Oregon
Tina Kotek, Governor

Department of State Lands
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State Land Board

December 10, 2024
10:00 am – 12:00 pm
Meeting Agenda

Public Wi-Fi logon: LandsDSL

*This is a hybrid meeting that can be attended in-person at **775 Summer St. NE, Suite 100, Salem, OR 97301-1279** or online through the Department of State Lands' livestream video: www.youtube.com/@oregonstatelands*

CONSENT ITEMS

1. Request for approval of the minutes of the October 15, 2024, State Land Board Meeting

ACTION ITEMS

2. Request for approval to permanently adopt:
   a. New rules in OAR 141-126: Authorizing Communication Site Facilities on State-Owned Land
   b. Amended rules in OAR 141-125: Authorizing Special Uses on State-Owned Land
   Public testimony will be accepted on this item.

INFORMATIONAL ITEMS

3. Common School Fund Annual Report
   No public testimony will be taken on this item.

Continued on the next page

4. Aquatic Resource Management Annual Report
   No public testimony will be taken on this item.

5. Geologic Carbon Sequestration in Oregon
   No public testimony will be taken on this item.

6. Other
   No public testimony will be taken on this item.

WATCH THE MEETING ONLINE

Meeting video and audio will be livestreamed, and the recording available after the meeting, on the DSL YouTube Channel: www.youtube.com/@oregonstatelands

ATTEND IN-PERSON

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 Arin Smith at arin.n.smith@dsl.oregon.gov at least two working days prior to the meeting.

Visitors are **NOT permitted to bring backpacks, bags, or large purses** into the State Lands building prior to, during, or following Land Board meetings. Purses, medical bags, and diaper bags are permitted, but may be subject to inspection by the Oregon State Police.

PROVIDE PUBLIC TESTIMONY

The State Land Board places great value on information received from the public. The public may provide written or spoken (online or in-person) testimony regarding consent and action agenda items, time permitting and at the discretion of the Chair.

- **Providing Written Testimony:** Testimony received by 10 a.m. on the Monday before the meeting will be provided to the Land Board in advance and posted on the meeting website. Submit your input in writing to: landboard.testimony@dsl.oregon.gov. Testimony received after this deadline may not be provided to the Land Board prior to a vote. Please indicate the agenda item your testimony relates to.

- **Providing Spoken Testimony by Video/Phone or In Person:** Advanced sign-up is required for the public to provide spoken testimony (in-person or by Zoom).

The sign-up deadline is 10 a.m. the day before the meeting.
Please note: When the number of people interested in speaking exceeds the time allotted for an agenda item, speakers are randomly selected for testimony slots to ensure all have an equal opportunity to testify. Speakers have the same chance of being randomly selected whether they plan to testify in person or by Zoom. The testimony order will be posted to the State Land Board Meetings webpage the day before the meeting, and everyone who signed up to testify will be notified of the testimony order via email. Be aware there may not be time for everyone who signs up to speak.

Additional Testimony Information

- Testimony on action items is taken during the item's presentation, before the Land Board votes. Please review the meeting agenda and be present and prepared to provide testimony at the appropriate time.
- The Board typically accepts testimony on consent and action items only.
- The standard time limit is three minutes for each individual; the actual time available for testimony during Land Board meetings is at the discretion of the Chair.
- The Board may not be able to accept testimony on items for which a formal comment period has closed, such as a rulemaking comment period. The meeting agenda indicates whether testimony will be accepted on an item.

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State Land Board

Tina Kotek
Governor

LaVonne Griffin-Valade
Secretary of State

Tobias Read
State Treasurer

The State Land Board (Land Board or Board) met in regular session on October 15, 2024, in the Land Board Room at the Department of State Lands (DSL), 775 Summer Street NE, Salem, Oregon. The meeting audio and video was livestreamed on the DSL YouTube channel.

Present were:

Tina Kotek	Governor
Tobias Read	State Treasurer
LaVonne Griffin-Valade	Secretary of State

Land Board Assistants

Geoff Huntington	Governor's Office
Jessica Ventura	Secretary of State's Office
Jessica Howell	State Treasurer's Office

Department Staff

Vicki Walker	Bill Ryan	Ellie Forness	Katrina Scotto di Carlo
Arin Smith	Jean Straight	Ali Ryan Hansen	Linda Safina-Massey
Patricia Fox	Ted Bright		

Department of Justice
Matt DeVore

Governor Kotek called the meeting to order at 10:00 a.m. The topics discussed and the results of those discussions are listed below. To view the Land Board (Board) meeting in its entirety, please visit our YouTube page: October 15, 2024, Land Board Meeting

Prior to the start of the regular meeting, the Board presented its annual Land Board awards. Governor Kotek gave a brief history of the awards before they were presented.

- **Stream Award**: The Dalles Dog River Pipeline Replacement
- **Stream Award**: North Fork Walla Walla River Restoration
- **Catalyst Award:** Chad Hoffman, Lane County Public Works
- **Partnership Award:** Rangeland Program Partners

Consent Items

1. **Minutes**

Treasurer Read made a motion to approve the minutes for the August 13, 2024, Land Board meeting.
Secretary Griffin-Valade seconded the motion.
The item was approved at 10:01 a.m. without objection.

Chair Kotek then asked that the Informational item (Item 5) be moved up on the agenda

INFORMATIONAL ITEMS

5. **Geologic Carbon Sequestration Presentation by Department of Geology and Mineral Industries**

Director Walker introduced Dr. Ruarri Day-Stirrat, State Geologist and DOGAMI Executive Director, to present the item.

Dr. Ruarri Day-Stirrat provided an overview of geologic carbon sequestration and considerations for further collaboration.

Carbon sequestration is the process by which carbon dioxide is removed from the atmosphere and permanently stored, an action that has been identified as integral to reducing global climate change. Carbon sequestration reduces the amount of carbon dioxide in the atmosphere and can generate revenue through the sale of carbon credits, fee-based programs, or other funding mechanisms.

Chair Kotek stated there are strict guidelines from the EPA and asked Dr. Day-Stirrat to confirm that the carbon wells bypass all water levels. Dr. Day-Stirrat confirmed that there is no connection between potable water and the carbon wells.

Treasurer Read asked about the State taking on some of the authority from the US EPA regarding carbon and what that would look like. Dr. Day-Stirrat stated that the US EPA wrote underground injection control Class 6 regulations specific to carbon sequestration. Since then, a number of states have gone through a process led by the US EPA where they have taken over regulatory control from the US EPA and State regulations are even stricter than US EPA regulations.

Treasurer Read then asked if it matters where the carbon comes from seeing that it would be good for the environment either way. Dr. Day-Stirrat responded that Oregon carbon emissions are relatively small, but the volume of rock is high, so there is a net opportunity on the State side to bring in CO2 as a way of mitigating climate change, and also generating revenue.

Secretary Griffin-Valade stated that she is interested in the map and the locations and wonders if there has been any input from the people who live in those areas. Dr. Day-Stirrat stated that there will be significant outreach, including with Tribal Nations, before any projects are started.

Chair Kotek stated that from the standpoint of the Land Board, the direction would be to continue due diligence and outreach. There are a lot of conversations to have, and we should come back at a future meeting to talk about progress.

Treasurer Read agreed with Chair Kotek and stated that we want to be prepared to move quickly and be ready when the technology is ready.

Director Walker stated that we will bring an update to the December 2024 Land Board meeting.

ACTION ITEMS

2. Elliott State Research Forest – Appointment of the remaining Board Members

Director Walker read brief bios of the candidates:

- Payton Smith
- Jennifer Allen
- Michael Wilson

Regarding Michael Wilson, Director Walker stated that although he is a Tribal member, his appointment to the Board is based on his skills and his experience in forest resource management as an individual and not a representative of a Tribe.

The Department then recommended the State Land Board appoint the remaining three voting members of the ESRF Board of Directors from the Department's candidate list.

Treasurer Read made a motion to approve the action item.
Secretary Griffin-Valade seconded the motion.
The item was approved at 10:33 a.m. without objection.

3. Elliott State Research Forest – Adoption of the proposed Forest Management Plan

Director Walker introduced Brett Brownscombe, ESRF Transition Director, to assist in presenting this item.

Mr. Brownscombe gave an overview of the Forest Management Plan (FMP) and timeline of how it was created.

Treasurer Read asked when the last timber harvest was done on the Elliott. Ryan Singleton, DSL's Forester, stated that the last timber harvest was in 2016.
Treasurer Read then asked about timber harvest modeling and what went into that.
Mr. Brownscombe responded that the modeling is conservative and will need to be tested.

Treasurer Read then asked about the Habitat Conservation Plan (HCP) and what we can expect. Mr. Brownscombe stated that the final HCP has been submitted. The key next steps relate to the process that has to happen on the Federal end before permits get issued.

Treasurer Read's final question inquired about Tribal participation. Mr. Brownscombe stated that there are several Tribes who consider the Elliott a part of their ancestral lands. Language has been built into both plans (FMP & HCP) to recognize the Tribes and the intention to continue positive and healthy engagement of Indigenous interest and stewardship in research.

Chair Kotek commented that Tribes have appreciated the engagement from the Department and want to make sure that the conversations continue as we move forward and the project evolves.

Secretary Griffin-Valade stated that she is honored to be part of this discussion and thinks that we are in a good space.

Chair Kotek then asked what the plan is for active management of the forest while we wait for the HCP to be completed.

Director Walker stated that we need to produce revenue and there are some timber harvests being planned.

Public testimony was then taken:

- Bob Zybach, NW Maps Company
- Michael Lang, Wild Salmon Center
- Mark Stern, Nature Conservancy

*Written testimony was also received and given to the Board for review ahead of the meeting. That testimony can be found on the website along with the meeting materials.

Director Walker introduced a Science Panel to give their comments.

- John Tokarczyk, Director of the Forest Resources Program and ODF
- Dr. Gordie Reeves, US Forest Service-Retired
- Dr. Johnson, Retired professor from the College of Forestry

Director Walker introduced an ESRF Board Panel to give their comments.

- Bob Sallinger
- Haley Lutz
- Keith Tymchuk

The Department recommended adoption of the initial Forest Management Plan for the Elliott State Research Forest.

Treasurer Read made a motion to approve the action item.
Secretary Griffin-Valade seconded the motion.
The item was approved at 12:10 a.m. without objection.

4. Adoption of the proposed School Lands Asset Management Plan

Director Walker introduced Bill Ryan, Deputy Director and Amber McKernan, Real Property Manager, to present the 2024 Asset Management Plan which guides the Department of State Land's management of rangelands, forestlands, and other lands dedicated to funding K-12 public schools for the next ten years.

Treasurer Read asked if removing lands from other uses to be used for renewable energy leases is necessary, or if some lands can be multiuse. Deputy Director Ryan stated that yes, we are looking for layered opportunities to manage lands and generate revenue from different ways on single pieces of property, but there are constraints. Treasurer Read then asked about transitioning from asset value to net operating income, and how that may play out over the long term. Deputy Director Ryan stated that the type of lands we are managing for revenue are not really investment lands, so the opportunity to increase revenue is limited for most of these properties and lease values are set by rule.

Chair Kotek stated that she appreciated the information in the plan regarding wildfires and our lands being managed in a way to reduce fires and continuing to be good partners in those communities.

The Department then recommended that the Land Board adopt the proposed 2024 Asset Management Plan, to be effective on December 1, 2024.

Treasurer Read made a motion to approve the action item.
Secretary Griffin-Valade seconded the motion.
The item was approved at 12:36 p.m. without objection.

The meeting was adjourned at 12:37 p.m.

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Tina Kotek, Governor

_____
Vicki L. Walker, Director

Oregon
Tina Kotek, Governor

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State Land Board

Regular Meeting
December 10, 2024
Agenda Item 2a

SUBJECT
Rules for communication site facilities on State-owned land.

ISSUE
Whether the State Land Board should approve new administrative rules in OAR 141-126 that guide how communication site facilities are leased on State-owned land.

AUTHORITY
The Oregon Constitution, Article VIII, Section 5, specifies that the State Land Board is responsible for managing Common School Fund lands.

ORS 273.041 to 273.071; authorizes the Department of State Lands to exercise the administrative functions of the State Land Board, relating to the general powers and duties of department and board.

BACKGROUND
The Department manages leases for communication site facilities located on DSL-managed lands that are owned by the people of Oregon and generate revenue for the state's Common School Fund. Communication site leases allow entities to place communication facilities on those lands. These facilities support wireless cellular service, internet service, emergency communications, technologies that detect wildfires or seismic activities, cable and radio broadcast, local radio users, and more.

This complex and rapidly evolving industry requires significant rule revisions to better serve management of these leases. In February 2021, the State Land Board authorized the Department of State Lands to initiate permanent rulemaking to amend the

administrative rules in OAR 141-125, which authorize special uses on state-owned land, by removing rules specific to communication sites and instead establishing updated rules in a new division: OAR 141-126.

This rulemaking updated existing rules and created new ones to manage communication site leases more efficiently, establish new lease rates and a modernized fee structure, and align the rules with broader federal and Oregon policies:

- **Manage communication site leases more efficiently.** For example, the lessees of the base-lease may choose to sublease to other entities to co-locate on the site. The lessee sets the rate, administers the sublease, and notifies the Department for review and approval. Part of the revenue generated from subleasing is sent to the Common School Fund.
- **Establish new lease rates and modern fee structure.** Informed by a market rate study and industry feedback, rates and fee structures are better aligned with evolving federal and industry standards. For example, more nuanced categories were added to acknowledge the differences between small and large wireless facilities. These smaller facilities are increasingly common and integral to the growth of 4G and 5G technology.
- **Align with broader federal and Oregon policies.** Increasing broadband access to underserved communities is a priority for the State, and lower lease rates for small wireless facilities will reduce barriers to promoting broadband development.

PUBLIC INVOLVEMENT

The Department took into consideration public comment, as well as input from the Rulemaking Advisory Committee (RAC), other local and state agencies, Tribal governments, and affected parties during this rulemaking process.

Rulemaking Advisory Committee (RAC)

A RAC was convened from August – October 2021, representing different types of lessees including industry, nonprofit, Oregon Tribal government, and state agency, in partnership with a Common School Fund beneficiary and Department staff. The following individuals served as members of the RAC:

- Jon Bial, Oregon Public Broadcasting
- Stephanie Bowen, Harney Electric Co-op
- Travis Coleman, Lumen/Century Link
- Lori Noble, Cow Creek Band of Umpqua Tribe of Indians
- Chip O'Hearn, Smartlink/AT&T
- Steve Quick, Harney County School District 3 Superintendent
- Gabe Rendon, ODOT Wireless Group
- Kassandra Rippee, Coquille Indian Tribe

The following individuals served as staff / advisors of the RAC:

- Chris Parkins, DSL, Manager, Real Property Program
- Amber McKernan, DSL, Property Manager
- Sheena Miltenberger, DSL, Rangeland Manager
- Erin Serra, DSL, Ownership Specialist
- Lani Ahmadian, DSL, Executive Support Specialist
- Shawn Zumwalt, DSL, Property Manager

The RAC met three times to review all proposed rules and were able to come to consensus where all parties were satisfied. As part of determining minimum compensation rates and fees, a market study was completed where Department staff reached out to other states and federal entities with similar communication site leasing programs. This research was compiled and presented to the RAC. RAC members supported staff in establishing timelines for administrative processes, streamlining processes for co-locations, codifying previous practices and guidelines, and establishing minimum compensation rates and fees based on the type of use and impact to both state-owned lands and staff time (see Appendix D for the Lease Rental Rates Fee Schedule).

Public Review and Comment Period in 2022

A Notice of Proposed Rulemaking was filed with the Secretary of State's office on June 17, 2022. The public review and comment period was held from July 1 - July 31, 2022, with a public hearing held virtually on July 22, 2022.

The Department issued a news release to Oregon media and emailed a public notice to inform interested parties, including all current communication site lessees, of the public review and comment opportunity. House Speaker Dan Rayfield and Senate President Peter Courtney were notified of the proposed rulemaking. All materials were posted to the DSL website: https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx.

In total, the Department received 2 comments. See Appendix C for the full comments submitted and the Department's responses. A summary:

- Comments from Oregon Wild centered on public noticing of new or modified lease applications, policies to minimize environmental impacts, assessments of alternative sites and trade-offs, and requirements for site decommissioning. These concerns are addressed in existing Department policies and the proposed rule language.
- Comments from the Wireless Association (CTIA) centered on the proposed application fee structures, compensation fees and timelines. In response the Department made minor changes to the proposed rules, including adding a category for small wireless facilities, an important component of the industry's move to 5G technology. Additional changes appropriately align the new rules with broader federal and Oregon broadband policies.

Public Review and Comment Period in 2024

In response to feedback from public comments in 2022, and following a review with the Department of Justice, changes were made to standardize the Department's processes with those of other state agencies and industry standards, reduce the administrative burden, and ensure that the Department is operating within its given authorities.

Given the extent of changes and length of time since the first comment period, a second public comment period was held from August 1 - September 3, 2024, following the same outreach and notification process.

In total, the Department received 2 comments. See Appendix C for the full comments submitted and the Department's responses. A summary:

- Comments from Oregon Wild focused on wildfire resilience of sites, policies to minimize environmental impacts, unintended impacts of subleases, and public involvement. These concerns are addressed in existing Department policies and the proposed rule language.
- Comments from the Wireless Association (CTIA) focused on fees for large, cellular facilities, fixed wireless access, timelines for the Department to process applications, regulation of frequencies, and the potential need for workshop(s). The Department's response explained how the proposed rule's fee structures were developed. Other concerns are addressed in existing policies and the proposed rule language.

RECOMMENDATION

The Department recommends that the Land Board adopt the proposed rules, OAR 141-126, Administrative Rules for Authorizing Communication Site Facilities on State-Owned Land. If adopted, the proposed rules will go into effect immediately upon filing. It is anticipated the rules will be filed prior to January 1, 2025.

APPENDICES

A. Final Rules
B. Notice of Proposed Rulemaking including the Statement of Need and Fiscal Impact and Draft Rules
C. Public Comments and DSL Responses (2022 and 2024)
D. Lease Rental Rates Fee Schedule

Department of State Lands

Chapter 141

Division 126
ADMINISTRATIVE RULES FOR AUTHORIZING COMMUNICATION SITE FACILITIES ON STATE-OWNED LAND

141-126-0100
Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of leases for communication site facilities on state-owned land.

(b) Apply to the management of state-owned Constitutional Common School Fund Lands (school lands) and Statutory Common School Fund Lands (statutory lands) for communication site facilities.

(c) Establish a process for authorizing such uses through the granting of leases.

(d) Do not apply to the granting of proprietary authorizations for uses specifically governed by other department administrative rules.

(2) The director may determine other uses and developments similar to those specified in OAR 141-126-0120(8) that are also subject to a communication site facility lease and these rules.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0110
Policies

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the department, has a constitutional responsibility to manage all land (school lands and statutory 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."

(2) All school lands will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.

(3) The department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a communication site facility lease on state-owned land.

(4) The use of state-owned land for the placement of communication site facilities is recognized by the department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.

(5) Each development placed in, on, or over state-owned land for the purposes of a communication site facility lease is subject to authorization and payment of compensation as required by these or other applicable department rules, or as determined by the director.

(6) Uses of, and developments placed in, on, or over state-owned land pursuant to a communication site facility lease will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(7) The department will not grant a communication site facility lease if it determines that the proposed use or development would unreasonably impact current uses or developments proposed or already in place within the requested area. Such a determination will be made by the department after consulting with lessees and holders of licenses, permits, and easements granted by the department in the requested area, and other interested persons.

(8) All uses subject to these rules must be authorized by either a communication site facility lease issued by the department or a sublease granted by the lessee under a base lease to a co-locator and approved by the department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.

(9) The department may:

(a) Conduct field inspections to determine if uses of, and developments in, on, or over state-owned land are authorized by, or conform with the terms and conditions of a communication site facility lease; and, if not,

(b) Pursue whatever remedies are available under law or in equity to ensure that the unauthorized uses subject to a communication site facility lease are either brought into compliance with the requirements of these rules or are removed.

(10) The department will honor the terms and conditions of any existing valid lease for a communication site facility granted by the department, including any that entitle the lessee to renewal if the lessee has complied with all terms and conditions of the lease and applies to the department for a renewal as prescribed in these rules. Renewal applications will be processed in accordance with the rules that are in place at the time of renewal.

(11) The department may, at its discretion, deny a communication site facility lease if the applicant's financial status or past business practices, or both, indicate that the applicant may not:

(a) Be able to fully meet the terms and conditions of a communication site facility lease offered by the department; or

(b) Use the land applied for in a way that meets the provisions of OAR 141-126-0110.

(12) Notwithstanding the provisions of these rules, the department may:

(a) Initiate projects involving communication site facilities developments in, on, or over the land it manages by itself or in conjunction with other entities;

(b) Request proposals for communication site facilities developments on land it manages, and may select and award a communication site facility lease through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-126-0110; and

(c) Negotiate and accept compensation in the form of services in lieu of monetary payments as provided for in these rules.

(13) These rules become effective on January 1, 2025.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0120
Definitions

(1) "Additional Rent" means any amounts in excess of base rent that a lessee is required to pay the department or third parties pursuant to these Division 126 rules.

(2) "Applicant" is any person applying for a communication site facility lease.

(3) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short- and long-term management by the Department of State Lands of the Common School Fund's real estate assets.

(4) "Base Lease" means a communication site facility lease issued to the owner of the communication site facility who has entered into a sublease with a co-locator.

(5) "Base Rent" means the annual rent to establish, occupy and use a communication site facility on the leased premises that a lessee is required to pay the department pursuant to these Division 126 rules.

(6) "Cellular Communications" means transmission and receiving of signals for mobile telecommunications over a cellular network operated by business entities that sell wireless cellular communications services. Cellular communications include "Macro Cellular Facility" and "Small Wireless Facility" sites.

(7) "Co-location" means more than one person sharing the same communication site facility under a sublease.

(8) "Co-locator" means a person sharing a communication site facility under a sublease.

(9) "Commercial" means a communication site use that results in, strives to achieve, or is associated with, a financial profit, monetary consideration, or gain as a direct result of use of the site.

(10) "Communication Site" means a portion of state-owned land being occupied by developments for the purposes of a communication site facilities lease. A communication site may be wholly, or partially open for public uses, or wholly or partially closed to public uses. A communication site may include multiple developments and may have uses other than communication site facilities leases.

(11) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences, and other associated structures, equipment, or developments used

by a lessee, or by a lessee and one or more co-locators, to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical and other cables that cross state-owned land to serve a communications facility, however, may be governed by the administrative rules for granting easements on state-owned land (OAR 141-122 and OAR 141-123).

(12) “Communication Site Facility Lease” or “Lease” means a written authorization granted by the department to a lessee to use a specific portion of a communication site for an authorized purpose in accordance with terms and conditions in the lease.

(13) “Compensation” is the amount of money paid or services provided by a lessee to the department under a communication site facility lease.

(14) “Constitutional Common School Fund Lands” or “School Lands” is land granted to the state upon its admission into the Union, obtained by the state as a result of an exchange of school lands, obtained in-lieu of originally granted school lands, purchased with Constitutional Common School Fund moneys, or obtained through foreclosure of loans using Constitutional Common School Fund moneys.

(15) “Decommissioning Plan” means a plan to retire and remove the physical facilities, structures, or developments authorized in a communication site facility lease including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.

(16) “Department” means the Oregon Department of State Lands.

(17) “Development” is any structure or series of related structures authorized by the department in, on, or over state-owned land.

(18) “Director” means the Director of the Oregon Department of State Lands or their designee.

(19) “Emergency Services” means the primary use of the communication site facility is for local 911/Emergency Medical Services (EMS), wildfire radio communications facilities, wildfire detection cameras, law enforcement services, and emergency alert systems, and does not include commercial wireless cellular facilities.

(20) “Facility Manager” means a person employed by a lessee to manage a communication site facility on their behalf for the purposes of site maintenance, management, or administration.

(21) “Large Commercial” means a communication site facility lease that is for a commercial purpose and is in a county that has a population of 150,000 or more people.

(22) “Leased Premises” means that portion of a communication site that the Department grants a lessee a leasehold interest in to establish, occupy, and use a communication site facility pursuant to these Division 126 rules.

(23) “Lessee” refers to any person having a communication site facility lease granted by the department authorizing a communication site facility on state-owned land.

(24) “Macro Cellular Facility” refers to any cellular communications facility that is not a small wireless facility. Macro cellular facilities are traditional cell towers and including but not limited to affiliated equipment such as buildings, towers, antennas, panels, and generators.

(25) “Market Value” means the most probable price, as of a specified date, in cash or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming neither is under undue duress.

(26) “Medium Commercial” means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.

(27) “Non-Commercial” means use by a local, county, state, federal or Tribal government, fire protection association, quasi-government entity, publicly owned and operated utility, a Person that qualifies as a state designated not-for-profit (non-profit), personal use, research and scientific use, or any other government or non-profit entity as determined by the director.

(28) “Person” includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as defined in ORS 174.100(6). For the purposes of these rules “Person” also includes any state or other governmental or political subdivision or agency, public corporation, public authority, or federally recognized Tribes in Oregon.

(29) “Personal Use” means the use of a communication site facility for amateur radio communications with no monetary gain to the lessee.

(30) “Research and Scientific Use” refers to using a communication site facility for scientific research communication with no monetary gain to the lessee.

(31) “Small Commercial” means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of less than 50,000 people.

(32) “Small Wireless Facility” or “SWF” means a facility that meets each of the following conditions:

(a) The facilities:

(A) Are mounted on structures 50 feet or less in height including the antennas, or

(B) Are mounted on structures no more than 10 percent taller than other adjacent structures, or

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

(c) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

(d) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in the Federal Communications Commission’s (FCC) Rules and Regulations 47 C.F.R.§ 1.1307(b).

(33) “State-Owned Land” is land owned or managed by the department or its agents and includes school lands and statutory lands.

(34)“Statutory Common School Fund Lands” or “Statutory Lands” is land owned or managed by the department other than Constitutional Common School Fund Lands, but are not limited to state-owned Swamp Land Act lands and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(35) “Sublease” means a lease for co-location between a lessee and a co-locator.

(36) “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

(37) “Submersible Land” means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0130
Application Requirements for a Lease or Lease Renewal

(1) Any person wanting to use state-owned land for a communication site facility lease:

(a) Must contact the department to schedule and complete a pre-application meeting;

(b) Submit a complete application in the format provided by the department; and

(c) Pay a non-refundable application processing fee to the department.

(2) The application processing fee for a new communication site facility lease or renewal lease with changes per OAR 141-126-0140(11)(a) is:

(a) Non-commercial uses:

(A) Personal or research and scientific use: $375

(B) All other non-commercial uses: $750

(b) Commercial use: $1,000

(c) Cellular communications:

(A) Macro cellular facility: $1,500

(B) Small wireless facility:

(i) $500 for up to five SWFs in the same application.

(ii) $100 per additional SWF beyond five in the same application.

(iii) $1,000 for a new pole (not a co-location) intended to support one or more SWF.

(3) The application processing fee for a lease renewal with no changes as described in OAR 141-126-0140(11)(b) and (c) is:

(a) All non-commercial uses: $375

(b) Commercial use: $500

(c) Cellular communications macro cellular facility: $750

(d) Cellular communications small wireless facility:

(A) $500 for up to five SWFs in the same application.

(B) $100 per additional SWF beyond five in the same application.

(C) $1,000 for a new pole (not a co-location) intended to support one or more SWF.

(4) Unless otherwise allowed by the director, a fully completed application for a lease for non-commercial or commercial uses must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.

(5) Unless otherwise allowed by the director, a fully completed application for a lease for a macro cellular facility must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a macro cellular facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.

(6) Unless otherwise allowed by the director, a fully completed application for a lease for a small wireless facility must be submitted to the department at least 90 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a small wireless facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 90 calendar days prior, but not more than one year prior to the expiration of the existing lease.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0140
Lease Application Review and Approval Process

(1) Upon receipt of an application for a lease, the department will determine:

(a) If the application is complete and accurate including all required documentation;

(b) If the requested area is available for the requested use;

(c) The primary type of use (non-commercial, commercial, or cellular communications) being requested through the application. These use categories will be used to determine the amount of compensation payable to the department pursuant to OAR 141-126-0150 and OAR 141-126-0210;

(d) If a lease under these rules is the required form of authorization;

(e) If another authorization under separate department rules may also be required along with a communication site facility lease; and

(f) If additional information is required concerning the:

(A) Proposed use of the state-owned land;

(B) Applicant's financial status or past business or management practices; and

(C) If the equipment and structures described in the application will be the property of the applicant or another person.

(2) The department will advise the applicant of its determination concerning each of the factors in OAR 141-126-0140(1) within 30 calendar days of receipt of the application. Applications determined by the department to be incomplete, or for an area in which the use would be incompatible, will be returned to the applicant with a written explanation of the reason(s) for rejection.

(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the department returned it to the applicant (as determined by the date of postmark or email) with all deficiencies noted by the department corrected, no additional application fee will be assessed.

(4) If more than one application for a specific area is received by the department for the same or conflicting uses subject to authorization by a lease, the department may:

(a) Determine which proposed application best fulfills the policies specified in OAR 141-126-0110 and accept and proceed with that application and deny the others; or

(b) If neither use is determined by the department to be demonstrably better, make the requested area available to the public by competitive bid pursuant to OAR 141-126-0210.

(5) Upon acceptance by the department, the application for a new lease will be circulated to applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property owners, lessees, or persons granted other authorizations from the department, for review and comment. As a part of this review, the department will specifically request comments concerning:

(a) The presence of state or federally listed threatened and endangered species (including candidate species) and if a survey is required;

(b) Archaeological and historic resources within the requested area that may be disturbed by the proposed use and if an archaeological survey is required;

(c) Conformance of the proposed use with local, state, and federal laws and rules;

(d) Conformance of the proposed use with the local comprehensive land use planning and zoning ordinances;

(e) Conformance with the policies described in OAR 141-126-0110 of these rules; and

(f) Potential conflicts of the proposed use with existing or proposed uses of the requested area.

(6) The department may request comments from the Federal Communications Commission, Oregon Public Utility Commission, Federal Aviation Administration, U.S. Department of Defense, any other person owning or leasing communication site facilities at the communication site, and any other person or applicable entities or interested parties who advise the department that they want to receive notification of such applications.

(7) The department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate location(s) 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.

(8) After receipt of comments concerning the proposed use, the department will advise the applicant in writing within 30 calendar days from the date the comment period closes of:

(a) If changes in the use or the requested area are necessary to respond to the comments received;

(b) If the proposed use will cause interference with existing uses at the communication site. The applicant must remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the Federal Communications Commission verifying the proposed use has been approved by the FCC.

(c) If additional information is required from the applicant, including but not limited to a survey, completed at the applicant's expense, of:

(A) State or federally listed threatened and endangered species (including candidate species) within the requested area; or

(B) Archaeological and historic resources within the requested area;

(d) If the area requested for the lease will be authorized for use by the applicant through a lease; or

(e) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-126-0210.

(9) Upon receipt of updated application information as required by OAR 141-126-0140(8)(a) through (c), an additional comment period may be initiated by the department.

(10) If the department approves the application, no changes are required as a result of the comment period(s), and no public auction is required, the department will notify the applicant in writing within 30 calendar days of the end of the most recent comment period of:

(a) The amount of compensation pursuant to OAR 141-126-0150;

(b) Any insurance or surety bond or other financial instrument required by the department pursuant to the requirements of OAR 141-126-0200; and

(c) A draft copy of the lease.

(11) Upon acceptance by the department of a lease renewal application the department will determine if there is a change in use, size of the leased premises, or frequency.

(a) If the department determines there is a change in use, size of the leased premises, or frequency, the application will be processed as described in OAR 141-126-0140(1) through (10);

(b) If the department determines there is no change in the use, size of the leased premises, or frequency, and the lessee has fully complied with the terms of the lease, applicable statutes, administrative rules, and any other authorization granted to them by the department, the lessee may be eligible for a lease renewal term as conditioned in the lease;

(c) If the department determines the renewal complies with the requirements of OAR 141-126-0140(11)(b), the department shall provide written notice to the lessee that the lease has been renewed for the additional term as 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 contains a provision requiring that the annual compensation be redetermined upon renewal, the written notice from the department shall include the new annual compensation rate.

(12) A communication site facility lease, even if signed by the department, will not be effective unless and until the applicant has:

(a) Paid all fees and compensation specified in the lease;

(b) Provided evidence of any required insurance, surety bond, or other financial instrument; and

(c) Met all terms and conditions of these rules.

(13) In addition to the provisions of OAR 141-126-0140(10) and (12), a communication site facilities lease issued by the department may not be valid until the lessee has received all other approvals required by the department (such as a removal-fill permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the communication site in the manner requested, unless otherwise determined by the director.

(14) The director may refer any application to the State Land Board for review and approval.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0150
Compensation

(1) A lessee must remit to the department on a basis provided in the lease annual base rent as determined by the department for the type of use described in OAR 141-126-0150(2) and (3).

(2) Minimum annual base rent for communication site facility leases will be:

(a) Non-commercial uses:

(A) Personal or research and scientific: $750 per year or a one-time, lump sum amount as agreed upon by the department for the term of the lease.

(B) Local or county government and emergency services: $3,000 per year.

(C) State, Tribal, or federal government and emergency services: $4,500 per year.

(D) Non-profit/Non-commercial: $3,000 per year.

(b) Commercial uses:

(A) Small commercial: $4,000 per year.

(B) Medium commercial: $6,000 per year.

(C) Large commercial: $8,000 per year.

(c) Cellular Communications:

(A) Macro cellular facility: $10,000 per year.

(B) Small wireless facility: $270 per facility per year.

(3) Notwithstanding anything in OAR 141-126-0150(2), in the following circumstances, the department reserves the right to establish the annual base rent in amounts that may be greater than the minimum annual base rent;

(a) The minimum bid when the lease is awarded through public auction.

(b) At the department's discretion, an appraisal may be required to determine the market value for the area to be occupied by the communication site facility.

(c) This section does not apply to small wireless facilities.

(4) The amount of annual base rent paid to the department will increase annually by three percent for every year after the date these Division 126 rules are effective.

(5) Upon renewal of a lease, the base rent for first year of the renewal lease will equal the amount of the base rent for the final year of the previous lease plus three percent, unless the department has completed a market value study or an appraisal.

(6) To the extent allowed by ORS 758.010, communication site facilities may be exempt from the mandatory compensation payments specified in OAR 141-126-0150. However, the owners of such facilities must apply for and obtain an authorization from the department.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0160
General Terms and Conditions

(1) The initial term of a lease may be up to, but not exceed 10 years, unless otherwise approved by the director. The department will determine the length of a lease and any renewal provisions based on the nature of the use for the requested area. The initial lease term and renewal term(s) combined will not exceed 30 years from the effective date of the lease.

(2) Leases will be offered by the department for the minimum area determined by the department to be required for the requested use.

(3) A communication site facility lease issued by the department will be on a form supplied by the department that has been reviewed by the Oregon Department of Justice .

(4) The department may choose at its discretion to close one or more leased premises or an entire communication site to public entry or restrict recreational use by the public to protect persons, property, or developments from harm.

(5) The department or its authorized representative(s) will have the right to enter into and upon the leased premises at any time.

(6) Unless otherwise agreed to in writing as a provision of the lease, a lessee may not interfere with lawful public use of a leased premises, state-owned land adjacent to a leased premises, or obstruct free transit across state-owned land. At no time may the lessee or their representatives intimidate or otherwise threaten or harm public users of state land.

(7) A lessee must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the leased premises or to be discharged onto state-owned land or waterways adjacent to the leased premises.

(8) A lessee must cooperate and comply with:

(a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention, and control of noxious plants. The department will rely on the Oregon Department of Agriculture for information concerning which noxious plants present on a leased premises require corrective action by the lessee or the Oregon Department of Agriculture or its agents;

(b) The Oregon Department of Agriculture and the department in the management of plant pests and diseases; and

(c) The department and other agencies in the detection, prevention, and control of wildfires on state-owned land containing a communication site .

(9) A lessee must conduct all operations within the leased premises in a manner that conserves fish and wildlife habitat, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants.

(10) Unless otherwise agreed to in writing, the lessee must remove all developments as directed by the department within 180 calendar days of the date of the expiration or termination of the communication site facility lease. If the lessee refuses to remove the subject developments, the department may remove them and charge the lessee for doing so.

(11) The lessee will not allow any other use to be made of or occur on the leased premises that is not specifically authorized:

(a) By that communication site facility lease; or

(b) By the department in writing prior to the use, including allowing co-location of all or a portion of the leased premises or structures therein.

(12) A lessee must be the person which owns the equipment and structures installed on the leased premises.

(13) A lessee employing contractors or facility managers for the purposes of site management as the lessee's representative is required to provide:

(a) Written verification providing permission and designating a facility manager, site manager, contractor, or sub-contractor employed by the lessee to communicate with the department regarding management of the communication site facility lease; and

(b) A single point of contact for all communication between the department and the lessee's facility manager concerning the lease administration.

(14) The lessee must maintain all buildings, equipment and similar structures or improvements located within the leased premises in a good state of repair as determined by the department.

(15) The lessee must label all buildings, structures, towers, and equipment (such as generators) within the leased premises. The label must include, at a minimum, the lessee's lease number.

(16) The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessees of the communication site of the equipment modifications for review to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the Federal Communications Commission that the proposed frequency change has been approved by the FCC. The Federal Communications Act comprehensively regulates frequency interference.

(17) If requested by the department, a lessee must present evidence to the department prior to the use that it has obtained:

(a) All permits or approvals required by local, state and federal governing bodies to undertake the proposed use;

(b) Any permit or approval that may be required to obtain access or to cross land belonging to a person other than the department to undertake the use; and

(c) A surety bond, certificate of deposit, or other financial instrument and insurance as required by the department pursuant to OAR 141-126-0200.

(18) The communication site facility lease allows the lessee to access their communication site facility through state-owned lands adjacent to the leased premises.

(19) A lessee will indemnify the State of Oregon and the Department of State Lands in a manner that the department has determined will adequately protect the state from harm caused by the lessee's occupation or use of the leased premises.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0170

Co-location of Communication Site Facilities

(1) A lessee wanting to co-locate with a separate person on a portion of an existing communication site facility is required to notify the department in writing at least 90 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(2) A lessee wanting to co-locate a small wireless facility with a separate person on an existing structure is required to notify the department in writing at least 60 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(3) Lessees submitting a new or renewal co-location sublease to the department for review must submit a non-refundable application processing fee of:

(a) Non-commercial uses: $375.

(b) Commercial uses: $500.

(c) Cellular communication macro cellular facility: $750.

(d) Cellular communication small wireless facility: $100.

(4) All sublease terms must be approved by the department, and the department may condition approval of a sublease on the lessee revising the sublease in the manner prescribed by the department.

(5) For each approved sublease, the lessee shall pay the department on the basis provided in the communication site facility lease the following amounts as additional rent:

(a) Non-commercial uses:

(A) Personal or research and scientific: $500 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Local or county government and emergency services: $750 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) State, Tribal, or federal government and emergency services: $1,125 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(D) Non-profit/non-commercial: $750 one-time payment or 25 percent of fee charged by lessee to a co-locator per year, whichever is greater.

(b) Commercial uses:

(A) Small commercial: $1,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Medium commercial: $1,500 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) Large commercial: $2,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(c) Cellular communications:

(A) Macro cellular facility: 25 percent of the fee charged by the lessee to each co-locator per year.

(B) Small wireless facility: $100 per year.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0180
Lease Modifications

(1) Any current existing lessee in good standing must apply for a lease modification for the purposes of:

(a) Equipment upgrade or replacement that results in a change of frequency; or

(b) Any proposed ground disturbing activity; or

(c) Any change to existing communication site facilities structures, including but not limited to replacing an existing structure such as a building or tower, which results in an increase in the height of a tower, or any change in the footprint of a leased premises.

(2) A lessee must apply to the department in writing on a form provided by the department at least 90 calendar days prior to the proposed work being started. The application processing fee for a modification is:

(a) Non-commercial use: $250.

(b) Commercial use: $500.

(c) Cellular communications macro cellular facility:

(A) Equipment upgrade or replacement that results in a change of frequency: $500.

(B) Modifications per OAR 141-126-0180(1)(b) and (c): $750.

(d) Cellular communications small wireless facility:

(A) Equipment upgrade or replacement that results in a change of frequency: $250.

(B) Modifications per OAR 141-126-0180(1)(b) and (c): $500.

(3) Lease modification applications are subject to a review process including, at a minimum, other authorized lessees located at the same communications site. Lease modification applications including changes identified in OAR 141-126-0180(1)(b) and (c) will require concurrence with comprehensive land use planning and zoning from the local planning jurisdiction.

(4) If the department approves a lease modification, in order for such modification to be effective, it must be documented through a written amendment to the lease signed by the department and the lessee.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0190
Assignment of a Communication Site Facility Lease

(1) A lease in good standing is assignable.

(2) To request the assignment of a lease, the lessee must submit a:

(a) Notice of proposed assignment on a form provided by the department at least 60 calendar days prior to the date that the assignment is requested to occur; and

(b) Non-refundable assignment processing fee payable to the department of:

(A) Non-commercial use: $250.

(B) Commercial use: $500.

(C) Cellular communications macro cellular facility: $750.

(D) Cellular communications small wireless facility: $250.

(3) The department may request additional information concerning the proposed assignment.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0200
Insurance and Security; Decommissioning

(1) The department will require a lessee to obtain and maintain insurance requirements as determined by the department. .

(2) The department reserves the right to require the applicant for a communication site facility lease or a lessee to provide information concerning the intended or actual use of the leased premises to the department, which may assist the department in determining the appropriate amounts and types of insurance.

(3) The department reserves the right to require a lessee to obtain a surety bond, a letter of credit, or other instrument of guarantee acceptable to the department in an amount specified by the department and which names the State of Oregon as co-owner, to ensure that the lessee will perform in accordance with all terms and conditions of a communication site facility lease or decommissioning plan.

(4) The lessee will ensure the Department of State Lands and the applicable authorization number(s) are listed as an additional insured under any and all insurance policies required for the communication site facility lease.

(5) The department may require a decommissioning plan for certain communication site facilities as a condition of the lease.

(a) In the event a decommissioning plan is required, the lessee has 180 calendar days from the date of lease commencement to submit a decommissioning plan to the department for approval. The decommissioning plan will also include a cost estimate of the decommissioning work. The cost estimate must be prepared by a person qualified by experience and knowledge to prepare such cost estimates. Failure to provide a decommissioning plan when required may result in lease default.

(b) The lessee may be required to obtain a surety bond or other financial instrument as described in OAR 141-126-0200(3) for the full amount of the decommissioning costs as determined by the risk assessment.

(c) The lessee is required to provide notice to the department in writing 60 calendar days in advance of implementing the decommissioning plan.

(d) The lessee must demonstrate to the department that the decommissioning work has been completed within 180 calendar days of termination of the lease to allow the department to release the surety bond or other financial instrument.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0210
Competitive Bidding Process

(1) Except as provided in OAR 141-126-0110(10) and 141-126-0140(11), the department will determine on a case-by-case basis if a communication site or portion of a communication site requested for a lease will be offered to the public through competitive bidding. This decision will be made after considering:

(a) Whether the requested area is for a use located on school lands or statutory lands;

(b) The nature of the use and length of authorization requested; and

(c) Whether other applications received by the department to use the same requested area for the same or competing uses.

(2) The department will give a Notice of Lease Availability and provide an opportunity for applications to be submitted if it determines that the greatest public benefit and trust obligations of the department would be best served by offering the requested area through competitive bidding.

(3) The Notice of Lease Availability will state:

(a) The location and size of the requested area;

(b) The use approved by the department for the requested area;

(c) The minimum acceptable bid amount; and

(d) The deadline for submitting a completed application to the department.

(4) The Notice of Lease Availability will be:

(a) Published not less than once each week for two successive weeks in a newspaper of general circulation in the county or counties in which the requested area is located;

(b) Posted on the department's website;

(c) Sent to adjacent landowners bordering the requested area; and

(d) Sent to persons indicating an interest in the requested area.

(5) The department will evaluate all applications received for the requested area as advertised in the Notice of Lease Availability and will determine, at its discretion, the highest qualified applicant. The highest qualified applicant will be offered the lease subject to satisfaction of the requirements of OAR 141-126-0140 and 141-126-0160(3) of these rules. However, the department will have the right to reject any and all bids submitted.

(6) In the event no application is received upon the deadline established in the Notice of Lease Availability, the department may choose to offer the lease to the initial applicant per OAR 141-126-0210(1) if applicable or issue another Notice of Lease Availability to solicit competitive bid applications.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0220
Termination of a Communication Site Facility Lease for Default

(1) If the lessee fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the leased premises, the department will notify the lessee in writing of the default and may provide an opportunity for correction within a specified time frame.

(2) If the lessee fails to correct the default within the time frame specified, the department may modify or terminate the lease and take appropriate legal action.

(3) If a lessee fails to remove structures, buildings, or equipment upon termination of the lease, those structures, buildings, and equipment may become property of the department at the discretion of the department. The lessee is responsible for all costs to restore the leased premises to the pre-lease condition and all costs for the removal and disposal of structures, buildings, and equipment left on the leased premises.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0230
Enforcement Actions; Civil Penalties and Other Remedies

(1) Upon the director's own initiative, or in response to a complaint, the director may investigate a suspected violation of a communication site facility lease or the alleged unauthorized use of state-owned land to determine if use of the state-owned land conforms with the terms and conditions of a communication site facility lease or other department issued authorization or to determine if the use is not authorized.

(2) In conducting the investigation relative to suspected or alleged violations of a communication site facility lease issued by the director, the director or the director's agent may enter into buildings or structures owned by the lessee in order to determine if a violation has occurred. The department will provide the lessee advance notice prior to entering buildings or structures owned by the lessee during an investigation.

(3) Upon a determination that a violation of the communication site facility lease has occurred or that an unauthorized use of state-owned land has occurred, the director may exercise any available remedy or combination of remedies to bring the violation into compliance with the lease, including, but not limited to, the remedies set forth in the lease, imposition of civil penalties consistent with OAR 141-126-0230(4), or any other available remedies. The department will provide the lessee 60 calendar days in which to correct any violation prior to enforcement action being taken by the department. Failure of the lessee to comply with any obligation of the lease within 60 calendar days after notice by the department specifying the nature of the deficiency, or in the event of an emergency, within the time specified by the department to resolve the emergency, is considered a default of the lease and a trespass.

(4) The unauthorized use of state-owned land or the violation of an authorization granted under these rules constitutes a trespass. In addition to any other penalty or sanction provided by law, the director may assess a civil penalty per ORS 183.745 and 273.992 of not more than $1,000 per day of violation for the following:

(a) Violations of any provision of OAR 141-126 or ORS Chapter 273 or 274; or

(b) Violations of any term or condition of a written authorization granted by the department under ORS Chapter 273 or 274.

(5) The director will give written notice of a civil penalty incurred under OAR 141-126-0230(4) by registered or certified mail to the person incurring the penalty. The notice will 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 person's right to request a hearing within 20 calendar days 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.

(6) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-126-0230(5). Such request must be in writing. If no written

request for a hearing is made within the time allowed, or if the person requesting a hearing fails to appear, the director may make a final order imposing the penalty.

(7) In imposing a penalty under OAR 141-126-0230 of these rules, the director will consider the following factors as specified in ORS 273.994:

(a) The history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders, and authorizations pertaining to the use of state-owned land;

(c) The impact of the violation on school lands or statutory lands.

(d) Any other factors determined by the director to be relevant and consistent with the policy of these rules.

(8) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-126-0230 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(9) If a civil penalty is not paid as required by OAR 141-126-0230, interest will accrue at the maximum rate allowed by law from the date first due.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

141-126-0240
Reconsideration of Decision

(1) An applicant for a communication site facility lease, or any other person adversely affected by the issuance or denial of communication site facility lease on state-owned land, may request that the director or the State Land Board, depending upon which made the decision, reconsider the decision:

(a) Such a request must be received in writing by the director no later than 30 calendar days after the date of the decision.

(b) The director will review the request and reach a decision within 60 calendar days after the date that the director received the request.

(c) If the director made the underlying decision, the director may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration.

(d) If the State Land Board made the underlying decision, the State Land Board may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration. The director may make a recommendation to the State Land Board.

(2) Upon exhausting the reconsideration process in subsection (1), the applicant or adversely affected person may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470. Hearing requests must be submitted within 20 calendar days of the decision after reconsideration.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:

OFFICE OF THE SECRETARY OF STATE
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DEPUTY SECRETARY OF STATE
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ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED
07/30/2024 9:06 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Administrative rules for authorizing communication site leases on state-owned land.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/03/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Danielle Boudreaux
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Filed By:
Danielle Boudreaux
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/15/2024
TIME: 6:00 PM
OFFICER: Danielle Boudreaux

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 1-669-444-9171
CONFERENCE ID: 2508868653
SPECIAL INSTRUCTIONS:
These proposed rules will be presented to the State Land Board for adoption in late 2024 and will be open to further public
comment. For State Land Board agendas please visit https://www.oregon.gov/dsl/Board/Pages/SLBmeetings.aspx.

NEED FOR THE RULE(S)

Adoption of Division 126 rules is necessary to establish and streamline administrative procedures for authorizing communication site facilities on state-owned land. Division 126 rules will accommodate industry standards, best practices, and facilitate adaptive management within a specific industry that generally is very fluid. Adoption of rules will allow the Department to be more efficient in its management of communication site facilities. Rules will update compensation rates and fees and allow for changes in market value ensuring the fiduciary responsibilities of the Department are being met.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at sos.oregon.gov/archives/Pages/Oregon_administrative_rules.aspx or from the agency.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

While drafting the administrative rules for communication site facilities authorizations, the department looked at the racial equity impact on these administrative rules and answered the questions below.

What are the racial equity impacts of this particular rule(s), policy, or decision, and who will benefit from or be burdened?

The proposed adoption of Division 126 rules establishes rules for the administration and authorizing of communication site facilities leases on state-owned lands. The proposed rules do not represent a substantive change in policy and will functionally have no impact on employees, employers, or anyone else doing business with the department. Thus, it is highly unlikely that the rule change will impact racial equality in the state.

Are there strategies to mitigate the unintended consequences?

The department will be closely monitoring implementation of the proposed Division 126 rules to look for potential unintended consequences though, as noted above, the overall general impact of the rule change will be negligible.

FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate any additional administrative costs to the state with the adoption and changes to these rules. This includes administering the application process, working with the applicant and affected stakeholders through issues, drafting all required authorizations, compliance monitoring, legal defense of agency decisions, and State Land Board review and approval as needed.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) It is anticipated that these rules will have minimal fiscal impact on state agencies, units of local government and members of the public with an interest in the authorizing of communication site facilities on state-owned land. We do not expect the adoption of these rules to require any other governmental agencies to engage in rulemaking or to adopt subsequent code or ordinance.

(2)(a) It is anticipated that adoption of these rules will not have any significant fiscal impacts on small businesses, however, compensation could increase or decrease in some cases. There may also be some indirect costs to small businesses that utilize the services of larger companies that would be authorized to use state-owned lands for communication facilities under these rules. These costs could increase given that there may be increases to large companies holding the authorizations, as well as in some cases companies may pay less under these rules than they did under previous rules.

(2)(b) There is no expected increase in reporting, recordkeeping, and other administrative activities, including professional services for small business.

(2)(c) There will be no additional costs of compliance resulting from equipment, supplies, labor, and administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Rulemaking Advisory Committee (RAC) included representatives from businesses and groups most likely to be impacted by these rule changes. Some of the affected stakeholders included, but are not limited to: wireless telecommunications representatives, current leaseholders, non-profit entities, state agencies, public utilities, Common School Fund beneficiaries, and federally recognized Tribes in Oregon.

Multiple small business representatives were invited to participate on the RAC but did not respond to the invite.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:
141-126-0100, 141-126-0110, 141-126-0120, 141-126-0130, 141-126-0140, 141-126-0150, 141-126-0160, 141-126-0170, 141-126-0180, 141-126-0190, 141-126-0200, 141-126-0210, 141-126-0220, 141-126-0230, 141-126-0240

ADOPT: 141-126-0100

RULE SUMMARY: Establishes the purpose of the Division 126 rules to govern the granting of leases for communication site facilities and similar uses on state-owned lands managed by the Department of State Lands.

CHANGES TO RULE:

141-126-0100
Purpose and Applicability
(1) These rules:¶
(a) Govern the granting and renewal of leases for communication site facilities on state-owned land.¶
(b) Apply to the management of state-owned Constitutional Common School Fund Lands (school lands) and Statutory Common School Fund Lands (statutory lands) for communication site facilities.¶
(c) Establish a process for authorizing such uses through the granting of leases.¶
(d) Do not apply to the granting of proprietary authorizations for uses specifically governed by other department administrative rules.¶
(2) The director may determine other uses and developments similar to those specified in OAR 141-126-0120(8) that are also subject to a communication site facility lease and these rules.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0110

RULE SUMMARY: Establishes the authority and limits for which the Department will govern the granting of leases for communication site facilities on state-owned land.

CHANGES TO RULE:

141-126-0110
Policies
(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the department, has a constitutional responsibility to manage all land (school lands and statutory 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."¶
(2) All school lands will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.¶
(3) The department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a communication site facility lease on state-owned land.¶
(4) The use of state-owned land for the placement of communication site facilities is recognized by the department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.¶
(5) Each development placed in, on, or over state-owned land for the purposes of a communication site facility lease is subject to authorization and payment of compensation as required by these or other applicable department rules, or as determined by the director.¶
(6) Uses of, and developments placed in, on, or over state-owned land pursuant to a communication site facility lease will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.¶
(7) The department will not grant a communication site facility lease if it determines that the proposed use or development would unreasonably impact current uses or developments proposed or already in place within the requested area. Such a determination will be made by the department after consulting with lessees and holders of licenses, permits, and easements granted by the department in the requested area, and other interested persons.¶
(8) All uses subject to these rules must be authorized by either a communication site facility lease issued by the department or a sublease granted by the lessee under a base lease to a co-locator and approved by the department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.¶
(9) The department may:¶
(a) Conduct field inspections to determine if uses of, and developments in, on, or over state-owned land are authorized by, or conform with the terms and conditions of a communication site facility lease; and, if not,¶
(b) Pursue whatever remedies are available under law or in equity to ensure that the unauthorized uses subject to a communication site facility lease are either brought into compliance with the requirements of these rules or are removed.¶
(10) The department will honor the terms and conditions of any existing valid lease for a communication site facility granted by the department, including any that entitle the lessee to renewal if the lessee has complied with all terms and conditions of the lease and applies to the department for a renewal as prescribed in these rules. Renewal applications will be processed in accordance with the rules that are in place at the time of renewal.¶
(11) The department may, at its discretion, deny a communication site facility lease if the applicant's financial status or past business practices, or both, indicate that the applicant may not:¶
(a) Be able to fully meet the terms and conditions of a communication site facility lease offered by the department; or¶
(b) Use the land applied for in a way that meets the provisions of OAR 141-126-0110.¶
(12) Notwithstanding the provisions of these rules, the department may:¶
(a) Initiate projects involving communication site facilities developments in, on, or over the land it manages by itself or in conjunction with other entities;¶
(b) Request proposals for communication site facilities developments on land it manages, and may select and award a communication site facility lease through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-126-0110; and¶
(c) Negotiate and accept compensation in the form of services in lieu of monetary payments as provided for in these rules.¶
(13) These rules become effective on January 1, 2025.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0120

RULE SUMMARY: Establishes the meanings of specific terminology utilized by the Department for the purposes of these rules.

CHANGES TO RULE:

141-126-0120
Definitions
(1) "Additional Rent" means any amounts in excess of base rent that a lessee is required to pay the department or third parties pursuant to these Division 126 rules.¶
(2) "Applicant" is any person applying for a communication site facility lease.¶
(3) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short- and long-term management by the Department of State Lands of the Common School Fund's real estate assets.(4) "Base Lease" means a communication site facility lease issued to the owner of the communication site facility who has entered into a sublease with a co-locator.¶
(5) "Base Rent" means the annual rent to establish, occupy and use a communication site facility on the leased premises that a lessee is required to pay the department pursuant to these Division 126 rules.¶
(6) "Cellular Communications" means transmission and receiving of signals for mobile telecommunications over a cellular network operated by business entities that sell wireless cellular communications services. Cellular communications include "Macro Cellular Facility" and "Small Wireless Facility" sites.¶
(7) "Co-location" means more than one person sharing the same communication site facility under a sublease.¶
(8) "Co-locator" means a person sharing a communication site facility under a sublease.¶
(9) "Commercial" means a communication site use that results in, strives to achieve, or is associated with, a financial profit, monetary consideration, or gain as a direct result of use of the site.¶
(10) "Communication Site" means a portion of state-owned land being occupied by developments for the purposes of a communication site facilities lease. A communication site may be wholly, or partially open for public uses, or wholly or partially closed to public uses. A communication site may include multiple developments and may have uses other than communication site facilities leases. ¶
(11) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences, and other associated structures, equipment, or developments used by a lessee, or by a lessee and one or more co-locators, to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical and other cables that cross state-owned land to serve a communications facility, however, may be governed by the administrative rules for granting easements on state-owned land (OAR 141-122 and OAR 141-123).¶
(12) "Communication Site Facility Lease" or "Lease" means a written authorization granted by the department to a lessee to use a specific portion of a communication site for an authorized purpose in accordance with terms and conditions in the lease.¶
(13) "Compensation" is the amount of money paid or services provided by a lessee to the department under a communication site facility lease. ¶
(14) "Constitutional Common School Fund Lands" or "School Lands" is land granted to the state upon its admission into the Union, obtained by the state as a result of an exchange of school lands, obtained in-lieu of originally granted school lands, purchased with Constitutional Common School Fund moneys, or obtained through foreclosure of loans using Constitutional Common School Fund moneys.¶
(15) "Decommissioning Plan" means a plan to retire and remove the physical facilities, structures, or developments authorized in a communication site facility lease including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.¶
(16) "Department" means the Oregon Department of State Lands.¶
(17) "Development" is any structure or series of related structures authorized by the department in, on, or over state-owned land.¶
(18) "Director" means the Director of the Oregon Department of State Lands or their designee.¶
(19) "Emergency Services" means the primary use of the communication site facility is for local 911/Emergency Medical Services (EMS), wildfire radio communications facilities, wildfire detection cameras, law enforcement services, and emergency alert systems, and does not include commercial wireless cellular facilities.¶
(20) "Facility Manager" means a person employed by a lessee to manage a communication site facility on their behalf for the purposes of site maintenance, management, or administration.¶
(21) "Large Commercial" means a communication site facility lease that is for a commercial purpose and is in a county that has a population of 150,000 or more people.¶
(22) "Leased Premises" means that portion of a communication site that the Department grants a lessee a leasehold interest in to establish, occupy, and use a communication site facility pursuant to these Division 126

rules.¶
(23) "Lessee" refers to any person having a communication site facility lease granted by the department authorizing a communication site facility on state-owned land.¶
(24) "Macro Cellular Facility" refers to any cellular communications facility that is not a small wireless facility. Macro cellular facilities are traditional cell towers and including but not limited to affiliated equipment such as buildings, towers, antennas, panels, and generators.¶
(25) "Market Value" means the most probable price, as of a specified date, in cash or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming neither is under undue duress.¶
(26) "Medium Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.¶
(27) "Non-Commercial" means use by a local, county, state, federal or Tribal government, fire protection association, quasi-government entity, publicly owned and operated utility, a Person that qualifies as a state designated not-for-profit (non-profit), personal use, research and scientific use, or any other government or non-profit entity as determined by the director.¶
(28) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as defined in ORS 174.100(6). For the purposes of these rules "Person" also includes any state or other governmental or political subdivision or agency, public corporation, public authority, or federally recognized Tribes in Oregon.¶
(29) "Personal Use" means the use of a communication site facility for amateur radio communications with no monetary gain to the lessee.¶
(30) "Research and Scientific Use" refers to using a communication site facility for scientific research communication with no monetary gain to the lessee.¶
(31) "Small Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of less than 50,000 people.¶
(32) "Small Wireless Facility" or "SWF" means a facility that meets each of the following conditions:¶
(a) The facilities:¶
(A) Are mounted on structures 50 feet or less in height including the antennas, or¶
(B) Are mounted on structures no more than 10 percent taller than other adjacent structures, or¶
(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.¶
(b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.¶
(c) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.¶
(d) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in the FCC's Rules and Regulations 47 C.F.R.□ 1.1307(b).¶
(33) "State-Owned Land" is land owned or managed by the department or its agents and includes school lands and statutory lands.¶
(34)"Statutory Common School Fund Lands" or "Statutory Lands" is land owned or managed by the department other than Constitutional Common School Fund Lands, but are not limited to state-owned Swamp Land Act lands and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.¶
(35) "Sublease" means a lease for co-location between a lessee and a co-locator.¶
(36) "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¶
(37) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0130

RULE SUMMARY: Establishes and identifies the process and fees by which the Department will accept lease and renewal applications for communication site facilities.

CHANGES TO RULE:

141-126-0130
Application Requirements for a Lease or Lease Renewal
(1) Any person wanting to use state-owned land for a communication site facility lease:¶
(a) Must contact the department to schedule and complete a pre-application meeting;¶
(b) Submit a complete application in the format provided by the department; and¶
(c) Pay a non-refundable application processing fee to the department.¶
(2) The application processing fee for a new communication site facility lease or renewal lease with changes per OAR 141-126-0140(11)(a) is:¶
(a) Non-commercial uses:¶
(A) Personal or research and scientific use: $375¶
(B) All other non-commercial uses: $750¶
(b) Commercial use: $1,000¶
(c) Cellular communications:¶
(A) Macro cellular facility: $1,500¶
(B) Small wireless facility:¶
(i) $500 for up to five SWFs in the same application.¶
(ii) $100 per additional SWF beyond five in the same application.¶
(iii) $1,000 for a new pole (not a co-location) intended to support one or more SWF.¶
(3) The application processing fee for a lease renewal with no changes as described in OAR 141-126-0140(11)(b) and (c) is:¶
(a) All non-commercial uses: $375¶
(b) Commercial use: $500¶
(c) Cellular communications macro cellular facility: $750¶
(d) Cellular communications small wireless facility:¶
(A) $500 for up to five SWFs in the same application.¶
(B) $100 per additional SWF beyond five in the same application.¶
(C) $1,000 for a new pole (not a co-location) intended to support one or more SWF.¶
(4) Unless otherwise allowed by the director, a fully completed application for a lease for non-commercial or commercial uses must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶
(5) Unless otherwise allowed by the director, a fully completed application for a lease for a macro cellular facility must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a macro cellular facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶
(6) Unless otherwise allowed by the director, a fully completed application for a lease for a small wireless facility must be submitted to the department at least 90 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a small wireless facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 90 calendar days prior, but not more than one year prior to the expiration of the existing lease.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0140

RULE SUMMARY: Establishes and identifies the process that the Department will adhere to for evaluating and approving lease and lease renewal applications.

CHANGES TO RULE:

141-126-0140
Lease Application Review and Approval Process
(1) Upon receipt of an application for a lease, the department will determine:¶
(a) If the application is complete and accurate including all required documentation;¶
(b) If the requested area is available for the requested use;¶
(c) The primary type of use (non-commercial, commercial, or cellular communications) being requested through the application. These use categories will be used to determine the amount of compensation payable to the department pursuant to OAR 141-126-0150 and OAR 141-126-0210;¶
(d) If a lease under these rules is the required form of authorization;¶
(e) If another authorization under separate department rules may also be required along with a communication site facility lease; and¶
(f) If additional information is required concerning the:¶
(A) Proposed use of the state-owned land;¶
(B) Applicant's financial status or past business or management practices; and¶
(C) If the equipment and structures described in the application will be the property of the applicant or another person.¶
(2) The department will advise the applicant of its determination concerning each of the factors in OAR 141-126-0140(1) within 30 calendar days of receipt of the application. Applications determined by the department to be incomplete, or for an area in which the use would be incompatible, will be returned to the applicant with a written explanation of the reason(s) for rejection.¶
(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the department returned it to the applicant (as determined by the date of postmark or email) with all deficiencies noted by the department corrected, no additional application fee will be assessed.¶
(4) If more than one application for a specific area is received by the department for the same or conflicting uses subject to authorization by a lease, the department may:¶
(a) Determine which proposed application best fulfills the policies specified in OAR 141-126-0110 and accept and proceed with that application and deny the others; or¶
(b) If neither use is determined by the department to be demonstrably better, make the requested area available to the public by competitive bid pursuant to OAR 141-126-0210.¶
(5) Upon acceptance by the department, the application for a new lease will be circulated to applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property owners, lessees, or persons granted other authorizations from the department, for review and comment. As a part of this review, the department will specifically request comments concerning:¶
(a) The presence of state or federally listed threatened and endangered species (including candidate species) and if a survey is required;¶
(b) Archaeological and historic resources within the requested area that may be disturbed by the proposed use and if an archaeological survey is required;¶
(c) Conformance of the proposed use with local, state, and federal laws and rules;¶
(d) Conformance of the proposed use with the local comprehensive land use planning and zoning ordinances;¶
(e) Conformance with the policies described in OAR 141-126-0110 of these rules; and¶
(f) Potential conflicts of the proposed use with existing or proposed uses of the requested area.¶
(6) The department may request comments from the Federal Communications Commission, Oregon Public Utility Commission, Federal Aviation Administration, U.S. Department of Defense, any other person owning or leasing communication site facilities at the communication site, and any other person or applicable entities or interested parties who advise the department that they want to receive notification of such applications.¶
(7) The department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate location(s) 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.¶
(8) After receipt of comments concerning the proposed use, the department will advise the applicant in writing within 30 calendar days from the date the comment period closes of:¶
(a) If changes in the use or the requested area are necessary to respond to the comments received;¶
(b) If the proposed use will cause interference with existing uses at the communication site. The applicant must

remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the Federal Communications Commission verifying the proposed use does not interfere with existing uses at the communication site.¶
(c) If additional information is required from the applicant, including but not limited to a survey, completed at the applicant's expense, of:¶
(A) State or federally listed threatened and endangered species (including candidate species) within the requested area; or¶
(B) Archaeological and historic resources within the requested area;¶
(d) If the area requested for the lease will be authorized for use by the applicant through a lease; or¶
(e) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-126-0210.¶
(9) Upon receipt of updated application information as required by OAR 141-126-0140(8)(a) through (c), an additional comment period may be initiated by the department.¶
(10) If the department approves the application, no changes are required as a result of the comment period(s), and no public auction is required, the department will notify the applicant in writing within 90 calendar days of the end of the most recent comment period of:¶
(a) The amount of compensation pursuant to OAR 141-126-0150;¶
(b) Any insurance or surety bond or other financial instrument required by the department pursuant to the requirements of OAR 141-126-0200; and¶
(c) A draft copy of the lease.¶
(11) Upon acceptance by the department of a lease renewal application the department will determine if there is a change in use, size of the leased remises, or frequency.¶
(a) If the department determines there is a change in use, size of the leased premises, or frequency, the application will be processed as described in OAR 141-126-0140(1) through (10);¶
(b) If the department determines there is no change in the use, size of the leased premises, or frequency, and the lessee has fully complied with the terms of the lease, applicable statutes, administrative rules, and any other authorization granted to them by the department, the lessee may be eligible for a lease renewal term as conditioned in the lease;¶
(c) If the department determines the renewal complies with the requirements of OAR 141-126-0140(11)(b), the department shall provide written notice to the lessee that the lease has been renewed for the additional term as 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 contains a provision requiring that the annual compensation be redetermined upon renewal, the written notice from the department shall include the new annual compensation rate.¶
(12) A communication site facility lease, even if signed by the department, will not be effective unless and until the applicant has:¶
(a) Paid all fees and compensation specified in the lease;¶
(b) Provided evidence of any required insurance, surety bond, or other financial instrument; and¶
(c) Met all terms and conditions of these rules.¶
(13) In addition to the provisions of OAR 141-126-0140(10) and (12), a communication site facilities lease issued by the department may not be valid until the lessee has received all other approvals required by the department (such as a removal-fill permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the communication site in the manner requested, unless otherwise determined by the director.¶
(14) The director may refer any application to the State Land Board for review and approval.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0150

RULE SUMMARY: Establishes the minimum compensation rates due to the Department for specific types of communication site facilities.

CHANGES TO RULE:

141-126-0150
Compensation
(1) A lessee must remit to the department on a basis provided in the lease annual base rent as determined by the department for the type of use described in OAR 141-126-0150(2) and (3).¶
(2) Minimum annual base rent for communication site facility leases will be:¶
(a) Non-commercial uses:¶
(A) Personal or research and scientific: $750 per year or a one-time, lump sum amount as agreed upon by the department for the term of the lease.¶
(B) Local or county government and emergency services: $3,000 per year.¶
(C) State, Tribal, or federal government and emergency services: $4,500 per year.¶
(D) Non-profit/Non-commercial: $3,000 per year.¶
(b) Commercial uses:¶
(A) Small commercial: $4,000 per year.¶
(B) Medium commercial: $6,000 per year.¶
(C) Large commercial: $8,000 per year.¶
(c) Cellular Communications:¶
(A) Macro cellular facility: $10,000 per year.¶
(B) Small wireless facility: $270 per facility per year.¶
(3) Notwithstanding anything in OAR 141-126-0150(2), in the following circumstances, the department reserves the right to establish the annual base rent in amounts that may be greater than the minimum annual base rent;¶
(a) The minimum bid when the lease is awarded through public auction.¶
(b) At the department's discretion, an appraisal may be required to determine the market value for the area to be occupied by the communication site facility.¶
(4) The amount of annual base rent paid to the department will increase annually by three percent for every year after the date these Division 126 rules are effective.¶
(5) Upon renewal of a lease, the base rent for first year of the renewal lease will equal the amount of the base rent for the final year of the previous lease plus three percent, unless the department has completed a market value study or an appraisal.¶
(6) To the extent allowed by ORS 758.010, communication site facilities may be exempt from the mandatory compensation payments specified in OAR 141-126-0150. However, the owners of such facilities must apply for and obtain an authorization from the department.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0160

RULE SUMMARY: Establishes the general terms and conditions to be included in a lease and identifies the rights and responsibilities of the Department and the lease holder.

CHANGES TO RULE:

141-126-0160
General Terms and Conditions
(1) The initial term of a lease may be up to, but not exceed 10 years, unless otherwise approved by the director. The department will determine the length of a lease and any renewal provisions based on the nature of the use for the requested area. The initial lease term and renewal term(s) combined will not exceed 30 years from the effective date of the lease.¶
(2) Leases will be offered by the department for the minimum area determined by the department to be required for the requested use.¶
(3) A communication site facility lease issued by the department will be on a form supplied by the department that has been reviewed by the Oregon Department of Justice .¶
(4) The department may choose at its discretion to close one or more leased premises or an entire communication site to public entry or restrict recreational use by the public to protect persons, property, or developments from harm.¶
(5) The department or its authorized representative(s) will have the right to enter into and upon the leased premises at any time.¶
(6) Unless otherwise agreed to in writing as a provision of the lease, a lessee may not interfere with lawful public use of a leased premises, state-owned land adjacent to a leased premises, or obstruct free transit across state-owned land. At no time may the lessee or their representatives intimidate or otherwise threaten or harm public users of state land.¶
(7) A lessee must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the leased premises or to be discharged onto state-owned land or waterways adjacent to the leased premises.¶
(8) A lessee must cooperate and comply with:¶
(a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention, and control of noxious plants. The department will rely on the Oregon Department of Agriculture for information concerning which noxious plants present on a leased premises require corrective action by the lessee or the Oregon Department of Agriculture or its agents;¶
(b) The Oregon Department of Agriculture and the department in the management of plant pests and diseases; and¶
(c) The department and other agencies in the detection, prevention, and control of wildfires on state-owned land containing a communication site .¶
(9) A lessee must conduct all operations within the leased premises in a manner that conserves fish and wildlife habitat, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants.¶
(10) Unless otherwise agreed to in writing, the lessee must remove all developments as directed by the department within 180 calendar days of the date of the expiration or termination of the communication site facility lease. If the lessee refuses to remove the subject developments, the department may remove them and charge the lessee for doing so.¶
(11) The lessee will not allow any other use to be made of or occur on the leased premises that is not specifically authorized:¶
(a) By that communication site facility lease; or¶
(b) By the department in writing prior to the use, including allowing co-location of all or a portion of the leased premises or structures therein.¶
(12) A lessee must be the person which owns the equipment and structures installed on the leased premises.¶
(13) A lessee employing contractors or facility managers for the purposes of site management as the lessee's representative is required to provide:¶
(a) Written verification providing permission and designating a facility manager, site manager, contractor, or sub-contractor employed by the lessee to communicate with the department regarding management of the communication site facility lease; and¶
(b) A single point of contact for all communication between the department and the lessee's facility manager concerning the lease administration.¶
(14) The lessee must maintain all buildings, equipment and similar structures or improvements located within the leased premises in a good state of repair as determined by the department.¶

(15) The lessee must label all buildings, structures, towers, and equipment (such as generators) within the leased premises. The label must include, at a minimum, the lessee's lease number.¶
(16) The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessee's of the communication site of the equipment modifications for review to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the Federal Communications Commission that the proposed frequency change will not interfere with existing uses at the communication site. The Federal Communications Act comprehensively regulates frequency interference.¶
(17) If requested by the department, a lessee must present evidence to the department prior to the use that it has obtained:¶
(a) All permits or approvals required by local, state and federal governing bodies to undertake the proposed use;¶
(b) Any permit or approval that may be required to obtain access or to cross land belonging to a person other than the department to undertake the use; and¶
(c) A surety bond, certificate of deposit, or other financial instrument and insurance as required by the department pursuant to OAR 141-126-0200.¶
(18) The communication site facility lease allows the lessee to access their communication site facility through state-owned lands adjacent to the leased premises.¶
(19) A lessee will indemnify the State of Oregon and the Department of State Lands in a manner that the department has determined will adequately protect the state from harm caused by the lessee's occupation or use of the leased premises.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0170

RULE SUMMARY: Establishes the procedures for a lessee to notify the Department about a sublease to co-locate at a communication site facility, as well as the fees for submitting a new or renewal for a co-location sublease.

CHANGES TO RULE:

141-126-0170
Co-location of Communication Site Facilities
(1) A lessee wanting to co-locate with a separate person on a portion of an existing communication site facility is required to notify the department in writing at least 90 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.¶
(2) A lessee wanting to co-locate a small wireless facility with a separate person on an existing structure is required to notify the department in writing at least 60 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.¶
(3) Lessees submitting a new or renewal co-location sublease to the department for review must submit a non-refundable application processing fee of:¶
(a) Non-commercial Uses: $375.¶
(b) Commercial uses: $500.¶
(c) Cellular communication macro cellular facility: $750.¶
(d) Cellular communication small wireless facility: $100.¶
(4) All sublease terms must be approved by the department, and the department may condition approval of a sublease on the lessee revising the sublease in the manner prescribed by the department.¶
(5) For each approved sublease, the lessee shall pay the department on the basis provided in the communication site facility lease the following amounts as additional rent:¶
(a) Non-commercial uses:¶
(A) Personal or research and scientific: $500 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(B) Local or county government and emergency services: $750 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(C) State, Tribal, or federal government and emergency services: $1,125 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(D) Non-profit/non-commercial: $750 one-time payment or 25 percent of fee charged by lessee to a co-locator per year, whichever is greater.¶
(b) Commercial uses:¶
(A) Small commercial: $1,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(B) Medium commercial: $1,500 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(C) Large commercial: $2,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶
(c) Cellular Communications:¶
(A) Macro cellular facility: 25 percent of the fee charged by the lessee to each co-locator per year.¶
(B) Small wireless facility: $100 per year.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0180

RULE SUMMARY: Establishes the procedure for administering lease modification applications and modification application fees.

CHANGES TO RULE:

141-126-0180
Lease Modifications
(1) Any current existing lessee in good standing must apply for a lease modification for the purposes of:¶
(a) Equipment upgrade or replacement that results in a change of frequency; or¶
(b) Any proposed ground disturbing activity; or¶
(c) Any change to existing communication site facilities structures, including but not limited to replacing an existing structure such as a building or tower, which results in an increase in the height of a tower, or any change in the footprint of a leased premises.¶
(2) A lessee must apply to the department in writing on a form provided by the department at least 90 calendar days prior to the proposed work being started. The application processing fee for a modification is:¶
(a) Non-commercial use: $250.¶
(b) Commercial use: $500.¶
(c) Cellular communications macro cellular facility:¶
(A) Equipment upgrade or replacement that results in a change of frequency: $500.¶
(B) Modifications per OAR 141-126-0180(1)(b) and (c): $750.¶
(d) Cellular communications small wireless facility:¶
(A) Equipment upgrade or replacement that results in a change of frequency: $250.¶
(B) Modifications per OAR 141-126-0180(1)(b) and (c): $500.¶
(3) Lease modification applications are subject to a review process including, at a minimum, other authorized lessees located at the same communications site. Lease modification applications including changes identified in OAR 141-126-0180(1)(b) and (c) will require concurrence with comprehensive land use planning and zoning from the local planning jurisdiction.¶
(4) If the department approves a lease modification, in order for such modification to be effective, it must be documented through a written amendment to the lease signed by the department and the lessee.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0190

RULE SUMMARY: Establishes the procedure for administering lease assignments.

CHANGES TO RULE:

141-126-0190
Assignment of a Communication Site Facility Lease
(1) A lease in good standing is assignable.¶
(2) To request the assignment of a lease, the lessee must submit a:¶
(a) Notice of proposed assignment on a form provided by the department at least 60 calendar days prior to the date that the assignment is requested to occur; and¶
(b) Non-refundable assignment processing fee payable to the department of:¶
(A) Non-commercial use: $250.¶
(B) Commercial use: $500.¶
(C) Cellular communications macro cellular facility: $750.¶
(D) Cellular communications small wireless facility: $250.¶
(3) The department may request additional information concerning the proposed assignment.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0200

RULE SUMMARY: Addresses the Department's insurance and bond requirements and reserves the Department's right to require decommissioning plans for removal of a communication site facility.

CHANGES TO RULE:

141-126-0200
Insurance and Bond; Decommissioning
(1) The department will require a lessee to obtain insurance in a specified amount and types of coverage.¶
(2) The department reserves the right to require the applicant for a communication site facility lease or a lessee to provide information concerning the intended or actual use of the leased premises to the Department of State Lands and the Department of Administrative Services, Risk Management, which may assist the department in determining the appropriate amount and type of insurance policies and limits based on the nature of the use.¶
(3) The department reserves the right to require a lessee to obtain a surety bond or a certificate of deposit in an amount specified by the department, or a cash deposit in an amount equal to the surety bond and which names the State of Oregon as co-owner, to ensure that the lessee will perform in accordance with all terms and conditions of a communication site facility lease or decommissioning plan.¶
(4) The lessee will ensure the Department of State Lands and the applicable authorization number(s) are listed as an additional insured under any and all insurance policies required for the communication site facility lease.¶
(5) The provisions of OAR 141-126-0200(1) through (4) may not apply to certain self-insured government or other entities.¶
(6) The department may require a decommissioning plan for certain communication site facilities as a condition of the lease as determined by a risk assessment completed by the department.¶
(a) In the event a decommissioning plan is required, the lessee has 180 calendar days from the date of lease commencement to submit a decommissioning plan to the department for approval. The decommissioning plan will also include a cost estimate of the decommissioning work. The cost estimate must be prepared by a person qualified by experience and knowledge to prepare such cost estimates. Failure to provide a decommissioning plan when required may result in lease default.¶
(b) The lessee may be required to obtain a surety bond or other financial instrument as described in OAR 141-126-0200(3) for the full amount of the decommissioning costs as determined by the risk assessment.¶
(c) The lessee is required to provide notice to the department in writing 60 calendar days in advance of implementing the decommissioning plan.¶
(d) The lessee must demonstrate to the department that the decommissioning work has been completed within 180 calendar days of termination of the lease to allow the department to release the surety bond or other financial instrument.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0210

RULE SUMMARY: Establishes the process the Department will adhere to in the event competitive bidding for a lease is required.

CHANGES TO RULE:

141-126-0210
Competitive Bidding Process
(1) Except as provided in OAR 141-126-0110(10) and 141-126-0140(11), the department will determine on a case-by-case basis if a communication site or portion of a communication site requested for a lease will be offered to the public through competitive bidding. This decision will be made after considering:¶
(a) Whether the requested area is for a use located on school lands or statutory lands;¶
(b) The nature of the use and length of authorization requested; and¶
(c) Whether other applications received by the department to use the same requested area for the same or competing uses.¶
(2) The department will give a Notice of Lease Availability and provide an opportunity for applications to be submitted if it determines that the greatest public benefit and trust obligations of the department would be best served by offering the requested area through competitive bidding.¶
(3) The Notice of Lease Availability will state:¶
(a) The location and size of the requested area;¶
(b) The use approved by the department for the requested area;¶
(c) The minimum acceptable bid amount; and¶
(d) The deadline for submitting a completed application to the department.¶
(4) The Notice of Lease Availability will be:¶
(a) Published not less than once each week for two successive weeks in a newspaper of general circulation in the county or counties in which the requested area is located;¶
(b) Posted on the department's website;¶
(c) Sent to adjacent landowners bordering the requested area; and¶
(d) Sent to persons indicating an interest in the requested area.¶
(5) The department will evaluate all applications received for the requested area as advertised in the Notice of Lease Availability and will determine, at its discretion, the highest qualified applicant. The highest qualified applicant will be offered the lease subject to satisfaction of the requirements of OAR 141-126-0140 and 141-126-0160(3) of these rules. However, the department will have the right to reject any and all bids submitted.¶
(6) In the event no application is received upon the deadline established in the Notice of Lease Availability, the department may choose to offer the lease to the initial applicant per OAR 141-126-0210(1) if applicable or issue another Notice of Lease Availability to solicit competitive bid applications.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0220

RULE SUMMARY: Establishes the process the Department will adhere to in the event of default of a lease.

CHANGES TO RULE:

141-126-0220
Termination of a Communication Site Facility Lease for Default
(1) If the lessee fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the leased premises, the department will notify the lessee in writing of the default and may provide an opportunity for correction within a specified time frame.¶
(2) If the lessee fails to correct the default within the time frame specified, the department may modify or terminate the lease and take appropriate legal action.¶
(3) If a lessee fails to remove structures, buildings, or equipment upon termination of the lease, those structures, buildings, and equipment may become property of the department at the discretion of the department. The lessee is responsible for all costs to restore the leased premises to the pre-lease condition and all costs for the removal and disposal of structures, buildings, and equipment left on the leased premises.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0230

RULE SUMMARY: Establishes the process for investigating complaints of alleged unauthorized use of a communication site and remedies for correction of unauthorized uses.

CHANGES TO RULE:

141-126-0230
Enforcement Actions; Civil Penalties and Other Remedies
(1) Upon the director's own initiative, or in response to a complaint, the director may investigate a suspected violation of a communication site facility lease or the alleged unauthorized use of state-owned land to determine if use of the state-owned land conforms with the terms and conditions of a communication site facility lease or other department issued authorization or to determine if the use is not authorized.¶
(2) In conducting the investigation relative to suspected or alleged violations of a communication site facility lease issued by the director, the director or the director's agent may enter into buildings or structures owned by the lessee in order to determine if a violation has occurred. The department will provide the lessee advance notice prior to entering buildings or structures owned by the lessee during an investigation.¶
(3) Upon a determination that a violation of the communication site facility lease has occurred or that an unauthorized use of state-owned land has occurred, the director may exercise any available remedy or combination of remedies to bring the violation into compliance with the lease, including, but not limited to, the remedies set forth in the lease, imposition of civil penalties consistent with OAR 141-126-0230(4), or any other available remedies. The department will provide the lessee 60 calendar days in which to correct any violation prior to enforcement action being taken by the department. Failure of the lessee to comply with any obligation of the lease within 60 calendar days after notice by the department specifying the nature of the deficiency, or in the event of an emergency, within the time specified by the department to resolve the emergency, is considered a default of the lease and a trespass.¶
(4) The unauthorized use of state-owned land or the violation of an authorization granted under these rules constitutes a trespass. In addition to any other penalty or sanction provided by law, the director may assess a civil penalty per ORS 183.745 and 273.992 of not more than $1,000 per day of violation for the following:¶
(a) Violations of any provision of OAR 141-126 or ORS Chapter 273 or 274; or¶
(b) Violations of any term or condition of a written authorization granted by the department under ORS Chapter 273 or 274.¶
(5) The director will give written notice of a civil penalty incurred under OAR 141-126-0230(4) by registered or certified mail to the person incurring the penalty. The notice will 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 person's right to request a hearing within 20 calendar days 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.¶
(6) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-126-0230(5). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the person requesting a hearing fails to appear, the director may make a final order imposing the penalty.¶
(7) In imposing a penalty under OAR 141-126-0230 of these rules, the director will consider the following factors as specified in ORS 273.994:¶
(a) The history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;¶
(b) Any prior violations of statutes, rules, orders, and authorizations pertaining to the use of state-owned land;¶
(c) The impact of the violation on school lands or statutory lands.¶
(d) Any other factors determined by the director to be relevant and consistent with the policy of these rules.¶
(8) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-126-0230 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.¶
(9) If a civil penalty is not paid as required by OAR 141-126-0230, interest will accrue at the maximum rate allowed by law from the date first due.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0240

RULE SUMMARY: Establishes the process the Department will adhere to in the event an applicant challenges a decision made by the Department.

CHANGES TO RULE:

141-126-0240
Reconsideration of Decision
(1) An applicant for a communication site facility lease, or any other person adversely affected by the issuance or denial of communication site facility lease on state-owned land, may request that the director or the State Land Board, depending upon which made the decision, reconsider the decision:¶
(a) Such a request must be received in writing by the director no later than 30 calendar days after the date of the decision.¶
(b) The director will review the request and reach a decision within 60 calendar days after the date that the director received the request.¶
(c) If the director made the underlying decision, the director may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration.¶
(d) If the State Land Board made the underlying decision, the State Land Board may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration. The director may make a recommendation to the State Land Board.¶
(2) Upon exhausting the reconsideration process in subsection (1), the applicant or adversely affected person may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470. Hearing requests must be submitted within 20 calendar days of the decision after reconsideration.
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

OAR 141-126 Rulemaking Public Comments and Agency Response

Comments & Agency Response

The public comment period was open from July 1, 2022, to July 31, 2022. The Department received 2 comments in total, 0 of which were submitted via form letter.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

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Doug Heiken, Oregon Wild – July 18, 2022

Comment: Oregon Wild recognizes that communication using electromagnetic waves is a critically important technology now and for the foreseeable future.

Our suggestions for this rule-making are:

1. Provide an opportunity for informed public comment on the siting of comm sites that are new or are being considered for expansion of the existing physical footprint.
2. Adopt a policy to consider and document environmental trade-offs and a policy to avoid and minimize environmental effects to the extent practicable. Relevant environmental impacts include loss/degradation/fragmentation of habitat (forest meadow, rock garden, wetlands, etc.), wildlife collisions and mortality, scenic impacts, light pollution, noise pollution, soil erosion, water pollution, weeds, fire hazards, etc.
3. Adopt a policy to avoid siting new comm sites in locations that will require increased fire suppression effort or add to the complexity of fire control, especially in places where fire is a natural part of the natural disturbance regime.
4. Consider alternatives such as alternative locations for comm sites and access roads so that tradeoffs of different sites can be weighed.
5. Require site decommissioning and site restoration when comm sites are no longer needed. Require performance bonds or collect fees to cover the cost of decommissioning and site restoration.

Agency Response:

1. Per proposed OAR 141-126-0140(5), the Department will circulate the application for a new lease or lease modification with an expanded footprint to “applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property Holders, affected lessees and permitees, and easement Holders for review and comment.”

OAR 141-126 Rulemaking Public Comments and Agency Response

2. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use,” so as to minimize impact to land, habitat and environment. While the Department has not specifically adopted an in-depth environmental review, the most impactful uses such as cell towers are required by federal law to go through a full Environmental Impact Statement prior to siting any tower and is also required to co-locate on towers that already exist within the area of interest. Compliance with the Federal Communications Commission (FCC) rules implementing NEPA on new tower construction includes separate procedures the Endangered Species Act and the National Historic Preservation Act. Per proposed OAR 141-126-0160(8)(a), Holders of communication site leases must cooperate and comply in “the detection, prevention, and control of noxious plants,” and per proposed OAR 141-126-0160(8)(b), in “the management of plant pests and diseases.” Also, per proposed OAR 141-126-0160(9), all operations must be conducted “in a manner that conserves fish and wildlife, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants.”

3. As stated above, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use,” so as to minimize impact to land, habitat and environment. Any analysis would involve consideration of the wildfire regime for a given location. Most existing communication sites are located on butte tops in ecosystems with sparse fuels. In addition, according to proposed OAR 141-126-0160(8)(c), Holders of communications site leases must cooperate and comply with “the Department and other agencies in the detection, prevention, and control of wildfires on a lease area.”

4. Per proposed OAR 141-126-0130(1)(a), applicants “must contact the Department to schedule and complete a pre-application meeting.” During these meetings consideration is given to alternative site locations and issues such as access roads. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use” so as to minimize impact to land, habitat and environment. Finally, multiple alternatives regarding new tower locations and associated roads will be evaluated during FCC compliance.

5. A site decommissioning plan is a requirement for certain communications site facilities as determined by a risk assessment by the Department provided by proposed OAR 141-126-0200(6). Furthermore, as per proposed OAR 141-126-0200(6)

> (a) In the event a decommissioning plan is required, the Holder has one hundred eighty (180) calendar days to submit a decommissioning plan to the Department for approval. The decommissioning plan will also include a cost estimate of the decommissioning work. The cost estimate must be prepared by a person qualified by experience and knowledge to prepare such cost estimates.

OAR 141-126 Rulemaking Public Comments and Agency Response

(b) The Holder may be required to obtain a surety bond or other financial instrument as described in OAR 141-126-0200(3) for the full amount of the decommissioning costs as determined by the risk assessment.
(c) The Holder is required to provide notice to the Department in writing sixty (60) calendar days in advance of implementing the decommissioning plan.
(d) The Holder must demonstrate to the Department that the decommissioning work has been completed to allow the Department to release the surety bond or other financial instrument.

The intent of decommissioning plans is to ensure that sites no longer in use will be returned to a native state to the extent practical. Components to be included would include tower/structure removal, structure demolition, concrete slab removal, removal of electrical equipment and wiring, disposal of gas, batteries or other hazardous materials, reseeding/rehabilitation of the site with site-specific rehabilitation requirements, and timelines for completion.

OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The proposed rules would undermine the longstanding Oregon policy goal to expand broadband availability.

Agency Response:
The Department's proposed rules attempt to balance the Department's mission along with Oregon policy related to broadband expansion. Revisions to the proposed rules will appropriately align the Department rules with broader federal and Oregon's broadband policies.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should acknowledge the difference between large and small wireless facilities in the proposed rules, and significantly reduce the recurring fees for installations of new small wireless facilities.

Agency Response:
The Department is adding a category of cellular communication facilities for small wireless facilities (SWF). This category will differentiate between Macro Cellular uses and Small Wireless Facility uses. The Department will adopt the FCC definitions for size and volume regarding SWFs. The minimum compensation rates for SWFs will be set at the FCC recommended level of $270 per facility. Application fees for SWFs will also follow the FCC recommendations as described in proposed OAR 141-126-0130(3)(d), $500 for up to five (5) SWFs in the same application, $100 per additional SWF beyond five (5) in the same application, and $1,000 for a new pole (not a co-location) intended to support one or more SWF.

Matt DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should reduce the recurring fees for larger wireless facilities, aligning them with the BLM's approach rather than an ill-defined "market rate".

Agency Response:
Minimum compensation rates for macro cellular facilities will be reduced to $10,000 per year.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should significantly reduce the annual fees for co-locations.

Agency Response:
Co-location application fees will be reduced from $1,000 to $750 for each macro cellular co-locator. Co-location application fees for SWFs will be set at $100. Co-location compensation rates for macro cellular sites will be revised from $10,000/year to 25% of the fee charged to each co-locator. Co-location compensation rates for SWFs will be set at $100/year.

OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should align its application fees with the FCC's.

Agency Response:
Fees for the newly added category of small wireless facilities (SWFs) are aligned with the FCC recommended fees. Application fees for all existing macro cellular categories have been reduced from the original proposal. Application fees for a new or renewed lease with changes will be $1,500. Application fees for leases with no changes, co-locations, and assignments have been reduced to $750. Application fees for the new category of SWFs will be structured according to the FCC guidance, $500 for a single application that includes up to five SWFs, with an additional $100 for each additional facility, and $1,000 for a new pole (not a co-location) intended to support one or more SWF. Application fees for SWF co-locations will be $100, $250 for assignments and $250 for a modification simply resulting in changes of frequencies and $500 for modifications resulting in changes to structures or poles.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should streamline application procedures and eliminate unnecessary and/or duplicative processes.

Agency Response:
The Department's public review policy stated in proposed OAR 141-126-0140(5) is standard language for the Department's public process. All Department operations are part of public record. The Department maintains a list service where any member of the public or group can sign up and receive notifications regarding communication sites. New leases or renewals with changes require a public review. Renewals with no changes do not require a public review.

Regarding state and federal environmental and cultural review processes, the Department's application process includes a short list of tasks that require coordination with other agencies. The application requires applicants to check a box to indicate that they have considered these requirements. It is not a duplicative requirement as the Department is not requiring any further action from the applicant.

Regarding execution of a lease to an applicant that still requires subsequent approvals the Department would be willing to negotiate during the lease process on a case-by-case basis. If an applicant requires securing site control prior to other permits or authorizations, it must be requested in the application.

The timelines for the Department to process an application have been adjusted to conform with the FCC's 2009 and 2018 declaratory rulings on "shot clocks" for both macro cellular and small wireless facilities. The new timeline for small wireless facilities is 60 days for co-locations on existing structures and 90 days for new builds. The new timeline for macro cellular sites is 90 days for co-locations and 150 days for new facilities and renewals.

OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should delete or modify certain other rules that would undermine Oregon's broadband policies or conflict with federal law.

Agency Response:
Regarding lease terms, an initial lease has a 10-year term with additional renewal periods granted provided the leaseholder has complied with all terms and conditions of the lease and applies to the Department for a renewal per proposed OAR 141-126-0110(10). The shorter term (10 years) provides the Department the opportunity to keep leases up to date and not using antiquated rules.

Language regarding intent to terminate a lease is found in the lease document. Termination of a lease is an exception to the norm.

A lessee is not prohibited from fencing the leased areas to provide security to their equipment and operations. Most communication sites on state lands are behind locked gates. Emphasis in proposed OAR 141-126-0160(6) is on lawful public use. Typically, closures of state land require rulemaking under OAR Chapter 141, Division 88.

The Department does not regulate frequencies, that is the duty of the FCC. However, the Department has an obligation to ensure there is no conflict among the users of a shared communication site. Proposed OAR 141-126-0110(7) states that "The Department will not grant a communication site facility lease if it determines that the proposed use or development would unreasonably impact current uses, frequencies, or developments proposed or already in place within the requested area." The Department notifies other users of changes or additions in frequencies to avoid user conflict. The Department has had complaints from users in the past about interference from other user's new frequencies. The process is one of notification not regulation. A statement has been added to proposed OAR 141-126-0160(16) regarding the federal role in regulation of radio frequencies.

The indemnification clause described in proposed OAR 141-126-0160(19) is more general than that proposed by CTIA. This language must suit a variety of communication site lessees including large wireless companies, small radio companies, local governments, and non-profit organizations. Additional detail regarding the indemnification clause can be captured during an individual contract negotiation.

Competitive bidding, as described in proposed OAR 141-126-0210, is a standard process used by the Department outside the realm of communication site leases. The Department's fiduciary responsibility to the Common School Fund makes this an allowable process. Competitive bidding is used by other states as well. Competitive bidding for the use of communication sites has not been pursued by the Department in the past but it must remain an option.

It is not the Department's experience that any wireless firms are self-insured and are unable to provide policies that meet the Department's rule requirements. The Department will coordinate with the Department of Administrative Services, Risk Management, on a case-by-case basis if such an occurrence should arise per proposed OAR 141-126-0200(2).

OAR 141-126 Rulemaking Public Comments and Agency Response

Proposed OAR 141-126-0230(2) has been modified to give lessees advance notice of inspections into buildings or structures owned by lessees. Proposed OAR 141-126-0230(3) has been modified to provide lessees 60 days to correct violations prior to enforcement action being taken.

July 31, 2022

VIA E-MAIL

Ms. Allison Daniel
Rules Coordinator
Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 07301
Rules@dsl.oregon.gov

Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land

Dear Ms. Daniel:

CTIA[1] appreciates the opportunity to comment on the Department of State Lands' ("Department's") Notice of Proposed Rulemaking in this proceeding.[2]

CTIA supports the Department's development of rules for siting on state-owned land that will advance Oregon's longstanding commitment to expanding the availability of broadband communications services to all residents. Wireless services play a central role in achieving broadband availability nationwide, and our industry is making substantial capital investments in the wireless facilities needed for broadband – over $30 billion in 2020 alone, and over $600 billion throughout the life of the industry.[3] Enabling wireless facilities to be

[1] CTIA – The Wireless Association ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] Administrative Rules for Authorizing Communication Site Leases on State-Owned Land (June 17, 2022) ("Notice").

[3] CTIA, "2021 Annual Survey Highlights" (July 2021), *available at* https://www.ctia.org/news/2021-annual-survey-highlights (last accessed July 31, 2022).

installed efficiently on state-owned lands will promote broadband expansion consistent with state policy.

CTIA is, however, concerned that a number of the proposed rules would impede, rather than promote, broadband expansion in Oregon. They would impose excessive, burdensome and complex fees and requirements that would not advance Oregon's longstanding goal to expand broadband, or the Department's stated objective to streamline siting on state-owned lands.

CTIA urges the Department to revise the proposed rules, as detailed in this letter, to better advance State objectives. The Department's rules should:

- Acknowledge the fundamental differences between small wireless facilities and other types of deployment;
- Promote the deployment of small wireless facilities by adopting an annual fee of $270;
- Promote the deployment of larger facilities by setting annual fees of $4,000-$8,000;
- Reduce annual fees on collocations to promote efficient use of rights-of-way;
- Adopt an application fee for new facilities based on the Department's costs of reviewing and processing those applications; and
- Streamline the application process for all new wireless facilities, eliminate duplicative reviews, revise collocation approvals from an application to a consent process, and set deadlines for the Department to complete action on applications for new facilities.

I. THE PROPOSED RULES WOULD UNDERMINE THE LONGSTANDING OREGON POLICY GOAL TO EXPAND BROADBAND AVAILABILITY.

Achieving universal broadband availability has long been a priority for Oregon. For nearly two decades, state policymakers have recognized the critical importance of rapidly deploying advanced communications networks to serve all Oregon residents, and have removed barriers to that deployment. For example:

- In 2003, the Legislature enacted a law declaring that "it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations." The law finds that expanding broadband requires actions such as

"[r]emoving barriers to the full deployment of broadband digital applications."[4]

- In 2018, Governor Brown issued an Executive Order establishing the Oregon Broadband Office and declaring that "broadband constitutes critical infrastructure for the property of all Oregonians, especially Oregon's rural and underserved communities," and is "increasingly vital for the conduct of commerce, the economic viability of communities, and Oregon's global competitiveness." The Governor directed the new agency to "remove barriers to and support broadband infrastructure deployment to close the continuing digital divide."[5]

- The Oregon Broadband Office currently identifies as two of its missions to "develop broadband investment and deployment strategies" and "advocate for public policies that remove barriers, promote and coordinate solutions, support and promote broadband planning."[6]

- The 2020 Oregon Statewide Broadband Assessment and Best Practices Study concluded, "As broadband becomes an ever-increasing critical asset, too many smaller, rural and less affluent localities confront a confluence of geographic, economic and cultural barriers to adequate broadband. Cost is chief among these impediments – planning, designing, and constructing a broadband network requires significant resources up front as well as an ongoing infusion of capital to operate, maintain and upgrade."[7]

Efficient deployment of wireless networks advances Oregon's policy goals by making broadband available to residents, businesses and government agencies. Wireless is a cost-effective communications technology that can be rapidly deployed. It is particularly cost-effective compared to fiber in rural areas, where residents often lack reliable service. State-owned lands are often optimal locations for wireless facilities.

In particular, fifth-generation ("5G") wireless technology enables providers to deploy small wireless facilities ("SWFs") to complement their network of larger facilities. A SWF uses an

[4] 2003 c.775 §1, codified at Oregon Revised Statutes 759.016(1).

[5] Office of the Governor, Executive Order No. 18-31, "Establishing the Oregon Broadband Office" (Dec. 14, 2018).

[6] *Business Oregon,* "Oregon Broadband Office," *available at* https://www.oregon.gov/biz/programs/oregon_broadband_office/pages/default.aspx (last accessed July 31, 2022).

[7] Strategic Network Group, Oregon Statewide Broadband Assessment and Best Practices Study Prepared for the Oregon Business Development Department (Jan. 31, 2020).

antenna that is only a few cubic feet in size and is attached to rooftops, building exteriors, water towers, signs and poles (including streetlight poles), thus minimizing visual impact. SWFs can extend coverage and also enhance the network's capacity, which is critical in the provision of broadband service. SWFs are installed more closely together than macro facilities.

The major evolution in technology that 5G and SWFs represent is enabling faster deployment of broadband services across the nation. It makes a "one size fits all" regulatory approach not only unwarranted but also a threat to broadband investment, because it will discourage the deployment of SWFs in Oregon.

The Department proposes to adopt rules "to establish and streamline administrative procedures for authorizing communication site facilities on state-owned land."[8] CTIA agrees that siting communications facilities on Department-managed lands will benefit the public, and supports the objective to "streamline" those procedures. However, a number of the proposed rules erect substantial obstacles that will delay and impede – if not outright block – the Department's goal to authorize those facilities. Rather than "streamline" procedures, the proposed rules add multiple layers of complicated requirements, new costs, and long timelines. Moreover, the proposed rules do not seem to account for the proliferation of SWFs as fifth-generation networks are deployed across Oregon, and appear to be predicated on the assumption that all wireless communications sites will be larger and more complicated than other types of communications sites on state land.

These expensive and burdensome requirements will not only deter the investment in infrastructure the Department says it seeks to promote, but will also create the very "barriers" that the Oregon Broadband Office is tasked to remove. Despite the findings of the 2020 Statewide Broadband Assessment that high costs deter capital investment in networks, the rules would drive up costs and thus discourage that investment. Put simply, the Department proposes a path that is inconsistent with that of the Oregon agency charged with promoting broadband deployment. And to the extent that the proposed rules seek to use state lands to drive revenue, such revenue will be severely curtailed by the fact that the proposed rules will discourage wireless providers from siting on state lands at all.

The Department can correct these problems by revising its proposed rules to reduce their costs, delays, and burdensome compliance mandates. These changes will better align the

[8] Notice at 1.

Department with Oregon's broadband policies, accelerate expanded wireless network coverage, and achieve the clear public interest benefits that expanded coverage will deliver to the state's economy and to its residents.

II. THE DEPARTMENT SHOULD ADOPT LOWER RECURRING AND APPLICATION FEES FOR ALL WIRELESS FACILITIES TO PROMOTE INFRASTRUCTURE INVESTMENT.

A. The Department Should Acknowledge the Difference Between Large and Small Wireless Facilities in the Proposed Rules, and Significantly Reduce the Recurring Fees for Installations of New Small Wireless Facilities.

The proposed rules would apply the same minimum base annual fee of $20,000 to all types of "cellular communications" facilities. The rules appear to assume that all facilities involve antenna towers or large structures, but, as previously discussed, this is not the case for modern wireless deployments.

The marked difference in the economics of SWF technology has led the federal government to apply lower fees and less burdensome regulations to SWFs in order to remove barriers to deployment. In 2018, the FCC heralded the development of SWF technology as enabling greatly expanded wireless broadband service without requiring the construction of large towers. But it found that high fees would effectively prohibit SWF deployment, frustrating the national priority to accelerate broadband.

The FCC thus defined small wireless facilities as:

- *Size:* Facilities that are either:
  - (i) mounted on structures 50 feet or less in height including their antennas, or
  - (ii) mounted on structures no more than 10 percent taller than adjacent structures, or
  - (iii) that do not extend an existing structure to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
- *Volume:* Facilities where the antenna is no larger than three cubic feet in volume, and all other associated equipment is no more than 28 cubic feet in volume.

The FCC also required that fees for deploying SWFs in rights-of-way be based on the state or locality's reasonable costs to manage deployment. The FCC concluded that annual recurring

access fees of $270 are presumptively reasonable, and held that a state or locality may set a higher fee if its costs would not be recouped by the presumptively reasonable amount.[9]

The fees the proposed rules would impose are steep for all communications facilities, as will be discussed below. But in particular, these recurring fees are exorbitant for SWFs. The $20,000 annual fee for cellular facilities in Proposed Rule 141-126-0150 is simply not viable for a SWF. Further, the $20,000 figure cannot be justified as being necessary for the state or locality to recoup its administrative costs, as required by the FCC. And the fact that these fees would pile up quickly for deployments of multiple small facilities would dissuade providers from siting *any* small facilities in an area.[10]

CTIA urges the Department to instead adopt rules and annual fees for new installations of SWFs that align with the FCC's rules and account for the differences in types of wireless facilities.[11] The Department should:

- Add a definition of "small wireless facility" to the definitions in Rule 0140-126-0120 that tracks the FCC's definition; and
- Set the annual recurring fee at $270 for each SWF, as the FCC has.

B. The Department Should Reduce the Recurring Fees for Larger Wireless Facilities, Aligning them with the BLM's Approach Rather Than an Ill-Defined "Market Rate".

The Department states that the proposed rules "establish a lease rate and fee structure consistent with market rates, based on a market study of lease rates and fees for the Bureau of Land Management ["BLM"] and other western states that manage similar communication facility leases." However, Proposed Rule 141-126-0150's flat annual rental fee for "cellular"

[9] *See In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, Report and Order, 33 FCC Rcd 9088 (Sep. 27, 2018) ("2018 FCC Order").

[10] The Department should also note that federal law prohibits state regulations that "may prohibit, or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. §253(a).

[11] To the extent that the proposed fees discriminate against providers who rely more heavily on small cells to support their networks, the Department's rules could run afoul of federal law on those grounds as well. *See* 47 U.S.C. §253(c) ("Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, *on a competitively neutral and nondiscriminatory basis*, for use of public rights-of-way *on a nondiscriminatory basis*") (emphasis added).

facilities[12] bears no resemblance to the lower fees for other commercial wireless facilities, or to the BLM's fees, and more importantly, its market-based approach would erect significant barriers to deployment.

The Department proposes a flat annual fee of $20,000 for all cellular facilities, but does not make available the "market study" that it purports to rely on to establish a "market rate", or supply any factual basis to set the fees at such a level. Moreover, Rule 141-126-0150 states that the $20,000 annual fees are only "minimum base amounts" amounts that can be set higher: "The Department reserves the right to establish the base annual compensation in amounts that may be greater than the minimum base annual compensation." This uncertainty will deter wireless providers from seeking to site facilities on Department-managed land and undermine the Department's and state's objective to encourage expanded wireless service on its lands.

Although the Department notes that the fees are set to "generate revenue for the state's Common School Fund," courts have invalidated fees that similarly seek to raise revenues without being based on the costs governments incur to oversee granting siting applications and overseeing deployment. These courts have found that where fees are revenue-based and bear no relationship to governmental costs, they can effectively prohibit communications service in violation of 47 U.S.C. 253(a).[13] CTIA fully supports the goal of funding schools, and during the Covid-19 pandemic wireless carriers have gone to great lengths to enable remote learning, but school funding need not, and should not, prevent or detract from broadband deployment. (Moreover, to the extent that the Department's proposed reliance on market-based rates dissuades carriers from siting on state-owned

[12] As an aside, the use of the term "cellular" in the proposed rules is both dated and too narrow. While the FCC used that term for the first commercial mobile wireless systems in the 1980s, it has subsequently used many additional terms for systems that offer the public similar services, such as "personal communications service" and "advanced wireless service." To avoid confusion, CTIA suggests that the Department use the single term "commercial wireless" facilities to apply to all facilities that the proposed rules classify as "cellular" or "commercial" facilities (with a separate definition for "small wireless facilities," as discussed *supra*).

[13] *See, e.g., City of Portland v. United States,* 969 F.3d 1020, 1039 (9th Cir. 2020) ("The statute requires that compensation be 'fair and reasonable"; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs."); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003) ("Thus, to meet the definition of "fair and reasonable compensation" a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications provider makes use of the rights-of-way. . . [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry.").

lands, the proposed rules would limit broadband deployment *and* fail to generate revenue, making them completely counterproductive.)

The Department also provides only a cursory explanation for why it proposes to charge the annual fee of $20,000 for a "cellular" facility but much less – $4,000-$8,000 – for a "commercial" facility. "Cellular" is defined to mean "transmission and receiving of signals for mobile telecommunications over a cellular network," while "commercial" appears to cover all other commercial wireless communications (which would appear to include fixed wireless services). But this distinction (which is not in the Department's current rules) is arbitrary, because both types of facilities use antennas mounted on towers or other structures; they both receive and transmit communications. Nor are cellular antennas necessarily any larger or more complex other types of antennas. To the contrary, as CTIA explained above, they are often smaller, because cellular providers are increasingly relying on SWFs to build out their mobile networks.[14]

In contrast to the Department's proposed approach, the BLM sets progressively lower fees for wireless facilities as a market's population declines. The Department does not explain the basis for departing from the BLM's approach or for charging such a large flat fee. The flat fee also is inconsistent with the Department's own statement that it based fees on "market rates," as the market for land is certainly different in different parts of Oregon.

In short, the proposed annual fees are likely to inhibit broadband deployment, undercutting state policy to accelerate that deployment. CTIA urges that the Department to instead use the same tiered approach for larger facilities that it has established for "commercial" wireless facilities:

- $4,000 for facilities in counties with a population of less than 50,000
- $6,000 for facilities in counties with a population of 50,000-150,000
- $8,000 for facilities in counties with a population of more than 150,000.[15]

[14] Again, to the extent that the proposed rules are discriminatory, they would not pass muster under federal law. *See* note 11, *supra*.

[15] If the Department declines to follow this approach, it should use the tiered fees in the BLM's fee schedule.

C. The Department Should Significantly Reduce Annual Fees for Collocations.

The fees Rule 141-126-0170 would impose for collocation are excessive. Collocators would have to pay a minimum annual rent of $10,000, but that amount could be set higher based on an appraisal of the market value of the location – and there is no upper limit on that amount.

The Department supplies no basis for a $10,000 fee. As CTIA discussed earlier in these Comments, the FCC and courts have found that such large government-imposed fees deter investment in new infrastructure.

Moreover, the Department would already be collecting the annual fee from the pre-existing site user. If three additional users located on the same structure, the Department would collect a minimum of $50,000 each year (at least $20,000 for the initial user and at least $10,000 for each other user). Double- or triple-charging for the same facility ignores the Department's mission to promote deployment of new infrastructure, and dissuades efficient use of state-owned rights-of-way.

Rule 141-126-0170 should thus be modified to delete the additional rental fees that co-locators must pay and replace that fee structure with one that is reasonable, non-discriminatory and promotes Oregon's broadband deployment goals.

D. The Department Should Align Its Application Fees with the FCC's.

Rule 141-126-0130(2), governing application fees, suffers from the same issues as the proposed recurring fees. It would charge up-front application fees of $1,000 for "commercial" uses but double that -- $2,000 – for "cellular communications." As CTIA explained above, there is no plausible basis to discriminate between these types of facilities, creating issues with 47 U.S.C. §253(c). Both types of facilities provide commercial wireless services. The fact that a cellular facility can transmit signals to mobile devices (per the proposed definition) has no bearing on the appropriate amount of an application fee. In addition, the rule does not distinguish between SWFs and larger facilities, meaning exponentially higher fees for installations with multiple smaller facilities.

In its 2018 Order, the FCC reinforced the important of cost-based state and local application fees for wireless facilities in rights-of-way. It pointed to record evidence that given the economics of deployment, up-front fees of thousands of dollars were impairing deployment, undercutting the national priority to accelerate expanded service. It thus required state and

local governments to limit SWF application fees to recover governmental costs to process the application, and determined that the presumptively reasonable cost-based fee was $500 for a single application that includes up to five SWFs, with an additional $100 for each additional facility, or $1,000 for a new pole or other structure. Governments that can demonstrate these amounts would not recover their application review costs can increase those fees to the level needed to recoup them.[16]

The Department should incorporate these application fees into its rules. Adopting these fees will address the arbitrary distinction the proposed rules create and ensure that SWFs pay commensurately lower application fees. Application fees for new larger facilities should be based on the Department's costs. As discussed in Section III below, the Department should not require collocations to undertake a full application process because collocations would be implemented under the lease entered into by the structure owner. The Department should instead have a consent process for such collocations.

III. THE DEPARTMENT SHOULD STREAMLINE APPLICATION PROCEDURES, AND ELIMINATE UNNECESSARY AND/OR DUPLICATIVE PROCESSES.

CTIA is also concerned that the extensive application procedures the rules propose will deter investment in new infrastructure, undermining state broadband objectives. Because some procedures duplicate reviews that applicants must already undergo, they will unnecessarily increase costs and delays and conflict with the Department's stated objective to streamline the review process. The Department should delete or modify these requirements.

Public Notice and Review. Rule 141-16-0140(5) would require the application to "be circulated to applicable local, state, federal agencies, Tribal governments*, and other interested persons, including but not limited to* adjacent property Holders, affected lessees and permittees, and easement Holders for review and comment" (emphasis added).

This vague, unbounded list fails to give applicants fair notice of their obligation because it does not define who would qualify as an "applicable," "interested," or "affected" person. There is also no reason for the Department to require any such notice. Local governments typically require that notice of a wireless installation be given to them, published in a local newspaper, and/or considered in a public hearing. And federal and state environmental and historic preservation review processes require the applicant to provide to, or coordinate with,

[16] *See* 2018 FCC Order.

Federal, State and local agencies and Tribes. The Department should delete this duplicative notice requirement entirely and defer to those other existing procedures.

Rule 141-16-0140(5) would also direct the Department to seek comment from all notified persons on the environmental impact of the facility on "threatened or endangered species" and "archaeological and historic resources," which it will then review. This process appears to be duplicative of the reviews already conducted pursuant to State and Federal environmental and historic preservation laws. For example, at the federal level, FCC rules already require wireless providers to conduct this review pursuant to the National Environmental Policy Act and National Historic Preservation Act for facilities that could potentially have an impact on the environment or historic properties. There is thus no basis for the Department to conduct a redundant environmental and historic resource review. This entire process should be deleted.

Rule 141-16-0140(5) also provides the application will be circulated to agencies and Tribes so that a review for compliance with various laws can be completed. If the applicant needs to secure building permits, conduct studies or obtain other governmental approvals, it is unreasonable to burden it with the costs of doing so without first securing grant of the lease. Rule 141-16-0140(5) should be revised to authorize the Department to execute a lease with the condition that the applicant subsequently secure necessary approvals.

Timelines for Granting Applications. The proposed rules set exceedingly long potential timelines for the review and grant of applications, without any deadline for the Department to act. Rule 141-16-0130 requires an application to be filed at least 180 days prior to the date of intended use, indicating that the applicant should expect up to six months for the Department to complete its review. But the rule's six month "expectation" does not set a deadline for the Department to act on the application. To help make certain that applications are acted upon in a timely manner, an actual deadline should be provided.

The FCC has determined in several orders that promptly completing application reviews is important to achieving the public interest benefits from expanded wireless service. It thus adopted specified timelines applicable to state and local review to speed deployment. It found that setting such time periods will provide more certainty to wireless companies, which will incent investment. The FCC also determined that the installation of SWFs should involve less review and be significantly shortened given their much reduced visual impact, and thus set shorter deadlines for action on applications for those facilities.

The Department should set specific deadlines for acting on applications. Consistent with the time periods the FCC has set for installations of new facilities, the rules should direct that the Department must act within 150 days for macro sites, and within 90 days for SWFs. Those deadlines should begin to run immediately upon the filing of an application, and should encompass all Department review procedures, with an application deemed granted if not acted upon under this reasonable schedule.

When no new structure will be constructed and the antenna and supporting equipment will instead be collocated on an existing structure, there is no need for an application process or extended Department review beyond basic safety and engineering approval. Rather, the Department should merely be taking the ministerial act of consenting to the collocation. The rules should thus specify that collocations do not require a full approval process, and that the Department shall issue its consent for collocations within 30 days.

IV. THE DEPARTMENT SHOULD DELETE OR MODIFY CERTAIN OTHER RULES THAT WOULD UNDERMINE OREGON'S BROADBAND POLICIES OR CONFLICT WITH FEDERAL LAW.

Lease Term. Rule 141-16-0160(1) would provide that "the initial term of the lease may be up to, but not exceed ten (10) years, unless otherwise approved by the Director." This short term is likely to deter expansion of wireless services, contrary to state policy objectives. A 10-year term is insufficient given the capital investment needed to construct or install new wireless facilities. The rule should be modified to set a minimum initial term and automatic renewal terms of not less than 25-30 years. The Department is fully protected by Proposed Rule 141-16-0220, which empowers the Department to terminate a lease when it establishes that the lessee has defaulted on the lease terms.

In addition, Rule 141-16-0160(1) should include a two-year notice requirement should the Department determine not to renew the lease. Providers need that amount of time to find alternative locations, finalize any leasing and zoning processes, and install equipment there. Forcing the shutdown of communications services before new facilities are ready would unjustifiably disrupt service to the public.

Site Access. Rules 141-16-0160(4), (5) and (6) would address site access but would not address the lessee's access to utilities that are on-site. These rules should specifically grant the lessee utility access. These provisions also adopt conflicting requirements for third-party access. They recognize the need to restrict access to lease areas to protect the public, but

then also state that the public should have that access, and leave access issues to the Department's discretion. The language on third-party access should be removed because leaseholders should be entitled to quiet enjoyment of the premises they are leasing to operate facilities without interference from the public or Department involvement in determining access, absent a default on the lease. Further, it would be highly irregular for the public to have access to wireless facilities, and carriers should be able to secure such facilities on Department lands as they do elsewhere.

Frequency Changes. Rule 141-16-0160(12) would require the lease holder to notify the Department of "any equipment modifications resulting in a change of frequency." The Department will then notify other users, and the leaseholder "must resolve the frequency issue." However, Section 332(c)(7)(B) of the Communications Act preempts states and localities from regulating the use of radio frequencies, granting that authority exclusively to the FCC.[17] The FCC has set specific power and other limits on the frequencies that wireless service providers can use and addresses interference issues that may arise. This federal regime ensures that all wireless services can coexist and that problems can be quickly resolved. States have no permissible role in regulating frequency use or modifications to that use. Proposed Rule 141-16-0160(12) is preempted by federal law, serves no purpose not already addressed by the FCC's rules and procedures, and should be deleted or revised to clarify that FCC rules govern interference issues.

Indemnification. Rule 141-126-0160(19) would state that the holder of a lease "will indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to Holder's use or occupation of the lease area." This section should be revised to exclude claims or costs that are caused by, or arise from or relate, to the State's or the Department's willful misconduct, gross negligence, or fraud. These are typical exclusions to indemnification provisions.

Competitive Bidding. Rule 141-126-0210 would establish a "Competitive Bidding Process" under which the Department may choose to offer access to the lands it controls through competitive bids. This process should not be adopted.

- First, it would increase the cost of investing in new facilities. The bidding process would thus deter wireless firms from investing in new infrastructure because of the uncertainty as to how much they will have to pay – undermining the proceeding's

[17] *See also In re: 960 Radio, Inc.*, Memorandum Opinion and Declaratory Ruling, FCC 85-578, 1985 WL 193883 (Nov. 4, 1985) at para 4-6.

objective to facilitate wireless use of state-owned lands. And, the already substantial up-front application fees wireless providers would have to pay would be in addition to the amount of the winning bid, making investment even less attractive.

- Second, a competitive bidding process adds still more delay into securing access to a site – contrary to the Department's stated objective to "streamline administrative procedures."

- Third, the Department supplies no basis for how it would determine the winning bidder. The proposed rule states that the Department "will determine at its discretion the highest qualified applicant," but fails to explain what qualifications it would consider and how it would weigh them to compare and evaluate applicants. The rule would thus leave wireless firms with no basis to expect that whatever bid they submit would be successful.

- Fourth, bidding would be particularly difficult for smaller firms, which may lack the financial resources to compete with larger firms, driving them away from seeking to use state-owned lands. The Department asserts that the rules overall "will not have any significant fiscal impact on small businesses." But it failed to address the fiscal impact or the deterrent effect of requiring small businesses to engage in bidding.

Competitive bidding could for these reasons drive providers, particularly small firms, away from seeking to deploy at least at some locations – undermining the Department's stated objective of promoting deployment of broadband. Rule 141-126-0210 should be deleted.

Insurance. Rule 141-126-0200 would require lessees to obtain insurance coverage, but some wireless firms are self-insured, and cannot provide policies that would meet the rule's requirements. The rule should allow for alternative insurance coverage that would provide equivalent protection to the Department.

Enforcement. Rule 141-126-0230 would impose a process for the Department to determine when violations of the lease occur, but it fails to give the lessee the opportunity to correct the violation before the Department may take enforcement action (including a civil penalty). The rule should be modified to give the lessee 60 days to correct the violation before any enforcement action is taken. The rule should also provide that the Department will give the lessee advance notice of any inspection of the lessee's facilities.

* * *

The revisions to the rules that CTIA proposes will advance the State's broadband objectives and the Department's goal to streamline deployment on State-owned lands.

Sincerely,

/s/ Matthew DeTura
Matthew DeTura
Counsel, External and State Affairs
CTIA
mdetura@ctia.org

OAR 141-126 Rulemaking Public Comments and Agency Response

Comments & Agency Response

A second public comment period was open from August 1, 2024, to September 3, 2024. The Department received 2 sets of comments in total, 0 of which were submitted via form letter.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

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Doug Heiken, Oregon Wild – September 3, 2024 (submitted via e-mail)

Comment: Oregon Wild represents approximately 20,000 supporters who share our mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy.

> The proposed amendments to the communication site rules would establish and streamline administrative procedures for authorizing communication site facilities on state-owned land. Division 126 rules will accommodate industry standards, best practices, facilitate adaptive management, and update compensation rates and fees and allow for changes in market value ensuring the fiduciary responsibilities of the Department are being met.
>
> Some of the key issues that we urge the Land Board to consider relate to:
>
> **Wildfire**: Communication sites are often built in locations that are exposed to significant wildfire hazard. It is not reasonable to expect that wildfire will be controlled, so these communications facilities must be built to be resistant and resilient to wildfire. Luckily that can be done by building fire-safe structures, and modifying fuels within just 100 feet of structures. Broad-scale clearing of vegetation is not necessary for fire defense. See the work of Jack Cohen, such as: Finney and Cohen. 2003. Expectation and Evaluation of Fuel Management Objectives. USDA Forest Service Proceedings RMRS-P-29. http://www.fs.fed.us/rm/pubs/rmrs_p029/rmrs_p029_351_366.pdf; Jack Cohen and Dave Strohmaie 2020. Community destruction during extreme wildfires is a home ignition problem. Wildfire Today, September 21, 2020. https://wildfiretoday.com/2020/09/21/community-destruction-during-extreme-wildfires-is-a-home-ignition-problem/; Jack D. Cohen, Ph.D. 1999. Reducing the Wildland Fire Threat to Homes: Where and How Much? https://www.fs.fed.us/rm/pubs_other/rmrs_1999_cohen_j001.pdf presented this paper at the Fire Economics Symposium in San Diego, California on April 12, 1999.

Access Roads: Communication sites require access to remote sites, typically via road or helicopter. These roads are often used (both authorized and unauthorized) by the public which increases ecological impacts. DSL rules should focus on minimizing the impacts of roads. Building and maintaining roads on steep terrain has significant ecological costs including:

- Soil disturbance, erosion, compaction, loss of forest productivity
- Pollution: sedimentation, thermal loading
- Hydrologic modification: flow interception, accelerated run-off, peak flows
- Impaired floodplain function
- Barrier to movement of wood and spawning gravel
- Habitat removal
- Reduced recruitment of snags and down wood habitat
- Fragmentation: wildlife dispersal barrier
- Human disturbance, weed vector, hunting pressure, loss of snags, litter, marbled murrelet nest predation, human fire ignition, etc.
- Reduced carbon storage in adjacent and nearby forests

See also, NRDC 1999. "End of the Road: The Adverse Ecological Impacts of Roads and Logging: A Compilation of Independently Reviewed Research" (1999), https://web.archive.org/web/20081024112126/http://www.nrdc.org/land/forests/roads/eotrinx.asp; USDA Forest Service 2006. Draft Review and Comment on: Forest Service Roads: A Synthesis of Scientific Information, 2nd Draft, USDA FS: Ecological impacts - by Jack Wade (http://web.archive.org/web/20061008094731/http://www.wildlandscpr.org/resourcelibrary/reports/wade_report2.html.

Vegetation management: Comm sites often require vegetation maintenance to maintain line of site. DSL rules should protect mature and old-growth trees that provide important habitat, carbon storage, and other ecosystem services. Sites should be selected that will not require clearing of mature and old-growth trees.

Unique Habitats: Ridge tops often represent unique habitats (such as rock gardens, grasslands, and botanical areas) that are under-represented compared to historic conditions. Some ridgetops (such as Prairie Mountain and Mary's Peak) have experienced significant cumulative effects from extensive development of numerous communications facilities. The adverse effects include habitat loss, fragmentation, erosion, and all of the effects listed above related to roads. These effects are long-lasting and essentially irreversible. DSL rules should strive to minimize the ecological footprint of communications sites.

Subleases: Subleases may include activities that were not contemplated in the original lease. DSL rules should strive to minimize unintended and unanticipated effects that were not contemplated and increase the ecological footprint of the communications leases.

Public notice and public involvement: DSL should include the public in the process of planning and approving comm sites. This will help foster public trust and informed decision-making.

Agency Response:

Wildfire: Most of the Department's existing communication sites are located on butte tops in ecosystems with sparse fuels. The sites generally are surrounded by a cleared area of dirt

or gravel providing a break in surface fuels. The Department does not regulate building design or construction but can encourage lessees to incorporate fire safe considerations into their designs. The Department is currently planning fuels reduction at two sites to reduce fuels hazards to the communication sites. The Department is working with lessees in the planning phase of developing fire detection cameras and a remote weather station at several communication sites which will help in the early detection and prevention of serious wildfires in the vicinity. In addition, according to proposed OAR 141-126-0160(8)(c), Holders of communications site leases must cooperate and comply with "the Department and other agencies in the detection, prevention, and control of wildfires on a lease area."

Access Roads: Each of the six existing DSL communication sites are accessed by roads. Road access is restricted to lessees and agency personnel by gates while the sites remain open to public recreation on foot. Roads are regularly monitored for damage, including soil erosion, and maintained as necessary. There is currently a road improvement project in the planning phase at one site to improve the road surface and cross drains to maintain natural drainage.

Vegetation management: The Department infrequently has requests for new communication sites to be developed. The Department must follow all local, state and federal rules including the Oregon Forest Practices Act regarding maintaining old growth trees.

Unique Habitats: It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), "leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use," so as to minimize impact to land, habitat and environment. The Department's public process includes other agencies such as Oregon Department of Fish and Wildlife and the Oregon Department of Agriculture that have expertise and resource management guidelines pertaining to unique habitats. The most impactful uses such as cell towers are required by federal law to go through a full Environmental Impact Statement prior to siting any tower and is also required to co-locate on towers that already exist within the area of interest. Compliance with the Federal Communications Commission (FCC) rules implementing NEPA on new tower construction includes separate procedures the Endangered Species Act and the National Historic Preservation Act.

Subleases: All subleases must be approved by the Department and all uses are subject to proposed rules OAR 141-126-0110(8) which states that all uses subject to the rules must be authorized by a lease issued by the Department. In addition, uses and developments of communication sites must conform with local, state and federal laws according to OAR 141-126-0110(6). Subleases do not typically expand the physical footprint of the base lease but instead are co-located on the base lessee's existing equipment. It is often beneficial to have subleases rather than new base leases which would necessitate additional disturbed land.

Public notice and public involvement: All lease applications including those that involve building new facilities are circulated to applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property Holders, affected owners, lessees and permittees, and easement Holders, or persons granted other authorizations from the department, for review and comment as described in OAR 141-126-0140(5). In addition, the department may post a notice of an

application and opportunity to comment at a local government building, public library, or other appropriate location(s) 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 (OAR 141-126-0140(7)).

Matthew DeTura, CTIA – September 3, 2024 (letter submitted via e-mail, see attachment for full comments)

Comment:

1. The Department should reduce fees for larger cellular facilities and revise the proposed rules to establish maximum, not minimum, annual fees.
2. The Department should modify the proposed rules to clarify the status of fixed wireless access.
3. The Department should streamline application procedures, including revising its implementation of "shot clock" timelines to reflect the FCC's focus on reducing application delays.
4. The Department should eliminate regulation of radiofrequencies from the proposed rules to comply with the FCC's exclusive jurisdiction.
5. The Department should schedule one or more workshops to address concerns with the proposed rules.

Agency Response:

1. *The Department should reduce fees for larger cellular facilities and revise the proposed rules to establish maximum, not minimum, annual fees.*

   The Department reduced the annual fee from the 2022 proposal rate of $20,000 to $10,000 in the 2024 proposal. The $10,000 figure represents the low end of the market rate study prepared by the Department. This market rate study shows that the proposed rates are fair and reasonable compensation for the uses proposed. The Common School Fund obligation requires the Department to charge market rate for services.

   The Department does not anticipate requiring an appraisal as referenced in OAR 141-126-0150(3) unless the potential communication site is in a densely populated area and thus outside the minimum fees that have been established. All of the Department's current communication sites are in rural areas which allowed us to reduce the proposed fees to $10,000 but the rules provide the ability for the Department to charge higher rates if a site is developed in a more densely populated area. The Department does not manage suitable land in the major metro areas of Oregon including Portland, Salem, and Bend that are suitable candidates for future communication sites. For this reason, there is a low probability for an appraisal. The Applicant would be notified at the application phase if an appraisal was anticipated.

   While the fees set are minimums rather than maximums, the Department expects to update these rules periodically to evaluate the fees. It is not the Department's intent to have fees increase perpetually.

   For small wireless facilities the Department will honor the $270 as a maximum and appraisals will not apply. OAR 141-126-0150(3) has been updated to reflect this.

The categories of rent payments (commercial, non-commercial, and wireless cellular communications) were derived from the market study which compared rates and categories charged by other states and federal agencies.

The annual rent payment for co-locators (25% of fee charged to co-locator per year) was a recommendation from the Rules Advisory Committee as an industry standard. Charging a minimum fee for services is necessary because of the Department's Common School Fund obligation.

2. *The Department should modify the proposed rules to clarify the status of fixed wireless access.*

Justification for why fixed wireless access needs to be added to the OAR 141-126-0120 definitions was not adequately provided.

3. *The Department should streamline application procedures, including revising its implementation of "shot clock" timelines to reflect the FCC's focus on reducing application delays.*

In 141-126-0140(2) of the proposed rules, the Department reduced the amount of time to advise the Applicant of its determination of the completeness status of the application from 45 to 30 days. OAR 141-126-0140(5) sets the requirement for public review of each application. The public review period is a standard 30-day period. After the 30-day period closes, the onus to respond to any significant comments received is on the Applicant. The rules do not set a timeline for the Applicant to respond to public comment received. OAR 141-126-0140(8) requires the Department to notify the Applicant within 30 days if it is necessary for the Applicant to respond to comments received or if additional information is required. The Department will revise OAR 141-126-0140(10) to the following: "If the department approves the application, no changes are required as a result of the comment period(s), and no public auction is required, the department will notify the applicant in writing within 30 calendar days of the end of the most recent comment period...".

4. *The Department should eliminate regulation of radio frequencies from the proposed rules to comply with the FCC's exclusive jurisdiction.*

The Department is required to follow all local, state, and federal regulations. OAR 141-126-0110(6) states that "Uses of, and developments placed in, on, or over state-owned land pursuant to a communication site facility lease will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws." The Department requires verification of the FCC approval to ensure that the Department is authorizing uses allowed under federal law. The Department will revise OAR 141-126-0140(8)(b) to the following: "If the proposed use will cause interference with existing uses at the communication site. The applicant must remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the FCC verifying the proposed use has been approved by the FCC." The Department will revise OAR 141-126-0160(16) to the following: "The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessees of the communication site of the equipment modifications for review

to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the FCC that the proposed frequency change has been approved by the FCC. The Federal Communications Act comprehensively regulates frequency interference". The Department is not regulating frequencies, but simply ensuring that FCC has approved frequencies being used at a communication site.

5. *The Department should schedule one or more workshops to address concerns with the proposed rules.*

The Department is confident that it has addressed the concerns raised to its fullest ability while still maintaining our core mission.

September 3, 2024

VIA E-MAIL

Ms. Danielle Boudreaux
Rules Coordinator
Department of State Lands
775 Summer St. NE, Suite 100
Salem, OR 07301
Rules@dsl.oregon.gov

Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land, 2024 Revisions

Dear Ms. Boudreaux:

CTIA[1] submits the following comments regarding the Department of State Lands' (the "Department's") July 30, 2024 Notice of Proposed Rulemaking and accompanying proposed regulations (the "Proposed Rules") regarding siting on state-owned lands.

CTIA appreciates the Department's willingness to work collaboratively with stakeholders to improve the Proposed Rules. CTIA previously commented on the Proposed Rules in 2022,[2] after which the Department issued revisions as well as a summary document describing its rationale.[3] In its 2022 Comments, CTIA emphasized the need for removing barriers to broadband deployment. That need has only intensified as a result of the steady increase in

[1] CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless providers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

[2] CTIA Letter Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land, July 31, 2022 ("2022 Comments").

[3] State of Oregon Department of State Lands, OAR 141-126 Rulemaking Public Comments and Agency Response, March 2023 ("Agency Response"). Because the Proposed Rules were not submitted for subsequent legislative consideration in 2023, CTIA has not had the opportunity to comment on the 2023 revisions until present, so it takes the 2023 and 2024 revisions together herein.

consumer demand for broadband. 2022 saw the greatest increase in mobile data traffic on record, nearly double the year-over-year increase from 2020 to 2021. The nation's wireless networks supported more than 73.7 trillion MB of data traffic that year.[4] To keep pace with this demand, wireless investment increased for the fifth year in a row, with a historic $39 billion invested in wireless networks —up nearly 12% from the previous year's record setting total.[5]

CTIA appreciates the Department's willingness to incorporate stakeholder feedback in the revisions of the Proposed Rules. In particular, the Proposed Rules now appropriately treat "macro cellular facilities" and qualifying "small wireless facilities" ("SWF") differently, putting them on a different schedule of fees for leasing and applications.

CTIA remains concerned, however, many provisions in the Proposed Rules would create significant barriers to deployment on Department-managed lands, and offers the following suggestions for the Department:

- The Department should reduce its fees for larger facilities and co-locations and make clear that its annual fees represent a cap on rents, not a minimum;
- The Department should clarify the Proposed Rules to include fixed wireless access within its definitions;
- The Department should implement "shot clock" timelines for applications – not applicants – in accordance with the FCC's rules; and
- The Department should eliminate its regulation of radiofrequency interference in the Proposed Rules, which infringes on the FCC's exclusive authority to address any such conflicts.

Given the scope of these changes, CTIA also asks the Department to schedule a workshop (or workshops) to better address these issues.

By taking these steps to refine the Proposed Rules, the Department will help remove barriers to deployment and promote certainty in investment, helping it better meet its stated goal of increasing broadband access to underserved communities in Oregon.

[4] CTIA, "2023 Annual Survey Highlights" (July 25, 2023), *available at* https://www.ctia.org/news/2023-annual-survey-highlights.

[5] *Id.*

I. THE DEPARTMENT SHOULD REDUCE FEES FOR LARGER CELLULAR FACILITIES AND REVISE THE PROPOSED RULES TO ESTABLISH MAXIMUM, NOT MINIMUM, ANNUAL FEES.

CTIA appreciates that the Department has nominally lowered its proposed leasing fees from previous revisions of the rules. Unfortunately, these changes may not have any impact because the Proposed Rules continue to treat these fees as a floor, rather than a ceiling, on siting rents.

Proposed Rule 141-126-0150 states that the annual fees are merely a "minimum base amount" that not only will automatically increase by three percent every year to reflect inflation, but can be set even higher: "The Department reserves the right to establish the base annual compensation in amounts that may be greater than the minimum base annual compensation." As a result, there is no practical impact of the changes to the fees because, as before, there is no upper bound on what they can be. Moreover, the Proposed Rules are unclear on how the Department will set the fees and when in the process applicants will be apprised of the cost of their potential deployment, creating massive uncertainty that could deter providers from investment.

The issue is more pronounced for small wireless facilities, for which the FCC has established $270 as the maximum at which annual fees are presumptively reasonable.[6] The Proposed Rules not only allow for higher fees but ensure that the annual fee for a small wireless facility will exceed the FCC's safe harbor no later than a year after siting. Under the FCC's rules, fees above $270 require the Department to "demonstrat[e] that the fee is a reasonable approximation of cost that itself is objectively reasonable."[7]

And despite the improvements in the revisions to the Proposed Rules, annual fees for both macro cellular sites as well as collocations are still high, even at the "base rent" level, and could be prohibitive to deployment – and prohibited by federal law, to the extent that they discriminate between telecommunications providers.

The Department proposes to charge an annual fee of $10,000 for a non-SWF "cellular" facility. While this is less than the Department's 2022 proposal for a $20,000 annual fee, it is still more than the tiered $4,000-$8,000 annual fees for a "commercial" facility which are to be based on the population of the county where the facility is constructed. This would mean that in

[6] *See In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, Report and Order, 33 FCC Rcd 9088 (Sep. 27, 2018) ("2018 FCC Small Cell Order").

[7] *Id. at* n. 214.

counties with small populations, a commercial facility would pay the Department $2,000 annually while a cellular facility would pay $10,000 – five times as much.

The fee distinction the Department intends to draw between these terms is unclear given that a "cellular" facility is a subset of a "commercial uses" under the Department's definitions. In any event, the distinction would be arbitrary because both cellular and non-cellular facilities use antennas mounted on towers or other structures, and they both receive and transmit communications. Nor are cellular antennas larger or more complex than all other types of antennas.

Without a valid reason, this policy of charging different rates for wireless facilities than other types of communications facilities would violate 47 U.S.C. §253 on its face, which only allows states to require fair and reasonable compensation from telecommunications providers for use of public rights-of-way "on a competitively neutral and nondiscriminatory basis."[8] The fees for larger cellular facilities should thus align with those for other commercial facilities.

With regard to co-locations, co-locators would have to pay a minimum annual rent of 25 percent of the annual rent that the lessor pays to the Department – *i.e.*, at least $2,500 (with no upper bound.) Again, the Department supplies no basis for this fee, and the FCC and courts have found that such large government-imposed fees deter investment in new infrastructure.[9] Moreover, the Department would already be collecting the annual fee from the pre-existing site user. Double- or triple-charging for the same facility is unwarranted given that the Department should incur no additional costs because there is no new facility to occupy space or require maintenance.

While the Department notes that the fees generate revenue for the Oregon's Common School Fund, courts have invalidated fees that similarly seek to raise revenues without being based on the costs governments incur to oversee granting siting applications and overseeing deployment. These courts have found that where fees are revenue-based and bear no relationship to governmental costs, they can effectively prohibit communications service in violation of federal law.[10]

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[8] 47 U.S.C. §253(c).

[9] *See* 2018 FCC Small Cell Order at para. 41 *et seq.*

[10] *See, e.g., City of Portland v. United States,* 969 F.3d 1020, 1039 (9th Cir. 2020) ("The statute requires that compensation be 'fair and reasonable"; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs."); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003) ("Thus, to meet the definition of "fair and reasonable compensation" a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications

Accordingly, CTIA asks that the Department make the following revisions to the proposed rules:

- Set cost-based, predictable, maximum annual fees for all categories of wireless facilities.
- Clarify that annual fees may not be increased over the term of a lease.
- Reduce the annual fee for macro cellular facilities to track the tiered base amounts for "commercial" facilities:
    - $4,000 for facilities in counties with a population of less than 50,000.
    - $6,000 for facilities in counties with a population of 50,000-150,000.
    - $8,000 for facilities in counties with a population of more than 150,000.
- Reduce the additional rental fees that co-locators must pay to no more than $1,000.

II. THE DEPARTMENT SHOULD MODIFY THE PROPOSED RULES TO CLARIFY THE STATUS OF FIXED WIRELESS ACCESS.

CTIA appreciates the steps the Department took in its 2023 revisions to the Proposed Rules to separate larger wireless facilities from small cells. The Department should maintain these improvements, which better reflect the nature of modern wireless siting, in the Proposed Rules.

The Department should, however, clarify its definitions to ensure that sites supporting fixed wireless access, which is a significant part of the modern wireless ecosystem, are not treated as "commercial" under the Department's definition. In general, the term "cellular" communications is both dated and narrow with regard to wireless facilities, and the Department should consider replacing it with a broader term like "wireless communications services." At minimum, though, the Department should clarify the definition of "Cellular Communications" in the Proposed Rules to explicitly include fixed wireless access.

III. THE DEPARTMENT SHOULD STREAMLINE APPLICATION PROCEDURES, INCLUDING REVISING ITS IMPLEMENTATION OF "SHOT CLOCK" TIMELINES TO REFLECT THE FCC'S FOCUS ON REDUCING APPLICATION DELAYS.

In its 2022 Comments, CTIA noted the Proposed Rules had indeterminate timelines for application processing and urged the Department to amend the Proposed Rules to align them with the FCC's "shot clock" timelines for siting: to complete application review within

provider makes use of the rights-of-way. . . [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry.").

150 days for new macro sites (90 days for co-locations) and 90 days for small wireless facilities (60 days for co-locations).[11] In response, the Department revised the Proposed Rules to reduce the time that applicants are required to file an application in advance of a proposed deployment. In the Agency Response, the Department noted that "the timelines for the Department to process an application have been adjusted to conform with the FCC's 2009 and 2018 declaratory rulings on "shot clocks" for both macro cellular and small wireless facilities."[12] Unfortunately, the Department's revisions to the Proposed Rules did not accomplish this.

The FCC's "shot clock" timelines are imposed *on a reviewing agency*, not an applicant. While the Proposed Rules require an applicant to file an application 60/90/150 days in advance of a proposed deployment, nothing in the Proposed Rules guarantees that an applicant will know whether it is approved to deploy at the end of that period.

At present, the Proposed Rules do not set any deadline for the Department to seek public comment, respond to any such comments, and act on an application. This creates significant uncertainty for an applicant, as its application may be delayed for any length of time - potentially creating significant delays for broadband deployment, as the FCC has noted.

Accordingly, CTIA asks that the Department amend the Proposed Rules to make clear that the Department must approve or deny (with cause) an application within the timelines indicated.

IV. THE DEPARTMENT SHOULD ELIMINATE REGULATION OF RADIOFREQUENCIES FROM THE PROPOSED RULES TO COMPLY WITH THE FCC'S EXCLUSIVE JURISDICTION.

Proposed Rule 141-16-0160(16) requires the lease holder to notify the Department of "any equipment modifications resulting in a change of frequency." The Department will then notify other users, and the leaseholder "must resolve the frequency issue." Further, Proposed Rule 141-16-0140 (8b) and Proposed Rule 141-16-0160(16) directly address frequency conflicts and require that the applicant provide documentation from the FCC that the proposed use or frequency change "will not interfere with existing uses at the communication site". These provisions are contrary to federal law and should be eliminated.

[11] *See* 2022 Comments at 11-12.

[12] Agency Response at 5.

The federal Communications Act preempts states and localities from regulating the use of radio frequencies, granting that authority exclusively to the FCC.[13] The FCC has "exclusive authority over technical matters" relating to use of radiofrequency spectrum,[14] and the FCC's exclusive occupation of the field of radiofrequency spectrum regulation and usage under Title III of the Communications Act is a bedrock principle in communications law.[15]

The FCC has set specific power and other limits on the frequencies that wireless service providers can use and addresses interference issues that may arise. This federal regime is designed to ensure that all wireless services can coexist and that problems can be quickly resolved.

By requiring leaseholders to resolve any complaints from other frequency users under the Proposed Rules and provide documentation of "frequency compliance," the Department is setting conditions for lease approval based on jurisdiction it does not have. Denying leases on these grounds is not an issue of notification, as the Department suggests in the Agency Response – it is squarely one of regulation. In the Agency Response, the Department notes that it "has had complaints in the past about interference from other user's new frequencies."[16] But it is unlawful for the Department to handle such complaints – only the FCC may do so.

The Proposed Rules put all the onus for avoiding interference on the leaseholder/applicant. But it may well be the complainant that is in violation of the FCC's rules by infringing on licensed use. Or it may be the case that – such as for certain bands of unlicensed spectrum – all parties are required to *accept* interference under the FCC's rules. But by requiring the applicant to show that its uses do not interfere with any others, the Department is not just impermissibly regulating interference disputes, it is adjudicating them without the facts.

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[13] *See* 47 U.S.C. § 303.

[14] *New York SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 105 (2d Cir. 2010) (citation and internal quotations omitted); *see also Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 430 n.6 (1963). ("[T]he Commission's jurisdiction over technical matters such as a frequency allocation … is clearly exclusive").

[15] *See, e.g.*, *Cellco P'Ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012) (quoting *NBC v. United States*, 319 U.S. 190 (1943)). *See also Southwestern Bell Wireless Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185, 1190 (10th Cir. 1999); *Freeman v. Burlington Broadcasters Inc.*, 204 F.3d 311, 320 (2d Cir. 2000); *Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 997 (6th Cir. 1994).

[16] Agency Response at 6.

It is an applicant's responsibility to comply with the FCC's rules regarding frequency management, just as it is for all frequency users. The FCC has a public portal to handle interference complaints and an Enforcement Bureau that resolves such issues.

Additionally, as a practical matter, it is nearly inconceivable that a lease applicant would be able to produce FCC documentation demonstrating the proposed use or frequency change "will not interfere with existing uses at the communication site". The FCC does not offer such documentation. To the extent that the Department is interested in identifying licensed users of a spectrum band, that information is made publicly available by the FCC through its Universal Licensing System search function.

Accordingly, the Proposed Rules should be amended to eliminate regulation of RF interference, which authority is exclusively vested in, and is already comprehensively regulated by, the FCC. To the extent the Department is receiving any complaints regarding frequency interference issues, the Department should inform complainants that the proper forum for such issues is the FCC. CTIA suggests that, to the extent the Department is still concerned with such issues, it simply include a clause requiring lessees to comply with all applicable federal regulations for operation of their telecommunications equipment.

V. THE DEPARTMENT SHOULD SCHEDULE ONE OR MORE WORKSHOPS TO ADDRESS CONCERNS WITH THE PROPOSED RULES.

While CTIA appreciates that a public hearing was held on the Proposed Rules, that venue was extremely limited for productive discussion, with speakers limited to three minutes and no real discussion between the Department and stakeholders. Given the significant impact of the Proposed Rules on telecommunications siting and the concerns voiced herein, CTIA asks the Department to schedule at least one workshop following the comment round to allow stakeholders and the Department to meet collaboratively and discuss the issues raised over the course of this proceeding.

VII. CONCLUSION.

CTIA appreciates the opportunity to express its concerns with the Proposed Rules and urges the Department to make the revisions discussed herein in order to better meet the Department's goal of promoting broadband access in Oregon. While CTIA encourages the Department to schedule a workshop to gather all stakeholders to discuss these issues in a more formal setting, to the extent the Department has any questions regarding these

changes, or needs more information regarding issues related to wireless technology, CTIA remains available as a resource and would be happy to meet with the Department on an informal basis to answer questions and discuss any concerns prior to submission of the Proposed Rules to the Legislature.

Sincerely,

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DEPARTMENT OF STATE LANDS

Division 126, Communication Site Facilities, Proposed Rule
Lease Rates and Fee Schedule

The following tables present the lease rates and fee schedules for communication site facility leases under the proposed rules for OAR 141-126. The Division 126 rules would establish distinct administrative rules for communication site facilities located on school lands – lands owned by the people of Oregon that generate revenue for the state's Common School Fund.

Lease Rates

Use Type	Specific Use	Minimum Compensation Rate	Co-Location* Minimum Compensation Rate
Non-commercial	Personal/research/scientific	$750/year or a one-time negotiated payment	$500 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	Local or county government and emergency services	$3,000/year	$750 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	State, Federal, or Tribal government or emergency services	$4,500/year	$1,125 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	Non-profit/non-commercial	$3,000/year	$750/year or 25% of fee charged to co-locator per year, whichever is greater
Commercial	Small commercial	$4,000/year	$1,000/year or 25% of fee charged to co-locator per year, whichever is greater
	Medium commercial	$6,000/year	$1,500/year or 25% of fee charged to co-locator per year, whichever is greater
	Large commercial	$8,000/year	$2,000/year or 25% of fee charged to co-locator per year, whichever is greater
Wireless Cellular Communications	Macro	$10,000/year	25% of fee charged to co-locator per year
	Small wireless facility	$270/year	$100/year

Note: The Department reserves the right to establish a base compensation rate greater than the minimum annual base compensation. Minimum compensation rate and minimum co-locator compensation rate will increase annually by three percent (3%) for every year.

**Co-location:* When more than one entity shares the same communication site facility.

DEPARTMENT OF STATE LANDS

Fee Schedule

Fees for lease applications and assignments

Use Type and Specific Use		Application fees				Assignment fee
		New or renewed lease with changes	Lease renewal with no changes	Co-location lease (new and renewal)	Lease modification	
Non-commercial	Personal/research/ scientific	$375	$375	$375	$250	$250
	Local or county government and emergency services	$750	$375	$375	$250	$250
	State, Federal, or Tribal government or emergency services	$750	$375	$375	$250	$250
	Non-profit/non-Commercial	$750	$375	$375	$250	$250
Commercial	Small commercial	$1,000	$500	$500	$500	$500
	Medium commercial	$1,000	$500	$500	$500	$500
	Large commercial	$1,000	$500	$500	$500	$500
Wireless Cellular Communications	Macro	$1,500	$750	$750	$500-$750[1]	$750
	Small wireless facility	$500 for up to 5 SWF, $100 per additional SWF		$100	$250-$500[2]	$250

[1] When modification results in change of frequency only: $500. When modification results in enlargement of lease area or change in buildings or towers: $750.

[2] When modification results in change of frequency only: $250. When modification results in enlargement of lease area or change in structures or poles: $500.

Oregon
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State Land Board

Regular Meeting
December 10, 2024
Agenda Item 2b

SUBJECT
Rules for special uses on State-owned land.

ISSUE
Whether the State Land Board should approve proposed amendments to the special use rules in OAR 141-125 to remove rules guiding communication sites and instead establish and expand them in a new division (OAR 141-126) to better serve the complex and rapidly evolving industry.

AUTHORITY
The Oregon Constitution, Article VIII, Section 5, specifies that the State Land Board is responsible for managing Common School Fund lands.

ORS 273.041 to 273.071; authorizes the Department of State Lands to exercise the administrative functions of the State Land Board, relating to the general powers and duties of department and board.

BACKGROUND
Administrative rules in OAR 141-125 authorize a wide range of special uses on State-owned land, including, but not limited to: agriculture, scientific experiments and demonstration projects, recreational cabins, parking lots, upland quarries, and more

In February 2021, the State Land Board authorized the Department of State Lands to initiate permanent rulemaking to amend the administrative rules in OAR 141-125 to remove rules specific to communication sites, and instead establish updated rules in a new division: OAR 141-126. Upon adoption of Division 126 rules, amendment of the

Division 125 rules becomes necessary to remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

Additionally, this amendment also proposes the removal of several unnecessary references to range management as well as a duplicative section on competitive bidding.

PUBLIC INVOLVEMENT

As part of the public process for creating Division 126 rules, the Department took into consideration public comment, as well as input from a Rulemaking Advisory Committee (RAC), other local and state agencies, and Tribal governments during this rulemaking process. This engagement was focused on the communication site rules being amended or created in Division 126, and in tandem with that process the minor amendments in Division 125 were also circulated for review.

Notice of Proposed Rulemaking was filed with the Secretary of State's office on June 15, 2022. The public review and comment period was held from July 1, 2022, to July 31, 2022, with a public hearing held virtually on July 21, 2022.

The Department issued a news release to Oregon media and emailed a public notice to inform interested parties of the public review and comment opportunity. House Speaker Dan Rayfield and Senate President Peter Courtney were notified of the proposed rulemaking. All materials were posted to the DSL website: https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx.

In total, the Department received 0 comments related to Division 125.

Comments were received on communication site rules in Division 126, and a summary and materials of can be found in Agenda Item 2a of the Land Board meeting packet.

RECOMMENDATION

The Department recommends that the Land Board adopt the proposed amendments to OAR 141-125, Administrative Rules for Authorizing Special Uses on State-Owned Land. If adopted, the proposed amendments will go into effect immediately upon filing.

APPENDICES

A. Final Rules
B. Notice of Proposed Rulemaking including the Statement of Need and Fiscal Impact and Draft Rules

Department of State Lands

Chapter 141

Division 125
ADMINISTRATIVE RULES FOR AUTHORIZING SPECIAL USES ON STATE-OWNED LAND

141-125-0100
Purpose And Applicability

(1) These rules:

(a) Apply to the management of state-owned Trust and Non-Trust Land for special uses.

(b) Establish a process for authorizing such uses through the granting of leases, licenses and, short-term access authorizations (hereafter collectively referred to as a special use authorization).

(c) Do not apply to the granting of proprietary authorizations for uses specifically governed by other Department administrative rules

(2) A special use is one not governed by other Department administrative rules. Special uses include, but are not limited to, using state-owned land (including historically filled land) for:

(a) Agriculture;

(b) Industrial, business, commercial and residential purposes;

(c) Native seed harvesting;

(d) Scientific experiments and demonstration projects;

(e) Conventions, sporting and other events;

(f) Recreational cabins;

(g) Commercial outfitting and guiding services;

(h) Motion picture filming and set construction;

(i) Renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations, geothermal resources installations and biomass generating facilities, and their related transmission lines within the authorized area;

(j) Removal of semiprecious stones, petrified wood and fossils for commercial purposes;

(k) Parking lots;

(l) Materials and equipment storage;

(m) Warehouses;

(n) Marine service and repair facilities on state-owned upland;

(o) Resorts and recreational facilities;

(p) Golf courses;

(q) Upland quarries;

(r) Geological investigations;

(s) Liquefied natural gas receiving plants;

(t) Removal of juniper and other trees, plants or biomass for commercial use; and

(u) Removal of sunken logs, woody debris and abandoned pilings for their commercial value.

(3) The Director may determine other uses and developments similar to those specified in OAR 141-125-0100(2) that are also subject to a special use authorization and these rules.

Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:
DSL 1-2017, f. & cert. ef. 1-12-17
DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15
DSL 3-2008, f. & cert. ef. 10-15-08
DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0110
Policies

No changes to the rule text

141-125-0120
Definitions

(1) “Agriculture” means the cultivation of land to grow crops or the raising of livestock.

(2) “Applicant” is any person applying for a special use authorization.

(3) “Appraised Value” means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.

(4) “Asset Management Plan” is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of the Common School Fund’s real estate assets.

(5) “Authorized” is the area of state-owned land defined in the special use authorization for which a use is authorized.

(6) “Biomass” refers to renewable organic matter such as agricultural crops and residue, wood and wood waste, animal and human waste, aquatic plants and organic components of municipal and industrial wastes.

(7) “Biomass Generating Facility” includes, but is not limited to the furnaces, boilers, combustors, digesters, gasifers, turbine systems and other related equipment used to produce electricity, steam, heat, or biofuel from biomass.

(8) "By-Products" means all commercially valuable products other than heat energy obtained in conjunction with the development of Geothermal Resources excluding oil, hydrocarbon gas, and other hydrocarbon substances.

(9) “Commercial” means a use that results in or is associated with any monetary consideration or gain.

(10) “Commercial Electrical Energy Generating Installation”

(a) Is any electrical energy generating facility:

(A) Operated as a commercial venture (as contrasted to being operated as a demonstration project);

(B) Connected to the regional power grid and used to meet local or regional demand for electricity; or

(C) Used to meet all or part of the electricity demand by a person who may otherwise have to purchase the electricity produced by the facility from another source.

(b) Does not include any solar, wind or hydroelectric devices operated by a person who uses them to generate electricity for their home and who sells excess self-generated electricity back to a utility under a net metering agreement.

(11) “Comparative compensatory payment” is the amount of money paid to the owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant’s requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.

(12) “Compensation” or “Compensatory Payment” is the amount of money paid for a special use authorization to the Department for the use of Department-managed land.

(13) “Construction Period” as applied to wind, geothermal resources and solar energy projects is the time during which construction of the commercial electrical energy generating installation is underway.

(14) “Cropshare” is a method of determining the compensation to be paid by a lessee for the use of state-owned land for agricultural purposes in which the owner of the land receives a pre-agreed percentage of the value of the crop at the time it is harvested or sold.

(15) “Demonstration Project” is a limited duration activity of less than three years designed primarily to investigate or test the economic and technological viability of a concept or use of state-owned land under a license granted by the Department.

(16) “Department” means the Department of State Lands.

(17) “Development” is any structure (for example, a communications or cellular tower, shed or barn, fence, irrigation system, wind turbine, solar mirror or recreational cabin) authorized by the Department on an area of state-owned land managed by the Department.

(18) “Director” means the Director of the Department of State Lands or designee.

(19) "Geothermal Resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas, or other hydrocarbon substances, but including specifically:

(a) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(20) “Historically Filled Lands” means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible land by artificial fill or deposit, and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible land by other than artificial fill or deposit.

(21) “Industrial, Business and Commercial Purpose” are uses of state-owned land not governed by other Department administrative rules. Such uses include, but are not limited to office buildings, manufacturing facilities, retail stores, outfitting and guide facilities and restaurants.

(22) “Lease” is a written authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions. The term of a lease is for one to 30 years.

(23) “Lessee” refers to any person having a special uses lease granted by the Department authorizing a special use on state-owned land managed by the Department.

(24) “License” is a written authorization issued by the Department to a person allowing the non-exclusive, short-term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use license has a maximum term of less than three years.

(25) “Licensee” refers to any person having a special use license granted by the Department authorizing a special use on state-owned land managed by the Department.

(26) “Materials and Equipment Storage” means the storage of logs, hay, containers, automobiles, coal, machinery or other items or materials on state-owned land (exclusive of rock, sand, gravel and silt derived from state-owned submerged and submersible land which are governed by other administrative rules).

(27) “Non-Trust Land” is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(28) “Operation Period” as applied to wind, solar, geothermal resources and biomass energy projects begins when the delivery of electricity from the commercial electrical generating installation begins.

(29) “Outfitting and Guiding Services” include, but are not limited to commercial businesses involved in leading, protecting, instructing, training, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone for use in outdoor recreational activities does not constitute commercial outfitting and guiding services.

(30) “Person” includes individuals, corporation, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.

(31) “Preference Right” means a riparian property owner’s statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner’s property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area.

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

(33) “Recreational Cabin” is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).

(34) “Semiprecious Stones” are gemstones having a commercial value that is less than precious stones such as diamonds, rubies, emeralds and sapphires. Semiprecious stones include, but are not limited to amethyst, garnet, jade, sunstone, topaz, tourmaline and zircon.

(35) “Short Term Access Authorization” is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-125-0205.

(36) “Solar Energy Installation” includes, but is not limited to the photovoltaic panels, mirrors, power towers, heat engines, generators, transformers, inverters, parabolic troughs and other equipment required to produce electricity from solar energy.

(37) “Special Use” is a use of state-owned land not specifically governed by other Department administrative rules. Special uses are listed in OAR 141-125-0100(2) and (3).

(38) “Special Use Authorization” is a lease, license or short-term access authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions.

(39) “State Owned Land” is land owned or managed by the Department or its agents and includes Trust and Non-Trust Land.

(40) “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.

(41) “Submersible Land” means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(42) “Sunken Log, Woody Debris and Abandoned Piling Salvage” means the retrieval of sunken logs, woody debris and abandoned pilings lying on, or partially or wholly embedded in state-owned land underlying Oregon’s rivers and lakes that are removed for their commercial value.

(43) “Territorial Sea” has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.

(44) “Trust Land” is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.

(45) “Upland Quarry” is a site on state-owned land from which rock, boulders, sand, gravel, silt or soil is removed for use for commercial and non-commercial purposes.

(46) “Wind Farm” is a facility consisting of wind turbines interconnected by an electrical collection system.

(47) “Wind Turbine” is a machine that converts the force of the wind into electrical energy. A wind turbine usually consists of one or more moving blades connected to an electrical generator that is mounted on a tower.

Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:
DSL 1-2017, f. & cert. ef. 1-12-17
DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15
DSL 3-2008, f. & cert. ef. 10-15-08
DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

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

No changes to the rule text

141-125-0140
Lease or License Application Review and Approval Process

No changes to the rule text

141-125-0150
Competitive Bidding Process

No changes to the rule text

141-125-0160
Compensation

(1) To establish the amount of annual compensation or minimum bid at auction, the Department will:

(a) Adhere to the policies contained in OAR 141-125-0110(1) and (2) of these rules, and

(b) Whenever practicable, base the amount on comparative compensatory payments for publicly or privately-owned parcels located as close as possible to the state-owned land requested by an applicant.

(2) In the event that reliable data concerning comparative compensatory payments are not available, the Department will select another method of determining the amount of compensatory payment or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop or product value, or percent of product produced.

(3) For the uses indicated in OAR 141-125-0160(4) through 141-125-0160(11), the Department will determine the amount of annual compensatory payment owed by the holder of a special use lease or license using the method(s) indicated.

(4) Agricultural Uses

As an alternative to basing the amount of compensation due for an agricultural use on comparative compensatory payments, the Department may, at its discretion, use a cropshare approach. If this methodology is used, the state's share will be no less than 25 percent of the value received by the holder of a special use lease or license in payment for each crop harvested from the authorized area.

(5) Upland Quarry

(a) The holder of a special use lease or license for an upland quarry must remit to the Department:

(A) Eight percent of the gross revenue received by the lessee or licensee from the sale of the rock, boulders, sand, gravel, silt or soil removed by the lessee or licensee, or

(B) The compensation rate in effect at the time of removal as provided in OAR 141-014 (Rules for Authorizing Leases and Licenses for the Removal or Use of Rock, Sand, Gravel and Silt Derived from State-Owned Submerged and Submersible Land) for “shorecast dredge spoils” if the lessee or licensee uses the rock, boulders, sand, gravel, silt or soil.

(b) Data concerning the quantity of rock, boulders, sand, gravel, silt or soil removed and sold, and the revenue received from any sales will be recorded and reported by the lessee or licensee to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(6)(a), the holder of a special use license or lease for an upland quarry is required to pay the compensation due for any easements (for example, roads leading into the quarry and power lines crossing state land) or other forms of authorization required by Department rules.

(6) Semiprecious Stones, Petrified Wood and Fossils

Any person removing semiprecious stones, petrified wood or fossils for commercial purposes must remit to the Department within 30 calendar days of the removal of any semiprecious stones, petrified wood and fossils:

(a) Compensatory payment in the amount of 10 percent of the market value of the semiprecious stones, petrified wood and fossils; and

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

(7) Retrieval of Sunken Logs, Woody Debris and Abandoned Pilings

(a) The holder of a special use license or lease to retrieve sunken logs, woody debris and abandoned pilings from state-owned submerged and submersible land for their commercial value must remit to the Department 10 percent of the gross revenue received by the lessee or licensee from the sale of any logs or lumber products produced from the logs.

(b) Data concerning the quantity of lumber recovered or sold and revenue received from any sales must be recorded and reported by the lessee or licensee to the Department on a basis to be set by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(8)(a), the holder an special use lease or license to retrieve sunken logs, woody debris and abandoned pilings must also pay the compensation due for any easements (for example, storage of logs on state-owned land) or other forms of authorization required by the Department.

(8) Wind Turbines/Wind Farms

(a) The holder of a special use lease or license must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) $500;

(ii) $5.00 per acre of land within the authorized area; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction period a one-time installation fee equal to $3,000 times the number of megawatts of nameplate rated capacity for each wind turbine to be installed as a part of that phase of the development.

(C) During the operation period:

(i) 2.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine during from the start of the operation through year 10;

(ii) 3.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 11 through year 15;

(iii) 4.0 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 16 until the termination of the operation of that turbine.

(D) During the decommissioning period:

An amount to be determined by the Director based on the compensation which could reasonably be expected to be received by the Department for the use of the land encumbered by the wind power project.

(b) Notwithstanding the provisions of OAR 141-125-0160(9)(a), the director reserves the right to establish another rate of compensation to be charged by the Department during the construction and operation periods based on factors unique to an operation (for example, distance of the operation from major transmission lines and variability of the wind) and comparative compensatory payments.

(c) The lessee or licensee will record and report the amount of electricity generated by each wind turbine and wind farm under lease as well as the gross revenue resulting from that generation on a basis to be determined by the Department and included as a provision of the lease. Gross revenue is defined as all revenues earned through the sale of the electricity by the lessee to purchasers.

(d) In the event the lessee or licensee consumes all, or a portion of the electricity generated by the wind turbine and wind farm, the Department will establish a value for that electricity based on what the lessee or licensee would have to pay a utility for the equivalent amount of electricity delivered to the lessee’s or licensee’s point of demand as well as information provided by the lessee.

(e) In addition to the compensation required under OAR 141-125-0160(9)(a) and (b) the holder of a lease or license for a wind turbine and wind farm is required to pay to the Department the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(9) Solar Energy Installation

(a) The holder of a special use lease or license for a solar energy installation must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) $500;

(ii) $5.00 per acre of land within the authorized area; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(10)(a) and

(b) The holder of a special use lease or license for solar energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(10) Geothermal Energy Installation

(a) The holder of a special use lease or license for a geothermal energy installation must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) $500 per year;

(ii) $5.00 per acre of land within the authorized area per year; or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects per year.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments. (i) The Director shall take into consideration current industry standards for annual comparative compensatory payments by reviewing the current Bureau of Land Management Code of Federal Regulations, current comparative compensatory payments received by other states, and comparative compensatory payments received by private landowners under free market conditions.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) Upon the sale, exchange or other disposition for value of by-products produced in conjunction with the production of Geothermal Resources under a license or lease, the holder shall pay royalties as follows:

(A) Demineralized water – A royalty on the sale of demineralized water shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:

(i) One percent of the gross sale price of demineralized water sold, exchanged, or otherwise disposed of for value in any calendar month; or

(ii) The comparative royalty rate received by other landowners for demineralized water regionally.

(B) Heavy metals, nonhydrocarbon gases, and miscellaneous precipitates -- A royalty on the sale of heavy metals, nonhydrocarbon gases, and miscellaneous precipitates shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:

(i) Five percent of the gross sale price of all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of for value in any calendar month; or

(ii) The comparative royalty rate received by other landowners for all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of regionally

(d) In addition to the compensation required under OAR 141-125-0160(11)(a), (b) and (c), the holder of a special use lease or license for a geothermal energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.

(11) Biomass Generating Facility

(a) The holder of a special use lease or license for a commercial electrical energy generating installation using biomass must remit to the Department:

(A) During the demonstration project period the greatest of:

(i) $500,

(ii) $5.00 per acre of land within the authorized area, or

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.

(c) In addition to the compensation required under OAR 141-125-0160(12)(a), the holder of a special use lease for biomass generating facility is required to pay the compensation due for any easements (for

example, transmission lines crossing state land) or other forms of authorization required by the Department.

(d) If the biomass used to fuel a generating facility is obtained from state-owned land, the Director will determine the amount of compensation owed by the lessee for the use of this material.

(12) Regardless of the type of use that is subject to a special use authorization, the amount of annual compensation received by the Department will not be less than:

(a) $500 per year for all leases;

(b) $100 per year for licenses; or

(c) The minimum bid when the lease is awarded through public auction.

Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5
History:
DSL 1-2017, f. & cert. ef. 1-12-17
DSL 3-2015, f. 11-9-15, cert. ef. 12-1-15
DSL 3-2008, f. & cert. ef. 10-15-08
DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02

141-125-0170
General Terms and Conditions

No changes to the rule text

141-125-0180
Insurance and Bond

No changes to the rule text

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

No changes to the rule text

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

No changes to the rule text

141-125-0205
Short Term Access Authorization Application Requirements, Review and Approval Process

No changes to the rule text

141-125-0210
Enforcement Actions; Civil Penalties and Other Remedies

No changes to the rule text

141-125-0220
Reconsideration of Decision

No changes to the rule text

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED
06/15/2022 5:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: ADMINISTRATIVE RULES FOR AUTHORIZING SPECIAL USES ON STATE-OWNED LAND

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/31/2022 11:59 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Allison Daniel
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Suite 100
Salem,OR 97301

Filed By:
Allison Daniel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/21/2022
TIME: 5:30 PM - 7:00 PM
OFFICER: Amber McKernan
ADDRESS: Department of State Lands
775 Summer St. NE
Suite 100
Salem, OR 97301
SPECIAL INSTRUCTIONS:
The public hearing will be held virtually via Zoom. Meeting links and call-in information are on the DSL website.

NEED FOR THE RULE(S)

Authorizations for Communication Site Facilities managed by the Department are currently administered by the Division 125 rules. With the adoption of the Division 126 rules, the Division 125 rules specific to Communication Site Facilities are no longer necessary.

Amendment of Division 125 rules is necessary to remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at sos.oregon.gov/archives/Pages/Oregon_administrative_rules.aspx or from the agency.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to

historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

The proposed amendments to Division 125 rules and the adoption of Division 126 rules establishes rules for the administration and authorization of communication site facility leases on state-owned lands. The proposed rules do not represent a substantive change in policy and will functionally have no impact on employees, employers, or anyone else doing business with the department. Thus, it is highly unlikely that the rule change will impact racial equity in the state.

The department will be closely monitoring implementation of the amended Division 125 rules and the proposed Division 126 rules to look for potential unintended consequences though, as noted above, the overall general impact of the rule change will be negligible.

FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate any additional administrative costs to the state with the adoption and changes to these rules. This includes administering the application process, working with the applicant and affected stakeholders, drafting all required authorizations, compliance monitoring, legal defense of agency decisions, and State Land Board review and approval as needed.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

It is anticipated that these rules will not have any fiscal impact on state agencies, units of local government, members of the public, or small businesses. We do not expect the revision of these rules to require any other governmental agencies to engage in rulemaking or to adopt subsequent code or ordinance. There is no expected increase in reporting, recordkeeping, and other administrative activities, including professional services for small business. There will be no additional costs of compliance resulting from equipment, supplies, labor, and administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Rulemaking Advisory Committee (RAC) included representatives from businesses and groups most likely to be impacted by these rule changes. Some of the affected stakeholders included, but are not limited to: wireless telecommunications representatives, current leaseholders, non-profit entities, state agencies, public utilities, Common School Fund beneficiaries, and federally recognized Tribes in Oregon.

Multiple small business representatives were invited to participate on the RAC but did not respond to the invite.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

141-125-0100, 141-125-0110, 141-125-0120, 141-125-0140, 141-125-0150, 141-125-0160, 141-125-0200

AMEND: 141-125-0100

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and

communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0100
Purpose And Applicability ¶

(1) These rules:¶
(a) Apply to the management of state-owned Trust and Non-Trust Land for special uses.¶
(b) Establish a process for authorizing such uses through the granting of leases, licenses and, short-term access authorizations (hereafter collectively referred to as a special use authorization).¶
(c) Do not apply to the granting of proprietary authorizations for uses specifically governed by other Department administrative rules¶
(2) A special use is one not governed by other Department administrative rules. Special uses include, but are not limited to, using state-owned land (including historically filled land) for:¶
(a) Agriculture;¶
(b) ~~Communications facilities;¶~~
~~(c)~~ Industrial, business, commercial and residential purposes;¶
(~~d~~c) Native seed harvesting;¶
(~~e~~d) Scientific experiments and demonstration projects;¶
(~~f~~e) Conventions, sporting and other events;¶
(~~g~~f) Recreational cabins;¶
(~~h~~g) Commercial outfitting and guiding services;¶
(~~i~~h) Motion picture filming and set construction;¶
(~~j~~i) Renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations, geothermal resources installations and biomass generating facilities, and their related transmission lines within the authorized area;¶
(~~k~~j) Removal of semiprecious stones, petrified wood and fossils for commercial purposes;¶
(~~l~~k) Parking lots;¶
(~~m~~l) Materials and equipment storage;¶
(~~n~~m) Warehouses;¶
(~~o~~n) Marine service and repair facilities on state-owned upland;¶
(~~p~~o) Resorts and recreational facilities;¶
(~~q~~p) Golf courses;¶
(~~r~~q) Upland quarries;¶
(~~s~~r) Geological investigations;¶
(~~t~~s) Liquefied natural gas receiving plants;¶
(~~u~~t) Grazing on land other than that designated as rangeland;¶
(~~v~~u) Removal of juniper and other trees, plants or biomass for commercial use; and¶
(~~w~~v) Removal of sunken logs, woody debris and abandoned pilings for their commercial value.¶
(3) The Director may determine other uses and developments similar to those specified in OAR 141-125-0100(2) that are also subject to a special use authorization and these rules.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

AMEND: 141-125-0110

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0110
Policies ¶

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."¶
(2) All Trust Land will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.¶
(3) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a special use authorization on state-owned land.¶
(4) ~~The use of state-owned land for the placement of communications facilities is recognized by the Department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.¶~~
~~(5)~~ Each individual use of, or development placed on state-owned land will constitute a separate discrete activity subject to payment of compensation as required by these or other applicable Department rules, or as determined by the Director.¶
(~~6~~5) Uses of, and developments placed in, on or over state-owned land pursuant to a special use authorization will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.¶
(~~7~~6) The Department will not grant a special use authorization if it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area. Such a determination will be made by the Department after consulting with holders of leases, licenses, permits and easements granted by the Department in the requested area, and other interested persons.¶
(~~8~~7) All uses subject to these rules must be authorized by a special use authorization issued by the Department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.¶
(~~9~~8) The Department may:¶
(a) Conduct field inspections to determine if uses of, and developments in, on or over state-owned land are authorized by, or conform with the terms and conditions of a special use authorization and, if not,¶
(b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a special use authorization are either brought into compliance with the requirements of these rules or removed.¶
(~~10~~9) The Department will honor the terms and conditions of any existing valid lease or license for a special use granted by the Department including any that entitle the lessee or licensee to renewal if the holder of the authorization has complied with all terms and conditions of the authorization and applies to the Department for a renewal as prescribed in these rules.¶
(~~11~~0) Holders of a license to conduct a demonstration project for a land-based (that is, not on state-owned submerged and submersible land) wind farm geothermal resource installation or solar energy installation will be given the first right to apply for a lease for the area authorized under the license.¶
(~~12~~1) The Department may, at its discretion, authorize a demonstration project for a land based renewable energy project as part of a lease with the commercial electrical energy generating installation.¶
(~~13~~2) The Department may, at its discretion, deny a special use authorization if the applicant's financial status or past business practices, or both, indicate that the applicant may not:¶
(a) Be able to fully meet the terms and conditions of a special use authorization offered by the Department; or¶
(b) Use the land applied for in a way that meets the provisions of OAR 141-125-0110.¶
(~~14~~3) Notwithstanding the provisions of ORS 274.885, the Department will not allow or authorize the removal of kelp or other seaweed for commercial purposes.¶
(~~15~~4) Notwithstanding the provisions of these rules, the Department may:¶
(a) Initiate projects involving special uses of, or developments in, on or over the land it manages by itself or in conjunction with other persons;¶
(b) Request proposals for special uses of, or developments on land it manages and select and award a lease

through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-125-0110; and¶
(c) Negotiate and accept compensation in the form of services in lieu of monetary payments provided for in these rules.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5

AMEND: 141-125-0120

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0120
Definitions ¶

(1) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.¶
(2) "Applicant" is any person applying for a special use authorization.¶
(3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.¶
(4) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of the Common School Fund's real estate assets.¶
(5) "Authorized" is the area of state-owned land defined in the special use authorization for which a use is authorized.¶
(6) "Biomass" refers to renewable organic matter such as agricultural crops and residue, wood and wood waste, animal and human waste, aquatic plants and organic components of municipal and industrial wastes.¶
(7) "Biomass Generating Facility" includes, but is not limited to the furnaces, boilers, combustors, digesters, gasifers, turbine systems and other related equipment used to produce electricity, steam, heat, or biofuel from biomass.¶
(8) "By-Products" means all commercially valuable products other than heat energy obtained in conjunction with the development of Geothermal Resources excluding oil, hydrocarbon gas, and other hydrocarbon substances.¶
(9) "Commercial" means a use that results in or is associated with any monetary consideration or gain.¶
(10) "Commercial Electrical Energy Generating Installation"¶
(a) Is any electrical energy generating facility:¶
(A) Operated as a commercial venture (as contrasted to being operated as a demonstration project);¶
(B) Connected to the regional power grid and used to meet local or regional demand for electricity; or¶
(C) Used to meet all or part of the electricity demand by a person who may otherwise have to purchase the electricity produced by the facility from another source.¶
(b) Does not include any solar, wind or hydroelectric devices operated by a person who uses them to generate electricity for their home and who sells excess self-generated electricity back to a utility under a net metering agreement.¶
(11) ~~"Communications Facility" consists of the towers, antennas, dishes, buildings and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross state-owned land to serve a communications facility, however, are governed by the administrative rules for granting easements on state-owned land.~~¶
~~(12)~~ "Comparative compensatory payment" is the amount of money paid to the owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.¶
(13~~2~~) "Compensation" or "Compensatory Payment" is the amount of money paid for a special use authorization to the Department for the use of Department-managed land.¶
(14~~3~~) "Construction Period" as applied to wind, geothermal resources and solar energy projects is the time during which construction of the commercial electrical energy generating installation is underway.¶
(15~~4~~) "Cropshare" is a method of determining the compensation to be paid by a lessee for the use of state-owned land for agricultural purposes in which the owner of the land receives a pre-agreed percentage of the value of the crop at the time it is harvested or sold.¶
(16~~5~~) "Demonstration Project" is a limited duration activity of less than three years designed primarily to investigate or test the economic and technological viability of a concept or use of state-owned land under a license granted by the Department.¶
(17~~6~~) "Department" means the Department of State Lands.¶
(18~~7~~) "Development" is any structure (for example, ~~a communications or cellular tower,~~ shed or barn, fence, irrigation system, wind turbine, solar mirror or recreational cabin) authorized by the Department on an area of state-owned land managed by the Department.¶
(19~~8~~) "Director" means the Director of the Department of State Lands or designee.¶

(~~20~~19) "Geothermal Resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas, or other hydrocarbon substances, but including specifically:¶
(a) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;¶
(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;¶
(c) Heat or other associated energy found in geothermal formations; and¶
(d) Any by-product derived from them.¶
(2~~1~~0) "Historically Filled Lands" means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible land by artificial fill or deposit, and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible land by other than artificial fill or deposit.¶
(2~~2~~1) "Industrial, Business and Commercial Purpose" are uses of state-owned land not governed by other Department administrative rules. Such uses include, but are not limited to office buildings, manufacturing facilities, retail stores, outfitting and guide facilities and restaurants.¶
(2~~3~~2) "Lease" is a written authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions. The term of a lease is for one to 30 years.¶
(2~~4~~3) "Lessee" refers to any person having a special uses lease granted by the Department authorizing a special use on state-owned land managed by the Department.¶
(2~~5~~4) "License" is a written authorization issued by the Department to a person allowing the non-exclusive, short-term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use license has a maximum term of less than three years.¶
(2~~6~~5) "Licensee" refers to any person having a special use license granted by the Department authorizing a special use on state-owned land managed by the Department.¶
(2~~7~~6) "Materials and Equipment Storage" means the storage of logs, hay, containers, automobiles, coal, machinery or other items or materials on state-owned land (exclusive of rock, sand, gravel and silt derived from state-owned submerged and submersible land which are governed by other administrative rules).¶
(2~~8~~7) "Non-Trust Land" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.¶
(2~~9~~8) "Operation Period" as applied to wind, solar, geothermal resources and biomass energy projects begins when the delivery of electricity from the commercial electrical generating installation begins.¶
(3~~0~~29) "Outfitting and Guiding Services" include, but are not limited to commercial businesses involved in leading, protecting, instructing, training, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone for use in outdoor recreational activities does not constitute commercial outfitting and guiding services.¶
(3~~1~~0) "Person" includes individuals, corporation, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.¶
(3~~2~~1) "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area.¶
(3~~3~~2) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).¶
(3~~4~~3) "Rangeland" is state land designated and managed by the Department for rangeland purposes.¶
(3~~5~~4) "Rangeland Purpose" is the use of rangeland for livestock grazing or conservation use.¶
(3~~6~~5) "Recreational Cabin" is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).¶
(3~~7~~6) "Semiprecious Stones" are gemstones having a commercial value that is less than precious stones such as diamonds, rubies, emeralds and sapphires. Semiprecious stones include, but are not limited to amethyst, garnet, jade, sunstone, topaz, tourmaline and zircon.¶
(3~~8~~7) "Short Term Access Authorization" is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-125-0205.¶

(3~~9~~8) "Solar Energy Installation" includes, but is not limited to the photovoltaic panels, mirrors, power towers, heat engines, generators, transformers, inverters, parabolic troughs and other equipment required to produce electricity from solar energy.¶
(~~40~~39) "Special Use" is a use of state-owned land not specifically governed by other Department administrative rules. Special uses are listed in OAR 141-125-0100(2) and (3).¶
(~~41~~0) "Special Use Authorization" is a lease, license or short-term access authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions.¶
(~~42~~1) "State Owned Land" is land owned or managed by the Department or its agents and includes Trust and Non-Trust Land.¶
(~~43~~2) "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.¶
(~~44~~3) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.¶
(~~45~~4) "Sunken Log, Woody Debris and Abandoned Piling Salvage" means the retrieval of sunken logs, woody debris and abandoned pilings lying on, or partially or wholly embedded in state-owned land underlying Oregon's rivers and lakes that are removed for their commercial value.¶
(~~46~~5) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.¶
(~~47~~6) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.¶
(~~48~~7) "Upland Quarry" is a site on state-owned land from which rock, boulders, sand, gravel, silt or soil is removed for use for commercial and non-commercial purposes.¶
(~~49~~8) "Wind Farm" is a facility consisting of wind turbines interconnected by an electrical collection system.¶
(~~50~~49) "Wind Turbine" is a machine that converts the force of the wind into electrical energy. A wind turbine usually consists of one or more moving blades connected to an electrical generator that is mounted on a tower.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

AMEND: 141-125-0140

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0140
Lease or License Application Review and Approval Process ¶

(1) Upon receipt of an application for a lease or license, the Department will determine:¶
(a) If the application is complete;¶
(b) If the subject area is available for the requested use;¶
(c) What method will be used to determine the amount of compensation payable to the Department pursuant to OAR 141-125-0150 and 0160;¶
(d) If a lease or license under these rules is the required form of authorization, and¶
(e) If additional information is required concerning the:¶
(A) Proposed use of the state land; and¶
(B) Applicant's financial status, or past business or management practices, or both.¶
(2) The Department will then advise the applicant of its determination concerning each of the five factors in OAR 141-125-0140(1). Applications determined by the Department to be incomplete, or for an area in which the use would be incompatible will be returned to the applicant with a written explanation of the reason(s) for rejection.¶
(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the Department returned it to the applicant (as determined by the date of postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.¶
(4) If more than one application for a specific area is received by the Department for the same or conflicting uses subject to authorization by a lease, the Department may:¶
(a) Determine which proposed use best fulfills the policies specified in OAR 141-125-0110, and accept and proceed with that application and deny the others; or¶
(b) If neither use is determined by the Department to be demonstrably better, make the subject area available to the public by auction.¶
(5) Upon acceptance by the Department, the application will be circulated to various local, state and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permitees, and easement holders for review and comment. As a part of this review, the Department will specifically request comments concerning:¶
(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;¶
(b) Conformance of the proposed use with local, state, and federal laws and rules;¶
(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;¶
(d) Conformance with the policies described in OAR 141-125-0110 of these rules; and¶
(e) Potential conflicts of the proposed use with existing or proposed uses of the requested area.¶
(6) ~~If the application is for a communications facility, the Department will request comments from the Federal Communications Commission, Public Utility Commission of Oregon, and any other persons owning or leasing communications facilities who advise the Department that they want to receive such applications.¶~~
~~(7)~~ The Department may post a 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.¶
(~~8~~7) After receipt of comments concerning the proposed use, the Department will advise the applicant in writing:¶
(a) If changes in the use or the requested lease or license area are necessary to respond to the comments received;¶
(b) If additional information is required from the applicant, including but not limited to a survey of:¶
(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or¶
(B) Archaeological and historic resources within the requested area.¶
(c) If the area requested for the lease or license will be authorized for use by the applicant through a lease or license, and¶
(d) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-125-0150. Only requests for leases may be subject to competitive bidding.¶
(~~9~~8) If the Department decides to issue a lease to the applicant without competitive bidding, or a license, the

Department will notify the applicant in writing of:¶
(a) The amount of compensation pursuant to OAR 141-125-0160 that the applicant must remit to the Department to obtain the authorization;¶
(b) Any insurance and surety bond required by the Department pursuant to the requirements of OAR 141-125-0180; and¶
(c) A draft copy of the lease or license¶
(~~10~~9) The Department will not grant a lease or license to an applicant until:¶
(a) It has received all fees and compensation specified in these rules, and evidence of any required insurance and surety bond; and¶
(b) The requirements of OAR 141-125-0170(4) of these rules have been met;¶
(1~~1~~0) In addition to the provisions of OAR 141-125-0140(~~9~~8), a special use authorization issued by the Department will not be valid until the holder has received all other authorizations required by the Department (such as a Removal-Fill Permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the state-owned land in the manner requested.¶
(1~~2~~1) The Director may refer any applications for a lease or license to the Land Board for review and approval.¶
(1~~3~~2) If an application is received and accepted by the Department for a lease on state-owned submerged and submersible land, the Department will, pursuant to the requirements of ORS 274.040, offer a preference right to lease to the eligible party as defined in OAR 141-125-0120(3~~2~~1) and (3~~3~~2), hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right:¶
(a) If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or combined group of single-ownership parcels perpendicular to the thread of the stream creating a single lease parcel that fronts and abuts the upland ownership.¶
(b) If the proposed lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of the adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.¶
(c) In accordance with the proposed use(s), the Department will calculate in a manner consistent with OAR 141-125-0160 a minimum annual compensatory payment for each lease parcel.¶
(d) The Department will notify each preference right holder in writing that a lease application has been approved by the Department and provide 30 calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual compensatory payment.¶
(e) If the preference right holder has accepted the offer of a preference right to lease and has executed the lease form and all other documents and remitted the required minimum annual lease rental payment within the required 30 calendar day period, the Department will execute the lease.¶
(f) If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to ORS 274.040 and hold a public auction pursuant to OAR 141-125-0150. The highest qualified bidder will be awarded the lease. The minimum bid amount will be set by the Department.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

AMEND: 141-125-0150

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0150
Competitive Bidding Process ¶

(1) Except as provided in OAR 141-125-0110(~~10~~9) and 141-125-0140(1~~1~~0), the Department will determine on a case-by-case basis if an area requested for a lease will be offered to the public through competitive bidding. This decision will be made after considering:¶
(a) Whether the area requested for a lease is for a use located on Trust or Non-Trust Land;¶
(b) The nature of the use and length of authorization requested;¶
(c) The availability of reliable data regarding the comparative compensatory payments for the proposed use; and¶
(d) Whether other applications are received by the Department to use the same area requested for the same or competing uses.¶
(2) The Department will give Notice of Parcel Availability and provide an opportunity for applications to be submitted if it:¶
(a) Determines that the greatest public benefit and/or trust obligations of the Department would be best served by offering the subject area through competitive bidding, or¶
(b) Is required to offer all or part of the subject area for competitive bid because the preference right holder did not exercise their preference right to take a lease.¶
(3) The Notice of Parcel Availability will state:¶
(a) The location and size of the subject area;¶
(b) The use approved by the Department for the subject area;¶
(c) The type of auction and minimum acceptable bid amount;¶
(d) What developments, if any, on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Department; and¶
(e) The deadline for submitting a completed application to the Department.¶
(4) The Notice of Parcel Availability will be:¶
(a) Published at the applicant's or, if more than one applicant, applicants' expense, with the cost being divided equally among the applicants, not less than once each week for two successive weeks in a newspaper of general circulation in the county or counties in which the subject parcel is located;¶
(b) Posted on the Department's internet web site; and¶
(c) Sent to persons indicating an interest in the subject parcel.¶
(5) The highest qualified bidder will be awarded the lease at auction subject to satisfaction of the requirements of OAR 141-125-0140(~~9~~8) and 141-125-0170(4) of these rules. However, the Department will have the right to reject any and all bids submitted.¶
(6) The Department may offer parcels for which no application has been received to the public through a competitive bidding process. When doing this the Department will follow the competitive bidding process provided in OAR 141-125-0150(3) through (5) and be responsible for the expenses of publishing the required notices.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

AMEND: 141-125-0160

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0160
Compensation ¶

(1) To establish the amount of annual compensation or minimum bid at auction, the Department will:¶
(a) Adhere to the policies contained in OAR 141-125-0110(1) and (2) of these rules, and¶
(b) Whenever practicable, base the amount on comparative compensatory payments for publicly or privately-owned parcels located as close as possible to the state-owned land requested by an applicant.¶
(2) In the event that reliable data concerning comparative compensatory payments are not available, the Department will select another method of determining the amount of compensatory payment or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop or product value, or percent of product produced.¶
(3) For the uses indicated in OAR 141-125-0160(4) through 141-125-0160(11~~1~~0), the Department will determine the amount of annual compensatory payment owed by the holder of a special use lease or license using the method(s) indicated.¶
(4) Agricultural Uses¶
As an alternative to basing the amount of compensation due for an agricultural use on comparative compensatory payments, the Department may, at its discretion, use a cropshare approach. If this methodology is used, the state's share will be no less than 25 percent of the value received by the holder of a special use lease or license in payment for each crop harvested from the authorized area.¶
(5) ~~Communications Facilities¶~~
~~The holder of a special use lease or license for a communications facility must remit to the Department on a basis provided in the authorization both:¶~~
~~(A) The full amount of the base annual compensation determined by the Department to be the comparative compensatory payment for similar communications facilities; and¶~~
~~(B) A payment equal to 25 percent of the rental received by the lessee during the previous 12 month period from sublessees and sublicensees using the subject facility authorized by the lease or license.¶~~
~~(b) If the holder of a lease or license for a communications facility allows other persons to use the facility (for example, to place or attach antennas, microwave dishes, or other signal broadcasting or receiving equipment on the site or to a tower), the holder of the authorization must record and report data concerning the number sublessees and sublicensees, and the amount of compensation received from them to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.¶~~
(~~6~~) Upland Quarry¶
(a) The holder of a special use lease or license for an upland quarry must remit to the Department:¶
(A) Eight percent of the gross revenue received by the lessee or licensee from the sale of the rock, boulders, sand, gravel, silt or soil removed by the lessee or licensee, or¶
(B) The compensation rate in effect at the time of removal as provided in OAR 141-014 (Rules for Authorizing Leases and Licenses for the Removal or Use of Rock, Sand, Gravel and Silt Derived from State-Owned Submerged and Submersible Land) for "shorecast dredge spoils" if the lessee or licensee uses the rock, boulders, sand, gravel, silt or soil.¶
(b) Data concerning the quantity of rock, boulders, sand, gravel, silt or soil removed and sold, and the revenue received from any sales will be recorded and reported by the lessee or licensee to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.¶
(c) In addition to the compensation required under OAR 141-125-0160(~~6~~5)(a), the holder of a special use license or lease for an upland quarry is required to pay the compensation due for any easements (for example, roads leading into the quarry and power lines crossing state land) or other forms of authorization required by Department rules.¶
(~~7~~6) Semiprecious Stones, Petrified Wood and Fossils¶
Any person removing semiprecious stones, petrified wood or fossils for commercial purposes must remit to the Department within 30 calendar days of the removal of any semiprecious stones, petrified wood and fossils:¶
(a) Compensatory payment in the amount of 10 percent of the market value of the semiprecious stones, petrified wood and fossils; and¶
(b) Photocopies of the evidence used by the lessee or licensee to determine the market value of the semiprecious stones, petrified wood and fossils removed. This evidence must accompany the payment of compensation owed.

Documentation suitable to the Department includes, but is not limited to a sales receipt (if the material is sold to another party); an appraisal by a gemologist or mineral dealer; or advertisements for the sale of similar material in lapidary magazines or trade journals.¶
(~~8~~7) Retrieval of Sunken Logs, Woody Debris and Abandoned Pilings¶
(a) The holder of a special use license or lease to retrieve sunken logs, woody debris and abandoned pilings from state-owned submerged and submersible land for their commercial value must remit to the Department 10 percent of the gross revenue received by the lessee or licensee from the sale of any logs or lumber products produced from the logs.¶
(b) Data concerning the quantity of lumber recovered or sold and revenue received from any sales must be recorded and reported by the lessee or licensee to the Department on a basis to be set by the Department and included as a provision of the license or lease.¶
(c) In addition to the compensation required under OAR 141-125-0160(8)(a), the holder an special use lease or license to retrieve sunken logs, woody debris and abandoned pilings must also pay the compensation due for any easements (for example, storage of logs on state-owned land) or other forms of authorization required by the Department.¶
(~~9~~8) Wind Turbines/Wind Farms¶
(a) The holder of a special use lease or license must remit to the Department:¶
(A) During the demonstration project period the greatest of:¶
(i) $500;¶
(ii) $5.00 per acre of land within the authorized area; or¶
(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.¶
(B) During the construction period a one-time installation fee equal to $3,000 times the number of megawatts of nameplate rated capacity for each wind turbine to be installed as a part of that phase of the development.¶
(C) During the operation period:¶
(i) 2.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine during from the start of the operation through year 10;¶
(ii) 3.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 11 through year 15;¶
(iii) 4.0 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 16 until the termination of the operation of that turbine.¶
(D) During the decommissioning period:¶
An amount to be determined by the Director based on the compensation which could reasonably be expected to be received by the Department for the use of the land encumbered by the wind power project.¶
(b) Notwithstanding the provisions of OAR 141-125-0160(~~9~~8)(a), the director reserves the right to establish another rate of compensation to be charged by the Department during the construction and operation periods based on factors unique to an operation (for example, distance of the operation from major transmission lines and variability of the wind) and comparative compensatory payments.¶
(c) The lessee or licensee will record and report the amount of electricity generated by each wind turbine and wind farm under lease as well as the gross revenue resulting from that generation on a basis to be determined by the Department and included as a provision of the lease. Gross revenue is defined as all revenues earned through the sale of the electricity by the lessee to purchasers.¶
(d) In the event the lessee or licensee consumes all, or a portion of the electricity generated by the wind turbine and wind farm, the Department will establish a value for that electricity based on what the lessee or licensee would have to pay a utility for the equivalent amount of electricity delivered to the lessee's or licensee's point of demand as well as information provided by the lessee.¶
(e) In addition to the compensation required under OAR 141-125-0160(~~9~~8)(a) and (b) the holder of a lease or license for a wind turbine and wind farm is required to pay to the Department the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.¶
(~~10~~9) Solar Energy Installation¶
(a) The holder of a special use lease or license for a solar energy installation must remit to the Department:¶
(A) During the demonstration project period the greatest of:¶
(i) $500;¶
(ii) $5.00 per acre of land within the authorized area; or¶
(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.¶
(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.¶
(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.¶

(c) In addition to the compensation required under OAR 141-125-0160(~~10~~9)(a) and¶
(b) The holder of a special use lease or license for solar energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.¶
(1~~1~~0) Geothermal Energy Installation¶
(a) The holder of a special use lease or license for a geothermal energy installation must remit to the Department:¶
(A) During the demonstration project period the greatest of:¶
(i) $500 per year;¶
(ii) $5.00 per acre of land within the authorized area per year; or¶
(iii) The comparative compensatory payment received by other landowners for similar demonstration projects per year.¶
(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments. (i) The Director shall take into consideration current industry standards for annual comparative compensatory payments by reviewing the current Bureau of Land Management Code of Federal Regulations, current comparative compensatory payments received by other states, and comparative compensatory payments received by private landowners under free market conditions.¶
(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.¶
(c) Upon the sale, exchange or other disposition for value of by-products produced in conjunction with the production of Geothermal Resources under a license or lease, the holder shall pay royalties as follows:¶
(A) Demineralized water - A royalty on the sale of demineralized water shall be reported and paid to the Department monthly.-The royalty payment shall be the greatest of:¶
(i) One percent of the gross sale price of demineralized water sold, exchanged, or otherwise disposed of for value in any calendar month; or¶
(ii) The comparative royalty rate received by other landowners for demineralized water regionally.¶
(B) Heavy metals, nonhydrocarbon gases, and miscellaneous precipitates -- A royalty on the sale of heavy metals, nonhydrocarbon gases, and miscellaneous precipitates shall be reported and paid to the Department monthly.-The royalty payment shall be the greatest of:¶
(i) Five percent of the gross sale price of all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of for value in any calendar month; or¶
(ii) The comparative royalty rate received by other landowners for all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of regionally¶
(d) In addition to the compensation required under OAR 141-125-0160(1~~1~~0)(a), (b) and (c), the holder of a special use lease or license for a geothermal energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.¶
(1~~2~~1) Biomass Generating Facility¶
(a) The holder of a special use lease or license for a commercial electrical energy generating installation using biomass must remit to the Department:¶
(A) During the demonstration project period the greatest of:¶
(i) $500,¶
(ii) $5.00 per acre of land within the authorized area, or¶
(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.¶
(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.¶
(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.¶
(c) In addition to the compensation required under OAR 141-125-0160(1~~2~~1)(a), the holder of a special use lease for biomass generating facility is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.¶
(d) If the biomass used to fuel a generating facility is obtained from state-owned land, the Director will determine the amount of compensation owed by the lessee for the use of this material.¶
(1~~3~~2) Regardless of the type of use that is subject to a special use authorization, the amount of annual compensation received by the Department will not be less than:¶
(a) $500 per year for al leases ~~except those for communications facilities;¶~~
~~(b) $750 per year for special use leases for communications facilities;¶~~
~~(c) $100 per year for licenses; or¶~~
~~(d) The minimum bid when the lease is awarded through public auction.¶~~

~~(14) Communications facilities located on Non-Trust Land outside of the designated limits of a city may be exempt from the mandatory compensation payments specified in OAR 141-125-0160(5) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities must apply for and obtain a lease or license from the Department~~¶
(c) $100 per year for licenses; or¶
(d) The minimum bid when the lease is awarded through public auction.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

AMEND: 141-125-0200

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0200
Assignment of Special Use Leases and Permits; Subleasing ¶

(1) A lease in good standing is assignable.¶
(2) Licenses and short-term access authorizations are non-assignable.¶
(3) To assign a lease, the lessee must submit a:¶
(a) Notice of proposed assignment on a form provided by the Department at least 60 calendar days prior to the date that the assignment is to occur; and¶
(b) Non-refundable assignment processing fee of $750 payable to the Department.¶
(4) The Department may request additional information concerning the proposed assignment.¶
(5) A lessee or licensee wanting to offer a sublease or sublicense to another person must:¶
(a) Obtain prior written authorization from the Department by applying to the Department on a form provided by the Department at least 60 calendar days prior to the date that the sublease or sublicense is desired; and¶
(b) Submit a non-refundable sublease or sublicense review fee of $250 along with the application form~~; and¶~~
~~(c) If the lease or license is for a communications facility, submit to the Department the amount provided in OAR 141-125-0160(5)(a)(B) for each sublessee or sublicensee at the end of each calendar year~~.
Statutory/Other Authority: ORS 273
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2~~,~~ & 5

Oregon
Tina Kotek, Governor

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State Land Board

Tina Kotek
Governor

LaVonne Griffin-Valade
Secretary of State

Tobias Read
State Treasurer

M E M O R A N D U M

Date December 10, 2024

To: Governor Tina Kotek
Secretary of State LaVonne Griffin-Valade
State Treasurer Tobias Read

From: Vicki L. Walker
Director

Subject: Common School Fund Review

The Oregon Investment Council formulates policies for the investment and reinvestment of funds under the control and administration of the Department of State Lands, known as the Common School Fund. This investment policy provides guidance to Oregon State Treasury staff and advisors regarding approved asset classes, asset allocation, and reporting requirements for the Common School Fund.

The investment objective for this fund is to maximize risk-adjusted return, while remaining consistent with goals as established by the State Land Board to generate returns in support of funding education for Oregon's school kids.

At the State Land Board meeting, the Oregon State Treasury will be presenting on the performance of the Common School Fund's investments as of September 30, 2024.

The key items that will be addressed:

- Fund Objectives
- Fund Evolution
- Fund Asset Allocation
- Fund Performance
- Accomplishments & Strategic Priorities
- Fund Net Asset Value

Common School Fund Distribution Policy Objective

The Common School Fund distributes 3.5% of the average three trailing years NAV to the Department of State Lands which in turn distributes those funds to the Department of Education to support the State's K-12 education programs. In addition, with the passage of SB 1566, certain funds (subject to a formula) are distributed to the State to pay down some of the unfunded PERS liability.

APPENDICES

A. Common School Fund Review

December 10, 2024

Common School Fund Annual Review

Louise Howard
Director of Capital Markets

Jamie McCreary
Service Model Program Manager

OREGON STATE TREASURY

Agenda

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Fund Objectives

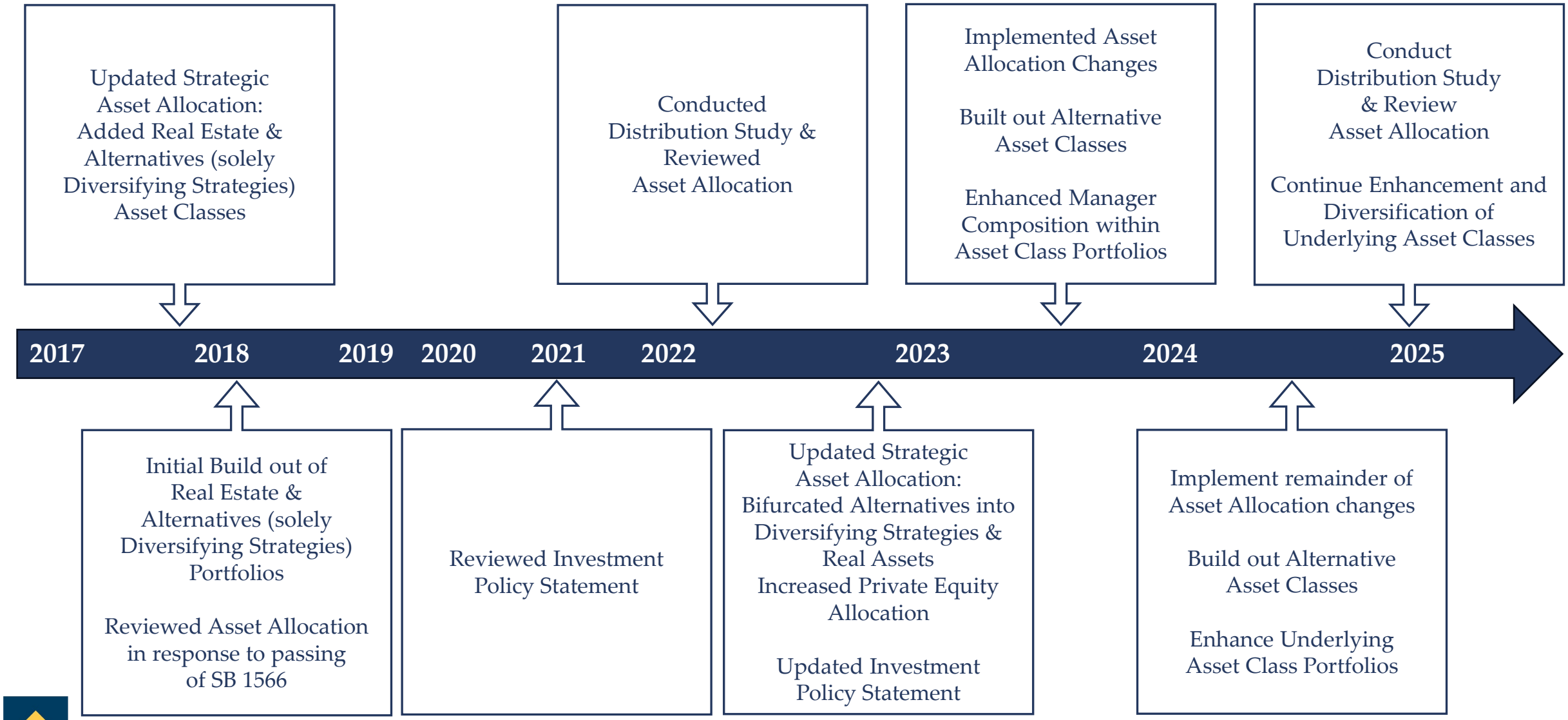
Investment Policy (INV 901)

- The Oregon Investment Council (OIC) formulates policies for the investment of funds under the control and administration of the Department of State Lands, known as the Common School Fund (the Fund)
- Investment policy provides guidance to Oregon State Treasury staff and investment consultants regarding approved asset classes, asset allocation, and reporting requirements
- The primary objective of the Common School Fund is to generate a real (inflation-adjusted) rate of return that is sufficient to support the mission of the Fund and its spending needs into perpetuity

Distribution Policy

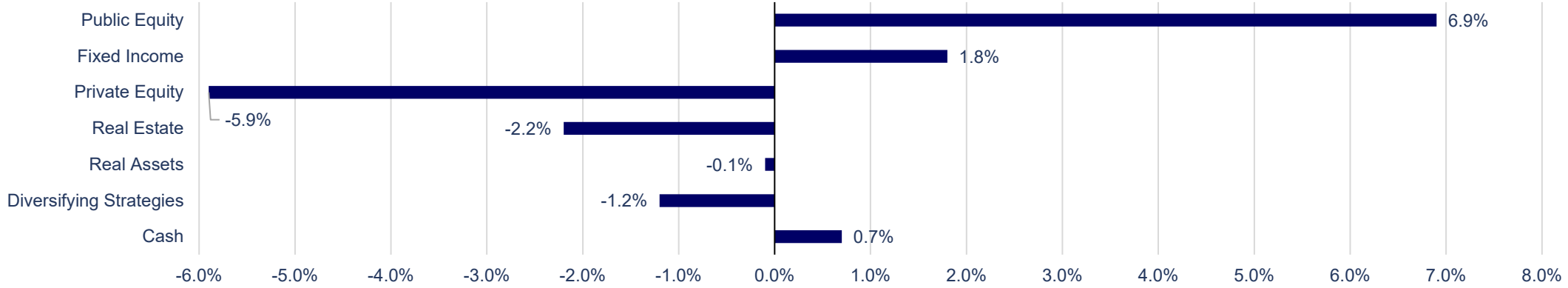
- On an annual basis, the Common School Fund distributes 3.5% of the Fund's trailing three-year average market value to the Department of Education to support the State's K-12 education programs
- In addition, with the passage of SB 1566, certain funds (subject to a formula) are distributed to the School Districts Unfunded Liability Fund to help pay down some of the PERS unfunded liability for those local school districts

Fund Evolution



OREGON STATE TREASURY

Total Fund Asset Allocation



Asset Class	Market Value	Current Allocation	Interim Target	Long-Term Target	Active Weight	Approved Range
Public Equity	$1.3B	54.4%	47.5%	45.0%	6.9%	40%- 50%
Fixed Income	$601.8M	24.3%	22.5%	20.0%	1.8%	15%- 25%
Private Equity	$163.2M	6.6%	12.5%	15.0%	-5.9%	10%- 20%
Real Estate	$194.2M	7.8%	10.0%	10.0%	-2.2%	5%- 15%
Real Assets	$59.7M	2.4%	2.5%	5.0%	-0.1%	0%- 10%
Diversifying Strategies	$94.3M	3.8%	5.0%	5.0%	-1.2%	0%- 10%
Cash	$17M	0.7%	0.0%	0.0%	0.7%	0%- 3%
Total Fund	**$2.5B**	**100%**				

OREGON STATE TREASURY

See Endnotes for source information. Active Weights shown are vs. Interim Targets.

as of 9/30/2024

Performance – Total Fund

- For the trailing 1-year period, as of September 30, 2024, the Common School Fund (Total Fund) returned 18.6%, slightly trailing its policy benchmark over all time periods
- Majority of the asset classes generated positive returns during the year (aside from real estate), with majority outperforming their respective benchmarks (aside from private equity and diversifying strategies)

	Market Value	1 Year	3 Years	5 Years	10 Years
Total Fund	$2.5B	18.6%	5.1%	8.0%	7.1%
Policy Benchmark		19.5%	5.3%	8.2%	7.4%
Excess Return		**-0.9%**	**-0.1%**	**-0.3%**	**-0.4%**

Total Fund	Long-Term Target
10-Year Expected Nominal Return	7.1%
10-Year Expected Standard Deviation	12.5%

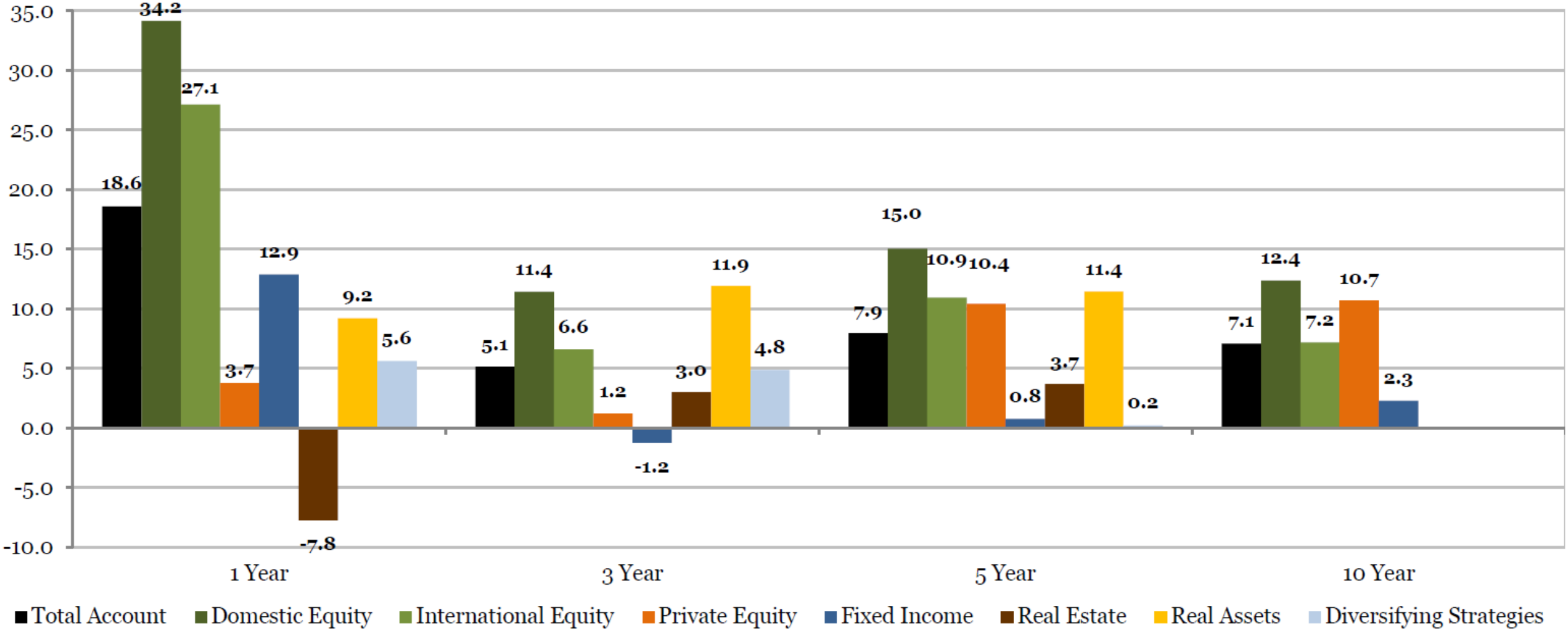
OREGON STATE TREASURY

Expected Return and Risk provided by Aon.

See Endnotes for source information

as of 9/30/2024

Net Annualized Performance (%)



OREGON STATE TREASURY

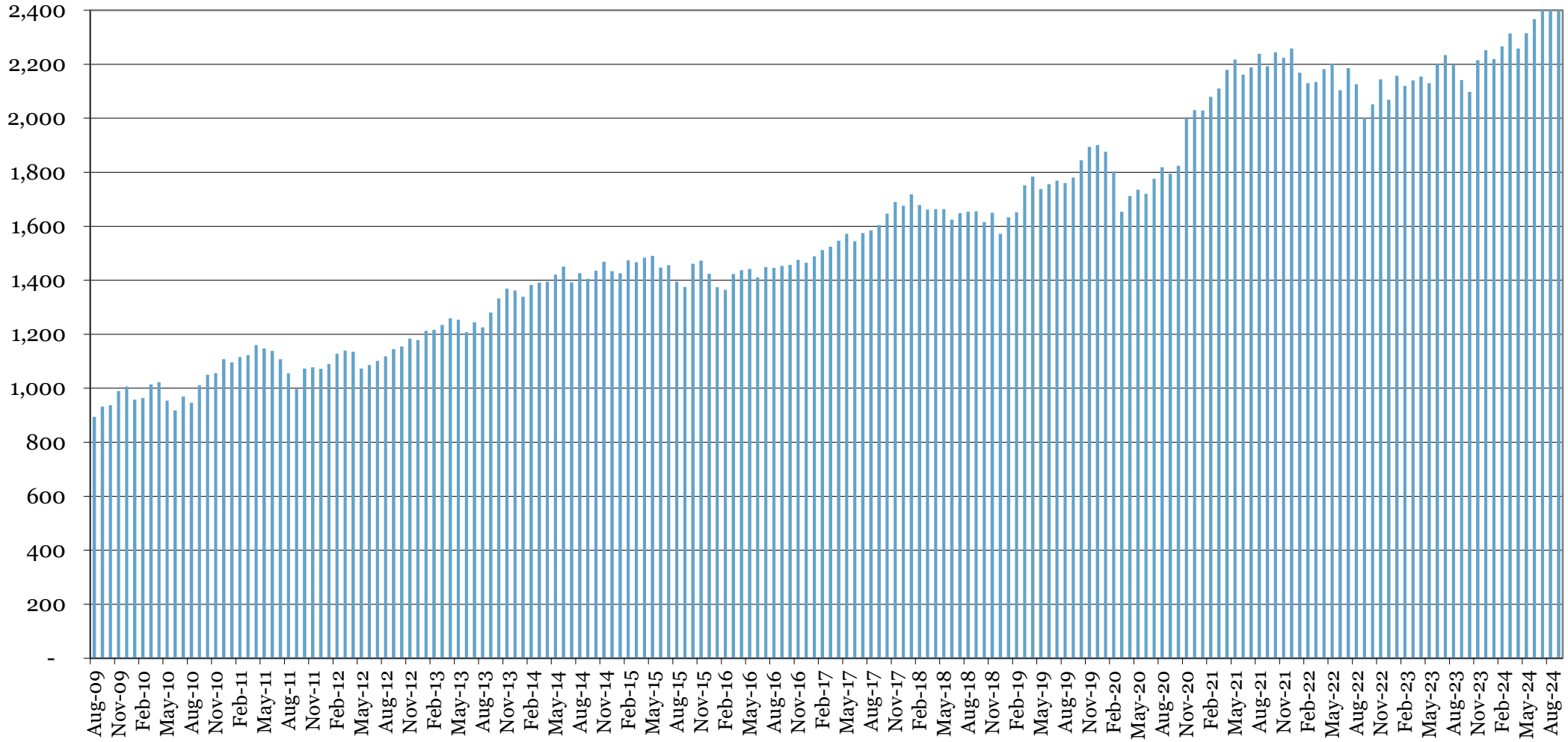
See Endnotes for source information
International Equity returns exclude Global Equity

as of 9/30/2024

Accomplishments and Strategic Priorities

- Oregon Investment Council Presentation September 2024
- Cash raise for Department of Education distribution- 12/2024 in process
- Cash raise for annual PERS distribution- 1/2025 in process
- Continue Implementing new asset allocation (approved by the OIC in 2022) – notably funding up Real Assets and Private Equity, while reducing Public Equity and Fixed Income
- Continue working with asset class teams and committees to review portfolio construction and refine investment manager composition
- Previously finalized Investment Policy Statement with intent to consolidate asset class guidelines in 2024
- Asset Allocation study in 2025/2026

CSF NAV
15 years ending September 30, 2024
($ in Millions)



OREGON STATE TREASURY

Source: State Street

as of 9/30/2024

Appendix: Asset Class Performance

OREGON STATE TREASURY

Performance – Public Equity

- The Public Equity portfolio is outperforming its policy benchmark across all time periods
- Relative performance has been driven by (active) manager selection outside of the U.S.
- Global equity markets continued their march higher into 2024
- The U.S. stock market (represented by the S&P 500) gained 36.4%, while developed international countries (MSCI World Ex US Index) gained 25.0% and emerging markets (MSCI EM Index) gained 26.1%
- Over the last year, Growth stocks have outperformed Value oriented stocks across the globe and most notably in the U.S. Although, Value stocks have gained some traction and provided strong absolute returns over the period

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Public Equity	$1.3B	54.4%	31.5%	9.3%	13.1%	9.9%
MSCI ACWI IMI (Net)			31.0%	7.4%	11.9%	9.2%
Excess Return			**0.6%**	**1.8%**	**1.3%**	**0.7%**

See Endnotes for source information

as of 9/30/2024

Performance – Fixed Income

- The Fixed Income portfolio outperformed the policy benchmark across all time periods
- The Fixed Income portfolio is comprised of two Core bond managers at roughly equal weight
- The Federal Open Market Committee cut their target rate by 50 bps during its September meeting, to a range of 4.75%-5.00%, citing a better balance of risks between inflation and the labor market
- For the trailing year, the Fixed Income portfolio benefited from longer duration and higher spread sector exposure versus the benchmark as rates declined and credit spreads tightened

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Fixed Income	$601.8M	24.3%	12.9%	-1.2%	0.8%	2.3%
BBG US Aggregate			11.6%	-1.4%	0.3%	1.8%
Excess Return			**1.3%**	**0.2%**	**0.4%**	**0.5%**

Performance – Private Equity

- The Private Equity (PE) portfolio is underperforming its benchmark across all time periods
- Over short timeframes and in volatile markets, we would expect large divergence between the public and private markets
- The lack of exits continues to be sore spot for LPs that are evermore desirous of distributions, though with recent and expected rate cuts, this scenario should begin to turn, over the near-term
- Private equity fundraising in ’24 continues to lag previous vintages as GPs continue to work through their slowly diminishing dry powder
- It is anticipated that ’25 should see an increase in GPs coming back to market

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Private Equity	$163.2M	6.6%	3.8%	1.2%	10.4%	10.7%
Russell 3000 +300bps (Qtr Lag)			26.1%	11.1%	17.4%	15.4%
Excess Return			**-22.3%**	**-9.9%**	**-7.0%**	**-4.7%**

Performance – Real Estate

- The Real Estate portfolio is outperforming its benchmark across all time periods
- The Real Estate portfolio is now comprised of 7 managers – anchored by 3 managers in the Core/Core-plus space, with another 4 in the Non-Core space, with a substantial amount of committed non-core capital yet to be called
- The Core portfolio posted positive income returns which was offset by negative appreciation
- Non-core managers remain early in their respective investment periods. As such, the managers are not expected to report meaningful results until the bulk of committed capital is substantially deployed (over $27M uncalled)

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Real Estate	$194.2M	7.8%	-7.8%	3.0%	3.7%	N/A
NCREIF ODCE (Custom) (Adj.)			-10.0%	1.0%	2.3%	N/A
Excess Return			**2.2%**	**2.0%**	**1.4%**	**N/A**

Performance – Real Assets

- The Real Assets portfolio outperformed its policy benchmark across all time periods
- The Real Assets portfolio, is comprised of 7 Infrastructure managers and 3 Natural Resources managers
- The Real Assets portfolio is still early in its lifecycle (initial funding in 2018), with approved managers still calling capital, resulting in an underweight to its long-term target allocation (currently 2.4% vs. 5.0% target)
- Real Assets fundraising has rebounded YTD 2024, relative to 2023. Fewer but larger funds coming to market, though the asset class continues to demonstrate resilient characteristics in the face of a higher inflationary environment
- Both the Energy Transition and AI related infrastructure sectors have seen tailwinds as well as the majority share of headlines across the asset class. These themes will continue to require substantial private capital and supportive regulatory policy

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Real Assets	$59.7M	2.4%	9.2%	11.9%	11.4%	N/A
CPI +4%			6.5%	8.9%	8.3%	6.9%
Excess Return			**2.7%**	**3.0%**	**3.1%**	**N/A**

See Endnotes for source information

as of 9/30/2024

Performance – Diversifying Strategies

- Diversifying Strategies portfolio underperformed its benchmark, while outperforming for the 3 year and underperforming for the 5 year
- The Diversifying Strategies portfolio is still relatively early in its lifecycle (initial funding in 2018, completed restructure 1/2023) and is nearing its long-term target allocation of 5.0% (3.8% as of quarter end)
- Medium-term (5 year) performance can almost entirely be attributed to pronounced long/short Value style factor exposures; all legacy managers have been liquidated
- The Diversifying Strategies portfolio now consists of 10 managers, with one new approval which was funded on 7/1

	Market Value	Current Allocation	1 Year	3 Years	5 Years	10 Years
Diversifying Strategies	$94.3M	3.8%	5.6%	4.9%	0.2%	N/A
HFRI FOF- Conservative Index			7.0%	3.7%	5.2%	N/A
Excess Return			**-1.4%**	**1.1%**	**-5.0%**	**N/A**

See Endnotes for source information

as of 9/30/2024

Oregon State Treasury Team

Michael Langdon
Director of Private Markets
Tenure: 2015

As the Director of Private Markets, Mike manages teams with oversight of OPERF's private equity, real estate, real asset and opportunities portfolios with current net asset value of nearly $50 billion. Mike also Co-Leads the Oregon Common School Fund.

- Oversee $5-7 billion per annum of commitment pacing
- Chair OST's internal investment committee for private market portfolio
- Day to day portfolio manager for OPERF's ~$24 billion private equity portfolio
- Manage select, strategic external manager relationships

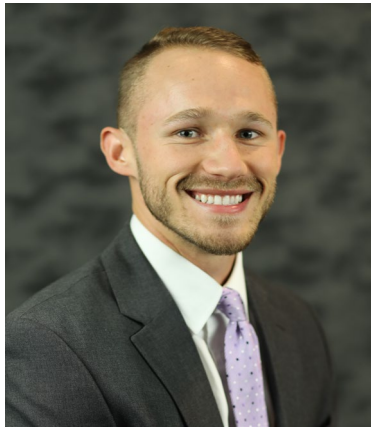
Education: BS Clemson University, CFA Charterholder

Wil Hiles
Investment Officer
Tenure: 2016

As Investment Officer, Wil supports the Public Equity team's day-to-day activities surrounding OPERF. Wil also Co-Leads the Oregon Common School Fund and assists in overseeing the Oregon Savings Growth Plan.

- Monitors and evaluates current and prospective investment managers
- Evaluates portfolio structure and makes recommendations to improve risk-adjusted returns
- Coordinates new account fundings, terminations, portfolio transitions, and cash raise activity
- Serves as internal equity portfolio manager and trader
- Conducts market research and analysis

Education: BA in Finance from Linfield College; Master of Science in Finance (MSF) from Pacific University



Louise Howard
Director of Capital Markets
Tenure: 2022

As the Director of Capital Markets, Louise oversees multiple asset class teams and their respective OPERF portfolios, including Public Equity, Fixed Income, and Diversifying Strategies. She also Co-leads the Common School Fund, SAIF and Oregon Savings Growth Plan.

- Chairs Capital Markets Leadership Committee
- Leads monitoring and evaluation efforts for external investment managers
- Evaluates portfolio structure and makes recommendations to improve risk-adjusted returns
- Responsible for managing and coordinating the liquidity needs of OPERF
- Participates in private market Committee Meetings (Real Estate, Private Equity, Alternative, and Opportunistic)
- Leads the oversight of Public Equity programs, including internal and external investment strategies

Education & Certifications: BA University of New Orleans, MBA University of New Orleans, CFA Charterholder, CAIA Charterholder

Jamie McCreary
Service Model Program Manager
Tenure: 2023

As the Service Model Program manager, Jamie is responsible for creating and/or maintaining centralized services model standards and manages all aspects of client account relationships with various state managed programs.

- Ongoing monitoring and oversight of state managed programs and investment portfolios
- Supports the application of industry and fiduciary best practice standards across all areas of the Investment Program
- Investment Policy Statement Review

Education: BS Southern Oregon University, CERTIFIED FINANCIAL PLANNER™ professional

Endnotes

- Source: State Street. Performance is net of investment management fees and annualized for periods longer than one year. Reminder alternative data is typically lagging 1-3 months.
- Oregon CSF Policy Index:
  - From February 1, 2012 to June 30, 2016, policy benchmark was 30% Russell 3000, 30% MSCI ACWI ex US Net, 30% BC Universal Index, and 10% Russell 3000+300 bps QTR lag. From July 1, 2016 to December 31, 2017, policy benchmark was 30% Russell 3000, 30% MSCI ACWI ex US Net, 30% BC US Aggregate, and 10% Russell 3000+300 bps QTR lag. From January 1, 2018 to December 31, 2022 policy benchmark was dynamically weighted and uses each asset class' value relative to the total market value as its percentage of the total policy benchmark.
  - From January 1, 2023 to present, policy benchmark is 47.5% MSCI ACWI IMI Net (Daily), 12.5% Russell 3000+300 bps quarter lag, 22.5% BBG US Agg, 10% NCREIF ODCE (Custom) (Adj.), 2.5% CPI +4%, and 5% HFRI FOF: Conservative Index.
- Oregon CSF FI Index:
  - Prior to November 1, 2005, index is BC Aggregate. From November 1,2015 to June 30,2016 the benchmark was BC Universal Index.
  - From July 1, 2016 to present the benchmark is BBG Aggregate
- Real Estate policy index- NCREIF ODCE (Custom) (Adj.):
  - From January 1, 1990 to March 31, 2016, the NCREIF ODCE (Custom) was weighted 100% NCREIF Property Index QTR Lag. From April 1, 2016 to present, the benchmark is weighted 100% - NFI-ODCE QTR LAG Net of Fees. Starting July 1, 2017, methodology for monthly return is calculated by geometrically linking prior months returns and then deriving the monthly returns by calculating the geometric average. Returns are not actual monthly, but rather equivalent for all intra-quarter months, in order to match the actual quarterly return.
- Private Equity policy index- Russell 3000 + BPS QRT LAG (Adj.)
  - Prior to May 1, 2005, index is R3000+500 bps, Qtr Lag. Until June 30, 2017 the index is R3000+300 bps, Qtr Lag. From July 1, 2017, the monthly return is calculated as the geometrically linked monthly portion of the quarterly return. Returns are not actual monthly, but rather equivalent for all intra-quarter months, in order to match the actual quarterly return.
- Any information provided herein has been prepared from sources believed to be reliable but is not guaranteed and is for informational purposes only. The information provided herein should not be regarded as an offer to sell or as a solicitation of an offer to buy the products mentioned. No representation is made that any returns will be achieved. Past performance is not indicative of future results. Opinions expressed herein are subject to change without notice.

OREGON STATE TREASURY

Tobias Read
Oregon State Treasurer

16290 SW Upper Boones Ferry Road
Tigard, OR 97224

oregon.gov/treasury

Oregon
Tina Kotek, Governor

Department of State Lands
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FAX (503) 378-4844
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State Land Board

Tina Kotek
Governor

LaVonne Griffin-Valade
Secretary of State

Tobias Read
State Treasurer

M E M O R A N D U M

Date December 10, 2024

To: Governor Tina Kotek
Secretary of State LaVonne Griffin-Valade
State Treasurer Tobias Read

From: Vicki L. Walker
Director

Subject: Aquatic Resource Management Annual Report

The Department of State Lands Aquatic Resource Management program protects waters and wetlands for their many contributions to Oregon – streams for swimming and fishing, wetlands to clean water and reduce flooding, and rivers where commerce thrives. The program also manages uses of Oregon-owned waterways, such as docks, marinas, and utility crossings, which send money to the Common School Fund and benefit our K-12 public schools.

The Managing Oregon's Waters and Wetlands: Aquatic Resource Management Program Annual Report for July 1, 2023, to June 30, 2024, reviews our annual permitting and authorization activities, details specific management efforts, and highlights recent and upcoming activities.

The purpose of the report is to provide current information about the Department's management of Oregon's waters and identify achievements, progress, and changes needed. This report also fulfills reporting requirements required by the legislature in ORS 196. The report can be measured against previous performance and used to identify and address factors affecting performance.

APPENDICES

Appendix A – Managing Oregon's Waters and Wetlands: Aquatic Resource Management Program Annual Report (FY 2024)

APPENDIX A

Annual Report of the Aquatic Resource Management Program

Navigating Challenges and Advancing Opportunities

Fiscal Year 2024

OREGON DEPARTMENT OF STATE LANDS

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- Protecting Oregon's Water

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The Aquatic Resource Management (ARM) program at Department of State Lands protects waters and wetlands for their many contributions to Oregon – streams for swimming and fishing, wetlands to clean water and reduce flooding, and rivers where commerce thrives. The program also manages uses of Oregon-owned waterways, such as for docks, marinas, and utility crossings, which protects the use of those waterways by the public and sends money to the Common School Fund and benefits our K-12 public schools.

This Annual Report of the Aquatic Resource Management Program for July 1, 2023, to June 30, 2024 (Fiscal Year 2024), highlights balancing critical environmental protection with community needs and education funding.

ARM PROGRAM SERVICES

ABANDONED AND DERELICT VESSELS

We work with partners statewide to remove hazardous boats from Oregon waterways.

More information

OREGON-OWNED WATERWAYS

We manage many publicly owned rivers and lakes for everyone's enjoyment and authorize certain public, private, and commercial uses of these waterways, with revenues supporting K-12 education.

More information

REMOVAL-FILL PERMITTING

We issue permits for projects that add, remove, or move material to wetlands and other waters and include requirements so that negative impacts to people, fish, and wildlife are minimized.

More information

ASSISTANCE FOR GOVERNMENTS

We provide technical assistance that helps cities and counties protect wetlands, estuaries, and coastal shorelands, and plan for responsible housing and economic development.

More information

SUBMERGED LANDS ENHANCEMENT FUND

We fund projects benefiting the water quality, wildlife habitat, and waterway users of Oregon-owned waterways.

More information

ASSISTANCE FOR PROPERTY OWNERS

Our Wetland Ecologists help people identify where wetlands are and provide information that lets property owners know if a permit may be needed for a project.

More information

MITIGATING PROJECT IMPACTS

We promote wetland and stream compensatory mitigation projects that can replace permitted impacts and provide benefits that will be sustained in perpetuity.

More information

$1.4M INVESTED
to support removal of hazardous boats to protect Oregon's waterways

$341K PAYMENTS
to the Department to mitigate for losses of wetlands and streams due to development

700 ATTENDEES
at 44 presentations and trainings to support management and restoration of wetlands and waterways

$4.8M GENERATED
from uses of Oregon-owned waterways

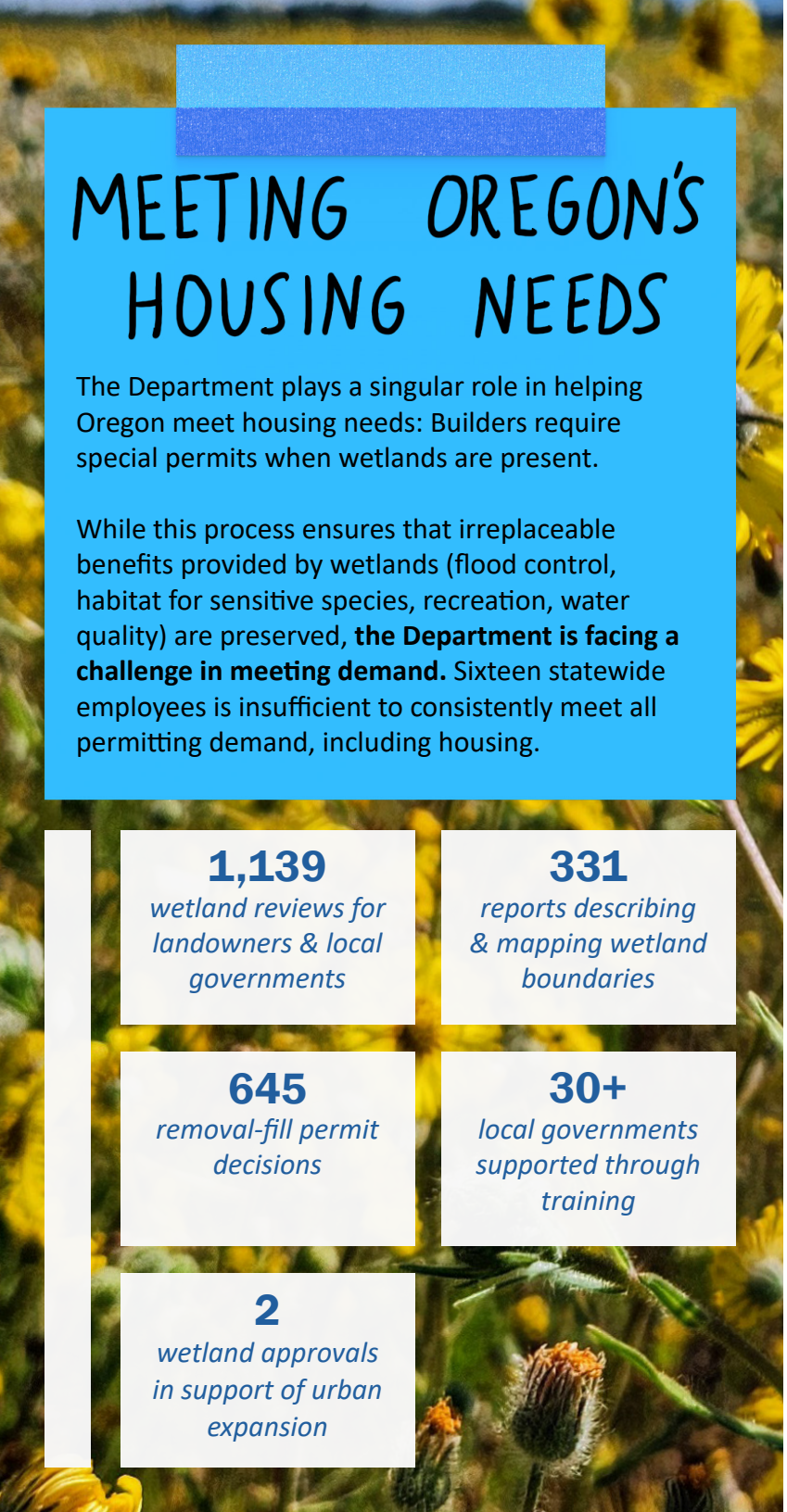
30 PROJECTS
providing wetland and stream habitat offsets that support development in the communities they serve

2,704 CUSTOMERS
served through agency decisions

The FV Tiffany—A 200-ton vessel containing PCBs, lead, and fuel—became a hazard when it sank in the Columbia River.

In October 2023, the Department facilitated the vessel's removal, deconstruction, and recycling.


MEETING OREGON'S HOUSING NEEDS
The Department plays a singular role in helping Oregon meet housing needs: Builders require special permits when wetlands are present.
PROTECTING OREGON'S WATER
The Department helps make sure that the environmental and community benefits of water are available for all Oregonians.
PROTECTING SCHOOL FUNDING
When revenue sources don't cover program costs, the statutory Common School Fund makes up the difference.



MEETING OREGON'S HOUSING NEEDS

The Department plays a singular role in helping Oregon meet housing needs: Builders require special permits when wetlands are present.

While this process ensures that irreplaceable benefits provided by wetlands (flood control, habitat for sensitive species, recreation, water quality) are preserved, **the Department is facing a challenge in meeting demand.** Sixteen statewide employees is insufficient to consistently meet all permitting demand, including housing.

1,139
wetland reviews for landowners & local governments

331
reports describing & mapping wetland boundaries

645
removal-fill permit decisions

30+
local governments supported through training

2
wetland approvals in support of urban expansion

CHALLENGE

Heavy workloads and resource gaps are impacting employee job satisfaction and well-being. In the 2023 Employee Survey, staff said they have more work than they can reasonably do and unmet resource needs, which impact both their satisfaction and ability to deliver service. Larger projects with significant impacts to wetlands and waters, like dam removals on the Klamath River or new undersea fiber optic cables, require permits that can be complex with lots of coordination and tight timelines. With eleven staff members statewide, complexity on one permit means longer wait times for other permits.

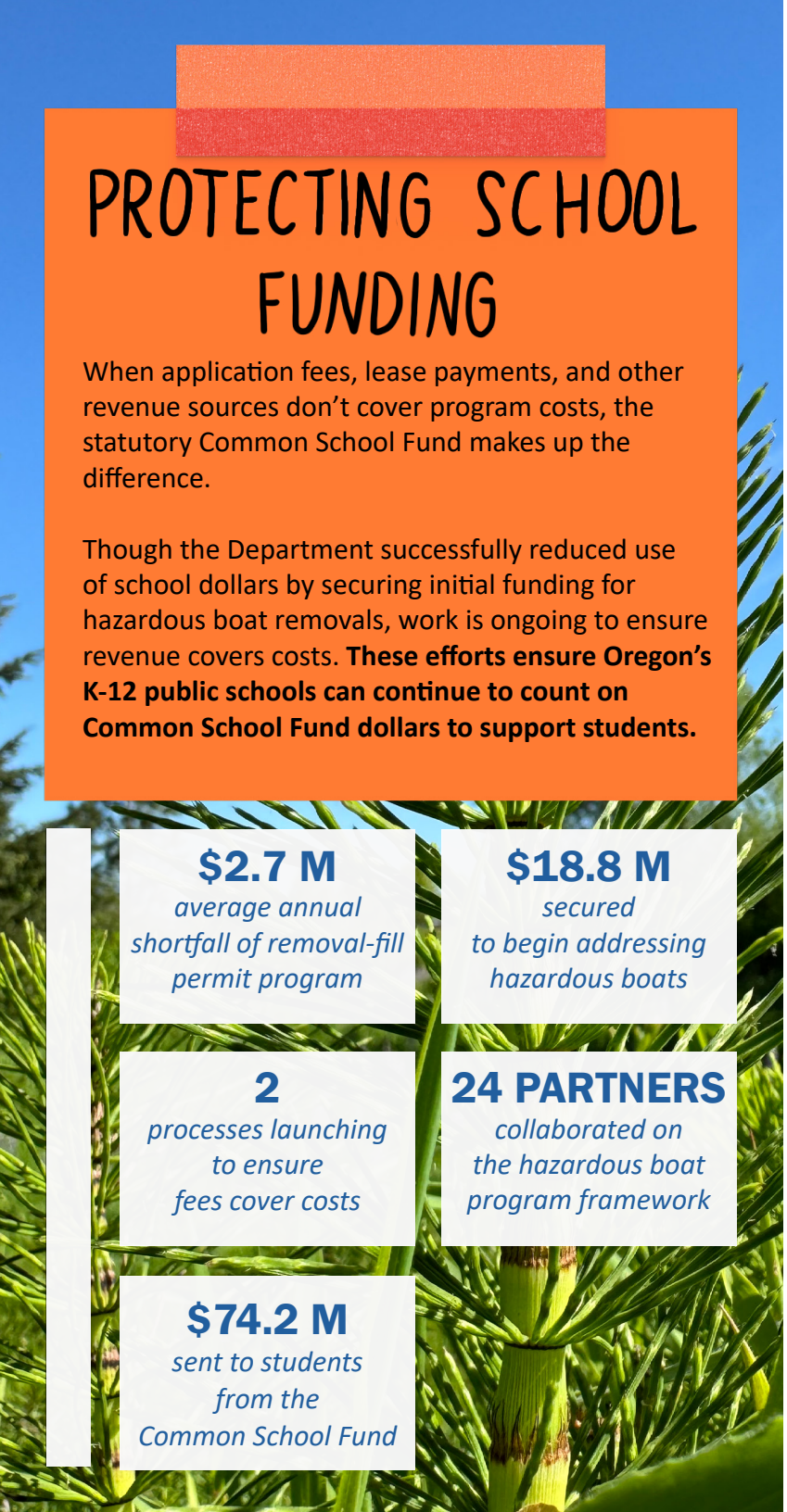
NEXT STEPS

Hiring more employees, particularly positions that directly deliver services—like reviewing wetland reports and permit applications—and managers that support those staff, were mentioned as urgent by many staff.

> "We had some delays in our project because of permitting, However, staff was very responsive once we communicated to them our tight timeline and I really appreciated that."
>
> - Customer feedback during FY24

RESPONSE TIMES FOR PROCESSES WITH STATUTORY DEADLINES

PERMIT TYPE	AGENCY GOAL	AVERAGE RESPONSE TIME
Wetland notices from local governments	22 Days	25 Days
Wetland delineation reports	60 Days	81 Days
Individual permits	60 Days	94 Days



PROTECTING SCHOOL FUNDING

When application fees, lease payments, and other revenue sources don't cover program costs, the statutory Common School Fund makes up the difference.

Though the Department successfully reduced use of school dollars by securing initial funding for hazardous boat removals, work is ongoing to ensure revenue covers costs. **These efforts ensure Oregon's K-12 public schools can continue to count on Common School Fund dollars to support students.**

$2.7 M
average annual shortfall of removal-fill permit program

$18.8 M
secured to begin addressing hazardous boats

2
processes launching to ensure fees cover costs

24 PARTNERS
collaborated on the hazardous boat program framework

$74.2 M
sent to students from the Common School Fund

CHALLENGE

Work in wetlands and rivers, streams, lakes, or other waters usually requires a removal-fill permit. Current fees for removal-fill permits and wetland delineations cover only 21% of the costs of the removal-fill program and have not been updated since 2007 beyond small annual adjustments. This means 79% of the program is being covered by the Common School Fund, an amount that is unacceptable to the Department, the Land Board, and legislators.

There is also fee discrepancy with waterway leases. Some uses of Oregon-owned waterways such as marinas, ports, floating homes and docks require authorization from the Department and compensation to the public for that use. Currently there are inconsistencies with lease rates and the application fees do not cover the administrative costs of processing them.

NEXT STEPS

In 2019, the Department asked the legislature to help increase fees for removal-fill, which resulted in the Department initiating rulemaking for a new fee structure in Summer 2024. While these increases will affect the fees for most permits and wetland delineations, fee increases are proposed to be higher for projects that require more staff time and have more impacts on aquatic resources. Fees alone may not remove all the burden from the Common School Fund as full cost recovery will require large increases in permit costs for developers.

In regard to waterway leases, rulemaking to address management of waterway leases is planned to begin in Winter 2024. These changes include establishing consistency in lease rate calculations, covering administrative costs with application fees, and mitigating unexpected financial liability for some uses of public lands.

> "Since 1859, Oregon students have counted on the Common School Fund as a reliable revenue source. We must do our best to protect this legacy."
>
> - Director Vicki Walker

PROTECTING OREGON'S WATER

The Department helps make sure that the environmental and community benefits of water are available for all Oregonians. Our daily work strives to keep wetlands and waterways intact, healthy, and safe while promoting responsible use and development.

The Department is falling short of reaching some goals. To address this, the Department is aiming to boost efforts to meet conservation targets.

2
mitigation specialists working statewide

23
mitigation banks selling credits

24-ACRE
net loss of wetlands

11
new mitigation banks in process for FY25

82
general authorization notices processed (decrease from FY23)

CHALLENGE

Landowners planning projects in wetlands and waterways need to work with the Department to avoid, minimize, and compensate for impacts to these resources – a concept known as mitigation. Mitigation ensures that the wealth of benefits wetlands and waterways provide to Oregonians—such as clean and healthy streams, diverse fish and wildlife, groundwater recharge, and resiliency to floods—are not lost. Oregon's wetland conservation goal is to maintain a stable resource base of wetlands. The Department did not meet the target in FY24 with a 24-acre net loss.

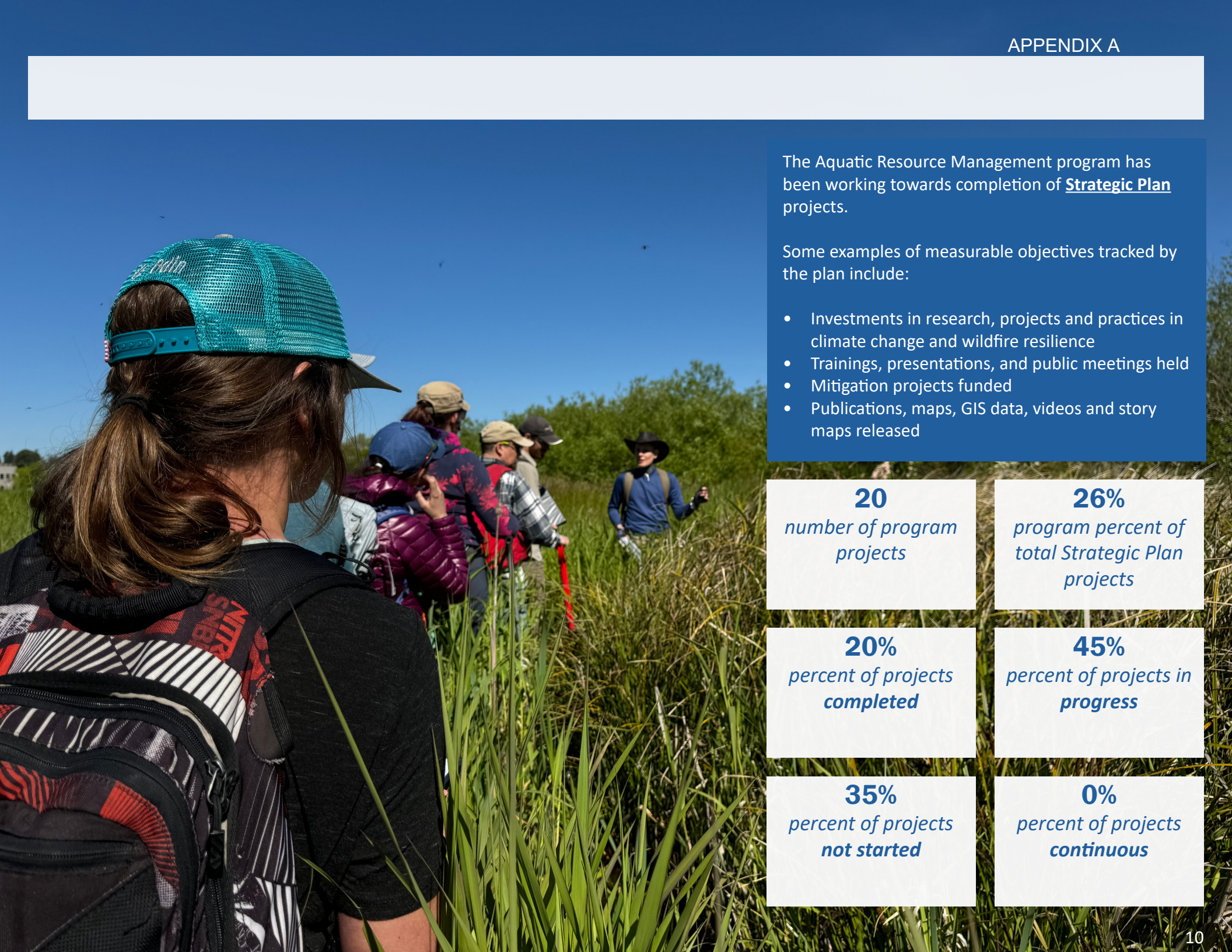
NEXT STEPS

The Department offers applicants a range of options for protecting the environmental and social benefits of wetlands, and some of these options do represent a net loss of wetlands. To achieve no net loss, the Department will be promoting wetland restoration and creation as better strategies to compensate for loss due to development as these strategies replace wetland acres.

Voluntary habitat restoration projects protect water and are supported through no- or low-cost project reviews. In FY24, The Department expanded general authorizations to cover more restoration activities. These notice-based authorizations streamline the Department's approval process and result in more restoration projects since critical project funding can go to on-the-ground benefits rather than more expensive permit processes.

In addition to voluntary projects, the Department can boost efforts to protect water by funding more mitigation projects using payments made to the Removal-Fill Mitigation Fund. The Department has struggled for several years to meet our target of dedicating collected funds to a project within a year. These unspent funds represent an ongoing loss of wetlands. This year, the Department contributed funding for the enhancement of 120 acres of tidal wetlands in Lillian Slough, a tributary to the Coos River, to restore fish habitat and improve stream conditions for Oregon Coast Coho.

> "We need to focus on restoring wetlands that were drained in the past and on creating new wetlands where reasonable."
>
> - Mitigation Policy Specialist Melody Rudenko



The Aquatic Resource Management program has been working towards completion of **Strategic Plan** projects.

Some examples of measurable objectives tracked by the plan include:

- Investments in research, projects and practices in climate change and wildfire resilience
- Trainings, presentations, and public meetings held
- Mitigation projects funded
- Publications, maps, GIS data, videos and story maps released

20
number of program projects

26%
program percent of total Strategic Plan projects

20%
percent of projects ***completed***

45%
percent of projects in ***progress***

35%
percent of projects ***not started***

0%
percent of projects ***continuous***

The Laviolette family has operated The Jetty Fishery on the Nehalem Bay, and leased from the Department, since 1979. Maintaining safe access to Oregon waters for individuals, families, and businesses is the work of the Department's Proprietary Coordinators.

The Department extends its gratitude to our dedicated staff and partners for their efforts in tackling challenges and seizing opportunities to enhance the management and preservation of Oregon's aquatic resources.

Looking towards the future, the Aquatic Resource Management program has identified seven actions to better achieve conservation goals, support public education funding, and manage Oregon's aquatic resources more effectively.

1

INCREASE STAFFING AND RESOURCES

Address staff capacity issues to improve response times for permit processing and support increased demand for wetland and stream management services. This includes hiring additional staff, if supported by the Department's budget, and investing in resources to handle the workload more effectively.

2

INCREASE RESTORATION EFFORTS

To meet Oregon's no net loss target, the Department should prioritize and accelerate wetland restoration and creation projects. This will involve increasing support for restoration initiatives and improving outreach to engage more stakeholders in such projects.

3

EXPAND GENERAL AUTHORIZATIONS

Encourage more widespread use of these notice-based authorizations by communicating recent expansions and the benefits provided by the simple application form, low fee, and 30-day review timeline.

4

REVISE WATERWAY LEASE RULES

Begin rulemaking to revise lease rate calculations, adjust the application fee structure to cover Department expenses, amend or change financial assurance requirements, and clarify the initial term of a lease. This will affect for-profit and nonprofit activities such as seafood processing facilities, marina vending, marina servicing, salvage operations, and buildings.

5

MITIGATION DEVELOPMENT

Continue to support and expedite the development of new mitigation banks and expanding the Department's in-lieu fee programs to enhance capacity for wetland and stream mitigation, addressing the current shortfall in available credits for housing in some areas.

6

IMPROVE HAZARDOUS BOAT MANAGEMENT

Implement the new statewide program for managing abandoned and derelict vessels, focusing on securing permanent funding sources and refining program details based on stakeholder feedback.

7

UPDATE FEE STRUCTURES

Implement the planned rulemaking for a new removal-fill fee structure by January 1, 2026. This should involve setting fees that reflect the cost of permit processing and administration to reduce the financial burden on the Common School Fund.

Cape Meares in Tillamook County

To accomplish the seven actions on page 12, the Department will need to increase opportunities through partnership:

1
STRENGTHEN COLLABORATIONS

Enhance partnerships with local governments, conservation groups, and other stakeholders to facilitate joint efforts in wetland restoration, hazardous boat management, and environmental conservation.

2
PROVIDE RESOURCES AND TRAINING

Offer additional resources, training, and technical assistance to partners to improve their capacity to manage and restore wetlands and streams and navigate regulatory processes.

3
FOSTER OPEN COMMUNICATION

Maintain transparent and open communication channels to ensure partners are well-informed about new policies, rulemaking updates, and opportunities for collaboration.

4
ENCOURAGE SHARED FUNDING

Explore and develop shared funding mechanisms to support joint projects and initiatives, making it easier for partners to participate in and benefit from conservation efforts.

By reinforcing these aspects of our partnerships, the Department aims to build a stronger network of collaborators dedicated to protecting Oregon's aquatic resources and advancing shared goals.

Sunrise on the Willamette River in North Portland, a tugboat going under a raised Burlington Northern Railroad Bridge

The Department reports information to the legislature annually as required by Oregon Revised Statute (ORS) for removal-fill program activities (ORS 196.855 and ORS 196.910) and the Oregon Removal-Fill Mitigation Fund (ORS 196.910).

The number of removal-fill permit decisions, notice responses, and permit renewals the Department makes demonstrates workload and identifies where there may need to be changes, such as if a high number of denials are issued. Table 1 shows permits, notices, and permit renewals made in FY24, including in Essential Salmonid Habitat (ESH)-designated waterways. One individual permit proposing installation of 46 untreated pilings to create a fish trap/ commercial pound net in the lower Columbia River was denied.

Table 1

PERMIT TYPE	NON-ESH APPROVED	ESH APPROVED	NON-ESH RENEWED	ESH RENEWED	REQUEST NOT APPROVED
Individual Permit	46	44	145	103	1
General Authorization Notices	28	53	Not renewable	Not renewable	0
General Permit	24	13	35	19	0
Emergency Permit	1	19	Not renewable	Not renewable	0
Voluntary Restoration Notices	4	9	Not applicable	Not applicable	0
Total	103	138	180	122	1

* The Department also made 54 decisions that no state permit was required for the activity described in an application. The Department received 301 new permit applications and notices in FY24. Some are still being reviewed and therefore are not reflected in table 1.

The volume of fill and removal authorized in FY24 by authorization type is shown in Table 2, as well as the portion of this in Essential Salmonid Habitat (ESH)-designated waterways. The volume of material, shown in cubic yards, affects the fee charged for some types of permits.

Table 2

PERMIT TYPE	NON-ESH REMOVAL VOLUME	ESH REMOVAL VOLUME	NON-ESH FILL VOLUME	ESH FILL VOLUME	WETLAND REMOVAL VOLUME	WETLAND FILL VOLUME
Individual Permit	15,396,540	1,770,152	4,095,663	1,078,544	113,153,867	1,163,980
General Authorizations	518	342	1,310	436	96	282
General Permit	366,783	22,035	377,192	18,269	13,350	21,467
Emergency Permit	110	1,370	0	5,089	72	72
Total	1,5763,951	1,793,901	4,474,165	1,102,367	13,167,386	1,185,802

Oregon's wetland conservation goal is to maintain a stable resource base of wetlands. The Department reports wetland area gains and losses by permit type to see whether no net loss was achieved. While wetland losses are compensated in each removal-fill authorization, gains from mitigation banks and other Department-funded mitigation projects are recorded in the fiscal year they are approved, rather than when they are purchased. Gains from wetland restoration and creation are included, but not enhancement or preservation of existing wetlands. Table 3 shows there was a loss of 24 acres of wetland from permits and enforcements in FY24.

Table 3

PERMIT TYPE	WETLAND ACRES GAINED	WETLAND ACRES LOST	NET WETLAND ACRES
Individual Permit	14.43	63.48	-49.05
General Authorization	1.53	0	1.53
General Permit	0.02	2.05	-2.03
Emergency Permit	0	0	0
Mitigation Bank	25.7	0	25.7
Enforcement	2.74	3.08	-0.34
Total	44.42	68.61	-24.19

The Department selected ten percent of permits that closed in FY23 to monitor if they were compliant with the conditions described in the permit. Monitoring is important because it highlights potential issues with certain permit types that may require changes or additional guidance. Table 4 shows that 82% of the permits monitored in FY24 were compliant. Individual permits and emergency permits had the lowest compliance rates.

Table 4

PERMIT TYPE	NUMBER MONITORED	COMPLIANT	NON-COMPLIANT
Individual Permits	27	20 (74%)	7 (26%)
General Authorizations	34	31 (91%)	3 (9%)
General Permits	7	7 (100%)	0 (0%)
Emergency Permits	10	6 (60%)	4 (40%)
Total	78	64 (82%)	14 (18%)

Permits that have a site restoration requirement, such as replanting vegetation, or that have completed a compensatory mitigation site, are monitored for success by the permit applicant. Monitoring duration varies but is for a minimum of five years for compensatory mitigation. Table 5 shows 583 permits with monitoring requirements in FY24. The Department closed 34 permits in FY24.

Table 5

WATERWAY TYPE	NUMBER OF PERMITS WITH MONITORING REQUIREMENTS	OPENED FY24	CLOSED FY24
Wetland	267	17	16
Stream	316	36	18
Total	583	53	34

Violations of the Removal-Fill Law occur when the conditions of a permit are not met, or when there is unauthorized removal-fill activity (without a required permit). The Department monitors permits to ensure compliance with required conditions. Generally, the Department works with permittees to resolve permit non-compliance. The Department also uses enforcement to deter and correct these violations using fair, transparent, and consistent methods to achieve compliance and program integrity. Table 6 shows compliance checks and enforcement activities that occurred in FY24, including in Essential Salmonid Habitat (ESH)-designated waterways. Compliance checks, enforcement, civil penalties, and final orders do not necessarily occur in the same year. For example, civil penalties may be collected for enforcements opened in prior years, and the amount of civil penalties initially assessed may be higher or lower than the amount collected.

Table 6

	NUMBER OF COMPLIANCE CHECKS	ENFORCEMENT FILES OPENED	ENFORCEMENT FILES CLOSED	CIVIL PENALTIES ASSESSED	CIVIL PENALTIES COLLECTED	FINAL ORDERS
Permit Violation, non-ESH waters	83	1	5	$32,000	$6,000	2
Unauthorized Removal-Fill, non-ESH waters	133	51	45	$203,114	$214,510	19
Permit Violation, ESH waters	30	0	2	$12,000	$6,000	1
Unauthorized Removal-Fill, ESH waters	53	23	24	$20,857	$20,857	12

All counties and cities are required to notify the Department of certain development activities proposed in wetlands or waters that are mapped on the Statewide Wetlands Inventory. Local governments provide information through an online submittal form and the Department must provide a written response within 30 days to the applicant and local government as to whether the proposed action is likely to require a removal-fill permit and/or a more precise wetland boundary location, known as wetland delineation. Table 7 shows that staff responded to nearly 82% of notices within 30 days or less.

Table 7

RESPONSE TIME	RESPONSES
30 Days or Less	704
More than 30 Days	157
Total	861

Mitigation banks represent an important efficiency for both the Department and for permit applicants. Mitigation banks can provide greater ecological benefits and are more efficient for Department staff to manage than smaller mitigation sites. The economy of scale with larger mitigation projects adds to the profit margin for the bank sponsor's business venture and allows lower per-credit pricing. A mitigation banks map is available to the public to identify potential options in their area of interest. Table 8 shows location and cumulative sales and balances of the 23 wetland mitigation banks that were active in FY24.

Table 8

MITIGATION BANK	COUNTY	TOTAL POSSIBLE CREDITS	% OF CREDIT RELEASED	% SOLD TO DATE (OUT OF TOTAL POSSIBLE)	BALANCE OF CREDITS REMAINING (OUT OF TOTAL POSSIBLE)
Amazon Prairie	Lane	92.81	27.43%	11.42%	82.21
Butler	Washington	45.60	83.33%	60.90%	17.83
Claremont	Clatsop	11.62	99.91%	63.77%	4.21
Foster Creek	Clackamas	28.10	100.00%	99.11%	0.25
Dairy Creek	Washington	60.72	30.01%	1.93%	59.55
Garret Creek	Clackamas	15.49	80.70%	78.70%	3.3
Long Tom	Lane	61.14	100.00%	100.00%	0
Marion	Marion	34.09	100.00%	95.89%	1.40
Mary's River	Benton	71.41	70.00%	33.27%	47.65
Mid-Valley phase 2	Benton	4.73	90.06%	90.06%	0.47
Muddy Creek	Benton	59.08	89.98%	89.68%	6.1
Mud Slough phase 4	Polk	42.58	100.00%	89.44%	4.49
Oak Creek	Linn	38.98	58.00%	58.00%	16.4
ODOT Bobcat Marsh	Washington	5.26	100.00%	86.31%	0.72
ODOT Crooked River	Crook	5.32	90.04%	42.29%	3.07
ODOT Greenhill	Lane	8.11	60.05%	14.06%	6.97
ODOT Lost River	Klamath	13.41	80.00%	32.00%	9.1
ODOT Vernal Pool	Jackson	20.95	96.00%	55.00%	9.48
Rogue Valley	Jackson	24.70	80.00%	77.25%	5.62
South Santiam	Linn	50.49	70.09%	63.97%	18.19
Tualatin Valley	Washington	31.13	100.00%	99.00%	0.31
Wilbur Estuary	Lane	44.12	75.00%	26.68%	32.35
Yoncalla Creek	Douglas	26.49	34.96%	31.11%	18.25
Total Credits	—	796.33			347.93

Purchasing mitigation credits directly from the Department of State Lands is one mitigation option. DSL deposits credit payments to the Removal-Fill Mitigation Fund, which provides grants for mitigation projects that replace the resources lost. The Department offers two types of mitigation credits: payment in-lieu credits and in-lieu fee credits. Payment in-lieu credits satisfy state mitigation requirements and are available for all areas of the state. In-lieu fee credits satisfy both state and federal mitigation requirements and are available only in areas of the state approved by the U.S. Army Corps of Engineers (Corps). Table 9 shows activities and credits sold through these programs in FY24.

Table 9

PAYMENT IN-LIEU (PIL) AND IN-LIEU FEE (ILF) CREDIT INFORMATION	
Number of Permits using the PIL Program	15
PIL $ Totals	$173,270.11
PIL Credits Sold	0.806
Number of Permits using the ILF Program	3
ILF $ Totals	$168,193.08
ILF Credits Sold	1.42
Mitigation Fund Deposits $ Total	$341,463.19
Total Mitigation Credits Sold	2.23

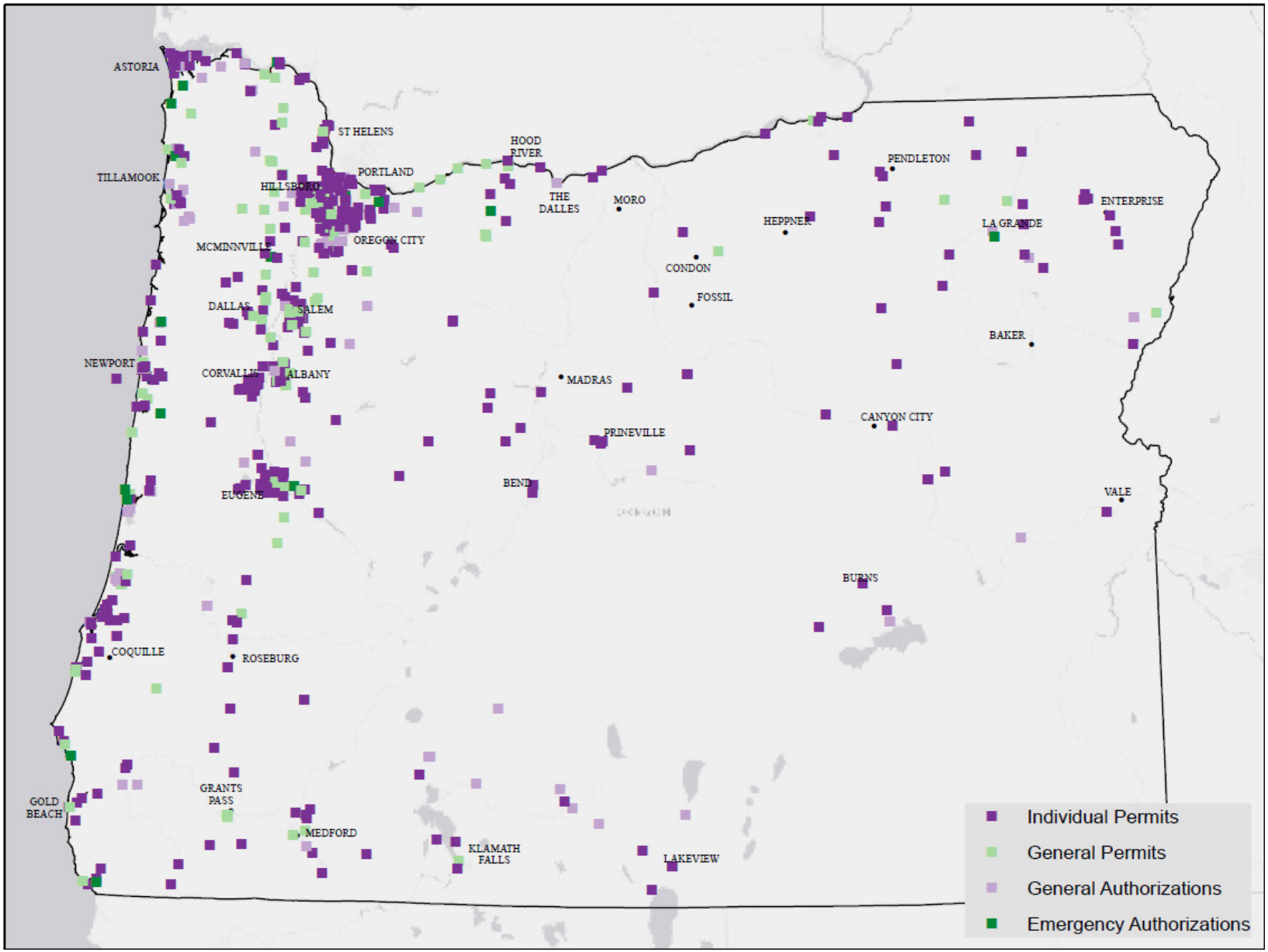
The Department's in-lieu fee program approved by the Corps covers six geographic areas. A set number of credits are pre-approved for sale in each service area, and credits sold must be fulfilled through compensatory mitigation projects through credit releases. Table 10 shows the projects or service areas, how many credits have been released from a project, how many credits have been sold, and the balance. Numbers are cumulative. A negative balance of credits means these credits have not yet been fulfilled through a project or we are waiting on a credit release from the Corps. A mitigation banks map that includes these projects is available to the public.

Table 10

PROJECT NAME	COUNTY	CREDITS RE-LEASED	CUMULATIVE CREDITS SOLD	BALANCE OF CREDITS REMAINING
Tamara Quays	Lincoln	2.16	1.81	0.35
Half Mile Lane	Washing-ton	13.24	8.3	4.94
Pixieland	Lincoln	4.02	2.52	1.5
Lower Columbia	Clatsop	0	5.42	-5.42
Umpqua Interior Foothills	Douglas	6.97	7.52	-.55
Kilchis (Wilson Trask Nestucca)	Tillamook	3.26	2.44	.82

Figure 1 shows removal-fill permits and authorizations, including renewals, were issued across the state in FY24, with concentration in urban areas in the Willamette Valley and on the Coast.

Figure 1



The Department reviews five-year trends on key processes of the Removal-Fill Program to understand when changes or additional resources may be needed.

Table 11 shows the number of wetland notices received from local governments and whether the Department's response time was within the 30-day statutory response time. While the number of notices received has decreased from a high in FY22, the percent of notices with a response within 30 days decreased in FY24. The staff that respond to notices also process determinations and delineations (table 12) so workload is high overall. Staff turnover was also a factor. The average response time for FY20 to FY24 was 23.7 days.

Table 11

RESPONSE TIME	FY20	FY21	FY22	FY23	FY24
30 Days or Less	761	1098	1036	849	704
More than 30 Days	43	82	192	155	157
Total	804	1180	1228	1004	861

Table 12 shows the number of jurisdictional determinations and delineation report reviews completed. Staff prioritize wetland delineations because there are fees and statutory deadlines associated with these reviews. Determinations are free and are completed as staff have time. Capacity to respond to determination requests has been low over the past several years.

Table 12

NUMBER OF REVIEWS	FY20	FY21	FY22	FY23	FY24
Determinations	317	339	321	242	278
Delineations	296	318	344	360	331
Total	613	657	665	602	609

Table 13 shows the number of removal-fill decisions by permit or authorization type, including renewals (individual permits and general permits only), but not notices or decisions where no state permit was required. The data fluctuates but does not show strong trends beyond the relative number of permit type decisions made each year.

Table 13

PERMIT TYPE	FY20	FY21	FY22	FY23	FY24
Individual Permit	369	377	381	416	339
General Authorization	96	113	88	94	81
General Permit	70	87	76	98	91
Emergency Permit	35	38	21	14	20
Total	570	615	566	622	531

Table 14 shows the number of waterways authorizations issued in FY24. Numbers for special licenses/permits and special use leases are not comparable across all years. These types of authorizations are also used for Oregon-owned uplands, but these were not removed from the waterways data prior to FY22. The numbers of authorizations in FY24 are higher than the last two years due to more registrations and short-term access agreements.

Table 14

AUTHORIZATION TYPE	FY20	FY21	FY22	FY23	FY24
Public Facility License	1	1	0	0	1
Waterway Easement	19	16	15	13	6
Registration of Waterway Structures	44	15	14	18	28
Waterway Lease	3	2	4	4	1
Sand & Gravel	1	2	2	2	1
Short Term Access Authorization*	38	42	17	29	35
Special Use License/Permit*	19	13	0	0	1
Special Use Lease*	2	0	0	0	1
Temporary Use Permit	0	0	0	0	0
Total	127	91	52	66	74

Table 15 shows renewals of waterways authorizations by type. The numbers of renewals in FY24 is the highest since FY20 and is driven by the high number of registrations.

Table 15

WATERWAY AUTHORIZATION TYPE	FY20	FY21	FY22	FY23	FY24
Public Facility License	2	2	3	5	3
Waterway Easement	3	2	1	7	0
Registration of Waterway Structures	776	412	478	359	500
Waterway Lease	15	20	10	23	10
Sand & Gravel	4	0	2	2	2
Short Term Access Authorization	0	0	2	0	0
Special Use License/Permit	3	2	0	0	0
Special Use Lease	2	0	0	0	0
Temporary Use Permit	0	0	0	0	0
Total	805	438	496	396	515

Oregon
Tina Kotek, Governor

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M E M O R A N D U M

Date: December 10, 2024

To: Governor Tina Kotek
Secretary of State LaVonne Griffin-Valade
State Treasurer Tobias Read

From: Vicki L. Walker, Director

Subject: Geologic Carbon Sequestration – December 2024 Project Update

Oregon's Department of Geology and Mineral Industries (DOGAMI) has been examining opportunities for storing carbon dioxide in underground rock formations in a process known as geologic carbon sequestration. Carbon sequestration is the process by which carbon dioxide is removed from the atmosphere and permanently stored, an action that has been identified as integral to reducing global climate change. Carbon sequestration reduces the amount of carbon dioxide in the atmosphere and can generate revenue through the sale of carbon credits, fee-based programs, or other funding mechanisms.

Northeast Oregon's Columbia Basin has been recognized by the U.S. Geological Survey as an area of geologic carbon sequestration study and opportunity – one of two in the Pacific Northwest. There is an opportunity for interagency collaboration on contributing to climate goals and diversifying revenue, as DSL owns the surface and subsurface rights for sixteen parcels totaling 1,558 acres within the opportunity area.

On October 15, 2024, Dr. Ruarri Day-Stirrat, State Geologist and DOGAMI Executive Director, provided information to the State Land Board on the science behind geologic carbon sequestration and its potential in Oregon. DOGAMI staff return to give an overview of the long-term project, goals for community engagement, and the potential for collaboration with DSL.

APPENDICES

A. Geologic Carbon Sequestration in Oregon – Project Timeline (DOGAMI)

Geologic Carbon Sequestration in Oregon

Project Components	2025*				2026*				2027*				2028*				2029*				2030*				2031*				2032-2035*			
	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4	Q 1	Q 2	Q 3	Q 4				
Geologic modeling and community outreach (CaRBTAP - DOE funding secured)												5																				
Well on DSL managed land (POP - potential DSL funding)	1						4																									
Additional geologic investigation and monitoring**																																
Regulatory program development (POP - potential funding)			2																													
Regulatory program development grant (potential EPA funding)					3																											
Regulatory program development & implementation***																	6										7					8

Notes:

CaRBTAP - Columbia River Basalt Technical Assistance Partnership
DOE - U.S. Department of Energy
DSL - Oregon Department of State Lands
EPA - U.S. Environmental Protection Agency
POP - Policy Option Package
** Dates are approximate*
*** Potential funding from multiple sources (federal, state)*
**** Potential funding from multiple sources (federal, state, fee/revenue)*

Decision/Inflection Points:

1. Ongoing coordination with DSL
2. Decision to move forward with EPA grant submittal
3. Application for EPA Grant
4. Final selection of well site
5. Feasibility decision (technical/community consent)
6. Request for additional funding if needed
7. Transition to revenue and fee funded regulatory program
8. Ongoing

last updated 11/26/24