



Oregon

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Department of State Lands

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State Land Board

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SUBJECT

Rules for communication site facilities on State-owned land.

ISSUE

Whether the State Land Board should approve new administrative rules in OAR 141-126 that guide how communication site facilities are leased on State-owned land.

AUTHORITY

The Oregon Constitution, Article VIII, Section 5, specifies that the State Land Board is responsible for managing Common School Fund lands.

ORS 273.041 to 273.071; authorizes the Department of State Lands to exercise the administrative functions of the State Land Board, relating to the general powers and duties of department and board.

BACKGROUND

The Department manages leases for communication site facilities located on DSL-managed lands that are owned by the people of Oregon and generate revenue for the state's Common School Fund. Communication site leases allow entities to place communication facilities on those lands. These facilities support wireless cellular service, internet service, emergency communications, technologies that detect wildfires or seismic activities, cable and radio broadcast, local radio users, and more.

This complex and rapidly evolving industry requires significant rule revisions to better serve management of these leases. In February 2021, the State Land Board authorized the Department of State Lands to initiate permanent rulemaking to amend the

administrative rules in OAR 141-125, which authorize special uses on state-owned land, by removing rules specific to communication sites and instead establishing updated rules in a new division: OAR 141-126.

This rulemaking updated existing rules and created new ones to manage communication site leases more efficiently, establish new lease rates and a modernized fee structure, and align the rules with broader federal and Oregon policies:

- **Manage communication site leases more efficiently.** For example, the lessees of the base-lease may choose to sublease to other entities to co-locate on the site. The lessee sets the rate, administers the sublease, and notifies the Department for review and approval. Part of the revenue generated from subleasing is sent to the Common School Fund.
- **Establish new lease rates and modern fee structure.** Informed by a market rate study and industry feedback, rates and fee structures are better aligned with evolving federal and industry standards. For example, more nuanced categories were added to acknowledge the differences between small and large wireless facilities. These smaller facilities are increasingly common and integral to the growth of 4G and 5G technology.
- **Align with broader federal and Oregon policies.** Increasing broadband access to underserved communities is a priority for the State, and lower lease rates for small wireless facilities will reduce barriers to promoting broadband development.

PUBLIC INVOLVEMENT

The Department took into consideration public comment, as well as input from the Rulemaking Advisory Committee (RAC), other local and state agencies, Tribal governments, and affected parties during this rulemaking process.

Rulemaking Advisory Committee (RAC)

A RAC was convened from August – October 2021, representing different types of lessees including industry, nonprofit, Oregon Tribal government, and state agency, in partnership with a Common School Fund beneficiary and Department staff. The following individuals served as members of the RAC:

- Jon Bial, Oregon Public Broadcasting
- Stephanie Bowen, Harney Electric Co-op
- Travis Coleman, Lumen/Century Link
- Lori Noble, Cow Creek Band of Umpqua Tribe of Indians
- Chip O'Hearn, Smartlink/AT&T
- Steve Quick, Harney County School District 3 Superintendent
- Gabe Rendon, ODOT Wireless Group
- Kassandra Rippee, Coquille Indian Tribe

The following individuals served as staff / advisors of the RAC:

- Chris Parkins, DSL, Manager, Real Property Program
- Amber McKernan, DSL, Property Manager
- Sheena Miltenberger, DSL, Rangeland Manager
- Erin Serra, DSL, Ownership Specialist
- Lani Ahmadian, DSL, Executive Support Specialist
- Shawn Zumwalt, DSL, Property Manager

The RAC met three times to review all proposed rules and were able to come to consensus where all parties were satisfied. As part of determining minimum compensation rates and fees, a market study was completed where Department staff reached out to other states and federal entities with similar communication site leasing programs. This research was compiled and presented to the RAC. RAC members supported staff in establishing timelines for administrative processes, streamlining processes for co-locations, codifying previous practices and guidelines, and establishing minimum compensation rates and fees based on the type of use and impact to both state-owned lands and staff time (see Appendix D for the Lease Rental Rates Fee Schedule).

Public Review and Comment Period in 2022

A Notice of Proposed Rulemaking was filed with the Secretary of State's office on June 17, 2022. The public review and comment period was held from July 1 - July 31, 2022, with a public hearing held virtually on July 22, 2022.

The Department issued a news release to Oregon media and emailed a public notice to inform interested parties, including all current communication site lessees, of the public review and comment opportunity. House Speaker Dan Rayfield and Senate President Peter Courtney were notified of the proposed rulemaking. All materials were posted to the DSL website: <https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx>.

In total, the Department received 2 comments. See Appendix C for the full comments submitted and the Department's responses. A summary:

- Comments from Oregon Wild centered on public noticing of new or modified lease applications, policies to minimize environmental impacts, assessments of alternative sites and trade-offs, and requirements for site decommissioning. These concerns are addressed in existing Department policies and the proposed rule language.
- Comments from the Wireless Association (CTIA) centered on the proposed application fee structures, compensation fees and timelines. In response the Department made minor changes to the proposed rules, including adding a category for small wireless facilities, an important component of the industry's move to 5G technology. Additional changes appropriately align the new rules with broader federal and Oregon broadband policies.

Public Review and Comment Period in 2024

In response to feedback from public comments in 2022, and following a review with the Department of Justice, changes were made to standardize the Department's processes with those of other state agencies and industry standards, reduce the administrative burden, and ensure that the Department is operating within its given authorities.

Given the extent of changes and length of time since the first comment period, a second public comment period was held from August 1 - September 3, 2024, following the same outreach and notification process.

In total, the Department received 2 comments. See Appendix C for the full comments submitted and the Department's responses. A summary:

- Comments from Oregon Wild focused on wildfire resilience of sites, policies to minimize environmental impacts, unintended impacts of subleases, and public involvement. These concerns are addressed in existing Department policies and the proposed rule language.
- Comments from the Wireless Association (CTIA) focused on fees for large, cellular facilities, fixed wireless access, timelines for the Department to process applications, regulation of frequencies, and the potential need for workshop(s). The Department's response explained how the proposed rule's fee structures were developed. Other concerns are addressed in existing policies and the proposed rule language.

RECOMMENDATION

The Department recommends that the Land Board adopt the proposed rules, OAR 141-126, Administrative Rules for Authorizing Communication Site Facilities on State-Owned Land. If adopted, the proposed rules will go into effect immediately upon filing. It is anticipated the rules will be filed prior to January 1, 2025.

APPENDICES

- A. Final Rules
- B. Notice of Proposed Rulemaking including the Statement of Need and Fiscal Impact and Draft Rules
- C. Public Comments and DSL Responses (2022 and 2024)
- D. Lease Rental Rates Fee Schedule

Department of State LandsChapter 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 Constitutional Common School Fund Lands (school lands) and Statutory Common School Fund Lands (statutory lands) 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 facility 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

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 (school lands and statutory lands) 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 school lands 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 development placed in, on, or over state-owned land for the purposes of a communication site facility lease is 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 facility 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 facility lease if it determines that the proposed use or development would unreasonably impact current uses or developments proposed or already in place within the requested area. Such a determination will be made by the department after consulting with lessees and holders of 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 either a communication site facility lease issued by the department or a sublease granted by the lessee under a base lease to a co-locator and approved 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 facility lease; and, if not,

(b) Pursue whatever remedies are available under law or in equity to ensure that the unauthorized uses subject to a communication site facility 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 lessee 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 facility 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 facility 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 communication site facility 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.

(13) These rules become effective on January 1, 2025.

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) "Additional Rent" means any amounts in excess of base rent that a lessee is required to pay the department or third parties pursuant to these Division 126 rules.

(2) "Applicant" is any person applying for a communication site facility lease.

(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) "Base Lease" means a communication site facility lease issued to the owner of the communication site facility who has entered into a sublease with a co-locator.

(5) "Base Rent" means the annual rent to establish, occupy and use a communication site facility on the leased premises that a lessee is required to pay the department pursuant to these Division 126 rules.

(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. Cellular communications include "Macro Cellular Facility" and "Small Wireless Facility" sites.

(7) "Co-location" means more than one person sharing the same communication site facility under a sublease.

(8) "Co-locator" means a person sharing a communication site facility under a sublease.

(9) "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.

(10) "Communication Site" means a portion of state-owned land being occupied by developments for the purposes of a communication site facilities lease. A communication site may be wholly, or partially open for public uses, or wholly or partially closed to public uses. A communication site may include multiple developments and may have uses other than communication site facilities leases.

(11) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences, and other associated structures, equipment, or developments used

by a lessee, or by a lessee and one or more co-locators, 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).

(12) "Communication Site Facility Lease" or "Lease" means a written authorization granted by the department to a lessee to use a specific portion of a communication site for an authorized purpose in accordance with terms and conditions in the lease.

(13) "Compensation" is the amount of money paid or services provided by a lessee to the department under a communication site facility lease.

(14) "Constitutional Common School Fund Lands" or "School Lands" is land granted to the state upon its admission into the Union, obtained by the state as a result of an exchange of school lands, obtained in-lieu of originally granted school lands, purchased with Constitutional Common School Fund moneys, or obtained through foreclosure of loans using Constitutional Common School Fund moneys.

(15) "Decommissioning Plan" means a plan to retire and remove the physical facilities, structures, or developments authorized in a communication site facility lease including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.

(16) "Department" means the Oregon Department of State Lands.

(17) "Development" is any structure or series of related structures authorized by the department in, on, or over state-owned land.

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

(19) "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.

(20) "Facility Manager" means a person employed by a lessee to manage a communication site facility on their behalf for the purposes of site maintenance, management, or administration.

(21) "Large Commercial" means a communication site facility lease that is for a commercial purpose and is in a county that has a population of 150,000 or more people.

(22) "Leased Premises" means that portion of a communication site that the Department grants a lessee a leasehold interest in to establish, occupy, and use a communication site facility pursuant to these Division 126 rules.

(23) "Lessee" refers to any person having a communication site facility lease granted by the department authorizing a communication site facility on state-owned land.

(24) "Macro Cellular Facility" refers to any cellular communications facility that is not a small wireless facility. Macro cellular facilities are traditional cell towers and including but not limited to affiliated equipment such as buildings, towers, antennas, panels, and generators.

(25) "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.

(26) "Medium Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.

(27) "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.

(28) "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.

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

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

(31) "Small Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of less than 50,000 people.

(32) "Small Wireless Facility" or "SWF" means a facility that meets each of the following conditions:

(a) The facilities:

(A) Are mounted on structures 50 feet or less in height including the antennas, or

(B) Are mounted on structures no more than 10 percent taller than other adjacent structures, or

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

(c) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

(d) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in the Federal Communications Commission's (FCC) Rules and Regulations 47 C.F.R. § 1.1307(b).

(33) "State-Owned Land" is land owned or managed by the department or its agents and includes school lands and statutory lands.

(34) "Statutory Common School Fund Lands" or "Statutory Lands" is land owned or managed by the department other than Constitutional Common School Fund Lands, but are not limited to state-owned Swamp Land Act lands and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(35) "Sublease" means a lease for co-location between a lessee and a co-locator.

(36) "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

(37) "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.

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 person wanting to use state-owned land for a communication site facility lease:

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

(a) Non-commercial uses:

(A) Personal or research and scientific use: \$375

(B) All other non-commercial uses: \$750

(b) Commercial use: \$1,000

(c) Cellular communications:

(A) Macro cellular facility: \$1,500

(B) Small wireless facility:

(i) \$500 for up to five SWFs in the same application.

(ii) \$100 per additional SWF beyond five in the same application.

(iii) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.

(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 macro cellular facility: \$750
- (d) Cellular communications small wireless facility:
 - (A) \$500 for up to five SWFs in the same application.
 - (B) \$100 per additional SWF beyond five in the same application.
 - (C) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.
- (4) Unless otherwise allowed by the director, a fully completed application for a lease for non-commercial or commercial uses must be submitted to the department at least 150 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 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.
- (5) Unless otherwise allowed by the director, a fully completed application for a lease for a macro cellular facility must be submitted to the department at least 150 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 for a macro cellular facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.
- (6) Unless otherwise allowed by the director, a fully completed application for a lease for a small wireless facility must be submitted to the department at least 90 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 for a small wireless facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 90 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

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;
 - (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 OAR 141-126-0210;

- (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 facility lease; and
 - (f) If additional information is required concerning the:
 - (A) Proposed use of the state-owned 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 30 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 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 owners, lessees, or persons granted other authorizations from the department, 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 person owning or leasing communication site facilities at the communication site, and any other person or 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 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 communication site. The applicant must remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the Federal Communications Commission verifying the proposed use has been approved by the FCC.

(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 30 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, size of the leased premises, or frequency.

- (a) If the department determines there is a change in use, size of the leased premises, 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 the use, size of the leased premises, or frequency, and the lessee has fully complied with the terms of the lease, applicable statutes, administrative rules, and any other authorization granted to them by the department, the lessee 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 lessee 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 redetermined 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 the department, 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 lease issued by the department may not be valid until the lessee 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 communication site 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

History:

141-126-0150

Compensation

(1) A lessee must remit to the department on a basis provided in the lease annual base rent as determined by the department for the type of use described in OAR 141-126-0150(2) and (3).

(2) Minimum annual base rent for communication site facility leases will be:

(a) Non-commercial uses:

(A) Personal or research and 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:

(A) Macro cellular facility: \$10,000 per year.

(B) Small wireless facility: \$270 per facility per year.

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

(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 to be occupied by the communication site facility.

(c) This section does not apply to small wireless facilities.

(4) The amount of annual base rent paid to the department will increase annually by three percent for every year after the date these Division 126 rules are effective.

(5) Upon renewal of a lease, the base rent for first year of the renewal lease will equal the amount of the base rent for the final year of the previous lease plus three percent, unless the department has completed a market value study or an appraisal.

(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

History:

141-126-0160

General Terms and Conditions

(1) The initial term of a lease may be up to, but not exceed 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 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 reviewed by the Oregon Department of Justice .

(4) The department may choose at its discretion to close one or more leased premises or an entire communication site 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 leased premises at any time.

(6) Unless otherwise agreed to in writing as a provision of the lease, a lessee may not interfere with lawful public use of a leased premises, state-owned land adjacent to a leased premises, or obstruct free transit across state-owned land. At no time may the lessee or their representatives intimidate or otherwise threaten or harm public users of state land.

(7) A lessee must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the leased premises or to be discharged onto state-owned land or waterways adjacent to the leased premises.

(8) A lessee 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 a leased premises 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 state-owned land containing a communication site .

(9) A lessee must conduct all operations within the leased premises 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 lessee must remove all developments as directed by the department within 180 calendar days of the date of the expiration or termination of the communication site facility lease. If the lessee refuses to remove the subject developments, the department may remove them and charge the lessee for doing so.

(11) The lessee will not allow any other use to be made of or occur on the leased premises that is not specifically authorized:

(a) By that communication site facility lease; or

(b) By the department in writing prior to the use, including allowing co-location of all or a portion of the leased premises or structures therein.

(12) A lessee must be the person which owns the equipment and structures installed on the leased premises.

(13) A lessee employing contractors or facility managers for the purposes of site management as the lessee's representative is required to provide:

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

(14) The lessee must maintain all buildings, equipment and similar structures or improvements located within the leased premises in a good state of repair as determined by the department.

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

(16) The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessees of the communication site of the equipment modifications for review to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the Federal Communications Commission that the proposed frequency change has been approved by the FCC. The Federal Communications Act comprehensively regulates frequency interference.

(17) If requested by the department, a lessee must present evidence to the department prior to the use that it has 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 facility lease allows the lessee to access their communication site facility through state-owned lands adjacent to the leased premises.

(19) A lessee will indemnify the State of Oregon and the Department of State Lands in a manner that the department has determined will adequately protect the state from harm caused by the lessee's occupation or use of the leased premises.

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 person on a portion of an existing communication site facility is required to notify the department in writing at least 90 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(2) A lessee wanting to co-locate a small wireless facility with a separate person on an existing structure is required to notify the department in writing at least 60 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(3) Lessees submitting a new or renewal co-location sublease to the department for review must submit a non-refundable application processing fee of:

(a) Non-commercial uses: \$375.

(b) Commercial uses: \$500.

(c) Cellular communication macro cellular facility: \$750.

(d) Cellular communication small wireless facility: \$100.

(4) All sublease terms must be approved by the department, and the department may condition approval of a sublease on the lessee revising the sublease in the manner prescribed by the department.

(5) For each approved sublease, the lessee shall pay the department on the basis provided in the communication site facility lease the following amounts as additional rent:

(a) Non-commercial uses:

(A) Personal or research and scientific: \$500 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Local or county government and emergency services: \$750 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) State, Tribal, or federal government and emergency services: \$1,125 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(D) Non-profit/non-commercial: \$750 one-time payment or 25 percent of fee charged by lessee to a co-locator per year, whichever is greater.

(b) Commercial uses:

(A) Small commercial: \$1,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Medium commercial: \$1,500 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) Large commercial: \$2,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(c) Cellular communications:

(A) Macro cellular facility: 25 percent of the fee charged by the lessee to each co-locator per year.

(B) Small wireless facility: \$100 per year.

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 lessee 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 leased premises.

(2) A lessee must apply to the department in writing on a form provided by the department at least 90 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 communications macro cellular facility:

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

(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$750.

(d) Cellular communications small wireless facility:

(A) Equipment upgrade or replacement that results in a change of frequency: \$250.

(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$500.

(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, in order for such modification to be effective, it must be documented through a written amendment to the lease signed by the department and the lessee.

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 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 communications macro cellular facility: \$750.

(D) Cellular communications small wireless facility: \$250.

(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 Security; Decommissioning

(1) The department will require a lessee to obtain and maintain insurance requirements as determined by the department. .

(2) The department reserves the right to require the applicant for a communication site facility lease or a lessee to provide information concerning the intended or actual use of the leased premises to the department, which may assist the department in determining the appropriate amounts and types of insurance.

(3) The department reserves the right to require a lessee to obtain a surety bond, a letter of credit, or other instrument of guarantee acceptable to the department in an amount specified by the department and which names the State of Oregon as co-owner, to ensure that the lessee will perform in accordance with all terms and conditions of a communication site facility lease or decommissioning plan.

(4) The lessee 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 communication site facility lease.

(5) The department may require a decommissioning plan for certain communication site facilities as a condition of the lease.

(a) In the event a decommissioning plan is required, the lessee has 180 calendar days from the date of lease commencement 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. Failure to provide a decommissioning plan when required may result in lease default.

(b) The lessee 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 lessee is required to provide notice to the department in writing 60 calendar days in advance of implementing the decommissioning plan.

(d) The lessee must demonstrate to the department that the decommissioning work has been completed within 180 calendar days of termination of the lease 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 a communication site or portion of a communication site 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 school lands or statutory lands;

(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; and
- (d) 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;

(b) Posted on the department's website;

(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

History:

141-126-0220

Termination of a Communication Site Facility Lease for Default

(1) If the lessee fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the leased premises, the department will notify the lessee in writing of the default and may provide an opportunity for correction within a specified time frame.

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

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 facility lease or the alleged unauthorized use of state-owned land to determine if use of the state-owned land conforms with the terms and conditions of a communication site facility 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 facility lease issued by the director, the director or the director's agent may enter into buildings or structures owned by the lessee in order to determine if a violation has occurred. The department will provide the lessee advance notice prior to entering buildings or structures owned by the lessee during an investigation.

(3) Upon a determination that a violation of the communication site facility lease has occurred or that an unauthorized use of state-owned 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), or any other available remedies. The department will provide the lessee 60 calendar days in which to correct any violation prior to enforcement action being taken by the department. Failure of the lessee to comply with any obligation of the lease within 60 calendar days after notice by the department specifying the nature of the deficiency, or in the event of an emergency, within the time specified by the department to resolve the emergency, is considered a default of the lease and a trespass.

(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 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 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-owned land;

(c) The impact of the violation on school lands or statutory lands.

(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 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

History:

141-126-0240

Reconsideration of Decision

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

(b) The director will review the request and reach a decision within 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 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

History:

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE

SECRETARY OF STATE

CHERYL MYERS

DEPUTY SECRETARY OF STATE

AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK

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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED

07/30/2024 9:06 AM
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: 09/03/2024 5:00 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.

CONTACT: Danielle Boudreaux
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dsl.rules@dsl.oregon.gov

775 Summer St NE
Suite 100
Salem, OR 97301

Filed By:
Danielle Boudreaux
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 08/15/2024

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-444-9171

CONFERENCE ID: 2508868653

SPECIAL INSTRUCTIONS:

These proposed rules will be presented to the State Land Board for adoption in late 2024 and will be open to further public

comment. For State Land Board agendas please visit <https://www.oregon.gov/dsl/Board/Pages/SLBmeetings.aspx>.

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. Division 126 rules will 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.

While drafting the administrative rules for communication site facilities authorizations, the department looked at the racial equity impact on these administrative rules and answered the questions below.

What are the racial equity impacts of this particular rule(s), policy, or decision, and who will benefit from or be burdened?

The proposed adoption of Division 126 rules establishes rules for the administration and authorizing of communication site facilities 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 equality in the state.

Are there strategies to mitigate the unintended consequences?

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 and changes to 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).

(1) 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 authorizing 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.

(2)(a) 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 that there may be increases to large companies holding the authorizations, as well as in some cases companies may pay less under these rules than they did under previous rules.

(2)(b) There is no expected increase in reporting, recordkeeping, and other administrative activities, including professional services for small business.

(2)(c) 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.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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 Constitutional Common School Fund Lands (school lands) and Statutory Common School Fund Lands (statutory lands) 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 facility 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 (school lands and statutory lands) 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 school lands 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 development placed in, on, or over state-owned land for the purposes of a communication site facility lease is 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 facility 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 facility lease if it determines that the proposed use or development would unreasonably impact current uses or developments proposed or already in place within the requested area. Such a determination will be made by the department after consulting with lessees and holders of 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 either a communication site facility lease issued by the department or a sublease granted by the lessee under a base lease to a co-locator and approved 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 facility lease; and, if not,¶
- (b) Pursue whatever remedies are available under law or in equity to ensure that the unauthorized uses subject to a communication site facility 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 lessee 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 facility 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 facility 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 communication site facility 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.¶
- (13) These rules become effective on January 1, 2025.

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: 141-126-0120

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) "Additional Rent" means any amounts in excess of base rent that a lessee is required to pay the department or third parties pursuant to these Division 126 rules.¶
- (2) "Applicant" is any person applying for a communication site facility lease.¶
- (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) "Base Lease" means a communication site facility lease issued to the owner of the communication site facility who has entered into a sublease with a co-locator.¶
- (5) "Base Rent" means the annual rent to establish, occupy and use a communication site facility on the leased premises that a lessee is required to pay the department pursuant to these Division 126 rules.¶
- (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. Cellular communications include "Macro Cellular Facility" and "Small Wireless Facility" sites.¶
- (7) "Co-location" means more than one person sharing the same communication site facility under a sublease.¶
- (8) "Co-locator" means a person sharing a communication site facility under a sublease.¶
- (9) "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.¶
- (10) "Communication Site" means a portion of state-owned land being occupied by developments for the purposes of a communication site facilities lease. A communication site may be wholly, or partially open for public uses, or wholly or partially closed to public uses. A communication site may include multiple developments and may have uses other than communication site facilities leases.¶
- (11) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences, and other associated structures, equipment, or developments used by a lessee, or by a lessee and one or more co-locators, 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).¶
- (12) "Communication Site Facility Lease" or "Lease" means a written authorization granted by the department to a lessee to use a specific portion of a communication site for an authorized purpose in accordance with terms and conditions in the lease.¶
- (13) "Compensation" is the amount of money paid or services provided by a lessee to the department under a communication site facility lease.¶
- (14) "Constitutional Common School Fund Lands" or "School Lands" is land granted to the state upon its admission into the Union, obtained by the state as a result of an exchange of school lands, obtained in-lieu of originally granted school lands, purchased with Constitutional Common School Fund moneys, or obtained through foreclosure of loans using Constitutional Common School Fund moneys.¶
- (15) "Decommissioning Plan" means a plan to retire and remove the physical facilities, structures, or developments authorized in a communication site facility lease including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.¶
- (16) "Department" means the Oregon Department of State Lands.¶
- (17) "Development" is any structure or series of related structures authorized by the department in, on, or over state-owned land.¶
- (18) "Director" means the Director of the Oregon Department of State Lands or their designee.¶
- (19) "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.¶
- (20) "Facility Manager" means a person employed by a lessee to manage a communication site facility on their behalf for the purposes of site maintenance, management, or administration.¶
- (21) "Large Commercial" means a communication site facility lease that is for a commercial purpose and is in a county that has a population of 150,000 or more people.¶
- (22) "Leased Premises" means that portion of a communication site that the Department grants a lessee a leasehold interest in to establish, occupy, and use a communication site facility pursuant to these Division 126

rules.¶

(23) "Lessee" refers to any person having a communication site facility lease granted by the department authorizing a communication site facility on state-owned land.¶

(24) "Macro Cellular Facility" refers to any cellular communications facility that is not a small wireless facility. Macro cellular facilities are traditional cell towers and including but not limited to affiliated equipment such as buildings, towers, antennas, panels, and generators.¶

(25) "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.¶

(26) "Medium Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.¶

(27) "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.¶

(28) "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.¶

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

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

(31) "Small Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of less than 50,000 people.¶

(32) "Small Wireless Facility" or "SWF" means a facility that meets each of the following conditions.¶

(a) The facilities:¶

(A) Are mounted on structures 50 feet or less in height including the antennas, or¶

(B) Are mounted on structures no more than 10 percent taller than other adjacent structures, or¶

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.¶

(b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.¶

(c) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.¶

(d) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in the FCC's Rules and Regulations 47 C.F.R. 1.1307(b).¶

(33) "State-Owned Land" is land owned or managed by the department or its agents and includes school lands and statutory lands.¶

(34) "Statutory Common School Fund Lands" or "Statutory Lands" is land owned or managed by the department other than Constitutional Common School Fund Lands, but are not limited to state-owned Swamp Land Act lands and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.¶

(35) "Sublease" means a lease for co-location between a lessee and a co-locator.¶

(36) "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.¶

(37) "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.

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 lease:¶

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

(a) Non-commercial uses:¶

(A) Personal or research and scientific use: \$375¶

(B) All other non-commercial uses: \$750¶

(b) Commercial use: \$1,000¶

(c) Cellular communications:¶

(A) Macro cellular facility: \$1,500¶

(B) Small wireless facility:¶

(i) \$500 for up to five SWFs in the same application.¶

(ii) \$100 per additional SWF beyond five in the same application.¶

(iii) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.¶

(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 macro cellular facility: \$750¶

(d) Cellular communications small wireless facility:¶

(A) \$500 for up to five SWFs in the same application.¶

(B) \$100 per additional SWF beyond five in the same application.¶

(C) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.¶

(4) Unless otherwise allowed by the director, a fully completed application for a lease for non-commercial or commercial uses must be submitted to the department at least 150 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 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶

(5) Unless otherwise allowed by the director, a fully completed application for a lease for a macro cellular facility must be submitted to the department at least 150 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 for a macro cellular facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶

(6) Unless otherwise allowed by the director, a fully completed application for a lease for a small wireless facility must be submitted to the department at least 90 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 for a small wireless facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 90 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 OAR 141-126-0210;
 (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 facility lease; and
 (f) If additional information is required concerning the:
 (A) Proposed use of the state-owned 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 30 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 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 owners, lessees, or persons granted other authorizations from the department, 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 person owning or leasing communication site facilities at the communication site, and any other person or 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 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 communication site. The applicant must

remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the Federal Communications Commission verifying the proposed use does not interfere with existing uses at the communication site.¶

(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 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, size of the leased remises, or frequency.¶

(a) If the department determines there is a change in use, size of the leased premises, 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 the use, size of the leased premises, or frequency, and the lessee has fully complied with the terms of the lease, applicable statutes, administrative rules, and any other authorization granted to them by the department, the lessee 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 lessee 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 redetermined 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 the department, 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 lease issued by the department may not be valid until the lessee 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 communication site 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) A lessee must remit to the department on a basis provided in the lease annual base rent as determined by the department for the type of use described in OAR 141-126-0150(2) and (3).¶

(2) Minimum annual base rent for communication site facility leases will be:¶

(a) Non-commercial uses:¶

(A) Personal or research and 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:¶

(A) Macro cellular facility: \$10,000 per year.¶

(B) Small wireless facility: \$270 per facility per year.¶

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

(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 to be occupied by the communication site facility.¶

(4) The amount of annual base rent paid to the department will increase annually by three percent for every year after the date these Division 126 rules are effective.¶

(5) Upon renewal of a lease, the base rent for first year of the renewal lease will equal the amount of the base rent for the final year of the previous lease plus three percent, unless the department has completed a market value study or an appraisal.¶

(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

ADOPT: 141-126-0160

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 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 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 reviewed by the Oregon Department of Justice.¶
- (4) The department may choose at its discretion to close one or more leased premises or an entire communication site 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 leased premises at any time.¶
- (6) Unless otherwise agreed to in writing as a provision of the lease, a lessee may not interfere with lawful public use of a leased premises, state-owned land adjacent to a leased premises, or obstruct free transit across state-owned land. At no time may the lessee or their representatives intimidate or otherwise threaten or harm public users of state land.¶
- (7) A lessee must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the leased premises or to be discharged onto state-owned land or waterways adjacent to the leased premises.¶
- (8) A lessee 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 a leased premises 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 state-owned land containing a communication site.¶
- (9) A lessee must conduct all operations within the leased premises 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 lessee must remove all developments as directed by the department within 180 calendar days of the date of the expiration or termination of the communication site facility lease. If the lessee refuses to remove the subject developments, the department may remove them and charge the lessee for doing so.¶
- (11) The lessee will not allow any other use to be made of or occur on the leased premises that is not specifically authorized.¶
- (a) By that communication site facility lease; or¶
- (b) By the department in writing prior to the use, including allowing co-location of all or a portion of the leased premises or structures therein.¶
- (12) A lessee must be the person which owns the equipment and structures installed on the leased premises.¶
- (13) A lessee employing contractors or facility managers for the purposes of site management as the lessee's representative is required to provide:¶
- (a) Written verification providing permission and designating a facility manager, site manager, contractor, or subcontractor employed by the lessee 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 lessee's facility manager concerning the lease administration.¶
- (14) The lessee must maintain all buildings, equipment and similar structures or improvements located within the leased premises in a good state of repair as determined by the department.¶

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

(16) The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessee's of the communication site of the equipment modifications for review to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the Federal Communications Commission that the proposed frequency change will not interfere with existing uses at the communication site. The Federal Communications Act comprehensively regulates frequency interference.¶

(17) If requested by the department, a lessee must present evidence to the department prior to the use that it has 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 facility lease allows the lessee to access their communication site facility through state-owned lands adjacent to the leased premises.¶

(19) A lessee will indemnify the State of Oregon and the Department of State Lands in a manner that the department has determined will adequately protect the state from harm caused by the lessee's occupation or use of the leased premises.

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: 141-126-0170

RULE SUMMARY: Establishes the procedures for a lessee to notify the Department about a sublease to co-locate at a communication site facility, as well as the fees for submitting a new or renewal for a co-location sublease.

CHANGES TO RULE:

141-126-0170

Co-location of Communication Site Facilities

(1) A lessee 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 90 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.¶

(2) A lessee wanting to co-locate a small wireless facility with a separate person on an existing structure is required to notify the department in writing at least 60 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.¶

(3) Lessees submitting a new or renewal co-location sublease to the department for review must submit a non-refundable application processing fee of:¶

(a) Non-commercial Uses: \$375.¶

(b) Commercial uses: \$500.¶

(c) Cellular communication macro cellular facility: \$750.¶

(d) Cellular communication small wireless facility: \$100.¶

(4) All sublease terms must be approved by the department, and the department may condition approval of a sublease on the lessee revising the sublease in the manner prescribed by the department.¶

(5) For each approved sublease, the lessee shall pay the department on the basis provided in the communication site facility lease the following amounts as additional rent:¶

(a) Non-commercial uses:¶

(A) Personal or research and scientific: \$500 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(B) Local or county government and emergency services: \$750 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(C) State, Tribal, or federal government and emergency services: \$1,125 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(D) Non-profit/non-commercial: \$750 one-time payment or 25 percent of fee charged by lessee to a co-locator per year, whichever is greater.¶

(b) Commercial uses:¶

(A) Small commercial: \$1,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(B) Medium commercial: \$1,500 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(C) Large commercial: \$2,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.¶

(c) Cellular Communications:¶

(A) Macro cellular facility: 25 percent of the fee charged by the lessee to each co-locator per year.¶

(B) Small wireless facility: \$100 per year.

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 lessee 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 leased premises.
(2) A lessee must apply to the department in writing on a form provided by the department at least 90 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 communications macro cellular facility:
(A) Equipment upgrade or replacement that results in a change of frequency: \$500.
(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$750.
(d) Cellular communications small wireless facility:
(A) Equipment upgrade or replacement that results in a change of frequency: \$250.
(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$500.
(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, in order for such modification to be effective, it must be documented through a written amendment to the lease signed by the department and the lessee.
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 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 communications macro cellular facility: \$750.¶

(D) Cellular communications small wireless facility: \$250.¶

(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 a lessee to obtain insurance in a specified amount and types of coverage.¶
- (2) The department reserves the right to require the applicant for a communication site facility lease or a lessee to provide information concerning the intended or actual use of the leased premises to the Department of State Lands and the Department of Administrative Services, Risk Management, which may assist the department in determining the appropriate amount and type of insurance policies and limits based on the nature of the use.¶
- (3) The department reserves the right to require a lessee to 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 lessee will perform in accordance with all terms and conditions of a communication site facility lease or decommissioning plan.¶
- (4) The lessee 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 communication site facility lease.¶
- (5) The provisions of OAR 141-126-0200(1) through (4) may not apply to certain self-insured government or other 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 lessee has 180 calendar days from the date of lease commencement 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. Failure to provide a decommissioning plan when required may result in lease default.¶
- (b) The lessee 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 lessee is required to provide notice to the department in writing 60 calendar days in advance of implementing the decommissioning plan.¶
- (d) The lessee must demonstrate to the department that the decommissioning work has been completed within 180 calendar days of termination of the lease 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 a communication site or portion of a communication site 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 school lands or statutory lands;
¶

(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; and
¶

(d) 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;
¶

(b) Posted on the department's website;
¶

(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 lessee fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the leased premises, the department will notify the lessee in writing of the default and may provide an opportunity for correction within a specified time frame.¶

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

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 facility lease or the alleged unauthorized use of state-owned land to determine if use of the state-owned land conforms with the terms and conditions of a communication site facility 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 facility lease issued by the director, the director or the director's agent may enter into buildings or structures owned by the lessee in order to determine if a violation has occurred. The department will provide the lessee advance notice prior to entering buildings or structures owned by the lessee during an investigation.¶

(3) Upon a determination that a violation of the communication site facility lease has occurred or that an unauthorized use of state-owned 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), or any other available remedies. The department will provide the lessee 60 calendar days in which to correct any violation prior to enforcement action being taken by the department. Failure of the lessee to comply with any obligation of the lease within 60 calendar days after notice by the department specifying the nature of the deficiency, or in the event of an emergency, within the time specified by the department to resolve the emergency, is considered a default of the lease and a trespass.¶

(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 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 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-owned land;¶

(c) The impact of the violation on school lands or statutory lands.¶

(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 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 an applicant challenges a decision made by the Department.

CHANGES TO RULE:

141-126-0240

Reconsideration of Decision

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

(b) The director will review the request and reach a decision within 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 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



OAR 141-126 Rulemaking Public Comments and Agency Response

Comments & Agency Response

The public comment period was open from July 1, 2022, to July 31, 2022. The Department received 2 comments in total, 0 of which were submitted via form letter.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

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Doug Heiken, Oregon Wild – July 18, 2022

Comment: Oregon Wild recognizes that communication using electromagnetic waves is a critically important technology now and for the foreseeable future.

Our suggestions for this rule-making are:

1. Provide an opportunity for informed public comment on the siting of comm sites that are new or are being considered for expansion of the existing physical footprint.
2. Adopt a policy to consider and document environmental trade-offs and a policy to avoid and minimize environmental effects to the extent practicable. Relevant environmental impacts include loss/degradation/fragmentation of habitat (forest meadow, rock garden, wetlands, etc.), wildlife collisions and mortality, scenic impacts, light pollution, noise pollution, soil erosion, water pollution, weeds, fire hazards, etc.
3. Adopt a policy to avoid siting new comm sites in locations that will require increased fire suppression effort or add to the complexity of fire control, especially in places where fire is a natural part of the natural disturbance regime.
4. Consider alternatives such as alternative locations for comm sites and access roads so that tradeoffs of different sites can be weighed.
5. Require site decommissioning and site restoration when comm sites are no longer needed. Require performance bonds or collect fees to cover the cost of decommissioning and site restoration.

Agency Response:

1. Per proposed OAR 141-126-0140(5), the Department will circulate the application for a new lease or lease modification with an expanded footprint 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.”



OAR 141-126 Rulemaking Public Comments and Agency Response

2. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), "leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use," so as to minimize impact to land, habitat and environment. While the Department has not specifically adopted an in-depth environmental review, the most impactful uses such as cell towers are required by federal law to go through a full Environmental Impact Statement prior to siting any tower and is also required to co-locate on towers that already exist within the area of interest. Compliance with the Federal Communications Commission (FCC) rules implementing NEPA on new tower construction includes separate procedures the Endangered Species Act and the National Historic Preservation Act. Per proposed OAR 141-126-0160(8)(a), Holders of communication site leases must cooperate and comply in "the detection, prevention, and control of noxious plants," and per proposed OAR 141-126-0160(8)(b), in "the management of plant pests and diseases." Also, per proposed OAR 141-126-0160(9), all operations must be conducted "in a manner that conserves fish and wildlife, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants."
3. As stated above, per proposed OAR 141-126-0160(2), "leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use," so as to minimize impact to land, habitat and environment. Any analysis would involve consideration of the wildfire regime for a given location. Most existing communication sites are located on butte tops in ecosystems with sparse fuels. In addition, according to proposed OAR 141-126-0160(8)(c), Holders of communications site leases must cooperate and comply with "the Department and other agencies in the detection, prevention, and control of wildfires on a lease area."
4. Per proposed OAR 141-126-0130(1)(a), applicants "must contact the Department to schedule and complete a pre-application meeting." During these meetings consideration is given to alternative site locations and issues such as access roads. It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), "leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use" so as to minimize impact to land, habitat and environment. Finally, multiple alternatives regarding new tower locations and associated roads will be evaluated during FCC compliance.
5. A site decommissioning plan is a requirement for certain communications site facilities as determined by a risk assessment by the Department provided by proposed OAR 141-126-0200(6). Furthermore, as per proposed OAR 141-126-0200(6)
 - (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.



OAR 141-126 Rulemaking Public Comments and Agency Response

- (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.

The intent of decommissioning plans is to ensure that sites no longer in use will be returned to a native state to the extent practical. Components to be included would include tower/structure removal, structure demolition, concrete slab removal, removal of electrical equipment and wiring, disposal of gas, batteries or other hazardous materials, reseeding/rehabilitation of the site with site-specific rehabilitation requirements, and timelines for completion.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The proposed rules would undermine the longstanding Oregon policy goal to expand broadband availability.

Agency Response:

The Department's proposed rules attempt to balance the Department's mission along with Oregon policy related to broadband expansion. Revisions to the proposed rules will appropriately align the Department rules with broader federal and Oregon's broadband policies.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should acknowledge the difference between large and small wireless facilities in the proposed rules, and significantly reduce the recurring fees for installations of new small wireless facilities.

Agency Response:

The Department is adding a category of cellular communication facilities for small wireless facilities (SWF). This category will differentiate between Macro Cellular uses and Small Wireless Facility uses. The Department will adopt the FCC definitions for size and volume regarding SWFs. The minimum compensation rates for SWFs will be set at the FCC recommended level of \$270 per facility. Application fees for SWFs will also follow the FCC recommendations as described in proposed OAR 141-126-0130(3)(d), \$500 for up to five (5) SWFs in the same application, \$100 per additional SWF beyond five (5) in the same application, and \$1,000 for a new pole (not a co-location) intended to support one or more SWF.

Matt DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should reduce the recurring fees for larger wireless facilities, aligning them with the BLM's approach rather than an ill-defined "market rate".

Agency Response:

Minimum compensation rates for macro cellular facilities will be reduced to \$10,000 per year.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should significantly reduce the annual fees for co-locations.

Agency Response:

Co-location application fees will be reduced from \$1,000 to \$750 for each macro cellular co-locator. Co-location application fees for SWFs will be set at \$100. Co-location compensation rates for macro cellular sites will be revised from \$10,000/year to 25% of the fee charged to each co-locator. Co-location compensation rates for SWFs will be set at \$100/year.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should adopt lower recurring and application fees for all wireless facilities to promote infrastructure investment: The Department should align its application fees with the FCC's.

Agency Response:

Fees for the newly added category of small wireless facilities (SWFs) are aligned with the FCC recommended fees. Application fees for all existing macro cellular categories have been reduced from the original proposal. Application fees for a new or renewed lease with changes will be \$1,500. Application fees for leases with no changes, co-locations, and assignments have been reduced to \$750. Application fees for the new category of SWFs will be structured according to the FCC guidance, \$500 for a single application that includes up to five SWFs, with an additional \$100 for each additional facility, and \$1,000 for a new pole (not a co-location) intended to support one or more SWF. Application fees for SWF co-locations will be \$100, \$250 for assignments and \$250 for a modification simply resulting in changes of frequencies and \$500 for modifications resulting in changes to structures or poles.

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should streamline application procedures and eliminate unnecessary and/or duplicative processes.

Agency Response:

The Department's public review policy stated in proposed OAR 141-126-0140(5) is standard language for the Department's public process. All Department operations are part of public record. The Department maintains a list service where any member of the public or group can sign up and receive notifications regarding communication sites. New leases or renewals with changes require a public review. Renewals with no changes do not require a public review.

Regarding state and federal environmental and cultural review processes, the Department's application process includes a short list of tasks that require coordination with other agencies. The application requires applicants to check a box to indicate that they have considered these requirements. It is not a duplicative requirement as the Department is not requiring any further action from the applicant.

Regarding execution of a lease to an applicant that still requires subsequent approvals the Department would be willing to negotiate during the lease process on a case-by-case basis. If an applicant requires securing site control prior to other permits or authorizations, it must be requested in the application.

The timelines for the Department to process an application have been adjusted to conform with the FCC's 2009 and 2018 declaratory rulings on "shot clocks" for both macro cellular and small wireless facilities. The new timeline for small wireless facilities is 60 days for co-locations on existing structures and 90 days for new builds. The new timeline for macro cellular sites is 90 days for co-locations and 150 days for new facilities and renewals.



OAR 141-126 Rulemaking Public Comments and Agency Response

Matthew DeTura, CTIA – July 31, 2022

Comment: The Department should delete or modify certain other rules that would undermine Oregon's broadband policies or conflict with federal law.

Agency Response:

Regarding lease terms, an initial lease has a 10-year term with additional renewal periods granted provided the leaseholder has complied with all terms and conditions of the lease and applies to the Department for a renewal per proposed OAR 141-126-0110(10). The shorter term (10 years) provides the Department the opportunity to keep leases up to date and not using antiquated rules.

Language regarding intent to terminate a lease is found in the lease document. Termination of a lease is an exception to the norm.

A lessee is not prohibited from fencing the leased areas to provide security to their equipment and operations. Most communication sites on state lands are behind locked gates. Emphasis in proposed OAR 141-126-0160(6) is on lawful public use. Typically, closures of state land require rulemaking under OAR Chapter 141, Division 88.

The Department does not regulate frequencies, that is the duty of the FCC. However, the Department has an obligation to ensure there is no conflict among the users of a shared communication site. Proposed OAR 141-126-0110(7) states that "The Department will not grant a communication site facility 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." The Department notifies other users of changes or additions in frequencies to avoid user conflict. The Department has had complaints from users in the past about interference from other user's new frequencies. The process is one of notification not regulation. A statement has been added to proposed OAR 141-126-0160(16) regarding the federal role in regulation of radio frequencies.

The indemnification clause described in proposed OAR 141-126-0160(19) is more general than that proposed by CTIA. This language must suit a variety of communication site lessees including large wireless companies, small radio companies, local governments, and non-profit organizations. Additional detail regarding the indemnification clause can be captured during an individual contract negotiation.

Competitive bidding, as described in proposed OAR 141-126-0210, is a standard process used by the Department outside the realm of communication site leases. The Department's fiduciary responsibility to the Common School Fund makes this an allowable process. Competitive bidding is used by other states as well. Competitive bidding for the use of communication sites has not been pursued by the Department in the past but it must remain an option.

It is not the Department's experience that any wireless firms are self-insured and are unable to provide policies that meet the Department's rule requirements. The Department will coordinate with the Department of Administrative Services, Risk Management, on a case-by-case basis if such an occurrence should arise per proposed OAR 141-126-0200(2).



OAR 141-126 Rulemaking Public Comments and Agency Response

Proposed OAR 141-126-0230(2) has been modified to give lessees advance notice of inspections into buildings or structures owned by lessees. Proposed OAR 141-126-0230(3) has been modified to provide lessees 60 days to correct violations prior to enforcement action being taken.



July 31, 2022

VIA E-MAIL

Ms. Allison Daniel
 Rules Coordinator
 Department of State Lands
 775 Summer St. NE, Suite 100
 Salem, OR 07301
Rules@dsl.oregon.gov

Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land

Dear Ms. Daniel:

CTIA¹ appreciates the opportunity to comment on the Department of State Lands' ("Department's") Notice of Proposed Rulemaking in this proceeding.²

CTIA supports the Department's development of rules for siting on state-owned land that will advance Oregon's longstanding commitment to expanding the availability of broadband communications services to all residents. Wireless services play a central role in achieving broadband availability nationwide, and our industry is making substantial capital investments in the wireless facilities needed for broadband – over \$30 billion in 2020 alone, and over \$600 billion throughout the life of the industry.³ Enabling wireless facilities to be

¹ CTIA – The Wireless Association ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless carriers, device manufacturers, and suppliers as well as app and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² Administrative Rules for Authorizing Communication Site Leases on State-Owned Land (June 17, 2022) ("Notice").

³ CTIA, "2021 Annual Survey Highlights" (July 2021), available at <https://www.ctia.org/news/2021-annual-survey-highlights> (last accessed July 31, 2022).



installed efficiently on state-owned lands will promote broadband expansion consistent with state policy.

CTIA is, however, concerned that a number of the proposed rules would impede, rather than promote, broadband expansion in Oregon. They would impose excessive, burdensome and complex fees and requirements that would not advance Oregon's longstanding goal to expand broadband, or the Department's stated objective to streamline siting on state-owned lands.

CTIA urges the Department to revise the proposed rules, as detailed in this letter, to better advance State objectives. The Department's rules should:

- Acknowledge the fundamental differences between small wireless facilities and other types of deployment;
- Promote the deployment of small wireless facilities by adopting an annual fee of \$270;
- Promote the deployment of larger facilities by setting annual fees of \$4,000-\$8,000;
- Reduce annual fees on collocations to promote efficient use of rights-of-way;
- Adopt an application fee for new facilities based on the Department's costs of reviewing and processing those applications; and
- Streamline the application process for all new wireless facilities, eliminate duplicative reviews, revise collocation approvals from an application to a consent process, and set deadlines for the Department to complete action on applications for new facilities.

I. THE PROPOSED RULES WOULD UNDERMINE THE LONGSTANDING OREGON POLICY GOAL TO EXPAND BROADBAND AVAILABILITY.

Achieving universal broadband availability has long been a priority for Oregon. For nearly two decades, state policymakers have recognized the critical importance of rapidly deploying advanced communications networks to serve all Oregon residents, and have removed barriers to that deployment. For example:

- In 2003, the Legislature enacted a law declaring that "it is the goal of this state to promote access to broadband services for all Oregonians in order to improve the economy in Oregon, improve the quality of life in Oregon communities and reduce the economic gap between Oregon communities that have access to broadband digital applications and services and those that do not, for both present and future generations." The law finds that expanding broadband requires actions such as



“[r]emoving barriers to the full deployment of broadband digital applications.”⁴

- In 2018, Governor Brown issued an Executive Order establishing the Oregon Broadband Office and declaring that “broadband constitutes critical infrastructure for the property of all Oregonians, especially Oregon’s rural and underserved communities,” and is “increasingly vital for the conduct of commerce, the economic viability of communities, and Oregon’s global competitiveness.” The Governor directed the new agency to “remove barriers to and support broadband infrastructure deployment to close the continuing digital divide.”⁵
- The Oregon Broadband Office currently identifies as two of its missions to “develop broadband investment and deployment strategies” and “advocate for public policies that remove barriers, promote and coordinate solutions, support and promote broadband planning.”⁶
- The 2020 Oregon Statewide Broadband Assessment and Best Practices Study concluded, “As broadband becomes an ever-increasing critical asset, too many smaller, rural and less affluent localities confront a confluence of geographic, economic and cultural barriers to adequate broadband. Cost is chief among these impediments – planning, designing, and constructing a broadband network requires significant resources up front as well as an ongoing infusion of capital to operate, maintain and upgrade.”⁷

Efficient deployment of wireless networks advances Oregon’s policy goals by making broadband available to residents, businesses and government agencies. Wireless is a cost-effective communications technology that can be rapidly deployed. It is particularly cost-effective compared to fiber in rural areas, where residents often lack reliable service. State-owned lands are often optimal locations for wireless facilities.

In particular, fifth-generation (“5G”) wireless technology enables providers to deploy small wireless facilities (“SWFs”) to complement their network of larger facilities. A SWF uses an

⁴ 2003 c.775 §1, codified at Oregon Revised Statutes 759.016(1).

⁵ Office of the Governor, Executive Order No. 18-31, “Establishing the Oregon Broadband Office” (Dec. 14, 2018).

⁶ *Business Oregon*, “Oregon Broadband Office,” available at https://www.oregon.gov/biz/programs/oregon_broadband_office/pages/default.aspx (last accessed July 31, 2022).

⁷ Strategic Network Group, Oregon Statewide Broadband Assessment and Best Practices Study Prepared for the Oregon Business Development Department (Jan. 31, 2020).



antenna that is only a few cubic feet in size and is attached to rooftops, building exteriors, water towers, signs and poles (including streetlight poles), thus minimizing visual impact. SWFs can extend coverage and also enhance the network's capacity, which is critical in the provision of broadband service. SWFs are installed more closely together than macro facilities.

The major evolution in technology that 5G and SWFs represent is enabling faster deployment of broadband services across the nation. It makes a “one size fits all” regulatory approach not only unwarranted but also a threat to broadband investment, because it will discourage the deployment of SWFs in Oregon.

The Department proposes to adopt rules “to establish and streamline administrative procedures for authorizing communication site facilities on state-owned land.”⁸ CTIA agrees that siting communications facilities on Department-managed lands will benefit the public, and supports the objective to “streamline” those procedures. However, a number of the proposed rules erect substantial obstacles that will delay and impede – if not outright block – the Department’s goal to authorize those facilities. Rather than “streamline” procedures, the proposed rules add multiple layers of complicated requirements, new costs, and long timelines. Moreover, the proposed rules do not seem to account for the proliferation of SWFs as fifth-generation networks are deployed across Oregon, and appear to be predicated on the assumption that all wireless communications sites will be larger and more complicated than other types of communications sites on state land.

These expensive and burdensome requirements will not only deter the investment in infrastructure the Department says it seeks to promote, but will also create the very “barriers” that the Oregon Broadband Office is tasked to remove. Despite the findings of the 2020 Statewide Broadband Assessment that high costs deter capital investment in networks, the rules would drive up costs and thus discourage that investment. Put simply, the Department proposes a path that is inconsistent with that of the Oregon agency charged with promoting broadband deployment. And to the extent that the proposed rules seek to use state lands to drive revenue, such revenue will be severely curtailed by the fact that the proposed rules will discourage wireless providers from siting on state lands at all.

The Department can correct these problems by revising its proposed rules to reduce their costs, delays, and burdensome compliance mandates. These changes will better align the

⁸ Notice at 1.



Department with Oregon's broadband policies, accelerate expanded wireless network coverage, and achieve the clear public interest benefits that expanded coverage will deliver to the state's economy and to its residents.

II. THE DEPARTMENT SHOULD ADOPT LOWER RECURRING AND APPLICATION FEES FOR ALL WIRELESS FACILITIES TO PROMOTE INFRASTRUCTURE INVESTMENT.

A. The Department Should Acknowledge the Difference Between Large and Small Wireless Facilities in the Proposed Rules, and Significantly Reduce the Recurring Fees for Installations of New Small Wireless Facilities.

The proposed rules would apply the same minimum base annual fee of \$20,000 to all types of “cellular communications” facilities. The rules appear to assume that all facilities involve antenna towers or large structures, but, as previously discussed, this is not the case for modern wireless deployments.

The marked difference in the economics of SWF technology has led the federal government to apply lower fees and less burdensome regulations to SWFs in order to remove barriers to deployment. In 2018, the FCC heralded the development of SWF technology as enabling greatly expanded wireless broadband service without requiring the construction of large towers. But it found that high fees would effectively prohibit SWF deployment, frustrating the national priority to accelerate broadband.

The FCC thus defined small wireless facilities as:

- *Size:* Facilities that are either:
 - (i) mounted on structures 50 feet or less in height including their antennas, or
 - (ii) mounted on structures no more than 10 percent taller than adjacent structures, or
 - (iii) that do not extend an existing structure to a height of more than 50 feet or by more than 10 percent, whichever is greater; and
- *Volume:* Facilities where the antenna is no larger than three cubic feet in volume, and all other associated equipment is no more than 28 cubic feet in volume.

The FCC also required that fees for deploying SWFs in rights-of-way be based on the state or locality's reasonable costs to manage deployment. The FCC concluded that annual recurring



access fees of \$270 are presumptively reasonable, and held that a state or locality may set a higher fee if its costs would not be recouped by the presumptively reasonable amount.⁹

The fees the proposed rules would impose are steep for all communications facilities, as will be discussed below. But in particular, these recurring fees are exorbitant for SWFs. The \$20,000 annual fee for cellular facilities in Proposed Rule 141-126-0150 is simply not viable for a SWF. Further, the \$20,000 figure cannot be justified as being necessary for the state or locality to recoup its administrative costs, as required by the FCC. And the fact that these fees would pile up quickly for deployments of multiple small facilities would dissuade providers from siting *any* small facilities in an area.¹⁰

CTIA urges the Department to instead adopt rules and annual fees for new installations of SWFs that align with the FCC's rules and account for the differences in types of wireless facilities.¹¹ The Department should:

- Add a definition of “small wireless facility” to the definitions in Rule 0140-126-0120 that tracks the FCC’s definition; and
- Set the annual recurring fee at \$270 for each SWF, as the FCC has.

B. The Department Should Reduce the Recurring Fees for Larger Wireless Facilities, Aligning them with the BLM’s Approach Rather Than an Ill-Defined “Market Rate”.

The Department states that the proposed rules “establish a lease rate and fee structure consistent with market rates, based on a market study of lease rates and fees for the Bureau of Land Management [“BLM”] and other western states that manage similar communication facility leases.” However, Proposed Rule 141-126-0150’s flat annual rental fee for “cellular”

⁹ See *In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, Report and Order, 33 FCC Rcd 9088 (Sep. 27, 2018) (“2018 FCC Order”).

¹⁰ The Department should also note that federal law prohibits state regulations that “may prohibit, or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” 47 U.S.C. §253(a).

¹¹ To the extent that the proposed fees discriminate against providers who rely more heavily on small cells to support their networks, the Department’s rules could run afoul of federal law on those grounds as well. See 47 U.S.C. §253(c) (“Nothing in this section affects the authority of a State or local government to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, *on a competitively neutral and nondiscriminatory basis*, for use of public rights-of-way *on a nondiscriminatory basis*”) (emphasis added).



facilities¹² bears no resemblance to the lower fees for other commercial wireless facilities, or to the BLM's fees, and more importantly, its market-based approach would erect significant barriers to deployment.

The Department proposes a flat annual fee of \$20,000 for all cellular facilities, but does not make available the "market study" that it purports to rely on to establish a "market rate", or supply any factual basis to set the fees at such a level. Moreover, Rule 141-126-0150 states that the \$20,000 annual fees are only "minimum base amounts" amounts that can be set higher: "The Department reserves the right to establish the base annual compensation in amounts that may be greater than the minimum base annual compensation." This uncertainty will deter wireless providers from seeking to site facilities on Department-managed land and undermine the Department's and state's objective to encourage expanded wireless service on its lands.

Although the Department notes that the fees are set to "generate revenue for the state's Common School Fund," courts have invalidated fees that similarly seek to raise revenues without being based on the costs governments incur to oversee granting siting applications and overseeing deployment. These courts have found that where fees are revenue-based and bear no relationship to governmental costs, they can effectively prohibit communications service in violation of 47 U.S.C. 253(a).¹³ CTIA fully supports the goal of funding schools, and during the Covid-19 pandemic wireless carriers have gone to great lengths to enable remote learning, but school funding need not, and should not, prevent or detract from broadband deployment. (Moreover, to the extent that the Department's proposed reliance on market-based rates dissuades carriers from siting on state-owned

¹² As an aside, the use of the term "cellular" in the proposed rules is both dated and too narrow. While the FCC used that term for the first commercial mobile wireless systems in the 1980s, it has subsequently used many additional terms for systems that offer the public similar services, such as "personal communications service" and "advanced wireless service." To avoid confusion, CTIA suggests that the Department use the single term "commercial wireless" facilities to apply to all facilities that the proposed rules classify as "cellular" or "commercial" facilities (with a separate definition for "small wireless facilities," as discussed *supra*).

¹³ See, e.g., *City of Portland v. United States*, 969 F.3d 1020, 1039 (9th Cir. 2020) ("The statute requires that compensation be 'fair and reasonable'; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs."); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003) ("Thus, to meet the definition of "fair and reasonable compensation" a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications provider makes use of the rights-of-way... [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry.").



lands, the proposed rules would limit broadband deployment *and* fail to generate revenue, making them completely counterproductive.)

The Department also provides only a cursory explanation for why it proposes to charge the annual fee of \$20,000 for a “cellular” facility but much less – \$4,000-\$8,000 – for a “commercial” facility. “Cellular” is defined to mean “transmission and receiving of signals for mobile telecommunications over a cellular network,” while “commercial” appears to cover all other commercial wireless communications (which would appear to include fixed wireless services). But this distinction (which is not in the Department’s current rules) is arbitrary, because both types of facilities use antennas mounted on towers or other structures; they both receive and transmit communications. Nor are cellular antennas necessarily any larger or more complex than other types of antennas. To the contrary, as CTIA explained above, they are often smaller, because cellular providers are increasingly relying on SWFs to build out their mobile networks.¹⁴

In contrast to the Department’s proposed approach, the BLM sets progressively lower fees for wireless facilities as a market’s population declines. The Department does not explain the basis for departing from the BLM’s approach or for charging such a large flat fee. The flat fee also is inconsistent with the Department’s own statement that it based fees on “market rates,” as the market for land is certainly different in different parts of Oregon.

In short, the proposed annual fees are likely to inhibit broadband deployment, undercutting state policy to accelerate that deployment. CTIA urges that the Department to instead use the same tiered approach for larger facilities that it has established for “commercial” wireless facilities:

- \$4,000 for facilities in counties with a population of less than 50,000
- \$6,000 for facilities in counties with a population of 50,000-150,000
- \$8,000 for facilities in counties with a population of more than 150,000.¹⁵

¹⁴ Again, to the extent that the proposed rules are discriminatory, they would not pass muster under federal law. See note 11, *supra*.

¹⁵ If the Department declines to follow this approach, it should use the tiered fees in the BLM’s fee schedule.



C. The Department Should Significantly Reduce Annual Fees for Collocations.

The fees Rule 141-126-0170 would impose for collocation are excessive. Collocators would have to pay a minimum annual rent of \$10,000, but that amount could be set higher based on an appraisal of the market value of the location – and there is no upper limit on that amount.

The Department supplies no basis for a \$10,000 fee. As CTIA discussed earlier in these Comments, the FCC and courts have found that such large government-imposed fees deter investment in new infrastructure.

Moreover, the Department would already be collecting the annual fee from the pre-existing site user. If three additional users located on the same structure, the Department would collect a minimum of \$50,000 each year (at least \$20,000 for the initial user and at least \$10,000 for each other user). Double- or triple-charging for the same facility ignores the Department’s mission to promote deployment of new infrastructure, and dissuades efficient use of state-owned rights-of-way.

Rule 141-126-0170 should thus be modified to delete the additional rental fees that co-locators must pay and replace that fee structure with one that is reasonable, non-discriminatory and promotes Oregon’s broadband deployment goals.

D. The Department Should Align Its Application Fees with the FCC’s.

Rule 141-126-0130(2), governing application fees, suffers from the same issues as the proposed recurring fees. It would charge up-front application fees of \$1,000 for “commercial” uses but double that -- \$2,000 – for “cellular communications.” As CTIA explained above, there is no plausible basis to discriminate between these types of facilities, creating issues with 47 U.S.C. §253(c). Both types of facilities provide commercial wireless services. The fact that a cellular facility can transmit signals to mobile devices (per the proposed definition) has no bearing on the appropriate amount of an application fee. In addition, the rule does not distinguish between SWFs and larger facilities, meaning exponentially higher fees for installations with multiple smaller facilities.

In its 2018 Order, the FCC reinforced the importance of cost-based state and local application fees for wireless facilities in rights-of-way. It pointed to record evidence that given the economics of deployment, up-front fees of thousands of dollars were impairing deployment, undercutting the national priority to accelerate expanded service. It thus required state and



local governments to limit SWF application fees to recover governmental costs to process the application, and determined that the presumptively reasonable cost-based fee was \$500 for a single application that includes up to five SWFs, with an additional \$100 for each additional facility, or \$1,000 for a new pole or other structure. Governments that can demonstrate these amounts would not recover their application review costs can increase those fees to the level needed to recoup them.¹⁶

The Department should incorporate these application fees into its rules. Adopting these fees will address the arbitrary distinction the proposed rules create and ensure that SWFs pay commensurately lower application fees. Application fees for new larger facilities should be based on the Department's costs. As discussed in Section III below, the Department should not require collocations to undertake a full application process because collocations would be implemented under the lease entered into by the structure owner. The Department should instead have a consent process for such collocations.

III. THE DEPARTMENT SHOULD STREAMLINE APPLICATION PROCEDURES, AND ELIMINATE UNNECESSARY AND/OR DUPLICATIVE PROCESSES.

CTIA is also concerned that the extensive application procedures the rules propose will deter investment in new infrastructure, undermining state broadband objectives. Because some procedures duplicate reviews that applicants must already undergo, they will unnecessarily increase costs and delays and conflict with the Department's stated objective to streamline the review process. The Department should delete or modify these requirements.

Public Notice and Review. Rule 141-16-0140(5) would require the application to “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” (emphasis added).

This vague, unbounded list fails to give applicants fair notice of their obligation because it does not define who would qualify as an “applicable,” “interested,” or “affected” person. There is also no reason for the Department to require any such notice. Local governments typically require that notice of a wireless installation be given to them, published in a local newspaper, and/or considered in a public hearing. And federal and state environmental and historic preservation review processes require the applicant to provide to, or coordinate with,

¹⁶ See 2018 FCC Order.



Federal, State and local agencies and Tribes. The Department should delete this duplicative notice requirement entirely and defer to those other existing procedures.

Rule 141-16-0140(5) would also direct the Department to seek comment from all notified persons on the environmental impact of the facility on “threatened or endangered species” and “archaeological and historic resources,” which it will then review. This process appears to be duplicative of the reviews already conducted pursuant to State and Federal environmental and historic preservation laws. For example, at the federal level, FCC rules already require wireless providers to conduct this review pursuant to the National Environmental Policy Act and National Historic Preservation Act for facilities that could potentially have an impact on the environment or historic properties. There is thus no basis for the Department to conduct a redundant environmental and historic resource review. This entire process should be deleted.

Rule 141-16-0140(5) also provides the application will be circulated to agencies and Tribes so that a review for compliance with various laws can be completed. If the applicant needs to secure building permits, conduct studies or obtain other governmental approvals, it is unreasonable to burden it with the costs of doing so without first securing grant of the lease. Rule 141-16-0140(5) should be revised to authorize the Department to execute a lease with the condition that the applicant subsequently secure necessary approvals.

Timelines for Granting Applications. The proposed rules set exceedingly long potential timelines for the review and grant of applications, without any deadline for the Department to act. Rule 141-16-0130 requires an application to be filed at least 180 days prior to the date of intended use, indicating that the applicant should expect up to six months for the Department to complete its review. But the rule’s six month “expectation” does not set a deadline for the Department to act on the application. To help make certain that applications are acted upon in a timely manner, an actual deadline should be provided.

The FCC has determined in several orders that promptly completing application reviews is important to achieving the public interest benefits from expanded wireless service. It thus adopted specified timelines applicable to state and local review to speed deployment. It found that setting such time periods will provide more certainty to wireless companies, which will incent investment. The FCC also determined that the installation of SWFs should involve less review and be significantly shortened given their much reduced visual impact, and thus set shorter deadlines for action on applications for those facilities.



The Department should set specific deadlines for acting on applications. Consistent with the time periods the FCC has set for installations of new facilities, the rules should direct that the Department must act within 150 days for macro sites, and within 90 days for SWFs. Those deadlines should begin to run immediately upon the filing of an application, and should encompass all Department review procedures, with an application deemed granted if not acted upon under this reasonable schedule.

When no new structure will be constructed and the antenna and supporting equipment will instead be collocated on an existing structure, there is no need for an application process or extended Department review beyond basic safety and engineering approval. Rather, the Department should merely be taking the ministerial act of consenting to the collocation. The rules should thus specify that collocations do not require a full approval process, and that the Department shall issue its consent for collocations within 30 days.

IV. THE DEPARTMENT SHOULD DELETE OR MODIFY CERTAIN OTHER RULES THAT WOULD UNDERMINE OREGON'S BROADBAND POLICIES OR CONFLICT WITH FEDERAL LAW.

Lease Term. Rule 141-16-0160(1) would provide that “the initial term of the lease may be up to, but not exceed ten (10) years, unless otherwise approved by the Director.” This short term is likely to deter expansion of wireless services, contrary to state policy objectives. A 10-year term is insufficient given the capital investment needed to construct or install new wireless facilities. The rule should be modified to set a minimum initial term and automatic renewal terms of not less than 25-30 years. The Department is fully protected by Proposed Rule 141-16-0220, which empowers the Department to terminate a lease when it establishes that the lessee has defaulted on the lease terms.

In addition, Rule 141-16-0160(1) should include a two-year notice requirement should the Department determine not to renew the lease. Providers need that amount of time to find alternative locations, finalize any leasing and zoning processes, and install equipment there. Forcing the shutdown of communications services before new facilities are ready would unjustifiably disrupt service to the public.

Site Access. Rules 141-16-0160(4), (5) and (6) would address site access but would not address the lessee’s access to utilities that are on-site. These rules should specifically grant the lessee utility access. These provisions also adopt conflicting requirements for third-party access. They recognize the need to restrict access to lease areas to protect the public, but



then also state that the public should have that access, and leave access issues to the Department's discretion. The language on third-party access should be removed because leaseholders should be entitled to quiet enjoyment of the premises they are leasing to operate facilities without interference from the public or Department involvement in determining access, absent a default on the lease. Further, it would be highly irregular for the public to have access to wireless facilities, and carriers should be able to secure such facilities on Department lands as they do elsewhere.

Frequency Changes. Rule 141-16-0160(12) would require the lease holder to notify the Department of "any equipment modifications resulting in a change of frequency." The Department will then notify other users, and the leaseholder "must resolve the frequency issue." However, Section 332(c)(7)(B) of the Communications Act preempts states and localities from regulating the use of radio frequencies, granting that authority exclusively to the FCC.¹⁷ The FCC has set specific power and other limits on the frequencies that wireless service providers can use and addresses interference issues that may arise. This federal regime ensures that all wireless services can coexist and that problems can be quickly resolved. States have no permissible role in regulating frequency use or modifications to that use. Proposed Rule 141-16-0160(12) is preempted by federal law, serves no purpose not already addressed by the FCC's rules and procedures, and should be deleted or revised to clarify that FCC rules govern interference issues.

Indemnification. Rule 141-126-0160(19) would state that the holder of a 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." This section should be revised to exclude claims or costs that are caused by, or arise from or relate, to the State's or the Department's willful misconduct, gross negligence, or fraud. These are typical exclusions to indemnification provisions.

Competitive Bidding. Rule 141-126-0210 would establish a "Competitive Bidding Process" under which the Department may choose to offer access to the lands it controls through competitive bids. This process should not be adopted.

- First, it would increase the cost of investing in new facilities. The bidding process would thus deter wireless firms from investing in new infrastructure because of the uncertainty as to how much they will have to pay – undermining the proceeding's

¹⁷ See also *In re: 960 Radio, Inc.*, Memorandum Opinion and Declaratory Ruling, FCC 85-578, 1985 WL 193883 (Nov. 4, 1985) at para 4-6.



objective to facilitate wireless use of state-owned lands. And, the already substantial up-front application fees wireless providers would have to pay would be in addition to the amount of the winning bid, making investment even less attractive.

- Second, a competitive bidding process adds still more delay into securing access to a site – contrary to the Department’s stated objective to “streamline administrative procedures.”
- Third, the Department supplies no basis for how it would determine the winning bidder. The proposed rule states that the Department “will determine at its discretion the highest qualified applicant,” but fails to explain what qualifications it would consider and how it would weigh them to compare and evaluate applicants. The rule would thus leave wireless firms with no basis to expect that whatever bid they submit would be successful.
- Fourth, bidding would be particularly difficult for smaller firms, which may lack the financial resources to compete with larger firms, driving them away from seeking to use state-owned lands. The Department asserts that the rules overall “will not have any significant fiscal impact on small businesses.” But it failed to address the fiscal impact or the deterrent effect of requiring small businesses to engage in bidding.

Competitive bidding could for these reasons drive providers, particularly small firms, away from seeking to deploy at least at some locations – undermining the Department’s stated objective of promoting deployment of broadband. Rule 141-126-0210 should be deleted.

Insurance. Rule 141-126-0200 would require lessees to obtain insurance coverage, but some wireless firms are self-insured, and cannot provide policies that would meet the rule’s requirements. The rule should allow for alternative insurance coverage that would provide equivalent protection to the Department.

Enforcement. Rule 141-126-0230 would impose a process for the Department to determine when violations of the lease occur, but it fails to give the lessee the opportunity to correct the violation before the Department may take enforcement action (including a civil penalty). The rule should be modified to give the lessee 60 days to correct the violation before any enforcement action is taken. The rule should also provide that the Department will give the lessee advance notice of any inspection of the lessee’s facilities.

* * *



The revisions to the rules that CTIA proposes will advance the State's broadband objectives and the Department's goal to streamline deployment on State-owned lands.

Sincerely,

/s/ Matthew DeTura

Matthew DeTura

Counsel, External and State Affairs

CTIA

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OAR 141-126 Rulemaking Public Comments and Agency Response



Comments & Agency Response

A second public comment period was open from August 1, 2024, to September 3, 2024. The Department received 2 sets of comments in total, 0 of which were submitted via form letter.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

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Doug Heiken, Oregon Wild – September 3, 2024 (submitted via e-mail)

Comment: Oregon Wild represents approximately 20,000 supporters who share our mission to protect and restore Oregon's wildlands, wildlife, and waters as an enduring legacy.

The proposed amendments to the communication site rules would establish and streamline administrative procedures for authorizing communication site facilities on state-owned land. Division 126 rules will accommodate industry standards, best practices, facilitate adaptive management, and update compensation rates and fees and allow for changes in market value ensuring the fiduciary responsibilities of the Department are being met.

Some of the key issues that we urge the Land Board to consider relate to:

Wildfire: Communication sites are often built in locations that are exposed to significant wildfire hazard. It is not reasonable to expect that wildfire will be controlled, so these communications facilities must be built to be resistant and resilient to wildfire. Luckily that can be done by building fire-safe structures, and modifying fuels within just 100 feet of structures. Broad-scale clearing of vegetation is not necessary for fire defense. See the work of Jack Cohen, such as: Finney and Cohen. 2003. Expectation and Evaluation of Fuel Management Objectives. USDA Forest Service Proceedings RMRS-P-29.

http://www.fs.fed.us/rm/pubs/rmrs_p029/rmrs_p029_351_366.pdf; Jack Cohen and Dave Strohmaier 2020. Community destruction during extreme wildfires is a home ignition problem. Wildfire Today, September 21, 2020.

<https://wildfiretoday.com/2020/09/21/community-destruction-during-extreme-wildfires-is-a-home-ignition-problem/>; Jack D. Cohen, Ph.D. 1999. Reducing the Wildland Fire Threat to Homes: Where and How Much?

https://www.fs.fed.us/rm/pubs_other/rmrs_1999_cohen_j001.pdf presented this paper at the Fire Economics Symposium in San Diego, California on April 12, 1999.

Access Roads: Communication sites require access to remote sites, typically via road or helicopter. These roads are often used (both authorized and unauthorized) by the public which increases ecological impacts. DSL rules should focus on minimizing the impacts of roads. Building and maintaining roads on steep terrain has significant ecological costs including:

- Soil disturbance, erosion, compaction, loss of forest productivity
- Pollution: sedimentation, thermal loading
- Hydrologic modification: flow interception, accelerated run-off, peak flows
- Impaired floodplain function
- Barrier to movement of wood and spawning gravel
- Habitat removal
- Reduced recruitment of snags and down wood habitat
- Fragmentation: wildlife dispersal barrier
- Human disturbance, weed vector, hunting pressure, loss of snags, litter, marbled murrelet nest predation, human fire ignition, etc.
- Reduced carbon storage in adjacent and nearby forests

See also, NRDC 1999. "End of the Road: The Adverse Ecological Impacts of Roads and Logging: A Compilation of Independently Reviewed Research" (1999),

<https://web.archive.org/web/20081024112126/http://www.nrdc.org/land/forests/roads/eotrinx.asp>; USDA Forest Service 2006. Draft Review and Comment on: Forest Service Roads: A Synthesis of Scientific Information, 2nd Draft, USDA FS: Ecological impacts - by Jack Wade (http://web.archive.org/web/20061008094731/http://www.wildlandscpr.org/resourcelibrary/reports/wade_report2.html).

Vegetation management: Comm sites often require vegetation maintenance to maintain line of site. DSL rules should protect mature and old-growth trees that provide important habitat, carbon storage, and other ecosystem services. Sites should be selected that will not require clearing of mature and old-growth trees.

Unique Habitats: Ridge tops often represent unique habitats (such as rock gardens, grasslands, and botanical areas) that are under-represented compared to historic conditions. Some ridgetops (such as Prairie Mountain and Mary's Peak) have experienced significant cumulative effects from extensive development of numerous communications facilities. The adverse effects include habitat loss, fragmentation, erosion, and all of the effects listed above related to roads. These effects are long-lasting and essentially irreversible. DSL rules should strive to minimize the ecological footprint of communications sites.

Subleases: Subleases may include activities that were not contemplated in the original lease. DSL rules should strive to minimize unintended and unanticipated effects that were not contemplated and increase the ecological footprint of the communications leases.

Public notice and public involvement: DSL should include the public in the process of planning and approving comm sites. This will help foster public trust and informed decision-making.

Agency Response:

Wildfire: Most of the Department's existing communication sites are located on butte tops in ecosystems with sparse fuels. The sites generally are surrounded by a cleared area of dirt

or gravel providing a break in surface fuels. The Department does not regulate building design or construction but can encourage lessees to incorporate fire safe considerations into their designs. The Department is currently planning fuels reduction at two sites to reduce fuels hazards to the communication sites. The Department is working with lessees in the planning phase of developing fire detection cameras and a remote weather station at several communication sites which will help in the early detection and prevention of serious wildfires in the vicinity. In addition, according to proposed OAR 141-126-0160(8)(c), Holders of communications site leases must cooperate and comply with “the Department and other agencies in the detection, prevention, and control of wildfires on a lease area.”

Access Roads: Each of the six existing DSL communication sites are accessed by roads. Road access is restricted to lessees and agency personnel by gates while the sites remain open to public recreation on foot. Roads are regularly monitored for damage, including soil erosion, and maintained as necessary. There is currently a road improvement project in the planning phase at one site to improve the road surface and cross drains to maintain natural drainage.

Vegetation management: The Department infrequently has requests for new communication sites to be developed. The Department must follow all local, state and federal rules including the Oregon Forest Practices Act regarding maintaining old growth trees.

Unique Habitats: It is the policy of the Department to site uses that have impacts to land, wildlife and the environment in areas that are already disturbed or adjacent to areas that are already disturbed so as not to cause further fragmentation of lands and habitats that are intact. Further, per proposed OAR 141-126-0160(2), “leases will be offered by the Department for the minimum area determined by the Department to be required for the requested use,” so as to minimize impact to land, habitat and environment. The Department’s public process includes other agencies such as Oregon Department of Fish and Wildlife and the Oregon Department of Agriculture that have expertise and resource management guidelines pertaining to unique habitats. The most impactful uses such as cell towers are required by federal law to go through a full Environmental Impact Statement prior to siting any tower and is also required to co-locate on towers that already exist within the area of interest. Compliance with the Federal Communications Commission (FCC) rules implementing NEPA on new tower construction includes separate procedures the Endangered Species Act and the National Historic Preservation Act.

Subleases: All subleases must be approved by the Department and all uses are subject to proposed rules OAR 141-126-0110(8) which states that all uses subject to the rules must be authorized by a lease issued by the Department. In addition, uses and developments of communication sites must conform with local, state and federal laws according to OAR 141-126-0110(6). Subleases do not typically expand the physical footprint of the base lease but instead are co-located on the base lessee’s existing equipment. It is often beneficial to have subleases rather than new base leases which would necessitate additional disturbed land.

Public notice and public involvement: All lease applications including those that involve building new facilities are circulated to applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property Holders, affected owners, lessees and permittees, and easement Holders, or persons granted other authorizations from the department, for review and comment as described in OAR 141-126-0140(5). In addition, 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 (OAR 141-126-0140(7)).

Matthew DeTura, CTIA – September 3, 2024 (letter submitted via e-mail, see attachment for full comments)

Comment:

1. The Department should reduce fees for larger cellular facilities and revise the proposed rules to establish maximum, not minimum, annual fees.
2. The Department should modify the proposed rules to clarify the status of fixed wireless access.
3. The Department should streamline application procedures, including revising its implementation of “shot clock” timelines to reflect the FCC’s focus on reducing application delays.
4. The Department should eliminate regulation of radiofrequencies from the proposed rules to comply with the FCC’s exclusive jurisdiction.
5. The Department should schedule one or more workshops to address concerns with the proposed rules.

Agency Response:

1. *The Department should reduce fees for larger cellular facilities and revise the proposed rules to establish maximum, not minimum, annual fees.*

The Department reduced the annual fee from the 2022 proposal rate of \$20,000 to \$10,000 in the 2024 proposal. The \$10,000 figure represents the low end of the market rate study prepared by the Department. This market rate study shows that the proposed rates are fair and reasonable compensation for the uses proposed. The Common School Fund obligation requires the Department to charge market rate for services.

The Department does not anticipate requiring an appraisal as referenced in OAR 141-126-0150(3) unless the potential communication site is in a densely populated area and thus outside the minimum fees that have been established. All of the Department’s current communication sites are in rural areas which allowed us to reduce the proposed fees to \$10,000 but the rules provide the ability for the Department to charge higher rates if a site is developed in a more densely populated area. The Department does not manage suitable land in the major metro areas of Oregon including Portland, Salem, and Bend that are suitable candidates for future communication sites. For this reason, there is a low probability for an appraisal. The Applicant would be notified at the application phase if an appraisal was anticipated.

While the fees set are minimums rather than maximums, the Department expects to update these rules periodically to evaluate the fees. It is not the Department’s intent to have fees increase perpetually.

For small wireless facilities the Department will honor the \$270 as a maximum and appraisals will not apply. OAR 141-126-0150(3) has been updated to reflect this.

The categories of rent payments (commercial, non-commercial, and wireless cellular communications) were derived from the market study which compared rates and categories charged by other states and federal agencies.

The annual rent payment for co-locators (25% of fee charged to co-locator per year) was a recommendation from the Rules Advisory Committee as an industry standard. Charging a minimum fee for services is necessary because of the Department's Common School Fund obligation.

2. *The Department should modify the proposed rules to clarify the status of fixed wireless access.*

Justification for why fixed wireless access needs to be added to the OAR 141-126-0120 definitions was not adequately provided.

3. *The Department should streamline application procedures, including revising its implementation of "shot clock" timelines to reflect the FCC's focus on reducing application delays.*

In 141-126-0140(2) of the proposed rules, the Department reduced the amount of time to advise the Applicant of its determination of the completeness status of the application from 45 to 30 days. OAR 141-126-0140(5) sets the requirement for public review of each application. The public review period is a standard 30-day period. After the 30-day period closes, the onus to respond to any significant comments received is on the Applicant. The rules do not set a timeline for the Applicant to respond to public comment received. OAR 141-126-0140(8) requires the Department to notify the Applicant within 30 days if it is necessary for the Applicant to respond to comments received or if additional information is required. The Department will revise OAR 141-126-0140(10) to the following: "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 30 calendar days of the end of the most recent comment period...".

4. *The Department should eliminate regulation of radio frequencies from the proposed rules to comply with the FCC's exclusive jurisdiction.*

The Department is required to follow all local, state, and federal regulations. OAR 141-126-0110(6) states that "Uses of, and developments placed in, on, or over state-owned land pursuant to a communication site facility lease will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws." The Department requires verification of the FCC approval to ensure that the Department is authorizing uses allowed under federal law. The Department will revise OAR 141-126-0140(8)(b) to the following: "If the proposed use will cause interference with existing uses at the communication site. The applicant must remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the FCC verifying the proposed use has been approved by the FCC." The Department will revise OAR 141-126-0160(16) to the following: "The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessees of the communication site of the equipment modifications for review

to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the FCC that the proposed frequency change has been approved by the FCC. The Federal Communications Act comprehensively regulates frequency interference". The Department is not regulating frequencies, but simply ensuring that FCC has approved frequencies being used at a communication site.

5. *The Department should schedule one or more workshops to address concerns with the proposed rules.*

The Department is confident that it has addressed the concerns raised to its fullest ability while still maintaining our core mission.



September 3, 2024

VIA E-MAIL

Ms. Danielle Boudreaux
 Rules Coordinator
 Department of State Lands
 775 Summer St. NE, Suite 100
 Salem, OR 07301
Rules@dsl.oregon.gov

Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land, 2024 Revisions

Dear Ms. Boudreaux:

CTIA¹ submits the following comments regarding the Department of State Lands' (the "Department's") July 30, 2024 Notice of Proposed Rulemaking and accompanying proposed regulations (the "Proposed Rules") regarding siting on state-owned lands.

CTIA appreciates the Department's willingness to work collaboratively with stakeholders to improve the Proposed Rules. CTIA previously commented on the Proposed Rules in 2022,² after which the Department issued revisions as well as a summary document describing its rationale.³ In its 2022 Comments, CTIA emphasized the need for removing barriers to broadband deployment. That need has only intensified as a result of the steady increase in

¹ CTIA – The Wireless Association® ("CTIA") (www.ctia.org) represents the U.S. wireless communications industry and the companies throughout the mobile ecosystem that enable Americans to lead a 21st century connected life. The association's members include wireless providers, device manufacturers, and suppliers as well as apps and content companies. CTIA vigorously advocates at all levels of government for policies that foster continued wireless innovation and investment. The association also coordinates the industry's voluntary best practices, hosts educational events that promote the wireless industry and co-produces the industry's leading wireless tradeshow. CTIA was founded in 1984 and is based in Washington, D.C.

² CTIA Letter Re: Administrative Rules for Authorizing Communications Site Leases on State-Owned Land, July 31, 2022 ("2022 Comments").

³ State of Oregon Department of State Lands, OAR 141-126 Rulemaking Public Comments and Agency Response, March 2023 ("Agency Response"). Because the Proposed Rules were not submitted for subsequent legislative consideration in 2023, CTIA has not had the opportunity to comment on the 2023 revisions until present, so it takes the 2023 and 2024 revisions together herein.



consumer demand for broadband. 2022 saw the greatest increase in mobile data traffic on record, nearly double the year-over-year increase from 2020 to 2021. The nation’s wireless networks supported more than 73.7 trillion MB of data traffic that year.⁴ To keep pace with this demand, wireless investment increased for the fifth year in a row, with a historic \$39 billion invested in wireless networks —up nearly 12% from the previous year’s record setting total.⁵

CTIA appreciates the Department’s willingness to incorporate stakeholder feedback in the revisions of the Proposed Rules. In particular, the Proposed Rules now appropriately treat “macro cellular facilities” and qualifying “small wireless facilities” (“SWF”) differently, putting them on a different schedule of fees for leasing and applications.

CTIA remains concerned, however, many provisions in the Proposed Rules would create significant barriers to deployment on Department-managed lands, and offers the following suggestions for the Department:

- The Department should reduce its fees for larger facilities and co-locations and make clear that its annual fees represent a cap on rents, not a minimum;
- The Department should clarify the Proposed Rules to include fixed wireless access within its definitions;
- The Department should implement “shot clock” timelines for applications – not applicants – in accordance with the FCC’s rules; and
- The Department should eliminate its regulation of radiofrequency interference in the Proposed Rules, which infringes on the FCC’s exclusive authority to address any such conflicts.

Given the scope of these changes, CTIA also asks the Department to schedule a workshop (or workshops) to better address these issues.

By taking these steps to refine the Proposed Rules, the Department will help remove barriers to deployment and promote certainty in investment, helping it better meet its stated goal of increasing broadband access to underserved communities in Oregon.

⁴ CTIA, “2023 Annual Survey Highlights” (July 25, 2023), available at <https://www.ctia.org/news/2023-annual-survey-highlights>.

⁵ *Id.*



I. THE DEPARTMENT SHOULD REDUCE FEES FOR LARGER CELLULAR FACILITIES AND REVISE THE PROPOSED RULES TO ESTABLISH MAXIMUM, NOT MINIMUM, ANNUAL FEES.

CTIA appreciates that the Department has nominally lowered its proposed leasing fees from previous revisions of the rules. Unfortunately, these changes may not have any impact because the Proposed Rules continue to treat these fees as a floor, rather than a ceiling, on siting rents.

Proposed Rule 141-126-0150 states that the annual fees are merely a “minimum base amount” that not only will automatically increase by three percent every year to reflect inflation, but can be set even higher: “The Department reserves the right to establish the base annual compensation in amounts that may be greater than the minimum base annual compensation.” As a result, there is no practical impact of the changes to the fees because, as before, there is no upper bound on what they can be. Moreover, the Proposed Rules are unclear on how the Department will set the fees and when in the process applicants will be apprised of the cost of their potential deployment, creating massive uncertainty that could deter providers from investment.

The issue is more pronounced for small wireless facilities, for which the FCC has established \$270 as the maximum at which annual fees are presumptively reasonable.⁶ The Proposed Rules not only allow for higher fees but ensure that the annual fee for a small wireless facility will exceed the FCC’s safe harbor no later than a year after siting. Under the FCC’s rules, fees above \$270 require the Department to “demonstrat[e] that the fee is a reasonable approximation of cost that itself is objectively reasonable.”⁷

And despite the improvements in the revisions to the Proposed Rules, annual fees for both macro cellular sites as well as collocations are still high, even at the “base rent” level, and could be prohibitive to deployment – and prohibited by federal law, to the extent that they discriminate between telecommunications providers.

The Department proposes to charge an annual fee of \$10,000 for a non-SWF “cellular” facility. While this is less than the Department’s 2022 proposal for a \$20,000 annual fee, it is still more than the tiered \$4,000-\$8,000 annual fees for a “commercial” facility which are to be based on the population of the county where the facility is constructed. This would mean that in

⁶ See *In re: Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling, Report and Order, 33 FCC Rcd 9088 (Sep. 27, 2018) (“2018 FCC Small Cell Order”).

⁷ *Id.* at n. 214.



counties with small populations, a commercial facility would pay the Department \$2,000 annually while a cellular facility would pay \$10,000 – five times as much.

The fee distinction the Department intends to draw between these terms is unclear given that a “cellular” facility is a subset of a “commercial uses” under the Department’s definitions. In any event, the distinction would be arbitrary because both cellular and non-cellular facilities use antennas mounted on towers or other structures, and they both receive and transmit communications. Nor are cellular antennas larger or more complex than all other types of antennas.

Without a valid reason, this policy of charging different rates for wireless facilities than other types of communications facilities would violate 47 U.S.C. §253 on its face, which only allows states to require fair and reasonable compensation from telecommunications providers for use of public rights-of-way “on a competitively neutral and nondiscriminatory basis.”⁸ The fees for larger cellular facilities should thus align with those for other commercial facilities.

With regard to co-locations, co-locators would have to pay a minimum annual rent of 25 percent of the annual rent that the lessor pays to the Department – *i.e.*, at least \$2,500 (with no upper bound.) Again, the Department supplies no basis for this fee, and the FCC and courts have found that such large government-imposed fees deter investment in new infrastructure.⁹ Moreover, the Department would already be collecting the annual fee from the pre-existing site user. Double- or triple-charging for the same facility is unwarranted given that the Department should incur no additional costs because there is no new facility to occupy space or require maintenance.

While the Department notes that the fees generate revenue for the Oregon’s Common School Fund, courts have invalidated fees that similarly seek to raise revenues without being based on the costs governments incur to oversee granting siting applications and overseeing deployment. These courts have found that where fees are revenue-based and bear no relationship to governmental costs, they can effectively prohibit communications service in violation of federal law.¹⁰

⁸ 47 U.S.C. §253(c).

⁹ See 2018 FCC Small Cell Order at para. 41 *et seq.*

¹⁰ See, *e.g.*, *City of Portland v. United States*, 969 F.3d 1020, 1039 (9th Cir. 2020) (“The statute requires that compensation be ‘fair and reasonable’; this does not mean that state and local governments should be permitted to make a profit by charging fees above costs.”); *XO Missouri, Inc. v. City of Maryland Heights*, 256 F. Supp. 2d 987, 994 (E.D. Mo. 2003) (“Thus, to meet the definition of “fair and reasonable compensation” a fee charged by a municipality must be directly related to the actual costs incurred by the municipality when a telecommunications



Accordingly, CTIA asks that the Department make the following revisions to the proposed rules:

- Set cost-based, predictable, maximum annual fees for all categories of wireless facilities.
- Clarify that annual fees may not be increased over the term of a lease.
- Reduce the annual fee for macro cellular facilities to track the tiered base amounts for “commercial” facilities:
 - \$4,000 for facilities in counties with a population of less than 50,000.
 - \$6,000 for facilities in counties with a population of 50,000-150,000.
 - \$8,000 for facilities in counties with a population of more than 150,000.
- Reduce the additional rental fees that co-locators must pay to no more than \$1,000.

II. THE DEPARTMENT SHOULD MODIFY THE PROPOSED RULES TO CLARIFY THE STATUS OF FIXED WIRELESS ACCESS.

CTIA appreciates the steps the Department took in its 2023 revisions to the Proposed Rules to separate larger wireless facilities from small cells. The Department should maintain these improvements, which better reflect the nature of modern wireless siting, in the Proposed Rules.

The Department should, however, clarify its definitions to ensure that sites supporting fixed wireless access, which is a significant part of the modern wireless ecosystem, are not treated as “commercial” under the Department’s definition. In general, the term “cellular” communications is both dated and narrow with regard to wireless facilities, and the Department should consider replacing it with a broader term like “wireless communications services.” At minimum, though, the Department should clarify the definition of “Cellular Communications” in the Proposed Rules to explicitly include fixed wireless access.

III. THE DEPARTMENT SHOULD STREAMLINE APPLICATION PROCEDURES, INCLUDING REVISING ITS IMPLEMENTATION OF “SHOT CLOCK” TIMELINES TO REFLECT THE FCC’S FOCUS ON REDUCING APPLICATION DELAYS.

In its 2022 Comments, CTIA noted the Proposed Rules had indeterminate timelines for application processing and urged the Department to amend the Proposed Rules to align them with the FCC’s “shot clock” timelines for siting: to complete application review within

provider makes use of the rights-of-way. . . [P]lainly a fee that does more than make a municipality whole is not compensatory in the literal sense, and instead risks becoming an economic barrier to entry.”).



150 days for new macro sites (90 days for co-locations) and 90 days for small wireless facilities (60 days for co-locations).¹¹ In response, the Department revised the Proposed Rules to reduce the time that applicants are required to file an application in advance of a proposed deployment. In the Agency Response, the Department noted that “the timelines for the Department to process an application have been adjusted to conform with the FCC’s 2009 and 2018 declaratory rulings on “shot clocks” for both macro cellular and small wireless facilities.”¹² Unfortunately, the Department’s revisions to the Proposed Rules did not accomplish this.

The FCC’s “shot clock” timelines are imposed *on a reviewing agency*, not an applicant. While the Proposed Rules require an applicant to file an application 60/90/150 days in advance of a proposed deployment, nothing in the Proposed Rules guarantees that an applicant will know whether it is approved to deploy at the end of that period.

At present, the Proposed Rules do not set any deadline for the Department to seek public comment, respond to any such comments, and act on an application. This creates significant uncertainty for an applicant, as its application may be delayed for any length of time - potentially creating significant delays for broadband deployment, as the FCC has noted.

Accordingly, CTIA asks that the Department amend the Proposed Rules to make clear that the Department must approve or deny (with cause) an application within the timelines indicated.

IV. THE DEPARTMENT SHOULD ELIMINATE REGULATION OF RADIOFREQUENCIES FROM THE PROPOSED RULES TO COMPLY WITH THE FCC’S EXCLUSIVE JURISDICTION.

Proposed Rule 141-16-0160(16) requires the lease holder to notify the Department of “any equipment modifications resulting in a change of frequency.” The Department will then notify other users, and the leaseholder “must resolve the frequency issue.” Further, Proposed Rule 141-16-0140 (8b) and Proposed Rule 141-16-0160(16) directly address frequency conflicts and require that the applicant provide documentation from the FCC that the proposed use or frequency change “will not interfere with existing uses at the communication site”. These provisions are contrary to federal law and should be eliminated.

¹¹ See 2022 Comments at 11-12.

¹² Agency Response at 5.



The federal Communications Act preempts states and localities from regulating the use of radio frequencies, granting that authority exclusively to the FCC.¹³ The FCC has “exclusive authority over technical matters” relating to use of radiofrequency spectrum,¹⁴ and the FCC’s exclusive occupation of the field of radiofrequency spectrum regulation and usage under Title III of the Communications Act is a bedrock principle in communications law.¹⁵

The FCC has set specific power and other limits on the frequencies that wireless service providers can use and addresses interference issues that may arise. This federal regime is designed to ensure that all wireless services can coexist and that problems can be quickly resolved.

By requiring leaseholders to resolve any complaints from other frequency users under the Proposed Rules and provide documentation of “frequency compliance,” the Department is setting conditions for lease approval based on jurisdiction it does not have. Denying leases on these grounds is not an issue of notification, as the Department suggests in the Agency Response – it is squarely one of regulation. In the Agency Response, the Department notes that it “has had complaints in the past about interference from other user’s new frequencies.”¹⁶ But it is unlawful for the Department to handle such complaints – only the FCC may do so.

The Proposed Rules put all the onus for avoiding interference on the leaseholder/applicant. But it may well be the complainant that is in violation of the FCC’s rules by infringing on licensed use. Or it may be the case that – such as for certain bands of unlicensed spectrum – all parties are required to *accept* interference under the FCC’s rules. But by requiring the applicant to show that its uses do not interfere with any others, the Department is not just impermissibly regulating interference disputes, it is adjudicating them without the facts.

¹³ See 47 U.S.C. § 303.

¹⁴ *New York SMSA Ltd. P’ship v. Town of Clarkstown*, 612 F.3d 97, 105 (2d Cir. 2010) (citation and internal quotations omitted); see also *Head v. New Mexico Bd. of Examiners in Optometry*, 374 U.S. 424, 430 n.6 (1963). (“[T]he Commission’s jurisdiction over technical matters such as a frequency allocation … is clearly exclusive”).

¹⁵ See, e.g., *Cellco P’Ship v. FCC*, 700 F.3d 534, 542 (D.C. Cir. 2012) (quoting *NBC v. United States*, 319 U.S. 190 (1943)). See also *Southwestern Bell Wireless Inc. v. Johnson County Board of County Commissioners*, 199 F.3d 1185, 1190 (10th Cir. 1999); *Freeman v. Burlington Broadcasters Inc.*, 204 F.3d 311, 320 (2d Cir. 2000); *Broyde v. Gotham Tower, Inc.*, 13 F.3d 994, 997 (6th Cir. 1994).

¹⁶ Agency Response at 6.



It is an applicant's responsibility to comply with the FCC's rules regarding frequency management, just as it is for all frequency users. The FCC has a public portal to handle interference complaints and an Enforcement Bureau that resolves such issues.

Additionally, as a practical matter, it is nearly inconceivable that a lease applicant would be able to produce FCC documentation demonstrating the proposed use or frequency change "will not interfere with existing uses at the communication site". The FCC does not offer such documentation. To the extent that the Department is interested in identifying licensed users of a spectrum band, that information is made publicly available by the FCC through its Universal Licensing System search function.

Accordingly, the Proposed Rules should be amended to eliminate regulation of RF interference, which authority is exclusively vested in, and is already comprehensively regulated by, the FCC. To the extent the Department is receiving any complaints regarding frequency interference issues, the Department should inform complainants that the proper forum for such issues is the FCC. CTIA suggests that, to the extent the Department is still concerned with such issues, it simply include a clause requiring lessees to comply with all applicable federal regulations for operation of their telecommunications equipment.

V. THE DEPARTMENT SHOULD SCHEDULE ONE OR MORE WORKSHOPS TO ADDRESS CONCERNS WITH THE PROPOSED RULES.

While CTIA appreciates that a public hearing was held on the Proposed Rules, that venue was extremely limited for productive discussion, with speakers limited to three minutes and no real discussion between the Department and stakeholders. Given the significant impact of the Proposed Rules on telecommunications siting and the concerns voiced herein, CTIA asks the Department to schedule at least one workshop following the comment round to allow stakeholders and the Department to meet collaboratively and discuss the issues raised over the course of this proceeding.

VII. CONCLUSION.

CTIA appreciates the opportunity to express its concerns with the Proposed Rules and urges the Department to make the revisions discussed herein in order to better meet the Department's goal of promoting broadband access in Oregon. While CTIA encourages the Department to schedule a workshop to gather all stakeholders to discuss these issues in a more formal setting, to the extent the Department has any questions regarding these



changes, or needs more information regarding issues related to wireless technology, CTIA remains available as a resource and would be happy to meet with the Department on an informal basis to answer questions and discuss any concerns prior to submission of the Proposed Rules to the Legislature.

Sincerely,

/s/ Matthew DeTura

Matthew DeTura
Counsel, External and State Affairs
CTIA
mdetura@ctia.org



DEPARTMENT OF STATE LANDS

Division 126, Communication Site Facilities, Proposed Rule

Lease Rates and Fee Schedule

The following tables present the lease rates and fee schedules for communication site facility leases under the proposed rules for OAR 141-126. The Division 126 rules would establish distinct administrative rules for communication site facilities located on school lands – lands owned by the people of Oregon that generate revenue for the state's Common School Fund.

Lease Rates

Use Type	Specific Use	Minimum Compensation Rate	Co-Location* Minimum Compensation Rate
Non-commercial	Personal/research/scientific	\$750/year or a one-time negotiated payment	\$500 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	Local or county government and emergency services	\$3,000/year	\$750 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	State, Federal, or Tribal government or emergency services	\$4,500/year	\$1,125 one-time payment or 25% of fee charged to co-locator per year, whichever is greater
	Non-profit/non-commercial	\$3,000/year	\$750/year or 25% of fee charged to co-locator per year, whichever is greater
Commercial	Small commercial	\$4,000/year	\$1,000/year or 25% of fee charged to co-locator per year, whichever is greater
	Medium commercial	\$6,000/year	\$1,500/year or 25% of fee charged to co-locator per year, whichever is greater
	Large commercial	\$8,000/year	\$2,000/year or 25% of fee charged to co-locator per year, whichever is greater
Wireless Cellular Communications	Macro	\$10,000/year	25% of fee charged to co-locator per year
	Small wireless facility	\$270/year	\$100/year

Note: The Department reserves the right to establish a base compensation rate greater than the minimum annual base compensation. Minimum compensation rate and minimum co-locator compensation rate will increase annually by three percent (3%) for every year.

**Co-location: When more than one entity shares the same communication site facility.*



DEPARTMENT OF STATE LANDS

Fee Schedule

Fees for lease applications and assignments

Use Type and Specific Use		Application fees				Assignment fee
		New or renewed lease with changes	Lease renewal with no changes	Co-location lease (new and renewal)	Lease modification	
Non-commercial	Personal/research/scientific	\$375	\$375	\$375	\$250	\$250
	Local or county government and emergency services	\$750	\$375	\$375	\$250	\$250
	State, Federal, or Tribal government or emergency services	\$750	\$375	\$375	\$250	\$250
	Non-profit/non-Commercial	\$750	\$375	\$375	\$250	\$250
Commercial	Small commercial	\$1,000	\$500	\$500	\$500	\$500
	Medium commercial	\$1,000	\$500	\$500	\$500	\$500
	Large commercial	\$1,000	\$500	\$500	\$500	\$500
Wireless Cellular Communications	Macro	\$1,500	\$750	\$750	\$500-\$750 ¹	\$750
	Small wireless facility	\$500 for up to 5 SWF, \$100 per additional SWF		\$100	\$250-\$500 ²	\$250

¹ When modification results in change of frequency only: \$500. When modification results in enlargement of lease area or change in buildings or towers: \$750.

² When modification results in change of frequency only: \$250. When modification results in enlargement of lease area or change in structures or poles: \$500.