



OAR 141-126 RAC Meeting #1 Summary

August 24, 2021, 2:00-5:00 PM

Overview

The OAR 141-126 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on August 24, 2021, via Zoom. The RAC was convened to provide input on proposed administrative rules governing the authorizing of communication site facilities on state-owned land.

RAC Members and Attendance

Present?	Name	Affiliation
Yes	Chip O’Hearn	Smartlink/AT&T, industry representative
Yes	Jon Bial	Oregon Public Broadcasting, a non-profit lessee
Yes	Steve Quick	Harney County School District 3 Superintendent, Common School Fund beneficiary
Yes	Lori Noble	Cow Creek Band of Umpqua Tribe of Indians
Yes	Gabriel Rendon	ODOT Wireless Group, a lessee/state agency
Yes	Kassandra Rippee	Coquille Indian Tribe
Yes	Stephanie Bowen	Harney Electric Co-op, a lessee
Yes	Travis Coleman	Lumen/Century Link, industry representative
Staff/Advisors		
Yes	Chris Parkins	DSL, Manager, Bend Field Office
Yes	Amber McKernan	DSL, Property Manager
Yes	Sheena Miltenberger	DSL, Rangeland Manager
Yes	Shawn Zumwalt	DSL, Property Manager
Yes	Erin Serra	DSL, Ownership Specialist (Support)
Yes	Lani Ahmadian	DSL, Executive Support Specialist (Support)
Interested Parties		

Welcome/Introductions/Agenda Review

Chris Parkins, Facilitator, and Amber McKernan, DSL Staff Advisor, welcomed the group and explained the agenda and meeting goals, including that the meeting was being recorded. A power point

presentation was utilized for the first four agenda items. Chris advised that the meeting and a meeting summary will represent the official public record of the RAC deliberations.

Zoom Protocols, Rulemaking Process

Chris discussed the Zoom meeting protocols, including utilizing the chat and hand raise function to be called on by the facilitator. A timeline of the rulemaking process and where the RAC fits into the timeline was shown in the presentation.

Operating Principles, RAC Role

Chris outlined the operating principles and RAC role as shown in the presentation. The expectations for the RAC members being that all members review the background information provided to them prior to the meeting and be ready to discuss. Participate in all RAC meetings and work collaboratively to achieve consensus to provide recommendations to the Department.

Rulemaking Purpose and Scope

Amber discussed the Rulemaking Purpose and scope for the entirety of the proposed Division 126 rules including some specific topics the Department is looking for extra RAC input on. DSL wants input on defining user categories, best practices and standards, terminology, and proposed fees. Also identified were the rulemaking sections to be discussed during the this first RAC meeting.

Discussion-Draft Rules

Amber McKernan and Sheena Miltenberger shared the draft Division 126 rules and led the discussion looking at each section, rule by rule, asking for questions, comments, and discussion of each. Amber opened the discussion by stating that we would not necessarily read the rules word for word and that we would be taking notes on comments, questions, and discussion.

141-126-0100: Amber explained that these rules only apply to the authorization of leases for communication site facilities and establish a leasing process for that use. Amber specifically stated that these rules do not cover the granting of easements. There was no discussion from RAC members regarding this section.

141-126-0110: Amber explained that the majority of the rules in this section are standard in most Department Rules.

Jon Bial commented that he was having difficulty finding what the rules applied to, i.e., new applications going forward, renewals, existing contracts? *Department response:* The rules will be effective from the date rules are filed with the Secretary of State's Office, which follows State Land Board adoption and approval. They will apply to every lease application moving forward (new, renewals, assignments etc.). The terms and conditions of each existing lease will have to be reviewed to see how the rules apply. Jon followed up with asking if the Department will have to do an individualized analysis for each existing lease. *Department response:* Yes, the Department will look at each existing lease to analyze how the new rules will apply to it. Some parts may apply, such as fees, whereas renewal timelines might be set by the existing lease vs. the new rules. The Department will honor existing leases and renewals as long as an applicant goes through the processes outlined in the new rules.

Jon asked to clarify what we were looking for from the group as far as just looking at concepts or as detailed as readability and punctuation. *Department response:* The Department is looking for inputs on concepts and readability, but if the group notices a typo or punctuation error, please point them out.

141-126-120: Sheena went over the definitions for specific terms in the rules.

Chip O’Hearn mentioned the First Net sites that AT&T build and manages might not fit into the definition for Cellular Communications as they are part of a nationwide cell network for 911/First Responders. Stephanie Bowen added that utilities may also fall under emergency services as their communications equipment is utilized in emergency situations. Gabe Redon indicated that Oregon State Police communications is absorbed into ODOT as well as hosting other co-ops and state agencies. *Department Response:* We may need to identify primary and secondary uses of the infrastructure, i.e. if the primary use is for-profit or primarily for emergency services. Need more thought on this and will make track changes for the next iteration of the draft rules. Chip O’Hearn pointed out that the definition for decommissioning plan needs to account for end-of-life of equipment or lease. Also discussed was the definition for non-profit entities and the Department will look into adjusting the definition to capture more than 501-c(3)’s.

141-126-130: Amber led the discussion on application requirements.

Application fees are currently set at \$750 for Department applications. The applications fees proposed are meant to be more reflective of the types of uses. Stephanie asked if the application requirements were for base leases or co-location leases or both. *Department Response:* Co-location fees are addressed later in the rules.

Jon commented that the amount of work involved in a new application is significantly more than a renewal, is the application fee the same for both? *Department response:* It may be fair to have lower application fee for a renewal. New applications take more effort and have a higher workload for the Department. Renewals moving forward should be a more streamlined process which would support a lower fee and will be taken under consideration.

Steve Quick asked where the number for the proposed application fees came from. *Department Response:* The Department conducted a rate study that looked at other states and the federal government to see what fees they charge. Prior to the second RAC meeting, we will provide the rate study. There are 23 western states within an association that represents them, we have reached out to them to see how other states manage their Common School Fund trust lands in relation to communication site leasing.

Stephanie inquired if there should be a requirement in the rules for how quickly the Department turns the application around after receiving. *Department Response:* The goal would be to process a complete application within 180 days. Sometimes it depends on the complexity of the site or if it is a new site that requires development. Can also depend on public comments received, and agreeing on legal language in the contract. Stephanie’s comment is noted. May need to add language for Department’s response to an application – may fit better in a different section in the rules. Jon commented that he would advise against a hard deadline for lease signing, unless the parties could agree to an extension as leases take forever to negotiate, and it rarely matters who the parties are. Stephanie added that the Farm Service agency has a good methodology for this. *Department Response:* These comments are noted, and we will investigate this further.

Chip Asked if there was an avenue for permit applications and leasing to be done concurrently, from when a complete and accurate application is submitted. Maybe a date that the application is complete, which could trigger the next steps, what can be done to streamline the process for everyone?

Department Response: We run into a catch-22 with this, as the Department is obligated to ensure that an application does not move forward without having sign-off from other agencies such as local government planning. We may be able to tackle this on a case-by-case basis.

141-126-0140: Amber led the discussion on the application review processes.

With regards to multiple applications being submitted at once, Jon asked if the Department ever finds one application better than another and what would be the recourse for the applicant that was denied? *Department Response:* This has never really happened with communication sites in the past, although it does happen in other programs. We need to have a competitive bid process in the rules, but the Department will follow up or recourse for an aggrieved party.

Regarding the comment period for applications, Jon asked if the intent of this provision or practice of the Department to contact all stakeholders? *Department Response:* This does apply to new applications. If a lessee wants to replace equipment on a tower which doesn't change the use or footprint, then the application may not go through the public review process. Jon followed up by asking if the full stakeholder list is always contacted and if not then may need to change some language. *Department Response:* We will look at this and may change the language a bit to clarify.

Amber indicated that the Department curates "list-serves" to contact interested parties and stakeholders that anyone can sign up to be contacted. Lori Noble state that there is a NEPA Review through Tribal Government to ensure that lands have no tribal artifacts. Kassie Rippee followed up stating that SHPO (State Historic Preservation Office) is not the only contact for cultural resources and that there needs to be better communication with the Tribes. *Department Response:* The Department does reach out to Tribes through this process and will work to update Tribal contacts lists for notifications.

The Department stated that we usually require an archaeological survey for proposed ground disturbing activities. Kassie asked if that was stated anywhere in the draft rules. *Department Response:* We will add language to address that.

Stephanie asked if the comment period and what happens afterward in the process has timelines. i.e., how long is the notice posted, how long does the Department have to notify the applicant, how long does the applicant have to address any comments? *Department Response:* The application requires 30 days for the public review/comment period, we pass along any comments received to the applicant to address once the comment period is over. There are no timelines currently identified in the draft rules. In the past we have left it open ended to give the applicant time to address any comments and each application is handled on a case-by-case basis depending on the comments received. Stephanie requested that there needs to be some mechanism to keep the process moving forward. *Department Response:* We will investigate putting some timelines in the application review process.

Jon brought up language in 9 (c) as being an issue for renewals as an applicant should not have to renegotiate a lease renewal when language has already been agreed on. Most applicants want long

lease terms. *Department Response:* This language allows for changing over time in statutes and legal language. This may also be a Department policy that is used in other rule sets that we may not be able to change. Jon replied that this provision could cause a significant burden to both parties and we should consider striking the provision or limiting it to something catastrophic like a law change.

Regarding the requirement to submit payment prior to getting a lease signed, Jon found this odd because they would not want to provide a check prior to having a lease, it should be done at the same time ideally or within a short period. *Department Response:* We have discussed this internally and it is a DSL policy. There is always the option to use an escrow agent to facilitate payment and signing of lease simultaneously but there is a cost to that. DSL is willing to consider feedback provided and potentially modify the way this reads.

Summary and Next Steps

The next RAC meeting is scheduled for Tuesday, September 14th from 2:00 pm – 5:00 pm. We will focus on fees for applications and compensation in the next meeting. The rate study and other materials will be provided for your review along with the draft rules including track changes based on our discussion.