned vessel.”
- One comment relating to the definition of “derelict structures.”
- One comment relating to protocols for distributing moneys from the Submerged Lands Enhancement Fund.

Public Comment and Department’s Response:

Comment: Why is DSL not providing leasehold boundary survey instructions anymore? This is an added cost to a small business.

Response: The Department no longer has an engineering staff with that expertise.

Comment: Why is DSL now requiring pilings, dolphins and private boat ramps to be authorized?

Response: This is not a new requirement. Additional language was placed in 141-082-0265(3)(d) to clarify what is eligible for a registration. These types of uses are identified in current rule in 141-082-0335.

Comment: The cost to dredge is increasingly expensive; difficult to obtain costly state and federal permits to actual dredging costs. The state should be responsible for dredging their own land as sedimentation continues to occur within waterways. This may put small ports and marinas out of business.

Response: The proposed rule amendments are not associated with dredging activities.

Comment: Does not support rent increases.

Response: No rent increases are proposed in the rule amendment.

Comment: Does not agree with the state declaring ownership of Ten Mile Lake.

Response; This comment is outside of the scope of this rulemaking effort.

Comment: The individual wrote the 1989 survey report on Ten Mile Lake. Stated the lake should have been a municipal water body. The elevation of the lake is changing significantly due to sedimentation.

Response: This comment is outside the scope of this rulemaking effort.

Comment: The proposed definition of Transient Use violates the Public Trust Doctrine.

Response: DSL does not believe the definition of Transient Use violates the Public Trust Doctrine as it has broad authority to manage its lands as per 274.040. By defining Transient Use, DSL is protecting public uses by not allowing a single user to impede the Public Trust Rights of others. Furthermore, the state may regulate public uses of waterways as necessary to protect navigation, fisheries, commerce and recreation. The Public Trust Rights do not include the right to long-term residency.

Comment: The definition of “abandoned vessel” is unclear. What does “left without authorization” mean?

Response: The definition of Abandoned Vessel is derived from statute. The term “left without authorization” means the owner of the vessel has not obtained the permission of the landowner prior to mooring their vessel at that location.

Comment: Concerned that existing businesses with older overwater structures sitting at, or near the bed of the waterway will be determined to be derelict or marine debris and subject to removal.

Response: As per statute, if structures are determined to be derelict or if marine debris has been determined to be on state-owned submerged and submersible lands, those items are subject to removal. However, the department is required to make diligent effort to contact the owner of the structure prior to its removal.

Comment: Establish effective protocols for distribution of moneys out of the Submerged Lands Enhancement Fund. Clarify the amount of moneys available to distribute.

Response: As per HB 2463, the Department is committed to convening a multiagency team to review, prioritize and recommend funding on qualifying projects to ensure a fair and consistent approach to funding allocation. Furthermore, HB 2463 stipulates an extensive noticing process to owners of structures prior to the department taking action.

Oregon Department of State Lands

Aquatic Resource Management Program Report

Fiscal Years 2015 and 2016

(July 1 2014 through June 30 2016)





Introduction

The Oregon Department of State Lands (Department) is the administrative arm of the State Land Board, Oregon's oldest board. Established by the Oregon Constitution in 1859, the Land Board has been composed of the Governor, Secretary of State and State Treasurer throughout its history.

The Department's Aquatic Resources Management (ARM) program manages aquatic resources dedicated to the Common School Fund at statehood, including, among other resources, submerged and submersible lands within the bed and banks of twelve waterways within the state. Those waterways include all, or segments of, the John Day, Chetco, Columbia, Coos, Coquille, Klamath, McKenzie, Rogue, Sandy, Snake, Umpqua and Willamette Rivers, as well as a number of lakes such as the Klamath, Devils, Siltcoos, Tahkenitch and North and South Tenmile. Submerged and submersible lands also include tidally influenced bays and estuaries along the Pacific Ocean to three miles offshore (territorial sea). The Department processes applications within submerged and submersible land for waterway leases, easements, boat docks and boat house registrations, public facility licenses and sand and gravel operations and special uses.

The ARM also protects the state's waterways and wetlands through administration of Oregon's Removal-Fill Law, enacted in 1967. The Removal-Fill Law was passed to conserve, restore and protect water resources for their contribution to aquatic life and habitats, fisheries, aquatic-based economies, tourism, public recreation, navigation, water quality, floodwater storage and other natural resource functions.

The Department's Aquatic Resource Management and Common School Fund and Trust Property units are charged, among other responsibilities, with implementing the Removal-Fill Law, managing the state's submerged and submersible lands, real estate assets, estates and unclaimed property programs.

This report provides information regarding management of state-owned waterways and fulfills the annual report requirement in the state's Removal-Fill Law (ORS 196.885). The report covers fiscal years 2015 and 2016. A fiscal year for Oregon state government is July 1st through June 30th.

SECTION 1 – STATE WATERWAYS

Management of State-Owned Waterways

Proprietary Activity

Department staff focused on obtaining authorizations for new uses of state-owned waterways and renewals for uses that are in compliance with their authorizations yet expiring. The leasing program over this period targeted compliance monitoring and pursued trespass situations. The Department partnered with the Oregon State Marine Board to remove sunken vessels and marine debris and it convened a rules advisory committee to review and propose recommendations for changes to the waterway leasing rules.

The Department manages just over 4800 authorizations for a variety of uses on state-owned submerged and submersible land. Uses of the waterways include overwater structures such as marinas, floating home communities, marine industrial, public facilities, private docks, utility lines, sand and gravel operations, special use requests and remedial cleanup activities. Table 1 provides an overview of the number of authorizations managed by the Department by use classification.

Authorization Type	FY 2015	FY 2016
Leases	658	662
Public Facilities	238	245
Registrations	2755	2800
Easements	1113	1137
Remedial Activity	9	10
Total Active Authorizations	4773	4854

Portland Harbor Superfund Site

Over this reporting period, staff clarified the state's ownership boundaries within the Portland Harbor Superfund area and issued authorizations and permits for remedial activities, assisted with submissions to EPA, conducted work related to the non-judicial allocation of Portland Harbor response costs and coordinated with other state agencies on a state-level response to issues associated with cleanup. The Department continued to work with its partners to investigate restoration opportunities.

Legislation and Rulemaking

Division 82 Rules Governing the Management of, and Issuing of Leases, Licenses and Registrations for Structures on, and uses of State-Owned Submerged and Submersible Land

At this writing the Department is revising the rules governing the management of its waterways through issuing leases, licenses and registrations for structures and uses on state-owned submerged and submersible land. This includes the recently approved Submerged Lands Enhancement Fund and how it may be used pursuant to House Bill 2463 (2015). This measure authorized the Department to seize and dispose of abandoned structures and derelict structures on, under or over state-owned submerged and submersible lands and to perform other ecological enhancement of those lands.

SECTION 2 – REMOVAL-FILL PROGRAM TRENDS

Removal-Fill Permit Volumes

The Department saw declines in permit application and wetland delineation numbers following the 2008 economic downturn. This reporting period shows a continued reversal in this trend. Individual permits show an 82 percent increase over the last biennium (315 individual permits in FY 2013 and 2014, and 573 in FY 2015 and 2016), which is particularly telling as individual permits tend to be required for larger scale projects (see Table 1). Combined, 2015 and 2016 total permit numbers (excluding recreational placer mining) show a 58 percent increase over the prior biennium (603 total permits in FY 2013 and 2014, and 954 in FY 2015 and 2016). The reason this trend was calculated excluding recreational placer mining general authorizations is that there were numerous duplicate applications reported in FY 2013 and 2014 (see a following section on recreational placer mining).

General Permits are a streamlined alternative to permits issued individually for each project. A General Permit (GP) may be established by order or by rule. GPs issued are issued by rule on a statewide basis or a geographic basis. GPs are issued by order for an applicant or group of applicants to cover activities that are substantially similar in nature or ongoing, and have predictable effects. For example, the Bureau of Land Management/U.S. Forest Service GP (GP-42104-RF), issued by order, authorizes eleven aquatic restoration activity categories in multiple waterways in all Oregon counties. Multiple projects may be authorized within a single year. From July 2014-June 2015: 121 projects were implemented; and from July 2015 – June 2016: 97 projects were implemented using the GP.

The number of recreational placer mining authorizations issued declined precipitously over the past biennium, which is a continuation of the trend begun in the last biennia. This trend is discussed in more detail under Recreational Placer Mining.

Essential Indigenous Anadromous Salmonid Habitat (ESH)

The Department's essential indigenous anadromous salmonid habitat (ESH) regulations were established by the 1993 Legislative Assembly and fully implemented by the Department in 1996. The law requires review of projects smaller than the usual 50 cubic-yard removal-fill threshold for activities occurring

within stream reaches used for spawning or rearing of state and federally listed anadromous fish species. Authorization is required for any amount of fill or removal, unless the activity is specifically exempt. Table 1 shows the subtotals of all authorizations for activities located within ESH.

Table 1. Removal-Fill Authorizations by type and activity and location within essential salmonid habitat (ESH)				
Authorizations FY 2015 and 2016	2015 Total	2015 ESH	2016 Total	2016 ESH
Individual Permits				
Boat Ramp	2	1	3	1
Channel Relocation	6	3	8	4
Dam-Related	8	3	19	9
Dock/Pilings	12	7	37	31
Erosion Control	20	12	21	15
Fish Habitat	44	33	58	44
Commercial Gravel Removal	2	1	7	6
Maintenance Dredging/Sediment Removal	16	10	37	31
Pipeline/Cable/Utility	18	8	26	7
Roads/Bridges/Culverts	42	14	84	33
Wetland Enhancement	10	0	16	0
Wetland Fill	14	0	39	0
Other In-Water Work	14	7	10	5
Subtotal	208	99	365	186
General Permits				
Agricultural Drainage	1	1	2	1
Minor Removal-Fill Impacts	1	NA	2	NA
Transportation-Related Structures	25	12	47	19
Vernal Pool Wetlands	0	NA	0	NA
Subtotal	27	13	51	20
General Authorizations				
Minimal Disturbance in ESH	15	15	16	16
Piling Placement in ESH	51	51	63	63
Recreational Placer Mining	769	769	458	458
Sediment Removal and Disposal Behind Tidegates	0	0	0	0
Temporary Impacts	4	NA	3	NA
Transportation-Related	4	2	8	5
Waterway Bank Stabilization	12	7	5	3
Waterway Habitat Restoration	21	14	17	11
Wetland Ecosystem Restoration	11	3	6	2
Subtotal	887	861	576	558
Emergency Authorizations				
Dam-Related	1	0	1	1
Erosion Control	8	6	14	10
Pilings	1	1	3	3
Pipeline/Cable/Utility	1	0	7	4
Roads/Bridges/Culverts	6	4	13	8
Other In-Water Work	5	3	7	5
Subtotal	22	14	45	31
Grand Total	1144	987	1037	795

The Department works with the Oregon Department of Fish and Wildlife to update the ESH designations for Oregon's waterways to reflect improved mapping techniques and habitat reopened to salmonid and other species through recovery and restoration efforts. The maps were last updated and adopted into rule in March of 2015.

Recreational Placer Mining

The number of recreational placer mining authorizations hit its peak in 2012 (see Figure 1). Since then, the numbers have been steadily declining. Due to the limits imposed by SB 838 (see discussion below), the Department has not been accepting duplicate applications and this has dramatically decreased the number of applications reported.

Reporting

While the Department issued 1,227 authorizations during the reporting period, it only received 290 year-end reports for work performed during the 2015, and 154 during the 2016 mining seasons; for a total of 444 reports. Of the reports received, 230 individuals reported filling or removing 1,179 cubic yards in total; that is less than 1 cubic yard per authorization. The other 214 individuals reported they did not mine.

Senate Bill 838 (2013)

In 2013, the Oregon Legislature passed Senate Bill 838, finding that motorized mining in and directly adjacent to the beds and banks of Oregon's rivers and streams can pose significant risks to Oregon's natural resources (e.g. fish and wildlife, water quality, etc.) and cultural resources (e.g. areas of cultural significance to Indian tribes, historic artifacts, etc.).

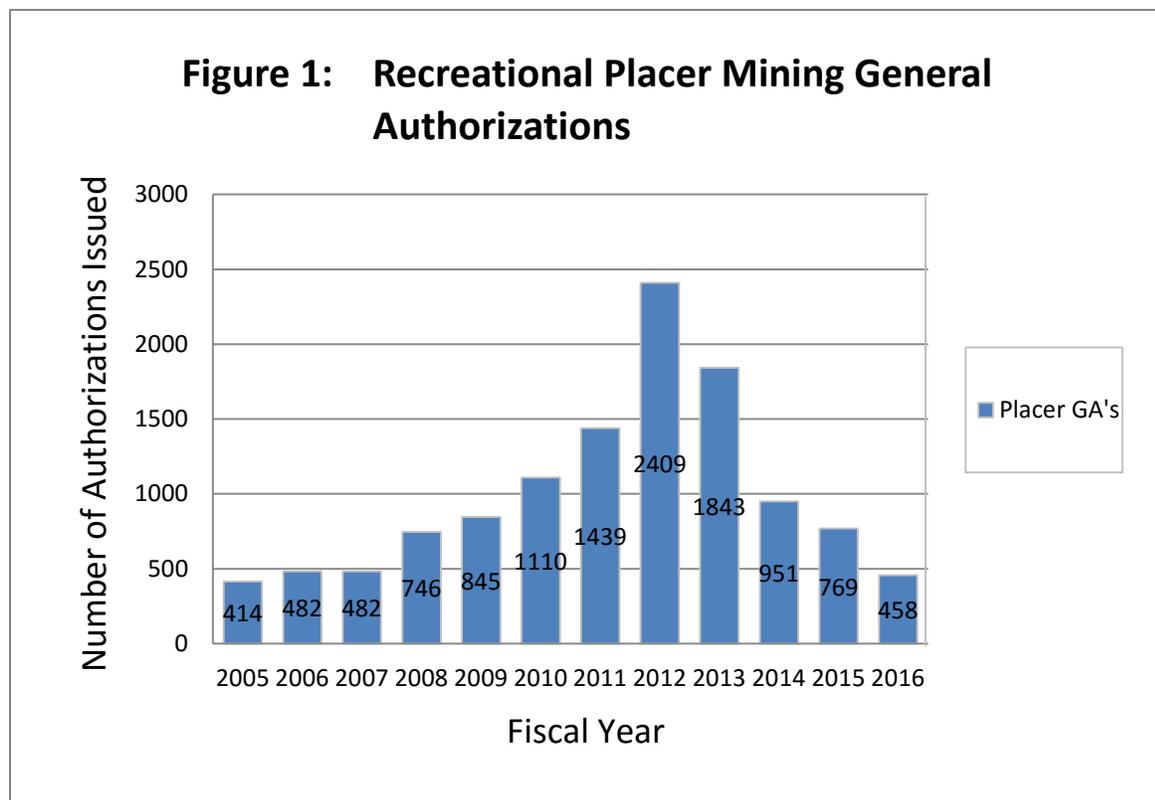
Based on these concerns, SB 838 directed the Governor's office, in consultation with DEQ, the Department, OSP, other state and federal agencies and Oregon tribes, to study motorized mining of placer deposits in waters of the state and propose a revised regulatory framework that would: consolidate permitting; provide fee structures that would enable adequate administration, compliance monitoring, enforcement and outreach; and provide conditions for and restrictions on mining that would better protect environmental and cultural resources.

SB 838 also imposed a moratorium on motorized mining for gold, silver and other precious metals that went into effect on January 2, 2016, and lasts until January 2, 2021. The intent was that the 2015 legislature would have the opportunity to implement legislation that would improve the regulatory framework and remove the moratorium provision. Legislation was proposed in 2015 and 2016, but did not pass. The moratorium does not prohibit all motorized placer mining for precious metals, but it establishes certain restrictions and prohibitions. The moratorium reduces the number of streams that are open to motorized suction dredge mining.

There are no year-end reports available for the 2016 calendar year, but due to the moratorium, the number of authorizations issued in FY 17 will be far less than in previous years. At this writing, only three authorizations have been issued for the summer 2016 in-water mining season.

Temporary Rule and Permanent Rulemaking

The Department initiated temporary rulemaking in late 2015 in order to address the imminent moratorium. It held a Removal-Fill Technical Advisory Committee meeting on December 10, 2015 and took input on the temporary rule. An e-mail invitation was sent out to all TAC members; a diverse group of removal-fill stakeholders representing business, environmental and conservation organizations, special interest groups, public agencies and other members of the public. The meeting was well attended by members of the placer mining community and we discussed the proposed temporary rule in depth. A temporary rule was filed and took effect on January 2, 2016 to align with the effective date of SB 838. The temporary rule expired on June 29, 2016. The permanent rule went into effect on June 30, 2016.



Legislation and Rulemaking

The Department has engaged in an unusual amount of rulemaking activity the past two years. This is in response to legislative action and stakeholder requests.

Division 93 Rules Governing the Development of a New General Permit for Navigational Access Maintenance Dredging

The Department initiated rulemaking to create a new removal-fill General Permit (OAR 141-093) for routine maintenance dredging of existing marinas, boat basins, terminals, access channels, etc. for navigational access purposes. The Department specifically requested public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business pursuant to ORS 183.335 (2)(b)(G). On June 14, 2016, the Department adopted this rule which goes into effect September 1, 2016.

Division 89 General Authorization for Recreational Placer Mining ESH that is not Designated State Scenic Waterway (SSW)

The Department completed rule changes to the Placer Mining General Authorization (OAR 141-089-0820 to 089-0835) that were needed to implement statutory changes. A legislatively established moratorium (Enrolled Senate Bill 838 – 2013) on some motorized placer mining began on January 2, 2016. It was necessary to revise the Department's General Authorization to implement the moratorium for some motorized placer mining. The Department first adopted a temporary rule and has now concluded permanent rulemaking.

Division 93 Rules Governing the General Permit for Impacts to Vernal Pools and Other Waters of the State in Jackson County

The Department initiated permanent rulemaking on the General Permit for Impacts to Vernal Pool Wetlands and Other Waters of the State in Jackson County, Oregon. The purpose of this rule (OAR 141-093-0180 to 0215) is to provide an expedited authorization for certain projects that involve removal-fill activities in vernal pool wetlands. It includes a mitigation framework to conserve the rare species found in these wetlands. The GP was renewed for a five-year period ending on January 1, 2021.

Division 89 Recommendations for Revisions to the Removal-Fill General Authorizations

The Department has completed its review of the general authorizations (GAs) and general permits of the Removal-Fill Law. Per ORS 196.850(7), the Department is required to review each general authorization every five years. The final recommendations are now available.

The overall consensus from government, private sector and non-profit applicants is that the rules and notification process are easy to follow, but that there is room for improvement. Recommendations included but were not limited to defining terms,

public outreach, website revisions, and specific recommendations pertaining to particular GAs and proposals for new GAs. The Department will consider these recommendations when renewing existing or pursuing new GAs in the future.

Division 89 and 93 Rules Governing the Development of a New General Authorization and/or General Permit for Stream Restoration Activities Mimicking Beaver Dams

The Department has initiated rulemaking to create a new removal-fill General Authorization (OAR 141-089) and/or a new General Permit (OAR 141-093) for stream restoration activities involving placing materials or structures in waterways for the purpose of mimicking beaver dams to promote beaver recovery.

Division 85, 89, 93 & 140 Rules Governing the Placement of Ocean Renewable Energy Devices in the Territorial Sea

The Department has initiated rulemaking to codify the requirements of recent administrative and legislative actions affecting the placement of ocean renewable energy devices in the territorial sea. These actions include adoption of Part 5 of the Territorial Sea Plan by the Land Conservation and Development Commission; enactment of HB 2694 (2013) establishing seafloor data sharing requirements; enactment of SB 606 (2013) amending financial assurance and civil penalty statutes for ocean renewable energy projects; and enactment of SB 319 (2015) refining the Department's regulatory and proprietary roles in siting ocean renewable energy projects.

SB 319 specifically requires the Department to convene a committee to assist in evaluating whether to establish by rule a general permit or a general authorization. The GA or GP would encompass ocean renewable energy facilities that are used as components of research projects or demonstration projects that produce ocean renewable energy.

Division 85 Rules Creating a New Wetland Planning Tool Called the Advanced Aquatic Resource Plan (AARP)

In 2014, the Department adopted OAR 141-085-0768 to create a flexible framework for communities to voluntarily plan for anticipated future wetland/development conflicts within a defined planning area. The AARP process identifies and characterizes wetland resources in advance of site-specific wetland permit application requirements. Local government makes strategic decisions to balance the needs for important wetland resources protection and the needs for economic development within the community. The AARP includes a comprehensive wetland mitigation strategy for those wetlands that are planned for future development.

Division 85 Rules Adding Definition for "Large Woody Debris" and adding Large Woody Debris as a Regulated Activity as "Removal" and Other Division 85 Revisions

During the 2013 Legislative Session, House Bill 2396 added "large woody debris" to the definition of "material" for the purposes of the Removal-Fill Law. This means that removal of large woody debris is subject to removal-fill permit requirements.

Statewide Wetlands Inventory and Goal 5 Planning Assistance FY 2015 & 2016

The Department is responsible for developing, maintaining and distributing the statewide wetlands inventory (SWI). The SWI is based upon the National Wetlands Inventory (NWI) developed by the U.S. Fish and Wildlife Service (USFWS) and includes Local Wetlands Inventories (LWI) covering many urban and urbanizing areas. LWIs have much more detailed and accurate wetlands inventory information and are developed according to standards established in rule by the Department. LWIs are used by cities and counties for planning purposes; they also provide good wetland location information for landowners and developers. The Department assists cities and their consultants with LWI development and ultimately reviews and approves LWIs. The Department approved LWIs for Bonny Slope West, Washington County; Cooper Mountain South, Beaverton; and the City of Bend. In review at this writing include the Hermiston and Monmouth LWIs, and Medford UGB Expansion area LWI.

The Department's Aquatic Resource Planner (ARP) participated in planning and public meetings during LWI development and other long-range wetland planning meetings. These included meetings and related correspondence with Clatsop and Washington Counties, and the cities of Beaverton, Corvallis, Dunes City, Durham, Eugene, Happy Valley, Medford, and Pendleton. Other coordination with local planning offices since April 2016 included the review of approximately 249 local notices, correspondence with local jurisdictions regarding approximately 214 planning topics and presentations to ten local planning offices about Department jurisdiction, the Statewide Wetlands Inventory and Department/local planning coordination.

New planning efforts by Department staff included the development of the Advanced Aquatic Resource Planning (AARP) opportunity. This advanced planning technique was established in rule by the Department. The first, for selected Industrial Sites in Linn and Benton Counties, was approved this biennium. The development of the second AARP for Six Industrial Areas in The Dalles was completed, with anticipated approval very early in FY 2017. The ARP assumed the AARP responsibilities in FY 2016.

The ARP participated in two Department of Land Conservation and Development rule advisory committees for the Streamlined UGB Expansion and Periodic Review Revision rulemaking efforts. Both of these rule divisions have connections to Goal 5 planning. The ARP and Department GIS staff have ongoing cooperative efforts to create GIS tools for Department ARM staff related to the Statewide Wetlands Inventory and AARP plan areas.

Aquatic Resource (Compensatory) Mitigation Strategy

The Department is updating our mitigation strategy to increase program effectiveness in replacing lost aquatic habitat functions (wetland, as well as stream functions) through compensatory mitigation. The update will better align our program with the federal Final Compensatory Mitigation Rule (2008) and Oregon's Removal-Fill Law regarding mitigation of waters of the state. It will also incorporate suggested changes and strategies outlined in documents including, but not limited to, The Oregon Sustainability Board's Senate Bill 513 Ecosystem Services and Markets Report (2010). The Department is working with representatives of the U.S. Environmental Protection Agency (EPA) and, U.S. Army Corps of Engineers (Corps), and a non-profit, Willamette Partnership, to develop science-based tools and policies that will help link wetland and stream mitigation in a common framework. The goals of the framework include science-based identification and quantification of aquatic functions and values, more function-based mitigation requirements, and better focus of mitigation investments where they will be most effective. The framework will maintain consistent with both state and federal standards.

One key element of the new framework is the development of function-based assessment methodologies to better assess compensatory mitigation requirements. This includes upgrades to the Oregon Rapid Wetland Assessment Protocol (ORWAP) to improve its use for ecosystem credit accounting, as well as development of an assessment method for streams. Other important program elements to be developed include mitigation site selection criteria based on watershed goals, and performance standards focused on project goals.

The Department, EPA and Corps continue to develop policy to support the inter-agency state and federal implementation of this integrated mitigation strategy across the state. Throughout these development efforts, staff have been, and will continue, to engage the developer, mitigation banker, and regulatory communities, as well as scientific and technical experts. Partial project funding for the Willamette Partnership and Department work on this framework comes from an EPA Wetland Program Development Grant. Implementation of the modified strategy is anticipated to begin in 2018.

State Assumption of Section 404 Authority under the Federal Clean Water Act (CWA)

Beginning in late 2015, and continuing beyond the end of the reporting period into early 2017, the Department is and will continue to be a panelist on the Assumable Waters Subcommittee convened by the US Environmental Protection Agency (EPA) under the National Advisory Council for Environmental Policy and Technology (NACEPT). EPA established the NACEPT in 1988 to provide independent advice to the EPA Administrator on a broad range of environmental policy, technology and management issues. NACEPT is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA).

If a state or Tribe is considering assuming such responsibilities, among the first questions to be answered are; what waters may the state or Tribe assume

permitting responsibility and what waters will the U.S. Army Corps of Engineers retain? States and Tribes have raised concerns to EPA that section 404 of the CWA and its implementing regulations, including EPA’s 404 assumption regulations, lack sufficient clarity to enable states and Tribes to estimate the extent of waters they could assume. This makes it challenging to estimate the potential scope and reach of a state or Tribal program and associated implementation costs.

The final subcommittee report to NACEPT may provide advice and recommendations on how EPA could clarify assumable waters. Deliberations will be consistent with the subcommittee’s charge and consistent with the CWA. The subcommittee’s final report is expected to be issued in early 2017. The subcommittee’s website is located here: <https://www.epa.gov/cwa-404/assumable-waters-sub-committee>.

SECTION 3 – REQUIRED PROGRAM REPORTING FOR REMOVAL-FILL

The following section reports data and contextual narrative prompted by ORS 196.855

Compliance Monitoring of Permitted Activities

Authorizations issued by the Department contain conditions intended to protect the state’s water resources during construction and provide mitigation to offset adverse effects of the project. The Department conducts two types of permit compliance monitoring:

- Post-construction monitoring of the project site to confirm the project was implemented according to the approved impacts and construction conditions.
- Mitigation site monitoring to confirm the mitigation was implemented as required and that the mitigation site is performing according to the performance standards in the permit.

Post-Construction Monitoring: The Department selected a sample of 117 permits to evaluate in 2015 and 2016. Site visits were conducted to assess impacts at the project site compared to what was authorized by the permits. Table 2 summarizes the results by permit type and resource type. The overall compliance rate is 90%, which is consistent with the previous biennium. Non-compliance issues are generally associated with exceeding the approved impact area or failure to re-establish vegetation in disturbed areas.

Table 2: Post-Construction Monitoring Conducted During FY 2015 and 2016

Permit Type	Number Inspected	Number in Compliance	Compliance Rate
Individual & general permits	50	46	92%
General authorizations	49	43	88%
Emergency permits	18	16	89%
Totals/Average Rate	117	105	90%

Wetland related	11	11	100%
Non-wetland related	106	94	89%
Totals/Average Rate	117	105	90%

Mitigation Monitoring: The Department monitored 249 wetland mitigation sites during the reporting period as summarized in Table 3. Of those, 54 percent (134 sites) were in “compliance” with all of the mitigation requirements and permit performance standards. This compliance rate is comparable to that of the prior biennium. “In compliance, but not performing” means that the mitigation work was constructed per permit requirements, but the site is not yet meeting performance standards (e.g., those related to vegetation cover and species). The permittee is required to manage the site in order to meet those standards. “Undetermined” means that the information submitted or conditions on the site at the time of the visit (e.g. high water obscuring the ground surface) do not allow a determination of compliance.

Table 3: Results of Wetland Mitigation Monitoring in FY 2015 and 2016

Compliance Result	Number	Rate
In compliance	134	54%
In compliance, but not performing	76	30%
Out of compliance	20	8%
Undetermined	19	8%
Total	249	

Permit-Related Violations

When non-compliance issues are brought to the Department’s attention, a file is opened. The purported violation is investigated to determine whether a violation has actually occurred or not. The Department opened 200 files during the reporting period. There were 89 cases determined to be actual violations, of which five were related to permit non-compliance. Table 4 summarizes the status of permit related enforcement actions by whether they are related to mitigation projects or not.

Table 4: Status of Violations Opened in FY 2015 and 2016 related to Permit Non-Compliance

Non-Compliance Type	Current Status of Violation	Number
Mitigation-related	No further action required	2
	Final resolution in place	0
	Pending resolution development	2
	Closed for miscellaneous reasons	0
Subtotal		4
Non-mitigation	No further action required	1
	Final resolution in place	2

	Pending resolution development	0
	Closed for miscellaneous reasons	0
Subtotal		3
Total		7

Enforcement of Unauthorized Activities

The Department investigates and makes inspections to determine whether illegal removal-fill in waters of the state has occurred without a permit. This is generally in response to a complaint from an external party. If a violation of the Removal-Fill Law has occurred, the Department pursues the enforcement case and normally resolves the violation through administrative procedures.

Table 5 summarizes the status of complaint investigations for the past two fiscal years.

Table 5: Status of Complaints Received in FY 2015 and 2016 related to Unauthorized Activities

Status of Complaint Investigations	Number
Violations confirmed	72
No jurisdiction or no violation	70
Still under investigation	39
Closed for miscellaneous reasons	12
New complaints opened (total)	193
Current Status of Confirmed Violations	
Resolved, no further action required	34
Final resolution in place	23
Proposed resolution pending final agreement or order	15
Resolution in development	0

The Department opened 193 enforcement cases in response to complaints of unauthorized activities. Approximately 37 percent (72) of those complaints resulted in a violation confirmation. For those that were violations, 47 percent (34) have been resolved or have a final resolution in place pending implementation (final consent agreement or final order).

Resolution of enforcement cases entailed civil penalties and corrective actions, if needed to protect and restore waters of the state. Corrective actions included site restoration or mitigation (if restoration was not possible). Table 6 summarizes the strategies used for enforcement cases begun and resolved in FY 2015 and 2016. Cases in which the strategy "no remedial action appropriate" would be used would

include unauthorized activity that negatively impacted a highly sensitive resource. In such cases remedial action may exacerbate the negative effects.

Table 6: Outcome of Resolved Enforcement Cases for Unauthorized Activities in FY 2015 and 2016

Strategy for Resolution	Number
Site restoration	19
Site self-restored	2
Mitigation	3
Permit	1
Civil penalty	6
No remedial action appropriate	3

Civil Penalties Collected

Many enforcement actions taken by the Department for permit non-compliance and unauthorized activities resulted in civil penalties. Table 7 provides a summary of the number of enforcement cases that resulted in civil penalties and the total amount collected. Note the total numbers of cases in Tables 6 and 7 do not align because they present data with different parameters. Table 6 represents the cases opened and resolved in FY 2015 and 2016. Table 7 shows all civil penalties collected in FY 2015 and 2016. This includes cases from prior years.

Table 7: Summary of Civil Penalties Collected

Fiscal Year	Number of Cases	Civil Penalties Collected
2015	24	\$25,138
2016	28	\$36,344
Total		\$61,482

Contested Case Hearings

The Department received eleven requests for contested case hearings during FY 2015 and 2016. Five of them were related to permit decisions. The remaining six were in response to proposed enforcement orders. Table 8 provides a summary of the outcome *and* status of pending contested case hearings.

Table 8: Status of Contested Case Hearings Requested in FY 2015 and 2016

	Permit Challenges	Enforcement Cases	Total
Hearing requests	5	6	11
<i>Cases Settled</i>	0	3	3
<i>Cases Withdrawn</i>	1	0	1
<i>Cases Pending</i>	3	3	6

<i>Hearing Held</i>	1	0	1
Department Action Upheld	1	N/A	1

Wetland Land Use Notification

The wetland land use notification process was initiated in 1989 as part of the wetlands program legislation. All counties and cities are required to notify the Department of certain development activities proposed in wetlands that are mapped on the National Wetlands Inventory (NWI) or, if completed, the Local Wetlands Inventory (LWI). The Department reviews the notice and provides a written response within 30 days to the applicant and local government as to whether or not the proposed action requires a removal-fill permit and/or a more precise wetland boundary location (delineation). The Department was successful in responding within 30 days for 751 notices, but exceeded that time period for 42 notices (5% of all notices) in 2015 and 2016.

The objective of the notification process is to provide coordination between local (city or county) development approvals and state wetland regulations. Overall, the wetland land use notice process has proven to be an effective “early warning” mechanism for landowners and developers that a state permit may be required in addition to the local approval.

Table 9: Department Response Time for Wetland Land Use Notices

Response Time	FY 2015	FY 2016
30 Days or Less	338	413
31-59 Days	13	29
60 Days or More	0	1
Total	351	443

Wetland/Jurisdictional Determinations and Wetland Delineation Report Review and Approval

The Department offers the public service of providing without charge an agency determination on whether wetlands or other waters of the state may be present on a particular parcel of land. A wetland determination identifies if wetlands or other waters of the state are present on a site that may be subject to state permit requirements. If wetlands are present, a wetland boundary delineation and report by a wetland consultant may be needed to accurately locate and map the wetlands (a wetland delineation report). Wetlands Program staff review wetland delineation reports submitted to the Department. Landowners, developers and local governments use the approved delineation report and maps to avoid or minimize wetland impacts, or to determine the impacts that will require a state permit.

Table 10 shows the number of wetland determinations and delineation report reviews conducted for FY 2015 and 2016.

Table 10: Wetland Determinations and Delineation Report Reviews

Determinations/ Delineations	FY 2015	FY 2016
Delineations	307	279
Determinations	257	223
Total	564	502

Statute requires the Department to complete the initial review of delineation reports within 120 days. The average number of days for completion of initial report review was 56 days for FY 2015 and 38 days for FY 2016. All initial reviews were completed within the 120-day timeline.

Compensatory Wetland Mitigation (CWM)

OAR 141-085-0006(3) defines compensatory mitigation as follows:
"Compensatory mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity."

Applicants have several mitigation options to choose from: they may conduct their own CWM on the impact site or elsewhere nearby by either creating or restoring wetlands; enhancing degraded wetlands; or in certain limited cases, preserving high-value wetlands that are threatened. Some applicants have the option of purchasing wetland credits from a mitigation bank or an in-lieu fee project, or they may pay into the Department's Removal-Fill Mitigation Fund. The Department promotes mitigation banking because it is ecologically valuable to consolidate mitigation while more efficiently replacing lost wetlands.

Mitigation Banking

There are currently 28 approved wetland mitigation banks in Oregon. During the last two years, three banks have sold out and three new ones have been approved. This includes Oregon's first stream mitigation bank, sponsored by the City of Salem. Approximately 70 wetland credits were sold during the last two years, and approximately 25 wetland credits were added to the total potential credits available from all banks.

Credit Sales from Banks:

Total bank credit sales have increased slightly from previous biennia, and the number of projects mitigating at banks has increased, as follows:

Table 12: Bank Credit Sales Biennia Comparison

Biennium	Total Credits Sold	Number of individual credit sales
2005-06	63.60	99
2007-08	80.90	107
2009-10	101.27*	98
2011-12	65.71	79

2013-14	63.72	97
2014-16	69.24	152

*35 credits for Junction City prison

Table 13: Mitigation Bank Credit Sales and Balances as of June 30, 2016

Mitigation Bank	County	Total possible credits	% of credit released	% sold to date	Balance of credits remaining
Amazon Creek	Lane	39.78	100	100	0
Butler	Washington	45.6	25	14	39.4
Claremont	Clatsop	17.51	45	32	11.97
Cow Hollow	Douglas	15.22	100	100	0
Coyote Prairie North	Lane	78.68	71	38	48.31
Evergreen	Benton	84.52	90	57	36.46
Foster Creek	Clackamas	27.57	75	83	4.57
Frazier Creek	Benton	13	100	100	0
Garret Creek	Clackamas	15.49	66	13	13.52
Long Tom	Lane	59.51	85	69	18.45
Marion	Marion	38.3	60	57	16.39
Mid-Valley phases 1-2	Benton	21.53	98	98	4.2
Muddy Creek	Benton	60.33	71	71	17.32
Mud Slough phases 1-4	Polk	157.9	73	58	56.93
Oak Creek	Linn	38.98	58	58	16.41
ODOT Bobcat Marsh	Washington	5.26	80	27	3.77
ODOT Crooked River	Crook	5.56	39	5	5.27
ODOT Greenhill	Lane	8.11	15	14	6.97
ODOT Lost River	Klamath	13.44	41	29	9.59
ODOT Vernal Pool	Jackson	20.95	62	44	11.64
One Horse Slough	Linn	66.91	90	53	31.69
Oregon Trail	Lane	41.47	0	0	41.47
Rogue Valley Vernal Pool	Jackson	24.7	30	12	21.83
Tualatin Valley	Washington	31.1	52	41	19
Weathers	Marion	9.19	100	100	0
West Eugene	Lane	135.52	100	100	0
Wilbur Estuary	Lane	51.34	64	3	49.74
Total wetland credits		1127.1		57	480.5
Salem Stream Bank	Marion	10,741*	30	3	10,405
In-Lieu-Fee sites					
Lower Columbia Advance	Clatsop	10**		28	7.24

Half Mile Lane	Washington	12.69	54	34	8.39
Wilson Trask Nestucca Advance	Tillamook	5**		<1	4.99
Pixieland	Lincoln	7.43	54	16	6.23
Tamara Quays	Lincoln	3.08	70	59	1.27
Umpqua Advance	Douglas	15**		28	10.85
Total ILF		53.91		17	38.97

*The Salem stream credit units are not based on acreage and thus are not comparable to the wetland credit balances.

**The Advance ILF potential credits are targets only, actual projects may yield more or less credits.

Bank Program Compliance and Efficiency

The substantial number of mitigation projects occurring at banks represents an important efficiency for the Department. Each permittee-responsible mitigation project (for applicants who do not buy bank credits) typically involves staff review of a mitigation plan, assignment of appropriate performance standards in the authorization, reviewing five annual monitoring reports, compliance actions as needed, release of financial security, and associated correspondence.

The Department staff work with each banker to ensure compliance with mitigation objectives for each bank and to address any emerging problems. Each active mitigation bank is inspected annually to evaluate whether expectations have been met, to verify information in the monitoring reports, and to discuss and resolve emerging issues. Two banks are currently implementing remediation plans due to weed invasion. Agency staff has been working with the bankers to promote establishment of long-term stewardship plans.

Recently, the conversations with bankers have included issues related to the upcoming shift in the mitigation program to better match functions and values lost with functions gained, rather than the current focus on acreage-based ratios. The agency is evaluating various ways to reduce uncertainties so that there will continue to be a supply of bank credits available to meet the demands of development projects.

Compensatory Mitigation – In-Lieu Programs

In-lieu fees are accepted into the Oregon Removal-Fill Mitigation Fund as a form of compensatory mitigation for unavoidable adverse effects on waters of this state. The funds are used by the agency to construct mitigation sites and compensate for lost functions and values. There are two in-lieu fee programs available. The Payment In-Lieu (PIL) program allows payment for compensatory mitigation for small impacts (generally <0.2 acres) to waters of this state when other methods of providing compensatory wetland mitigation are not available, or inadequate. The

U.S. Army Corps of Engineers does not accept PIL mitigation for their federal 404 permits. The In-Lieu Fee (ILF) program was approved by the U.S. Army Corps of Engineers in 2009, and provides compensatory mitigation for both waters of this state and waters of the United States; i.e., the credits may be used to satisfy mitigation requirements for both Oregon removal-fill permits and federal 404 permits.

During the 2015-2016 biennium, a total of \$140,190 was collected under the PIL program and \$483,547 was collected under the ILF program (Table 14), representing compensatory mitigation for 8.64 acres of impacts.

Table 14: Deposits into the Oregon Removal Fill Mitigation Fund

	FY 2015	FY 2016
Number of Permits using the PIL Program	10	12
PIL Totals	\$68,216	\$71,974
PIL Credits Sold	0.66	0.76
Number of Permits using the ILF Program	10	8
ILF Totals	\$267,148	\$216,399
ILF Credits Sold	4.36	2.86

The Department uses deposits from the Oregon Removal-Fill Mitigation Fund to fund wetland and waterway restoration, creation, enhancement, and preservation projects; and may purchase credits from appropriate mitigation banks, if they become established. During the last biennium no funds were committed to new projects, however staff has spent considerable time in the Douglas County area to locate a suitable project. The Department's in-lieu fee programs have generated an obligation for approximately six credits and there are ongoing mitigation needs in the area. A potential project site in Douglas County has been identified but has unique characteristics that take time to work through, and may not generate enough credits to fully satisfy current obligations. Staff continues to gather information for this site and is working to find local partners to be the project manager and to provide long-term site management. Staff is also building partnerships in the area in order to identify additional project options and encourage development of a mitigation bank to serve ongoing mitigation demands.

The Department continues to adapt its in-lieu fee programs in order to provide options for applicants to satisfy mitigation requirements while meeting program requirements. In 2015, the legislature approved a change to ORS 196.643 that expands when a mitigation payment could be made to the Oregon Removal-Fill Fund. Previously, the Department could not accept funds into the Oregon Removal-Fill Fund if appropriate credits from a mitigation bank were available. This made it impossible for the Department to recover project costs if a mitigation bank established in an area after in-lieu credits had been sold. With the approved change to ORS 196.643, the Department can now sell credits in an area when: 1) credits from an approved mitigation bank in the region were not available when the first

payment for ILF credits was made; and 2) expenses associated with a Department project in the region have not been fully recovered. The Department believes that this change will allow the in-lieu fee program to meet mitigation obligations while not discouraging the establishment and operation of mitigation banks.