



## **PUBLIC RECREATIONAL USE OF STATE-OWNED LAND RULEMAKING RULEMAKING ADVISORY COMMITTEE (RAC) -- SWAN ISLAND FACILITATOR'S REPORT**

### **OVERVIEW**

An OAR 141-088 Rulemaking Advisory Committee (RAC) was convened by the Oregon Department of State Lands (DSL or Department) to provide input on proposed rules to restrict the public recreational use of state-owned banks of the Willamette River between River Mile 9 and 10 within the Portland city limits. A list of RAC participants is attached (Attachment A). The RAC met on August 7, 2019 at the offices of GreenWorks, LLC in Portland.

### **ACTION ITEMS**

#### ***Proposed Rules***

There was consensus to support the proposed rules to protect against: (1) the loss of, or damage to property; (2) the loss of, or damage to natural resources and the environment; (3) degradation of water quality; and (4) loss of, or damage to riparian vegetation and wildlife habitat.

There was also consensus to recommend:

1. To ensure that accessible beach areas are covered by the restrictions, expand the geographic scope of the rules to include state-owned banks of the Willamette River between River Mile 8 (or the appropriate property boundary) and River Mile 10.
2. Encourage the Port of Portland in a future anticipated request for rulemaking to include all its properties contiguous to the Willamette River.
3. Include "beached vessels" in the definition of campsite (141-088-0220(2)).

#### ***Fiscal Impact Statement***

There was also consensus to support the draft Fiscal Impact Statement, amended to note that:

1. There is an extreme deficit of waterfront access in the Portland metropolitan area, making the protection of existing access areas a critical need.
2. Similarly, limited riparian resources within the metropolitan area need to be protected against environmental degradation or loss.
3. The history, function and public investment in the Willamette River Greenway Trail as a public recreation feature should be recognized. Ensuring safe access to the Trail is a communitywide benefit.

## **PURPOSE AND SCOPE**

Rulemaking was initiated by DSL in response to a request by the Port of Portland for restrictions on unauthorized uses of the riverbanks contiguous to the corporate headquarters of Daimler Trucks North America on Swan Island within the Portland city limits. Temporary use restrictions on these lands were enacted on July 1, 2019. The State Land Board has authorized the Department to initiate rulemaking.

The intent of the rulemaking is to restrict unauthorized uses, and specifically fires and overnight camping, in order to protect the natural environment, including water quality, riparian vegetation and wildlife habitat. It is also the intent to enable continued recreational uses on these lands, not to curtail all public use. DSL hopes that this rulemaking serves as a template for rulemaking to address unauthorized recreation uses on state-owned lands in other areas of the state.

## **RULEMAKING PROCESS**

This rulemaking is being combined with similar rulemaking for state-owned banks and islands on the Willamette River within the Eugene city limits. The goal is to provide a public comment period during the month of October. There will be one public hearing for the Eugene rulemaking in Eugene and one for the Swan Island rulemaking in Portland, with a combined public hearing on the two rules in Salem. The Land Board is expected to hold a hearing to adopt the two rules in December. The intent is to have the rules take effect as of January 1, 2020.

## **KEY TOPICS DISCUSSED**

RAC questions and discussion focused on the issues of geographic scope, a comprehensive approach to rulemaking on Port lands, enforcement, beached vessels, houselessness, and beneficial impacts.

### Geographic Scope

Members questioned limiting the rule's geographic scope to River Mile 9 to 10, as this area includes only one of the two Swan Island beaches in this area subject to unauthorized camping. Staff indicated that the department will consult with the Department of Justice on a limited expansion. The group recommended that the geographic scope of these rules be expanded to include state-owned banks of the Willamette River between River Mile 8 (or the appropriate property boundary) and River Mile 10.

It was also suggested that a more holistic, city-wide rule is needed. Staff explained that rulemaking is initiated in response to a local government request and that each geographic location has its own specific issues. The City could request more comprehensive, city-wide restrictions, but State Land Board action would be required to broaden the scope accordingly, which would entail a new process and a longer timeframe. The emergency closure of state-owned lands expires in one year and the Department was directed to complete rulemaking before that expiration. Participants agreed that this rulemaking should not be delayed while port-wide or citywide restrictions are sought. They also encouraged the Port of Portland in a

future anticipated request for rulemaking to include all its properties contiguous to the Willamette River.

### Enforcement

Participants queried about how the restrictions will be enforced. Staff indicated that DSL does not have resources to for enforcement of closures on its lands and relies upon intergovernmental agreements with local law enforcement agencies. While no such agreements are currently in place, the department is negotiating with the Port, Oregon State Marine Board, Multnomah County Sheriff's Office and Metro for enforcement and for abandoned property storage.

The question was also asked what prevents camping beyond the high water line (DSL ownership boundary). Signs are posted but currently there is no enforcement. Such enforcement is the responsibility of local jurisdictions.

### Beached Vessels

Ensuring that beached boats are addressed in the proposed rules was discussed. There was consensus to recommend that "beached vessels" be included in the definition of campsite.

### Houselessness

RAC members discussed the connection between the proposed rule and unauthorized camping on the Willamette River as a growing problem in the metro area. There was consensus that overnight camping needs to be regulated in order to address environmental degradation, public health and safety, and other community concerns. Unsanitary conditions; theft; public safety, especially for the Daimler daycare facility and for Willamette River Greenway Trail users; and trash washing down to marinas from upstream camps were among the concerns cited. A major concern is that public access to the riverfront has become limited due to harassment and other inappropriate behavior. At the same time, there was concern expressed about the consequences of relocating the houselessness problem to elsewhere.

### Fiscal Impact

Economic impacts are expected to be positive with improved public safety and reduced environmental degradation. The group felt that there will be positive impacts for state agencies, local governments, small businesses and the public associated with the proposed restrictions. It was suggested that the discussion of impacts note the extreme deficit of waterfront access and limited riparian resources within the metropolitan area. It was further suggested that the history, function and public investment in the Willamette River Greenway Trail as a public recreation feature should be recognized. Ensuring safe access to the Trail is a communitywide benefit. With amendment of the Fiscal Impact Statement to address these suggestions, members indicated support for the draft Fiscal Impact Statement.

Submitted by: Jim Owens, Facilitator  
Jim Owens Consulting Company

Date: August 9, 2019

**Attachment A: Rule Advisory Committee (RAC) Participants**  
 OAR 141-088 RULES GOVERNING THE ESTABLISHMENT OF RESTRICTIONS ON THE  
 PUBLIC RECREATIONAL USE OF STATE-OWNED LAND RULEMAKING  
 SWAN ISLAND, PORTLAND

<b>Name</b>	<b>Affiliation</b>
Stan Johnson	Board Member, Waterfront Organizations of Oregon (WOOO)
Todd Hoodenpyl	Lieutenant, Oregon State Police Fish and Wildlife Division
Nicole Miranda	Port of Portland
Travis Williams	Executive Director, Willamette Riverkeepers
Mary Jaron Kelley	Associate Program Director, North Portland Neighborhood Services
Celeste Duvall	City of Portland and Multnomah County Joint Office of Homeless Services
Wille Levenson	Ringleader, Human Access Project
Matthew Markstaller	Daimler Trucks North America
Blake Helm	Proprietary Coordinator, OR Dept. of State Lands
Anne Friend	Rules Coordinator, OR Dept. of State Lands
Jacob Taylor	Proprietary Coordinator, OR Dept. of State Lands
Jim Owens	Consultant/Facilitator, Jim Owens Consulting Company
Meliah Masiba	Senior Policy & Legislative Analyst, OR Dept. of State Lands