

[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 Trust and Non-Trust Land 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(9) that are also subject to a communication site facilities authorization 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 (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 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 individual use of, or development placed on state-owned land will constitute a separate discrete activity 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 facilities authorization 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 facilities authorization 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. 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) All uses subject to these rules must be authorized by a communication site facilities lease 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) 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 facilities lease and, if not,

(b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a communication site facilities authorization are either brought into compliance with the requirements of these rules or 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 holder of the authorization has complied with all terms and conditions of the lease and applies to the Department for a renewal as prescribed in these rules.

(11) The Department may, at its discretion, deny a communication site facilities 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 communication site facilities authorization 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; and

(b) Request proposals for communication site facilities developments on land it manages and may 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 141-126-0110; 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 273.045, ORS 273.051(2)(b), ORS 273.245

**Statutes/Other Implemented:** OR Const. Art. VIII, Sec. 2 & 5

**History:**

#### **141-126-0120**

##### **Definitions**

- (1) "Applicant" is any person applying for a communication site facilities authorization.
- (2) "Appraised Value" means an estimate of the current fair market value of property derived by a licensed independent appraiser.
- (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) "Authorized Area" is the area of state-owned land defined in the communication site facilities lease for which a use is authorized.
- (5) "Base Lease" means the lease issued to the owner of structures and facilities.
- (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.
- (7) "Co-location" means more than one entity sharing the same communication site facility.
- (8) "Commercial" means a use that results in, or is associated with, monetary consideration or gain. A business entity that strives to make a financial profit. ~~Does not apply to entities that are not for profit 501 (c)(3) or government.~~
- (9) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences and other associated structures or 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, may be governed by the administrative rules for granting easements on state-owned land (OAR 141-122 and OAR 141-123).
- (10) "Compensation" is the amount of money paid for a communication site facility lease to the Department for the use of Department-managed land.
- (11) "Decommissioning Plan" means a plan to retire and remove the physical facilities and/or structures of the communication site facility including, but not limited to, decontamination, dismantlement, site rehabilitation, costs, and timelines for decommissioning.
- (12) "Department" means the Oregon Department of State Lands.

**Commented [MS\*D1]:** Add language for "end of life" for a site and/or structures per RAC recommendation. Added language to section 0200 that discusses Decommissioning plans in greater detail.

(13) "Development" is any structure or series of related structures authorized by the Department on an area of state-owned land managed by the Department.

(14) "Director" means the Director of the Oregon Department of State Lands or designee.

(15) "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, ~~and/or~~ Law Enforcement services, and emergency alert systems. Does not include commercial wireless cellular facilities.

(16) "Entity" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies, non-profit organizations, as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or federally recognized Tribes in Oregon.

(17) "Facility Manager" means an entity employed by a leaseholder to manage a communication site facility on their behalf for the purposes of site maintenance, management, and/or administration.

(18) "Holder" means the entity to which a communication site facility lease authorization is issued.

~~(19) "Large Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services within a county where the communication site is located that has a population of 150,000 or more people.~~

~~(2019)~~ "Lease" is a written authorization issued by the Department to an entity to use a specific area of state-owned land for a specific use under specific terms and conditions.

~~(2120)~~ "Lessee" refers to any entity having a communication site facilities lease granted by the Department authorizing a communication site facility on state-owned land managed by the Department.

~~(21) "Local Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services to a service area that does not extend beyond the boundaries of the state of Oregon.~~

(22) "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.

~~(23) "Medium Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services within a county where the communication site is located that has a population of 50,000 to 150,000 people.~~

~~(23) "National/International Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services to a service area that extends beyond Regional Commercial.~~

(24) "Non-Commercial" means use by a ~~not for-profit (non-profit) 501 (c)(3) entity~~, local, county, state, federal or tribal government, fire protection association, quasi-government entity, publicly owned and operated utilities, an entity that qualifies as a federally designated not-for-profit (non-profit); also includes personal use and research and scientific use.

(25) "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.

(26) "Personal Use" means the use of a communication site facility for amateur radio communications with no monetary gain to the leaseholder.

~~(27) "Regional Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services to a service area that extends beyond the State of Oregon but does not extend beyond Washington, Idaho, Nevada and California.~~

~~(2728)~~ "Research and Scientific Use" refers to using a communication site facility for scientific research communication with no monetary gain to the leaseholder.

~~(28) "Small Commercial" means use by a for-profit entity that has business dealings and provides commercial products or services within a county where the communication site is located that has a population of less than 50,000 people.~~

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

(30) "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.

(31) "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.

(32) "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.

**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 entity wanting to use state-owned land for a communication site facility ~~must:~~

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

~~(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 facilities lease or renewal lease with changes per OAR 141-126-0140 (9)(a) is:

(a) Non-Commercial Uses:

(A) Personal or Research/Scientific Use: ~~\$375250~~

(B) All other Non-Commercial Uses: ~~\$750500~~

(b) Commercial Use: \$1000

(c) Cellular Communications: \$2000

(3) The application processing fee for a lease renewal with no changes as described in OAR 141-126-0140 (9)(b) and (c) is:

(a) All Non-commercial Uses: ~~\$375250~~

(b) Commercial Use: \$500

(c) Cellular Communications: \$1000

~~(4)~~ Unless otherwise allowed by the Director, a fully completed application for a lease must be submitted to the Department at least one hundred eighty (180) calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land.

**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; ~~and~~

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

(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 0210; ~~and~~

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

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

(f) 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; ~~and~~ and

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

(2) The Department will advise the applicant of its determination concerning each of the factors in OAR 141-126-0140(1) within forty-five (45) 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 ninety (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 subject area available to the public by auction.

(5) Upon acceptance by the Department, the application for a new lease will be circulated to applicable various-local, state, ~~and~~ federal agencies, tribal governments and other interested persons including but not limited to tribal governments, adjacent property holders, affected lessees and permittees, 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 if a survey is required; ~~and~~

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

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

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

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

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

(6) The Department ~~may~~will request comments from the Federal Communications Commission, Oregon Public Utility Commission, Federal Aviation Administration, U.S. Department of Defense, any other entities owning or leasing communication site facilities at the lease location, and any other interested parties 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 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 thirty (30) calendar days:

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

(b) If the proposed use will cause interference with existing uses at the lease site, the applicant must remedy any frequency interference identified as ~~Existing~~ authorized frequencies are senior in right to new requests; ~~any interference identified as a result of the proposed use must be addressed by the applicant; and~~

(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; ~~and~~

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

(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, and 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 ninety (90) calendar days of the end of the most recent comment period:

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

(b) Any insurance and/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.

(119) Upon acceptance by the Department of a lease renewal application the Department will determine if there is a change in use or size of the authorized area, or frequencies; ~~and~~

(a) If the Department determines there is a change in use, authorization area, or frequency the application will be processed as described in OAR 141-126-0140 (1) through (8); ~~and~~

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

(c) If the Department determines the renewal complies with the requirements of OAR 141-126-0140 (119)(b) the Department shall provide written notice to the holder 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~~

**Commented [MS\*D2]:** Per internal discussion this is a provision required under agency policy and is consistent with other agency administrative rules as approved by previous RAC recommendations for those rules.



contains a provision requiring that the annual compensation be re-determined upon renewal, the written notice from the Department shall include the new annual compensation rate.

~~(1210) If the Department approves the application, the Department will notify the applicant in writing of:~~

~~(a) The amount of compensation pursuant to OAR 141-126-0150 that the applicant must remit to the Department to obtain the authorization; and~~

~~(b) Any insurance and/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.~~

~~(1211) The Department will not grant a lease to an applicant until:~~ A communication site facility lease, whether executed or not, will not be effective unless and until the applicant has:

~~(a) It has received all fees and compensation specified in these rules, and evidence of any required insurance, surety bond and/or other financial instrument; and~~ Paid all fees and compensation specified in the lease;

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

~~(b) The terms and conditions of these rules have been met.~~ Met all terms and conditions of these rules.

~~(1312)~~ In addition to the provisions of OAR 141-126-0140(10) and ~~(124)~~, a communication site facilities authorization issued by the Department may not be valid until the holder 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 state-owned land in the manner requested, unless otherwise determined by the Director.

~~(1413)~~ The Director may refer any application to the 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) The holder of a communication site facility lease must remit to the Department on a basis provided in the authorization the full amount of the annual compensation as determined by the Department for the type of use described in OAR 141-126-0150(2) and (3).

(2) Minimum base annual compensation for communication site facility leases will be ~~the greatest of:~~

(a) Non-Commercial Uses:

(A) Personal or Research/Scientific: \$750 per year or a one-time, lump sum amount as agreed upon by the Department for the term of the lease.

**Commented [MS\*D3]:** Per Jon-(11) A lease with the Department, whether executed or not, 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 and/or other financial instrument; and
- (c) met all terms and conditions of these rules.

(B) ~~Local or County~~ Government and Emergency Services: ~~\$3,000~~~~2,000~~ 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/Local~~ Commercial: ~~\$4,000~~~~5,000~~ per year

(B) ~~Regional/Medium~~ Commercial: ~~\$6,000~~~~7,000~~ per year

(C) ~~National/International/Large~~ Commercial: ~~\$8,000~~~~9,000~~ per year

(c) Cellular Communications: \$20,000 per year

~~(d) The amounts in sections will be increased by 3% for every year after the date the rules are effective.~~

(3) Notwithstanding anything in OAR 141-126-0150 (2) the Department reserves the right to establish the base annual compensation for any lease awarded through public auction and where the Department has required an appraisal if such amounts are greater;

~~(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 of the lease.

~~(4)~~ The amount of annual compensation paid to the Department will increase annually by three percent (3%) for every year after the date the rules are effective commencing in the second lease year and compounding annually thereafter for the term of the lease.

~~(5)~~ Upon renewal of a lease, the first lease year rent will equal the amount of the final lease year rent of the previous lease plus three percent (3%) of that amount, unless the Department has completed a market value study as provided in OAR 141-126-0150 ~~(6)~~.

~~(6)~~ The Department reserves the right to periodically re-evaluate minimum compensation rates based on market value of similar communication site facilities.

~~(7)~~ To the extent allowed by ORS 758.010, communication 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 exceeding ten (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 intended for the requested site. The initial lease term and renewal term(s) combined will not exceed thirty (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 approved for legal sufficiency by the Department of Justice pursuant to ORS 291.045 to 291.047 (Public Contract Approval).

(4) The Department may choose at their discretion to close an authorized communication site facility lease area to public entry or restrict recreational use by the public to protect persons, property, and/or developments from harm.

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

(6) Unless otherwise agreed to in writing as a provision of the authorization, the holder of a communication site facilities lease may not interfere with lawful public use of an authorized area, or state lands adjacent to an authorized area, or obstruct free transit across state land. At no time may the holder or their representatives intimidate or otherwise threaten or harm public users of state land.

(7) The holder of a communication site facilities lease must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the authorized area or to be discharged onto state lands or waterways adjacent to the authorized area.

(8) The holder of a communication site facilities lease 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 an authorized area require corrective action by the lessee, or the Oregon Department of Agriculture or its agents; and

(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 an authorized area.

(9) The holder of a communication site facilities lease must conduct all operations within the authorized area 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 holder of the communication site facilities lease must remove any or all developments as directed by the Department within one hundred eighty (180) calendar days of the date of the expiration or termination of the authorization. If the holder of the communication site facilities lease refuses to remove the subject developments, the Department may remove them and charge the holder for doing so.

(11) The holder of a communication site facilities lease will not allow any other use to be made of, or occur on the site or facility that is not specifically authorized:

(a) By that lease; or

(b) By the Department in writing prior to the use. Including allowing co-location of all or a portion of the lease area or structures therein.

(12) Holders of a communication site facilities lease must be the entity which owns the equipment and structures installed on state land under the lease.

(13) The holder of a communication site facilities lease employing contractors or facility managers for the purposes of site management as the holder's representative are required to provide:

(a) Written verification providing permission and designating a facility manager, site manager, contractor, or sub-contractor employed by the holder 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 leaseholder's facility manager concerning the lease administration.

(14) The holder of a communication site facilities authorization must maintain all buildings, equipment and similar structures or improvements located within the authorized area in a good state of repair as determined by the Department.

(15) All buildings, structures, towers, and equipment (such as generators) are required to be labeled by the lessee indicating the authorization number.

(16) Equipment modifications resulting in a change of frequency are subject to a ~~public~~ review period where other authorized users of a site will be notified to identify any potential frequency conflicts. If a frequency conflict is identified, the holder proposing the frequency change will work to resolve the frequency issue so as not to interfere with other holder's uses.

(17) If requested by the Department, a holder of a communication site facilities lease must present evidence to the Department prior to the use that they have obtained:

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

(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 facilities lease allows the holder of the authorization to access their lease area through state lands adjacent to the authorized area.

(19) The holder of a communication site facilities lease will indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area.

**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 entity on a portion of an existing communication site facility is required to notify the Department in writing at least ninety (90) calendar days prior to the date they propose allowing the co-locator access to the site or placing/installing equipment on the site.

(2) All entities using a communication site facility are required to obtain an authorization from the Department corresponding with the following:

(a) Owners of structures are required to obtain a base lease per OAR 141-126-0130 and 141-126-0140 and are subject to compensation fees per OAR 141-126-0150. Owners of structures subject to base leases are not subject to additional co-locator fees.

(b) Entities co-locating on existing leases that are not an owner of a structure or building are required to obtain a co-location lease. The entity requesting co-location on a portion of a communication site facility must apply to the Department per OAR 141-126-0130(1) at least ninety (90) days prior to installing any equipment (i.e., antennas, microwave dishes, electronic controls etc.) and must remit to the Department the non-refundable application fee per OAR 141-126-0170(3). The Department will evaluate co-location applications received per OAR 141-126-0140.

(3) Entities applying for a co-location authorization must submit a non-refundable application processing fee of:

(a) Non-Commercial Uses: ~~\$375250~~

(b) Commercial Uses: \$500

(c) Cellular Communication: \$1000

(4) The term of a co-location lease will be determined by the Department and may be subject to termination or renewal coinciding with the termination or renewal of the base lease the co-locator is occupying.

(5) The compensation for a co-location lease will not be less than:

(a) Non-Commercial Uses:

(A) Personal or Research/Scientific: \$500 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: ~~\$7504,320~~ per year

(C) State, Tribal, or Federal Government and Emergency Services: \$1,125 per year

(D) Non-Profit/Non-Commercial: ~~\$7504,980~~ per year

(b) Commercial Uses:

(A) ~~Local-Small~~ Commercial: ~~\$1,0003,300~~ per year

(B) ~~Regional-Medium~~ Commercial: ~~\$1,5004,620~~ per year

(C) ~~National/International-Large~~ Commercial: ~~\$2,0005,940~~

(c) Cellular Communications: ~~\$13,20010,000~~ per year

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

(6) The amount of annual compensation for a co-location lease paid to the Department will increase annually by three percent (3%) ~~for every year after the date the rules are effective, commencing in the second lease year and compounding annually thereafter for the term of the lease.~~

(7) Upon renewal of a co-location lease, the first lease year rent will equal the amount of the final lease year rent of the previous lease plus three percent (3%) of that amount, unless the Department has completed a market value study.

(8) In the event the base lease is terminated either by default or by mutual agreement between the lessee and the Department, or is not renewed, a co-location lessee may be offered the option to become the base lessee if one of the following conditions are met:

(a) A co-locator lessee purchases the structures and buildings authorized under the base lease. Proof of purchase must be provided to the Department; or

(b) In the event the structures and buildings become property of the state through abandonment or seizure per OAR 141-126-0220 (3) the Department may offer the base lease to the existing co-location lessees through competitive bidding for purchase of the structures and buildings. The competitive bidding will start at the minimum lease rate as described in OAR 141-126-0150 (2)

**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 communication site facilities lease holder 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 an authorization area.

(2) A lessee must apply to the Department in writing on a form provided by the Department at least one hundred eighty (180) 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 Communication: \$1000

(3) Lease modification applications are subject to a ~~public~~ review process including, at a minimum, other authorized lessees located at the same communications site.

(4) An approved lease modification application will be documented through an amendment to the 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:**

**141-126-0190**

**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 sixty (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 Communication: \$1000
- (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 Bond; Decommissioning**

- (1) The Department will require the holder of a communication site facility authorization to obtain insurance in a specified amount and types of coverage.
- (2) The Department may request that the applicant for, or the holder of a communication site facilities authorization provide information concerning the use of the area to the Risk Management Division of the Oregon Department of Administrative Services, which may assist the Department in determining the

appropriate amount and type of insurance policies and limits based on the nature of the use and the site.

(3) The Department may, at its discretion, require that the holder of a communication site facilities authorization 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 they will perform in accordance with all terms and conditions of an authorization or decommissioning plan.

(4) The lease holder 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 authorization.

(5) The provisions of OAR 141-126-0200 (1) through (4) may not apply to certain self-insured government entities.

(6) The Department may, at its discretion, require a decommissioning plan in the event of termination per OAR 141-126-0220, default of the lease, ~~or~~ by a decision not to renew the lease, or due to "end of life" of structures and buildings.

(a) In the event a decommissioning plan is required, the lease 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.

(b) The lease 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.

(c) All decommissioning plans must be approved in writing by the Department prior to engaging in decommissioning work.

(d) The lease holder is required to provide notice to the Department in writing sixty (60) calendar days in advance of implementing the decommissioning plan. At that time, the surety bond or other financial instrument must be in place and submitted to the Department.

(e) The lease 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.

**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 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; and



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

(c) 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 a Notice of Lease Availability and provide an opportunity for applications to be submitted if it 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.

(3) The Notice of Lease Availability will state:

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

(b) The use approved by the Department for the subject area; and

(c) The type of auction and minimum acceptable bid amount; and

(d) What developments, if any, on the subject area the applicant must install, construct, or 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 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 subject parcel is located; and

(b) Posted on the Department's internet web site; and

(c) Sent to adjacent landowners bordering the subject parcel; and

(d) 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 141-126-0140(9) and (10) and 141-126-0160(3) of these rules. However, the Department will have the right to reject any and all bids submitted.

(6) On parcels for which no application has been received, the Department may offer to the public through a competitive bidding process. When doing this the Department will follow the competitive bidding process provided in OAR 141-126-0210(2) through (5).

**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 holder of a communication site facilities lease fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the authorized area, the

Department will notify the lease holder in writing of the default and may provide an opportunity for correction within a specified time frame.

(2) If the lease holder 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 lease holder fails to remove structures, buildings, and equipment upon termination of the lease, those structures, buildings, and equipment may become property of the Department at the discretion of 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:**

#### **141-126-0230**

##### **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 facilities authorization or the alleged unauthorized use of state land to determine if use of the state land conforms with the terms and conditions of a communication site facilities 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 facilities authorization issued by the Director, the Director or the Director's agent, may enter onto private property of the holder of the authorization in order to determine if a violation has occurred.

(3) Upon a determination that a violation of the communication site facilities authorization has occurred or that an unauthorized use of state land has occurred, the Director may exercise the remedies set forth in the communication site facilities authorization, any other remedies available at law, or impose civil penalties consistent with OAR 141-126-0210(4), below.

(4) The unauthorized use of state-owned land or ~~at the~~ violation of ~~an~~ [communication site facilities](#) authorization granted under these rules ~~constitutes a trespass pursuant to ORS 273.185, ORS 274.040, and Oregon Constitution Article VIII, Section 5, authorizing the use of state-owned land are a violation of ORS 273.413, 273.185, and 274.040.~~ In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty ~~pursuant to ORS 273.992, 274.992, and 274.994~~ for the unauthorized use of state-owned land, or for the violation of ~~an~~ [communication site facilities](#) authorization granted under these rules ~~as authorized in ORS 273.992 and ORS 274.992, authorizing the use of state-owned land.~~

**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 facilities authorization, or any other person adversely affected by the issuance or denial of communication site facilities authorization on state-owned land may request that the Director or the Land Board, depending upon which entity made the decision, reconsider the decision:

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

(b) The Director will review the request within sixty (60) calendar days after the date of delivery of the request.

(c) If the Director made the decision of concern, the Director may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the appeal.

(d) If the decision was made by the Land Board, the Director may recommend to the Land Board either that the communication site facilities authorization issuance or denial be affirmed based on the merits of the request, or that the Land Board authorize initiation of a contested case proceeding.

(2) If the Director recommends initiating a contested case proceeding, the Department will select a hearing officer and proceed pursuant to ORS 183.413 through 183.470.

**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:**