Oregon
Tina Kotek, Governor

Department of State Lands
775 Summer Street NE, Suite 100
Salem, OR 97301-1279
(503) 986-5200
FAX (503) 378-4844
www.oregon.gov/dsl

State Land Board

Tina Kotek
Governor

Tobias Read
Secretary of State

Elizabeth Steiner
State Treasurer

M E M O R A N D U M

Date: October 23, 2026

From: Division 83 Rulemaking Team

Re: Proposed Compensation Fees and Rules for New, Renewed, and Encroachment Easements Pertaining to Territorial Sea Infrastructure (OAR 141-083)

INTRODUCTION

The Department of State Lands (DSL), with State Land Board approval, issues easements to allow use of Oregon's territorial seafloor. In February 2026, DSL began rulemaking to align the Division 83 rules governing these easements with recent statutory requirements and updates to Oregon's Territorial Sea Plan.

The rulemaking process has included consideration of a new fee structure to ensure application fees provide sufficient support for the legislatively directed application review process and to ensure compensation fees provide sufficient payment for use of a public resource. This memo focuses on compensation fees, which include:

> ***Compensation for new easements and renewal of existing easements.*** Before Senate Bill 793 passed in 2025, Oregon could not require payment for easements in the territorial sea – which meant the people of Oregon received no compensation for long-term or permanent use of the seafloor. SB 793 directed DSL to adopt rules establishing compensation rates for easements associated with water, gas, electric and communication infrastructure in the territorial sea.
>
> ***Compensation for encroachment easements.*** House Bill 2603 (2021), codified in ORS 274.714, requires decommissioning and removal of infrastructure or approval of an encroachment easement. Within one year following termination of a territorial

sea easement, the holder must decommission all infrastructure by removing it from the seafloor and restoring the easement area to a natural condition. Failure to remove all the infrastructure is considered an encroachment and must receive an easement to remain in place, including unused bore pipes.

Outlined below is key background including the initial July 2026 proposed compensation fees for new, renewal, and encroachment easements; a summary of concerns raised regarding the initial proposal; and after review of comments received through September 21, 2206, the October 2026 revised compensation fees DSL now is considering. A summary of the proposed rule language accompanying the proposed fee revisions also is provided.

The Notice of Proposed Rulemaking, Proposed Rule Revisions, Rulemaking Tribal and Public Comment Summary and Agency Response, and compilation of all public comments received to date are available on the DSL rulemaking website: https://www.oregon.gov/dsl/Pages/rulemaking.aspx. Unless otherwise indicated, specific rule references in the DSL Response sections refer to rule references corresponding with those in the Proposed Rule Revisions document.

BACKGROUND

DSL Research and Data Collection

Prior to proposing compensation fees, DSL surveyed 22 coastal states, of which 12 responded. Although no standard methodology for determining compensation fees was apparent, most respondents replied that fees are set based on price per linear foot, ranging from $0.50 up to $27 per linear foot; California, for example, charges $5 per linear foot. After examining the survey data, DSL chose $3 per linear foot, which lies near the lower end of the range and is therefore competitive with other states.

In addition to cable length, DSL examined diameter to consider the overall area footprint of the infrastructure in setting compensation fees to align compensation practices for other uses of state-owned submerged and submersible lands. Standard submarine fiber optic cable diameters are typically under 3 inches in diameter. However, the standard method of landing cable near shore involves boring or horizontal directional drilling to install pipe or horizontal directional drilling (HDD) conduits beneath the sea floor; cable is then fed through the pipe/HDD conduit. The bore pipes/HDD conduits housing such cables may range in diameter. Because bore pipes/HDD conduits remain in place after cable installation, their footprint remains throughout the term of the easement and are abandoned in place even if the cable is later removed.

Rule Advisory Committee Discussions

The Rules Advisory Committee (RAC) discussed application and renewal application fees and compensation rates over multiple RAC meetings, held February – June 2026. The RAC generally agreed with the application fees presented by DSL; however, the RAC did not reach consensus on the appropriate compensation rates.

In particular, DSL heard different perspectives regarding:

> **How to assess compensation fees based on infrastructure diameter**. Some members of the RAC suggested setting fees based on linear length alone; other members suggested using the true diameter and assigning separate flat rates for infrastructure with diameters up to 3 inches as opposed to infrastructure with diameters of 3 inches or greater. Other RAC members noted that infrastructure diameter may be considerably greater when bore pipes/HDD conduits are used, and therefore suggested assigning a separate, higher flat rate for bore pipes/HDD conduits and the cables inside.
>
> **Compensation for use of bore pipes/HDD conduits for undersea cables**. Some members of the RAC stated that setting compensation rates based on bore pipe/HDD conduit diameter would discourage their use in favor of more environmentally destructive methods of installing cable, e.g., open trenching; however, the Territorial Sea Plan Part Four requires project applicants to design and site undersea infrastructure to "maintain and protect" the seafloor and its natural resources to the maximum extent practicable which would presumably prohibit the use of more destructive methods. In response to RAC input, the Department proposed a rate of $3/linear foot for cables with diameters of less than 3 inches; the Department also proposed setting a rate of $7/linear foot for bore pipes/HDD conduits with diameters of 3 inches or more. The preceding information was shared and discussed with the RAC on April 8, 2026. See DSL State Fee Research.

The proposed rules also include up to a 40% discount on compensation fees for new and renewed easements, if companies introduce sensors for environmental observation and monitoring.

INITIAL COMPENSATION FEES (AS PROPOSED JULY 1, 2026)

Based on the multi-state survey findings, RAC discussion, and DSL's best professional judgement, the initial compensation formulas were proposed and circulated for public review and comment as follows:

New and Renewed Easements (OAR 141-083-0855)

Type of Easement	**Diameter (inches)**	**Compensation Fee**
Cables/other utilities	D < 3	COMP = $3 x L x T
Cables/other utilities	D ≥ 3	COMP = $3 x L x D x T
Bore pipes/HDD conduits (including cable inside)	D ≥ 3	COMP = $7 x L x T

COMP = Compensation Fee

L = length of easement (linear feet).
D = diameter of cable/other/bore pipes/HDD conduits (inches).
T = duration of easement (years), set at 25 years.

Note, under the proposed rules, DSL may reduce compensation for new or renewed easements that incorporate sensing, monitoring, or data-collection technologies that advance public safety, environmental monitoring, climate resilience, infrastructure integrity, or resource management (e.g., pressure and seismic sensors, Distributed Acoustic Sensing (DAS), State of Polarization (SOP), SMART cables). The Department will determine the amount of the compensation reduction, in coordination with the Join Agency Review Team (JART), based on the public benefit, data accessibility, installation cost, and long-term maintenance commitment. The compensation reduction will not exceed 40 percent of the compensation fee. See OAR 141-083-0855(5)(b).

Encroachment Easements (OAR 141-083-0856)

Type of Easement	**Diameter (inches)**	**Compensation Fee**
Cables/other utilities	D < 3	$COMP_{enc}$ = $7 x L x T
Cables/other utilities	D ≥ 3	$COMP_{enc}$ = $7 x L x D x T
Bore pipes/HDD conduits (including cable inside)	D ≥ 3	$COMP_{enc}$ = $7 x L x D x T

$COMP_{enc}$ = Compensation Fee

L = length of easement (linear feet).
D = diameter of cable/other/bore pipes/HDD conduits (inches).
T = duration of easement, set at 100 years.

COMMENTS ON INITIAL COMPENSATION FEES; DSL RESPONSE

New and Renewed Easements (OAR 141-083-0855)

After reviewing comments received through September 21, 2026, DSL identified these primary areas of concern pertaining to new and renewed easements compensation fees:

- Some commenters stated that using the diameter as one of the variables in the compensation formula to determine compensation rates results in excessive compensation fees, particularly when bore pipes/HDD conduits are used. Some commenters recommended that DSL ignore the diameter of the bore pipe/HDD conduit and instead apply the $3 per linear foot for the cable itself when determining the compensation fee.
- Some commenters asked that the rules require companies to pay high compensation fees for installing undersea infrastructure relating to telecommunication systems. Many of these commenters suggested the proposed fees were insufficient and recommended instead an annual rental fee as opposed to a one-time compensation fee. Additionally, some commenters expressed concern regarding mitigation costs for environmental damage and restoration.

DSL response: Easements are issued based on land occupancy and the type of undersea infrastructure, including telecommunication cables, power cables, pipelines, other utilities, and fixtures. Telecommunication cables usually do not exceed a diameter of 2.5 inches, but conduits vary in diameter and may reach up to 30 inches for different type of infrastructure. Thus, applying $3 to all diameters does not account for the overall footprint of the infrastructure.

DSL does not charge a mitigation fee associated with easements, and mitigation will be assessed in any removal/fill permit required. However, DSL does account for long-term community and environmental impairment in other authorization and easement rules and accounts for that through the assessment of a surcharge designated for the Submerged Lands Enhancement Fund (SLEF). In response to comment, it is proposing to replicate that approach here. DSL determined that including such a fee was both appropriate and consistent with the Territorial Sea Plan Part 4.

After internal discussion, comments from the state agencies, Tribes, and the public, and after considering different alternatives, DSL proposes to revise the compensation formula using diameter increments to set compensation rates as opposed to using diameter as a multiplier for cables and other infrastructure up to 30 inches in diameter; for the infrastructure 30 inches or greater in diameter, DSL proposes to use a diameter multiplier. DSL also proposes adding a 5% surcharge that will go to the SLEF account for restoration activities in the territorial sea.

Encroachment Easements (OAR 141-083-0856)

After reviewing comments received through September 21, 2026, DSL identified these primary areas of concern pertaining to encroachment compensation fees:

- Some commenters requested exemptions for bore pipes/HDD conduits from the encroachment easement requirements, even if the infrastructure remained in the seabed after cable installation. Commenters noted that use of bore pipes/HDD conduits for installing cables is considered best practice, so imposing fees may discourage their use. Commenters also noted that although bore pipes/HDD conduits are deeply buried and generally cannot be removed without environment damage, they remain inert, and they could be reused for other cable landings.
- Related comments suggested that existing infrastructure should be exempt from compensation fees because they were not anticipated as a cost of the original project.
- Some comments suggested that the proposed rules were not clear with respect to whether an encroachment easement was permanent or 100 years.
- Some comments questioned whether encroachment easement renewals could be temporary and/or offered for terms of less than 25 years to allow current easement holders time to find another party to reuse the bore pipes/HDD conduits.
- Finally, some commenters expressed concern regarding mitigation costs for environmental damage and restoration for abandoned territorial sea infrastructure.

DSL Response: Although bore pipe and HDD conduits are a part of a project's use of the territorial sea and are best management practice, their use does not negate the requirement that if abandoned they require an encroachment easement and compensation. This policy has been in effect for existing projects as outlined under encroachment rules in OAR 141-123. The encroachment application and review process will consider whether it is environmentally preferable to allow a specific bore pipe or HDD conduit to be abandoned in place for each situation.

After internal discussion and considering different alternatives, DSL proposes to revise the compensation formula using diameter increments to set compensation rates as opposed

to using diameter as a multiplier for cables and other infrastructure up to 30 inches in diameter; for the infrastructure 30 inches or greater in diameter, DSL proposes to use a diameter multiplier. The Department proposes introducing a temporary (2-year) encroachment easement to allow a holder more time to find another user to reuse the bore pipe/HDD conduit. Similar to new and renewal easements, for encroachment easements, the Department also proposes adding a 5% surcharge to be deposited to the SLEF for restoration activities in the territorial sea. DSL's proposed top rate of $9 for large diameter infrastructure (and $0.75 per inch for greater than 30 inches) remains within the range of peer coastal states.

REVISED COMPENSATION FEES (PROPOSED OCTOBER 23, 2026)

In response to public comments and after considering alternatives, DSL is now proposing the following compensation fees for new, renewed, and encroachment easements. These proposed fees are based on diameter increments and apply to all types of undersea infrastructure.

New and Renewed Easements (OAR 141-083-0855)

Type of Easement	**Diameter (inches)**	**Compensation Fee**
Cables/other utilities	D < 3	COMP = $3 x L x T
Cables/other utilities, including bore pipes/HDD conduits	3 ≤ D < 6	COMP = $5 x L x T
Cables/other utilities, including bore pipes/HDD conduits	6 ≤ D < 12	COMP = $7 x L x T
Cables/other utilities, including bore pipes/HDD conduits	12 ≤ D < 30	COMP = $9 x L x T
Cables/other utilities, including bore pipes/HDD conduits	D ≥ 30	COMP = $0.75 x D x L x T

Note, under the proposed revisions, DSL retains the discretion to reduce compensation for new or renewed easements that incorporate sensing, monitoring, or data-collection technologies that advance public safety, environmental monitoring, climate resilience, infrastructure integrity, or resource management (e.g., pressure and seismic sensors, Distributed Acoustic Sensing (DAS), State of Polarization (SOP), SMART cables). The Department will determine the amount of the compensation reduction, in coordination with the JART, based on the public benefit, data accessibility, installation cost, and long-

term maintenance commitment. The compensation reduction will not exceed 40 percent of the compensation fee. See OAR 141-083-0855(5)(b).

COMP = Compensation Fee

L = length of easement (linear feet).
D = diameter of cable/other/bore pipes/HDD conduits (inches).
T = duration of easement, set at 25 years.

DSL proposes the following rule revisions to implement the above compensation fees:

- Revise OAR 141-083-0855(1) and (2), consistent with the revised compensation fee formulas in the table above, including the revised diameter tiers, with the term set to 25 years.
- Revise OAR 141-083-0855(2)(d), to clarify that the term of the easement may be "up to 25 years" long and to align with OAR 141-083-0851(11), which states that "If the department determines that the renewal application complies with the requirements of statutes and rules, the department will provide written notice to the holder that the easement has been renewed for an additional term of 25 years."
- Add OAR 141-082-0855(3). In addition to the compensation fee calculated under –0855(1), the applicant will pay a 5% SLEF surcharge for restoration activities in the territorial sea.

Encroachment Easements (OAR 141-083-0856)

Type of Easement	**Diameter**	**Compensation Fee**
Cables/other utilities	$D < 3$	$COMP_{enc} = \$3 \times L \times T$
Cables/other utilities, including bore pipes/HDD conduits	$3 \leq D < 6$	$COMP_{enc} = \$5 \times L \times T$
Cables/other utilities, including bore pipes/HDD conduits	$6 \leq D < 12$	$COMP_{enc} = \$7 \times L \times T$
Cables/other utilities, including bore pipes/HDD conduits	$12 \leq D < 30$	$COMP_{enc} = \$9 \times L \times T$
Cables/other utilities, including bore pipes/HDD conduits	$D \geq 30$	$COMP_{enc} = \$0.75 \times D \times L \times T$

$COMP_{enc}$ = Compensation Encroachment Fee

L = length of easement (linear feet).
D = diameter of cable/other/bore pipes/HDD conduits (inches).
T = duration of easement, set at 100 years (permanent) or 2 years (temporary).

DSL proposes the following rule revisions to implement the above compensation fees:

- Revise OAR 141-083-0856(2), consistent with the revised compensation fee formulas in the table above for the permanent encroachment easement, including the revised diameter tiers, with the term set to 100 years.
- Revise OAR 141-083-0853(1) to clarify that an encroachment easement is permanent; however, 100 years is used in the compensation formula in OAR 141-083-0856(2)(a) for calculating compensation fees.
- Add OAR 141-083-0853(2) to include the option of a 2-year temporary encroachment easement for the purposes of transferring a bore pipe/HDD conduit to another approved user for reuse.
- Add OAR 141-083-0856(3), consistent with the revised compensation fee formulas in the table above for the temporary encroachment easement, including the revised diameter tiers, with the term set to 2 years.
- Add OAR 141-083-0856(4). In addition to compensation fees calculated under section 1(a), the applicant will pay a 5% SLEF surcharge for restoration activities in the territorial sea.

NEXT STEPS – REOPENED PUBLIC COMMENT PERIOD

The Department has revised the proposed Division 83 rules, including those pertaining to compensation fees, in response to public comment received through September 21, 2026. To allow more opportunity for input, DSL shares this compensation fee memorandum as well as proposed rule revisions. The Department is reopening the public comment period for an additional week, from October 26 through November 2, 2026.