

OFFICE OF THE 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

06/17/2022 3:51 PM
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: 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.

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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)

Adoption of Division 126 rules is necessary to establish and streamline administrative procedures for authorizing communication site facilities on state-owned land. 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.

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 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 of 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).

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 authorization 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.

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 there may be increases to large companies holding the authorizations and, in some cases, companies may pay less under these rules than they did under previous rules.

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.

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 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(8) that are also subject to a communication site facilities 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 (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 Real Estate 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 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 facilities 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. 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 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 Holder of the lease 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 facilities 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 facilities 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 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.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

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

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) "Applicant" is any person applying for a communication site facilities lease.¶
- (2) "Appraised Value" means an estimate of the current fair market value of property derived by a licensed independent appraiser.¶
- (3) "Authorized Area" is the area of state-owned land defined in the communication site facilities lease for which a use is authorized.¶
- (4) "Base Lease" means the lease issued to the owner of the communication site facility. For cellular leases, the base lease is issued to the owner of the tower that may be used by co-locators.¶
- (5) "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.¶
- (6) "Co-location" means more than one person sharing the same communication site facility.¶
- (7) "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. ¶
- (8) "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).¶
- (9) "Compensation" is the amount of money paid for a communication site facility lease to the Department for the use of state-owned land.¶
- (10) "Decommissioning Plan" means a plan to retire and remove the physical facilities and structures of the communication site facility including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.¶
- (11) "Department" means the Oregon Department of State Lands.¶
- (12) "Development" is any structure or series of related structures authorized by the Department on an area of state-owned land.¶
- (13) "Director" means the Director of the Oregon Department of State Lands or designee.¶
- (14) "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.¶
- (15) "Facility Manager" means a person employed by a Holder to manage a communication site facility on their behalf for the purposes of site maintenance, management or administration. ¶
- (16) "Holder" means the person to which a communication site facility lease is issued.¶
- (17) "Large Commercial" means communication site lease that is for a commercial purpose and is in a county that has a population of 150,000 or more people.¶
- (18) "Lease" is a written authorization issued by the Department to a person to use a specific area of state-owned land for a specific use under specific terms and conditions.¶
- (19) "Lessee" refers to any person having a communication site facilities lease granted by the Department authorizing a communication site facility on state-owned land.¶
- (20) "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.¶
- (21) "Medium Commercial" means communication site lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.¶
- (22) "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.¶
- (23) "Non-Trust Land" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include, but are not limited to, state-owned Swamp Land Act land and submerged and submersible land (land below ordinary high water) under navigable and tidally-influenced waterways.¶

(24) "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.¶

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

(26) "Real Estate 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.¶

(27) "Research and Scientific Use" refers to using a communication site facility for scientific research communication with no monetary gain to the Holder.¶

(28) "Small Commercial" means communication site lease that is for a commercial purpose and is located in a county 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, obtained by the state as the result of an exchange of Trust Land, obtained in lieu of originally granted Trust Land, 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

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:

(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 facilities lease or renewal lease with changes per OAR 141-126-0140(11)(a) is:

(a) Non-Commercial Uses:

(A) Personal or Research/Scientific Use: \$375

(B) All other Non-Commercial Uses: \$750

(b) Commercial Use: \$1,000

(c) Cellular Communications: \$2,000

(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: \$1,000

(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. For a lease renewal, unless otherwise allowed by the Director, a fully completed application must be submitted to the Department at least one hundred eighty (180) 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 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 facilities lease; and¶

(f) If additional information is required concerning the:¶

(A) Proposed use of the state 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 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 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 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 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 entities owning or leasing communication site facilities at the lease location, and any other 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 thirty (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 lease site. The applicant must remedy any

frequency interference identified, as existing authorized frequencies are senior in right to new requests;¶
(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 ninety (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, or size of the authorization area, or frequency.¶
(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 (10);¶
(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, administrative rules, and any other authorization granted to them by the Department, the Holder 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 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 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.¶
(12) A communication site facility lease, even if signed by DSL, 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 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.¶
(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) The Holder of a communication site facility lease must remit to the Department on a basis provided in the lease 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:

(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

(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: \$20,000 per year

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

(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.

(5) Upon renewal of a lease, the first lease year rent of the renewal lease 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) 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

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 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 for the requested area. 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, or developments from harm.¶
- (5) The Department or its authorized representative(s) will have the right to enter into and upon the lease area at any time.¶
- (6) Unless otherwise agreed to in writing as a provision of the lease, the Holder of a lease may not interfere with lawful public use of a lease area, or state lands adjacent to a lease 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 lease area, or to be discharged onto state lands or waterways adjacent to the lease 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.¶
 - (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 a lease area.¶
- (9) The Holder 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 must remove 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 will not allow any other use to be made of, or occur on the lease area 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) A Holder must be the person which owns the equipment and structures installed on state land under the lease.¶
- (13) The Holder 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 Holder's facility manager concerning the lease administration.¶
- (14) The Holder must maintain all buildings, equipment and similar structures or improvements located within the lease area in a good state of repair as determined by the Department.¶

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

(16) The Holder must notify the Department of any equipment modifications resulting in a change of frequency. The Department will notify other authorized users of the site of the equipment modifications for review 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 authorized users.¶

(17) If requested by the Department, a Holder 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;¶

(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 to access their lease area through state lands adjacent to the lease 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 Holder's use or occupation of the lease 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

RULE SUMMARY: Establishes the conditions for which an applicant is eligible for a co-location lease, the procedure for the Department to administer co-location leases, and co-location application fees and compensation rates.

CHANGES TO RULE:

141-126-0170

Co-Location of Communication Site Facilities

(1) A Holder 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 ninety (90) calendar days prior to the date they propose allowing the co-locator access to the site or placing or installing equipment on the site.

(2) All entities using a communication site facility are required to obtain a lease 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 person requesting co-location on a portion of a communication site facility must apply to the Department per OAR 141-126-0130 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. Documentation of an agreement with the base lessee must be provided with the co-location application.

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

(a) Non-Commercial Uses: \$375

(b) Commercial Uses: \$500

(c) Cellular Communication: \$1,000

(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: \$750 per year

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

(D) Non-Profit/Non-Commercial: \$750 per year

(b) Commercial Uses:

(A) Small Commercial: \$1,000 per year

(B) Medium Commercial: \$1,500 per year

(C) Large Commercial: \$2,000 per year

(c) Cellular Communications: \$10,000 per year

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

(e) Twenty-five percent (25%) of the base lease compensation amount when the base lease compensation is determined by appraisal.

(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.

(7) Upon renewal of a co-location lease, the first lease year rent of the renewal lease 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 or an appraisal.

(8) In the event a co-location agreement with a base lessee is terminated by the base lessee, the co-location lease issued by the Department will also be terminated. The base lessee must notify the Department on a form provided by the Department that the co-location agreement has been terminated.

(9) 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

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 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 a lease 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:

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

(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$1,000

(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, it 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

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 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: \$1,000

(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 the Holder of a communication site facility lease to obtain insurance in a specified amount and types of coverage.¶

(2) The Department reserves the right to require the applicant for, or the Holder of, a communication site facilities lease 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 reserves the right to require that the Holder of a communication site facilities lease 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 Holder will perform in accordance with all terms and conditions of an authorization or decommissioning plan.¶

(4) The 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 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 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 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.

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 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 requested area is for a use located on Trust or Non-Trust Land;

(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;

(d) What developments, if any, on the requested area the applicant must install, construct or purchase from the existing lessee if applicable, 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 requested area is located; and

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

(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 Holder 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 Holder in writing of the default and may provide an opportunity for correction within a specified time frame.¶

(2) If the 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 Holder 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. Holder is responsible for all costs to restore the site to the pre-lease condition and all costs for the removal and disposal of structures, buildings and equipment left on the lease 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

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 facilities lease 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 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 facilities lease issued by the Director, the Director or the Director's agent may enter into buildings or structures owned by the Holder in order to determine if a violation has occurred.

(3) Upon a determination that a violation of the communication site facilities lease has occurred or that an unauthorized use of state 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) below, or any other available remedies.

(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 twenty (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 twenty (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 land;

(c) The impact of the violation on Trust Land;

(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 ten (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 a lease holder challenges a decision made by the Department.

CHANGES TO RULE:

141-126-0240

Reconsideration of Decision

(1) An applicant for a communication site facilities lease, or any other person adversely affected by the issuance or denial of communication site facilities 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 thirty (30) calendar days after the date of the decision.¶

(b) The Director will review the request and reach a decision within sixty (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 twenty (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