

RULES FOR GRANTING LEASES, LICENSES, REGISTRATIONS, AND ISSUING CERTIFICATIONS ON STATE-OWNED SUBMERGED AND SUBMERSIBLE LANDS

141-082-0250

Purpose and Applicability

(1) All uses of state-owned submerged and submersible Lands, unless exempt under these rules, require prior written authorization or certification from the Department of State Lands. These rules govern such authorizations and certifications.

(2) These rules govern:

(a) The issuance of wharf certifications;

(b) The granting and renewal of authorizations for use of state-owned submerged and submersible lands;

(c) The Submerged Lands Enhancement Fund (SLEF), including the process for dispersing grant funds to eligible projects;

(d) The removal of abandoned structures and derelict structures from state-owned submerged and submersible lands;

(e) The assessment of civil penalties for unauthorized use of state-owned submerged and submersible lands; and.

(f) The process for appealing the department's decisions regarding state-owned submerged and submersible lands.

(3) These rules do not apply to the granting of:

(a) Leases on state-owned submerged and submersible lands located in coastal estuaries for the commercial cultivation of oysters, clams, or mussels, as governed by Chapter 603 Division 82 of the Oregon Department of Agriculture's administrative rules;

(b) Easements on state-owned submerged and submersible lands, as governed by Division 122 or Division 123 of the department's administrative rules;

(c) Authorizations for hydroelectric projects on state-owned lands, as governed by Division 87 of the department's administrative rules;

(d) Authorizations for the removal or use of rock, sand, gravel, and silt from state-owned submerged and submersible lands, as governed by Division 14 of the department's administrative rules;

- (e) Authorizations for special uses of state-owned submerged and submersible lands such as for short term access or the conduct of scientific experiments and the removal of sunken logs, as governed by Division 125 of the department's administrative rules;
 - (f) Authorizations for ocean energy conversion devices and fiber optic and other cables in, on, or over the Territorial Sea, as governed by Divisions 83, 123, and 140 of the department's administrative rules;
 - (g) Authorizations for remediation and habitat restoration activities, as governed by Division 145 of the department's administrative rules; or
 - (h) Authorizations for uses and structures that are specifically governed by any other division of the department's administrative rules.
- (4) The director may determine that uses and structures similar to those specified in OAR 141-082 also require authorization or certification under these rules.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.376-274.388

141-082-0255

Definitions

- (1) "Abandoned Structure" means a structure that has been left without authorization on, under, or over state-owned submerged and submersible lands.
- (2) "Abandoned Vessel" means a vessel that has been left without authorization on public or private land, the waters of this state, or any other water.
- (3) "Adjacent Land Value" or "ALV" means the value of the adjacent riparian property, as determined by the department pursuant to OAR 141-082-0305(3).
- (4) "Adjacent Riparian Owner" or "Riparian Owner" means a person holding recorded title to property that fronts or abuts state-owned submerged and submersible land.
- (5) "Adjacent Riparian Property" or "Adjacent Riparian Tax Lot" means the non-state-owned portion of a tax lot that fronts or abuts state-owned submerged and submersible land.
- (6) "Applicant" means a person applying for an authorization.
- (7) "Aquaculture" means the culture, farming, or harvesting of food fish, shellfish, and other plants and animals in fresh or salt-water areas. Aquaculture practices include, but are not limited to, the hatching, seeding or planting, cultivating, feeding, raising, and harvesting of planted or natural species so as to maintain an optimum yield, and the processing of those plants or animals. For purposes of this definition, "aquaculture" excludes kelp, which is governed by Division 125 of the department's administrative rules.
- (8) "Assignment" means a transfer by the lessee or licensee, with the department's approval of the rights of use and occupancy of the premises or licensed area to another person or entity.

(9) "Authorization" means a registration, lease or public facility license granted by the department to an applicant, conveying a right to limited use of a specific area of state-owned submerged and submersible land for a specific purpose and for a fixed period of time.

(10) "Authorized Area" means the area of state-owned submerged and submersible land that is subject to an authorization. Authorized areas include premises under leases and licensed areas under public facility licenses.

(11) "Authorized Use" means any use of state-owned submerged and submersible land that is permitted under an authorization.

(12) "Bank Consent Agreement" means a document used when rights under an authorization are held as collateral for repayment of a loan.

(13) "Boathouse" means a covered or enclosed structure used to store, shelter, or protect a boat, or boats and boating equipment. A structure containing a dwelling does not qualify as a boathouse. A boathouse may include an unenclosed recreation area or a roof that is:

(a) Used as a viewing platform, for sunbathing, or for other related short-term recreational uses;

(b) Surrounded by a railing or other safety device;

(c) Accessible from the lower deck by a permanent or temporary stairway; or

(d) Used to gain access to a waterslide, or other recreational structure.

(14) "Boat Lift" means a device that is used to lift a vessel from the water for out-of-water moorage or storage; to move a vessel to another location; or to enable access to the vessel for purpose of maintenance.

(15) "Boat Ramp," "Boat Launch," or "Boat Landing" means a specific area that has been improved through the placement of a concrete pad or strips, steel mats, rails, gravel, or other similar durable material that is used for the launching of boats into a waterway.

(16) "Commercial Marina" means a marina, the operation of which results in or is associated with any monetary consideration or gain.

(17) "Commercial Use" means activity conducted on, within, or over state-owned submerged and submersible land that results in or is associated with any monetary consideration or gain, including but not limited to offices, stores, hotels, banks, marinas, restaurants, and retail service.

(18) "Department" means the Department of State Lands. The department is the administrative arm of the State Land Board.

(19) "Derelict Structure" means a structure that is on, under, or over state-owned submerged or submersible land and that is:

(a) Sunk or in imminent danger of sinking due to its dilapidated condition;

(b) Obstructing a waterway;

(c) Endangering life or property; or

(d) In dilapidated condition such that it is in danger of becoming an environmental hazard as evidenced by instances of leaking fuel, sewage, or other pollutants.

(20) "Derelict Vessel" means a vessel that is on the waters of this state and that is:

(a) Sunk or in imminent danger of sinking;

(b) Obstructing a waterway;

(c) Endangering life or property; or

(d) In dilapidated condition such that it is in danger of becoming a significant environmental hazard, as evidenced by repeated and documented instances of leaking, fuel, sewage, or other pollutants.

(21) "Diking District" means a public body organized under ORS Chapter 551 for the purposes of using diking or damming to improve lands that are subject to overflow by tidewater or freshets.

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

(23) "Dock" or "Float" means an individual, unenclosed, structure which may either be secured to the adjacent or underlying land or floats used for mooring boats and for similar recreational uses such as sunbathing, or as a swimming platform. A structure does not lose its designation as a dock or float if it has an unenclosed recreation area or includes a second level that may be used for a recreational purpose such as a viewing platform or sunbathing deck.

(24) "Dolphin" means a berthing or mooring structure that extends above water level and is not connected to the shore or any other structure.

(25) "Drainage District" means a public body organized under ORS Chapter 547 for the purpose of having swamp, wet, or overflowed lands or irrigated lands reclaimed and protected by drainage or otherwise from the effects of water for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience, and welfare or of public utility or benefit.

(26) "Dwelling" means a structure designed or occupied as permanent or temporary living quarters which is equipped with, but not limited to, any combination of: sleeping, cooking, bathing, toilet, and heating facilities.

(27) "Floating Home" means a moored floating structure that is used as a dwelling and may be physically connected to upland utility services.

(28) "Floating Recreational Cabin" means a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, that is not physically connected to any upland utility services (water, sewer, electricity), and used only periodically or seasonally.

(29) "Gangway" means a walkway or access ramp that connects and is used exclusively for the purpose of traversing from the upland to the nearest structure or use which is subject to an authorization by the department.

(30) "Goods or Merchandise" means products and raw materials transported in pursuit of trade, business, or economic gain. Goods or merchandise does not include passengers or materials used by a vessel for its maintenance, alteration, or operation.

(31) "Government Agency" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.

(32) "Government Functions" means activities that government agencies are assigned to perform to protect the health and safety of the public they serve. A ship, boat or vessel exclusively engaged in, or currently inactive but dedicated to, helping to maintain public health and safety is said to be performing a government function.

(33) "Highest Qualified Bidder" means a person who provides the highest bid through the competitive bid process outlined in OAR 141-082-0281(2), and who submits a complete application to, and meets all the requirements of the department for an authorization as provided in OAR 141-082-0280.

(34) "Historical Vessel" or "Historical Structure" means a vessel or structure listed or eligible for listing on the National Register of Historic Places as determined by the State Historic Preservation Office. In addition, these structures or vessels are owned by nonprofit organizations for which their primary purpose is youth-oriented, historical, educational, or scientific purposes.

(35) "Holder" means the person who has been issued an authorization under these rules. Holder includes a lessee under a lease and a licensee under a public facility license.

(36) "Houseboat" means a vessel which is or can be moored for use as a dwelling.

(37) "Incidental Services" means services that are incidental to the use and purpose of a marina. Incidental services include, but are not limited to, restrooms; showers; minor boat and motor repair facilities; mooring buoys; refueling facilities; boat lifts; boat launch ramps; fish cleaning stations; small offices for marina management; club houses and meeting rooms; vending machines; small retail areas for marine, fishing and other outdoor supplies and equipment; ice, packaged beverages and foods; limited-service restaurants; and temporary restaurants.

(38) "Industrial Use" means an activity for business purposes that involves wholly or in part the fabrication, assembly, processing, or manufacture of products, structures, or vessels from raw materials or fabricated parts, or that provides services such as storage, warehouses, factories, or shipyards.

(39) "Lease" means a form of authorization for the exclusive use of a specific area of state-owned submerged and submersible land, for a specific use.

(40) "Lease Anniversary Date" means the date the lease was initially entered into and on which, in subsequent years, the annual lease payment is due.

(41) "Lessee" means a holder of a lease.

(42) "Licensed Area" means the authorized area under a public facility license.

(43) "Licensee" means a holder of a public facility license.

(44) "Limited Duration Use" means any temporary or infrequent use of state-owned waterways, with no long term or extended use intended. Limited duration use includes any commercial use of state-owned submerged and submersible land which does not occur for longer than 14 consecutive days in any single location. Commercial use may include, but is not limited to, barge staging to facilitate movement of goods or merchandise. For purposes of this section, "location" means, for example, an area necessary to

moor at a dolphin or piling that is used by a vessel as it temporarily stops on its passage to its final location to off-load goods or merchandise. Limited duration use also includes any noncommercial use of state-owned submerged and submersible land which does not occur for longer than 30 calendar days during any contiguous 12-month time period within a distance of five miles.

(45) "Limited-Service Restaurant" means a business serving only pre-wrapped or pre-prepared food products and nonperishable beverages, as defined in ORS 624.010(5).

(46) "Line of Ordinary High Water" means the line on the bank or shore to which the high water ordinarily rises annually in season, as defined in ORS 274.005(3).

(47) "Line of Ordinary Low Water" means the line on the bank or shore to which the low water ordinarily recedes annually in season, as defined in ORS 274.005(4).

(48) "Log Boom Area" means a water surface area bounded by floating, connected logs or other devices, used for confining loose logs, grading and sorting logs, making log rafts, or to feed whole or partially processed wood products to a mill.

(49) "Log Raft" means a group of loose or bundled logs that can be stored or moved on water.

(50) "Log Raft Storage Area" means the unbounded water surface area used for mooring and storing log rafts, usually marked by piling and dolphins to which the log rafts are fastened.

(51) "Marina" means a small harbor, boat basin, or moorage facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial, or charter fishing boats.

(52) "Marine Debris" means any manufactured or processed solid material that:

(a) Persists in the marine environment; and

(b) Is disposed of or abandoned, either intentionally or unintentionally, in any waters of state-owned submerged and submersible land.

(53) "Marine Industrial/Marine Service" means a use or structure that is commercial or industrial in nature and needs to be located in or adjacent to waterways because the use or structure requires water access. Such uses include, but are not limited to: service uses such as dry dock, ship, tugboat, barge and workboat moorage and storage; industrial uses such as ship breaking or building facilities, vessel repair, and maintenance facilities; fish and seafood processing facilities; sea water desalination, mineral extraction, and other related processing uses.

(54) "Maximum Rent Payment" means the maximum annual compensation due the department for each use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(2)(c).

(55) "Minimum Rent Payment" means the minimum annual compensation due the department for each use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(2)(b).

(56) "Mixed-use" means a lease with more than one authorized use.

(57) "Mooring Buoy" means a floating device anchored to the bed of a waterway to which a boat is fastened using lines or ropes for the purpose of mooring the boat in a stationary position in the water.

(58) "Multi-Family Dock" means a noncommercial dock, maintained and owned in common by two or more families, and where no dues or fees are required to be paid for use of the dock. A multi-family dock is not an ownership-oriented facility.

(59) "Navigation Aids" means structures or devices such as navigation buoys, channel markers, beacons, approach and landing lights, and radio navigation and landing aids, etc., placed in, on, over or along a waterway, by or with the consent of appropriate government agencies, to aid persons engaged in navigation of a waterway or aviation.

(60) "Noncommercial" means a use that does not result in or is not associated with any monetary consideration or gain. For example, a use which includes the renting, leasing, or sale of space would not qualify as "noncommercial."

(61) "Noncommercial Marina" means a marina that is not operated for or associated with any monetary consideration or gain.

(62) "Non-Marine Uses" means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to waterways. Such structures and uses include, but are not limited to: multi-family residences, hotels, motels, residences, restaurants, offices, retail stores, manufacturing plants, and warehouses.

(63) "Nonprofit Organization" means an association or group organized for purposes other than generating profit, such as an educational, charitable, scientific, or other organization qualifying under Section 501(c) of the Internal Revenue Code. In addition, organizations such as soil and water conservation districts and watershed councils may, at the discretion of the department, also qualify as a nonprofit organization for the purposes of these rules.

(64) "Owner" means a person who has a property interest in a structure or vessel.

(65) "Ownership-Oriented Facility" means noncommercial facilities where the access and privilege to use is limited to a membership group of persons who pay dues or fees of some type to maintain membership and to operate the facility.

(66) "Parcel" means a separate and distinct section or area of a premises designated such because it is a separate and distinct use or because it fronts and abuts a separate and distinct tax lot.

(67) "Parcel Annual Lease Payment" or "PALP" means the amount of money, as determined by the department pursuant to OAR 141-082-0305, to be paid by a lessee under a lease.

(68) "Person" or "Persons" means individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies, as well as any state or other governmental or political subdivision or agency, public corporation, public authority, nonprofit organizations, or Indian Tribe.

(69) "Personal Recreational Use" means noncommercial structures or uses which are dedicated to private recreation and leisure and adjacent to property zoned residential or that otherwise allows residential activities.

(70) "Piling" means a wood, steel, or concrete beam driven or jetted into the bed or bank of a waterway to secure a floating structure, log raft, or boat.

(71) "Preference Right" means a riparian property owner's statutory privilege, as set forth in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The preference right does not apply to the renewal of an existing lease or an amendment to change the use or size, where the lessee is in compliance with all the terms and conditions of the lease. The preference right shall not be offered, in accordance with OAR 141-082-0281(1), if there is a gap in the term of the lease, for example, because of lease termination. A person claiming the right of occupancy to state-owned submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested premises.

(72) "Preference Right Holder" means a person holding the preference right to lease, as set forth in these rules and ORS 274.040(1).

(73) "Premises" means the authorized area under a lease.

(74) "Processing Facility" means a structure or vessel where the cleaning, freezing, canning, preserving, and storing of fish, crustaceans, or other forms of aquatic life are conducted.

(75) "Protective Boom" means logs or similar floating devices attached to each other and used to protect a structure or bank from floating debris, erosion, or wave action.

(76) "Public Facility License" means a form of authorization issued by the department for structures owned, operated, and maintained, or uses made by a government agency such as transient use docks, floats, boat ramps, boat landings, or viewing structures where no or minimal entry or use fees are charged; and navigation aids, excepting those navigation aids operated and maintained by the United States Coast Guard.

(77) "Public Trust Uses" means those uses embodied in the public trust doctrine under federal and state law including, but not limited to navigation, recreation, commerce and fisheries, and other uses that support, protect, and enhance those uses. Examples of public trust uses include, but are not limited to, limited duration use, camping, bank fishing, crabbing, clamming, picnicking, walking, hiking, and boating.

(78) "Recreation Area" means an area of state-owned submerged and submersible land, or structure thereon, dedicated to day-use recreation.

(79) "Registration" means a form of authorization issued by the department allowing a qualifying noncommercial structure or use to occupy state-owned submerged and submersible land.

(80) "Residential Use" means an activity conducted on, in, or over state-owned submerged and submersible land devoted to or available for single or multiple dwelling units, single-family homes, floating homes, apartments or condominiums.

(81) "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared. This includes establishments that prepare food or drink in consumable form for service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities, or temporary restaurants as defined in ORS 624.010(9)(10).

(82) “Rip-Rap” means the facing of a streambank with rock or similar substance to control erosion, as defined in ORS 196.815(2)(e)(D).

(83) “Shear Boom” or “Stiff Boom” means logs, or similar floating devices attached to each other and used to protect a structure or bank from floating debris, erosion, or wave action.

(84) “SLEF” means the Submerged Lands Enhancement Fund, a fund created by the Oregon legislature to be separate from the General Fund and to be used to enhance, improve, and protect state-owned submerged and submersible land.

(85) “State Land Board” means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law.

(86) “State-Owned Submerged and Submersible Land” means state-owned submerged land, state-owned submersible land, or both.

(87) “Structure” or “Improvement” means anything placed, constructed, or erected on, in, under, or over state-owned submerged and submersible land that is associated with a use that requires an authorization. Structures include boathouses, floating homes, and other structures secured to a pier or piling, except vessels.

(88) “Sublease” means a subordinate lease between the lessee and a third party for all or part of the premises, where the lessee remains contractually and primarily liable under the lease.

(89) “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.

(90) “Submersible Land” means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(91) “Temporary Restaurant” has the same meaning as in ORS 624.010.

(92) “Tide Gate” means a device mounted to a bridge or culvert to regulate the tidal flow or water level on the inside of the gate.

(93) “Total Maximum Daily Load Plan” means a written quantitative plan and analysis for attaining and maintaining water quality standards, as defined in OAR 340-042-0030(15), and includes the elements described in OAR 340-042-0040.

(94) “Use” means an activity with or without associated structures on state-owned submerged and submersible land that requires an authorization under these rules.

(95) “Use Classification” means the specific category of similar uses and structures subject to authorization described in OAR 141-082-0265.

(96) “Use Rate” means the percentage established by the department related to use of parcels under a lease, as determined by the department pursuant to OAR 141-082-0305(4).

(97) "Vessel" means a ship, boat, watercraft, or vehicle that is used for traveling on water. A vessel is not a structure as defined in this section (87) above.

(98) "Voluntary Habitat Restoration Work" has the same meaning as set forth in ORS 274.043(5)(d). Voluntary habitat restoration work does not include:

(a) Activities undertaken to satisfy any actual or potential legal obligation;

(b) Activities for which the person undertaking the work receives compensation of any kind to do the work (as used in this definition compensation does not include grants or charitable donations); or

(c) Work completed by an entity to satisfy an environmental mitigation obligation or to generate, sell, or obtain credit as an offset against actual or potential natural resource damages liability.

(99) "Waterway" means a navigable or tidally influenced body of water, such as a river, lake, or sea.

(100) "Water Sport Structures" means water ski buoys, jumps and ramps, kayak race gates, and other such devices used in association with a water recreational sport. Such devices are typically temporary in nature and not permanently attached to a piling, dolphin, or other fixed object.

(101) "Wharf" has the same meaning as in ORS 780.040, being a structure constructed or maintained by the owner of any land lying upon any navigable stream or other like water and within the corporate limits of any incorporated town or within the boundaries of any port that extends into the navigable stream or other like water beyond the low-water mark so far as may be necessary for the use and accommodation of any vessels engaged exclusively in the receipt and discharge of goods or merchandise or in the performance of governmental functions upon the navigable stream or other like water. A "wharf" does not include new lands created upon submerged and submersible land by artificial fill or deposit. To qualify as a "wharf," a structure must be exclusively used for the receipt and discharge of goods or merchandise or in the performance of government functions.

(102) "Wharf Certification" means a written certification from the department that a structure is a wharf.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.376-374.388

141-082-0260

General Provisions

(1) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon Legislature under the jurisdiction of the State Land Board and the department, as the administrative arm of the State Land Board.

(2) The State Land Board, through the department, has a constitutional responsibility to manage "the lands under its jurisdiction with the object of obtaining the greatest benefit for the people of the State of Oregon, consistent with the conservation of this resource under sound techniques of land management" pursuant to Article 8, Section 5(2) of the Oregon Constitution.

(3) State-owned submerged and submersible land is managed to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation, and other public trust values. These rights are collectively referred to as “public trust rights.”

(4) No person is allowed to place a structure or vessel on, or make use of state-owned submerged and submersible land, regardless of the length of time the structure may have existed on, or the use may have occurred on the land, without the required authorization described in these rules, unless the structure or use is exempt from such authorization by law or these rules. Ownership of state-owned submerged and submersible land cannot be obtained by adverse possession regardless of the length of time the structure or use has been in existence.

(5) All uses of state-owned submerged and submersible land must conform to local (including local comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

(6) The department shall not grant an authorization for an existing or proposed use or structure if:

(a) It is inconsistent with local, state, or federal laws;

(b) It is not in compliance with these rules;

(c) It would result in an unreasonable interference with the public trust rights of commerce, navigation, fishing, and recreation;

(d) It would have unacceptable impacts on public health, safety or welfare, or result in the unacceptable loss of, or damage to natural, historical, cultural, or archaeological resources;

(e) It is prohibited by a State Land Board or department-adopted area closure, use restriction, or waterway management plan (such as the Lower Willamette River Management Plan or the Oregon Territorial Sea Plan);

(f) It is inconsistent with any threatened, endangered, and candidate fish and wildlife species management plan adopted by the department under the Oregon Endangered Species Act (ORS 496.171 to 496.192);

(g) It is inconsistent with a total maximum daily load plan or the department’s implementation plan as a designated management agency; or

(h) It extends from the bank of a waterway for a distance that exceeds 25 percent of the width of the waterway, unless authorized by the director. In determining whether to authorize a structure that extends more than 25 percent of the width of the waterway, the director shall consider:

(A) Whether the structure alone, or in combination with existing structures within the waterway, would unreasonably interfere with the public trust rights of commerce, navigation, fishing, and recreation;

(B) Whether the physical conditions of the land or waterway require a structure to exceed 25 percent of the width of the waterway in order to engage in the proposed use.

(i) The existing structure is not in a state of good repair, has been inspected by an insurance company and cannot be properly insured, or has been inspected by the local planning authority or building inspector and is found to be in violation of local building codes.

(7) No applicant for, or person holding an authorization from the department shall request from any government agency a change in the zoning for or approved uses of a parcel of state-owned submerged and submersible land without first applying to and receiving written approval from the department to request such a change.

(8) When a use or structure subject to written authorization from the department becomes exempt from written authorization, compensation, or both, by a change in the law or in these rules, the holder may terminate the written authorization or allow the written authorization to expire by its terms. If the written authorization is terminated, the holder is not entitled to receive any reimbursement from the department for any compensation or other fees paid by the holder to the department under the written authorization prior to expiration or termination.

(9) Unless otherwise allowed by the director, the department shall not execute a wharf certification or authorization until all information, documents, fees, payments, financial assurances, or any other remaining documents required by the department for that certification or authorization have been received by the department. Certifications, registrations, leases, and public facility licenses issued under these rules are executed upon signature by the department.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.376-374.388

141-082-0265

Types of Uses and Required Authorizations

(1) All uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the department pursuant to these rules.

(2) Uses and structures requiring leases include, but are not limited to:

(a) Aquaculture facilities;

(b) Marine industrial/marine service uses;

(c) Floating homes, floating home moorages, houseboats, and other dwellings;

(d) Log raft, log storage, or log booming areas;

(e) Historical structures and historic vessel moorages;

(f) Commercial and noncommercial marinas;

(g) Multi-family docks that do not require registration under these rules;

(h) Non-marine uses (for example, restaurants, warehouses, offices, motels, etc.);

- (i) Noncommercial docks, floats, boathouses, and floating recreational cabins not qualifying for registration or public facility license
- (j) Commercial, industrial, and residential uses;
- (k) Water taxi, cruise ship, and tour boat moorages;
- (l) Ownership-oriented facilities and
- (m) Other similar uses and structures not exempted by statute or these rules, and determined by the director to be subject to lease.

(3) Uses and structures requiring a registration are:

- (a) Noncommercial structures including docks, floats, multi-family docks, boat lifts, and/or boathouses of 2,500 square feet or less; measurement excludes calculation of associated gangways, pilings, dolphins, mooring buoys, protective booms, stiff booms, shear booms, and boat ramps;
- (b) Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated pilings, dolphins, recreational use mooring buoys, protective booms, stiff booms, and shear booms;
- (c) Water sport structures including those authorized by the State Marine Board in compliance with OAR 250-010-0097 (Application for Special Use Device Permits);
- (d) Erosion control structures and rip-rap;
- (e) Pilings, dolphins, and private boat ramps;
- (f) Structures constructed by a drainage district or diking district;
- (g) Tide gates, not connected to a roadway, bridge, or culvert;
- (h) Rights of way established prior to November 1, 1981, for any county road or city street;
- (i) Voluntary habitat restoration work; and
- (j) Other similar structures or uses determined by the director to be eligible for registration.

(4) Uses and structures that are eligible for a public facility license are publicly-owned, operated and maintained and include:

- (a) Boat ramps, boat launches, and landings;
- (b) Viewing structures, decks, and boardwalks;
- (c) Fishing, crabbing, or otherwise public piers;
- (d) Recreational boating, transient docks or floats;
- (e) Structures, piers, docks, and floats owned, operated by, or under contract to a government agency as long as they are in active service and used exclusively by the government agency to perform the function of that agency; and

(f) Navigation aids, excepting those maintained and operated by the United States Coast Guard, placed by government agencies including approach and landing lights and radio navigation and landing aids for aviation.

(5) Limited Duration uses are exempt from authorization under these rules.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0270

Wharf Certification

(1) The owner of a wharf located on state-owned submerged and submersible land shall certify that the structure is a wharf. The wharf certification shall be on a form provided by the department. There is no fee associated with submission of a wharf certification.

(2) Upon receipt of a wharf certification form, the department shall review it for completeness. If the structure is a wharf as defined in ORS 780.040 and in these rules, the department shall issue to the owner a written certification that the structure is a wharf. There is no compensation due the department for a wharf certification.

(3) In applying the definition of a wharf as set forth in ORS 780.040 and in these rules, the following criteria will apply, where appropriate:

(a) A “government function,” as used in this section, is an activity engaged in by government agencies in order to perform the function of those agencies or protect the health and safety of the public that the government agencies serve.

(b) A ship, boat or vessel owned by a government agency is engaged in a government function if it is exclusively dedicated to the performance of a government function and is either currently engaged in the performance of a government function (such as a ship owned or under contract to a government agency such as the United States Navy, United States Coast Guard, United States Army Corps of Engineers, or a fire, police, or sheriff’s department), or if not currently engaged in the performance of a government function, is able to be quickly activated to perform the function for which it is dedicate (such as a United States Maritime Administration Ready Reserve Force ship).

(c) A structure used to load and unload passengers from a ship, boat, or vessel transporting passengers (such as a passenger ferry, cruise ship, or tour boat) is not a structure engaged in the receipt and discharge of goods or merchandise.

(d) A structure must be open and clear of all debris and materials when not actively being used in the receipt and discharge of goods or merchandise; if any cranes or other permanent infrastructure such as offices, conveyor belts, forklifts, pallets, shipping containers, and other equipment and materials are stored on state-owned submerged and submersible land, the structure will be subject to a waterway lease or other appropriate authorization.

(4) A wharf certification is valid for a term of five years from the date it is issued. Upon expiration of a wharf certification, the owner thereof shall recertify that the structure is a wharf as set forth above.

(5) If the department does not certify the structure as a wharf, the owner thereof shall obtain the appropriate authorization from the department in compliance with these rules. Unauthorized structures must be removed pursuant to OAR 141-082-0310.

(6) A wharf certified in compliance with these rules may be repaired or replaced without prior notice to the department. However, the owner of the wharf shall notify the department in writing describing the repair or replacement within 90 calendar days of making such repairs or replacement. Any repair and replacement work is subject to all other applicable local, state, and federal laws.

(7) The department must be notified in writing of any:

(a) Change in the location, size, or use of the wharf at least 90 calendar days prior to such change.

(b) Change in ownership of the wharf as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.

(c) Change in ownership of the wharf by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision.

(8) Failure of the owner to notify the department of a change in the location, size, use, or the ownership of the wharf within the time provided may result in the automatic termination of the wharf certification.

(9) If the use of a certified structure changes to a use that requires an authorization under these rules, the owner shall obtain the appropriate authorization for such use or uses from the department as provided in these rules.

(10) The department shall provide a copy of the wharf certification to the appropriate county official in the county where the wharf is located.

(11) If a structure is used in part as a wharf and in part for a use or uses that are subject to authorization under these rules, the owner shall obtain the appropriate authorization for such use or uses from the department in compliance with these rules.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0275

Lease and Public Facility License Application Requirements

(1) Any person wanting to enter into a lease or public facility license to use state-owned submerged and submersible land shall apply for the use using a form provided by the department prior to using the state-owned submerged and submersible land.

(2) All applications for a lease or public facility license must be submitted signed, complete and accompanied by a non-refundable fee payable to the department.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0280

Lease and Public Facility License Application Review Process

(1) Upon receipt of an application for a lease or public facility license, the department shall review it for completeness. If the application is complete the department shall process the application according to these rules.

(2) A complete application shall include the following:

(a) the appropriate application fee identified in OAR 141-082-0306;

(b) a form provided by the department and signed and filled out by the applicant or the applicant's agent; and

(c) any additional information or attachments identified in the form provided by the department.

(3) If an application for a lease or public facility license is determined by the department to be incomplete, the department shall notify the applicant of the additional information required.

(4) If more than one application for a specific premises or licensed area is received by the department, the department shall determine which proposed use best fulfills the general provisions specified in OAR 141-082-0260. The department shall then process the application according to these rules, and deny the others.

(5) Notwithstanding the provisions of OAR 141-082-0260(6)(a), the department may process an application for a use or structure that is not currently allowed under local land use laws, or that requires a conditional use permit from the local government agency, if the applicant is actively pursuing in good faith a change to the local land use laws or a conditional use permit that would enable the use to occur, provided the department has approved the change under OAR 141-082-0260(7).

(6) The department shall determine if the proposed or existing use conforms to the provisions of these rules. The department may deny an application for a lease or public facility license if:

(a) The applicant's financial status or past business/management practices or experience indicates that they may not:

(A) Be able to fully meet the terms and conditions of a lease or public facility license; or

(B) Use the land applied for in a way that meets the provisions of OAR 141-082-0260(2) and (3).

(b) The applicant is in default on any other authorization granted to them by the department.

(c) The application does not contain complete information or otherwise does not provide the information requested on the application form and the applicant has not responded to a request for more information for 120 calendar days or more.

(d) The use does not conform to the provisions of these rules.

(7) Once the department has determined the application complete, the department shall offer a preference right to the preference right holder, following the process outlined in OAR 141-082-0281.

(8) Except as provided in OAR 141-082-0280(10), the department, upon determining that the application is complete and following the processes outlined in OAR 141-082-0281, shall circulate the application to various local, state, and federal agencies and other interested persons including Tribal governments, adjacent property owners, affected lessees, permittees, grantees, and other authorization holders for review and comment. The department may require the applicant to respond to comments where applicable. As a part of this review, the department shall specifically request comments concerning:

(a) The presence of state or federal listed threatened, endangered, and candidate plant, fish, and wildlife species and archaeological and historic resources within the requested premises or licensed area that may be disturbed by the proposed use;

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

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

(d) Conformance with the general provisions described in OAR 141-082-0860 of these rules; and

(e) Potential conflicts of the proposed use with existing or future public trust uses of the requested premises or licensed area.

(9) The department may provide notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order 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.

(10) The department shall not request review and comment on an application to obtain a lease or public facility license as provided in OAR 141-082-0280(8) if the use or structure:

(a) Has already received the necessary city or county approvals;

(b) Has been subjected to public comment during a prior circulation; and

(c) Has not changed in terms of the size of the premises or licensed area, or use of the premises or licensed area, since the time any city or county approvals were given.

(11) Based on the evaluation of the application and the comments received, the department shall:

(a) Approve the application and execute the lease or public facility license;

(b) Require that the applicant modify and resubmit the application; or

(c) Deny the application.

(12) The premises or licensed area shall include all state-owned submerged and submersible land including the area between moorage slips, boat wells, and all gangways.

(13) If the department cannot readily determine the limits/boundaries of the requested premises or licensed area from the description provided by the applicant or, if in the judgment of the department, a dispute may arise concerning the description, the department may require the applicant, at applicant's cost, to have a survey of the requested premises or licensed area conducted by a licensed professional engineer or surveyor.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0281

Preference Right and Competitive Bid Process

(1) The department shall take the following steps to offer a preference right:

(a) If the riparian property adjacent to the proposed premises consists of tax lots having different owners, the department shall subdivide the requested premises into smaller parcels by extending lines from the boundaries of or within the boundaries of the adjacent riparian tax lots, beginning at the point on which the boundaries intersect with the line of state-ownership perpendicular to the thread of the stream so that there is a separate area offered for each adjacent riparian tax lot under separate ownership.

(b) If the riparian property adjacent to the proposed premises consists of a single tax lot, or two or more contiguous tax lots owned by the same person, the department shall extend the boundaries of the single tax lot or combined group of tax lots beginning at the point on which the boundaries intersect with the line of state-ownership, perpendicular to the thread of the stream creating a single premises.

(c) For applications to use state-owned submerged and submersible land within a cove or lake, the department shall apply generally accepted surveying principles to determine the area of the premises subject to the preference right of an adjacent riparian owner.

(d) Following identification of any preference right holders, the department shall provide written notice to each preference right holder that a lease application has been accepted by the department. Within 30 calendar days from the date of written notice from the department, each preference right holder shall provide the department written notice of the preference right holder's intent to exercise the preference right to lease the proposed premises and submit a new application for a lease to the department.

(e) Upon receipt of an application from a preference right holder, the department shall review it for completeness as set forth in OAR 141-082-0280(1) and (2). If the application is complete and the use conforms to the provisions of these rules, the department shall process the preference right holder's application according to these rules.

(f) Once the department has determined the application complete, the department shall process the application as set forth in OAR 141-082-0280(8) through (13).

(g) The preference right shall be considered waived by the department for the following reasons:

(A) The preference right holder does not exercise their preference right;

(B) The department denies the preference right holder's application, in accordance with OAR 141-082-0280(6); or

(C) The preference right holder fails to execute a lease with the department within 120 calendar days of the department offering of the lease.

(2) If the preference right holder waives the preference right, as outlined in subsection (1)(g) above, the department shall put the lease out for competitive bid pursuant to the requirements of ORS 274.040 and in accordance with the following process:

(a) The department shall prepare and publish an advertisement for bids. The minimum bid amount shall be set by the department.

(b) The advertisement shall contain the following:

(A) The type of auction and the minimum bid set by the department;

(B) The location and size of the requested premises;

(C) The deadline for submitting a complete application to the department;

(c) A bidder may bid on the use applied for in the application initiating the offering of the preference right or any other use that conforms to the provisions of these rules and that requires an annual lease payment rate equal to or greater than the minimum bid amount. The highest qualified bidder shall be awarded the right to lease the proposed premises, subject to compliance with the provisions of these rules.

(d) All bids submitted to the department must contain the following:

(A) An application for use of state-owned submerged and submersible lands, identifying an activity that conforms to the provisions of these rules.

(B) A new application fee, in accordance with OAR 141-082-0306(2).

(C) Information regarding the amount per year the bidder intends to pay the department for use of the state-owned submerged and submersible land.

(e) Following the closing of bids, the department shall provide written notice to the highest qualified bidder of the award and of the right to enter into a lease with the department. Within 30 calendar days from the date of written notice from the department, the person notified shall provide the department written notice of the bidder's intent to enter into a lease for the proposed premises and submit a bid deposit in a sum equal to one-half of the annual lease payment for the use that was the subject of the bid. The purpose of the bid deposit is to ensure the bidder enters into a lease with the department.

(f) After written notice of the bidder's intent and the bid deposit is received, the department shall review the application for completeness and determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the department shall process the application as set forth in OAR 141-082-0280(8) through (13).

(g) If the bidder awarded the right to lease does not exercise the right to lease, or if the bidder's application is denied, or if the application is accepted but the bidder fails to execute a lease with the department within 120 calendar days of the date of the bidder's notice of intent to the department to exercise the right to lease, the right to lease shall be deemed to have been waived. If the bidder's right to lease is waived, the bidder's bid deposit will be forfeited to the department and the department shall offer the right to enter into a lease to the next highest qualified bidder according to the procedures set forth in OAR 141-082-0281(2)(e).

(h) If the bidder enters into a lease with the department, the amount of the bid deposit shall be applied to the first annual lease payment.

(3) The department shall not require a preference right review or put the lease out for competitive bid:

(a) For applications to renew a lease, when the lessee is in good standing and the lease has been continuously authorized, notwithstanding any holdover provisions that may apply; or

(b) For applications to modify a lease, as required under OAR 141-082-0295 of these rules; or

(c) When the applicant is the preference right holder;

(d) For applications for a new public facility license or registration or applications to renew or amend a public facility license or registration; or

(e) For those reasons provided in ORS 274.040.

Statutory/Other Authority: ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0285

Lease and Public Facility License General Conditions and Form

(1) The department shall offer a form of lease or public facility license that has been approved by the Department of Justice.

(2) Subject to the terms of an existing lease or public facility license or as otherwise agreed by the department, the applicant shall have 90 calendar days from the date of offer to execute a lease or public facility license with the department. The department may revoke the offer after 90 calendar days, at which time the applicant may re-apply for the proposed use in accordance with OAR 141-082-0275.

(3) Unless otherwise approved by the director, the initial term for a lease issued under these rules shall be five years.

(4) The department may include in a lease the right to renew the lease for an additional term, subject to the requirements of OAR 141-082-0290. Unless otherwise approved by the director, the length of the renewal term for a lease shall not exceed 15 years and shall be determined by the department based on:

(a) Whether the proposed use is reasonably expected to exist for the time period requested by the applicant;

(b) The applicant's ability to fully meet the terms and conditions of a lease or license considering the applicant's financial status, past business or management practices, experience, and standing with the department;

(c) Requirements imposed by financial institutions as a condition of project financing and approved by the department;

(d) The holder's participation in programs that benefit the health and safety of waterways, such as the Clean Marina Program at the State Marine Board or other similar programs;

- (e) Whether the holder provides free or low-cost public access;
 - (f) The general provisions contained in these rules; and
 - (g) Additional criteria or rationale, consistent with these rules and as determined by the director.
- (5) Unless otherwise approved by the director, the initial term for a public facility license issued under these rules shall not exceed 15 years and shall be determined by the department and based on:
- (a) Whether the proposed use is reasonably expected to exist for the time period requested by the applicant;
 - (b) Requirements imposed by financial institutions as a condition of project financing and approved by the department;
 - (c) The general provisions contained in these rules; and
 - (d) Additional criteria or rationale, consistent with these rules and as determined by the director.
- (6) The department may include in a public facility license the right to renew the license for an additional term, subject to the requirements of OAR 141-082-0290. The length of the renewal term for a public facility license shall be determined by the department and shall be based on the criteria listed in section (5).
- (7) For leases issued under these rules the following apply:
- (a) Each lease shall consist of one or more parcels, as established by the department, as areas of land separate from any existing tax lots.
 - (b) When a proposed or existing premises extends beyond the boundaries of an individual tax lot, the department shall subdivide the area into separate parcels by extending lines from the boundaries of the adjacent riparian tax lots, beginning at the point on which the boundaries intersect with the line of state-ownership perpendicular to the thread of stream, making a separate parcel fronting and abutting each adjacent riparian tax lot.
 - (c) For a multi-use lease, the department shall subdivide the premises into separate parcels for each use classification. A parcel cannot have more than one use classification.
- (8) State-owned submerged and submersible land shall remain open to public trust uses.
- (a) Notwithstanding the provisions of OAR 141-088, a holder may close all or a portion of the premises or licensed area to public trust uses or restrict public trust uses within all or a portion of the premises or licensed area, provided the closure or restriction is:
 - (A) Reasonably necessary to protect persons and property from harm arising from holder's authorized use of the state-owned submerged and submersible land;
 - (B) Limited in duration; and
 - (C) Limited in scope.

(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, the holder shall consult with the United States Coast Guard and the State Marine Board prior to implementing the closure or restriction. The holder shall comply with all requirements imposed by the United States Coast Guard and the State Marine Board.

(c) The holder shall provide written notice to the department no less than 30 calendar days prior to the implementation of any closure or restriction. The written notice shall identify the need for, the scope of, and the duration of the closure or restriction, and must certify that holder has consulted with the United States Coast Guard and the State Marine Board regarding the closure or restriction, if required under subsection (8)(b).

(d) The department, in its sole discretion, may at any time require the holder to terminate or modify the closure or restriction. The department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088.

(9) The holder may restrict public use of holder-owned property or structures authorized under a lease or public facility license.

(10) The department or its authorized representative(s) shall have the right to enter into and upon the premises or licensed area at any time for the purposes of inspection or management.

(11) The holder shall not encumber the rights held under an authorization, nor mortgage or grant a security interest in the holder's interest in the authorization without prior written consent of the department. Written consent shall be applied for on a form provided by the department.

(12) The holder shall pay a nonrefundable bank consent agreement application fee, in accordance with OAR 141-082-0306(6), for each request for the department's approval of a bank consent agreement.

(13) The holder shall maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements in a good state of repair. Any structures and improvements not maintained in a good state of repair must be repaired or removed upon receiving notice from the department, unless the department elects to remove or repair them at the holder's expense.

(14) The holder shall remove all unauthorized vessels, buildings, docks, pilings, floats, gangways, similar structures, or other improvements from the premises upon receiving notice from the department, unless the department elects to remove them at the holder's expense.

(15) The holder shall remove from the premises all abandoned and derelict vessels attributable to the holders uses upon receiving notice from the department, unless the department elects to remove them at the holder's expense.

(16) The holder shall comply with all the provisions of the authorization and is liable for any violation of those provisions, other applicable law, rule or use restrictions and the acts or omissions of the holder, its agents, officers, directors, employees or invitees. However, the holder shall not be liable for actions or claims attributable to the department, its officers, agents or employees.

(17) Within 90 calendar days after the expiration or earlier termination of a lease or a public facility license, the holder shall remove all authorized vessels, buildings, docks, pilings, floats, gangways, similar structures, or other improvements from the premises, unless otherwise agreed to by the holder and the department. The holder is responsible for any damage done to state-owned submerged and submersible land resulting from the removal of removing any structures, vessels, or other improvements by the holder or department.

(18) Prior to issuance of a lease for the uses described in OAR 141-082-0265(2), the applicant, as a condition of the lease and as required by ORS 274.040(3)(d), shall agree to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation. The applicant's obligation to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation must be in writing on a form provided by the department.

(19) The holder shall dispose of all waste in a proper manner and not allow debris, garbage, or other refuse to accumulate within the premises, and if the holder allows debris, garbage, or other refuse to accumulate within the premises, allow the department to remove the debris, garbage, and other refuse at the holder's expense.

(20) The holder shall conduct all operations within the premises in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion.

(21) In addition to any other applicable laws and regulations, the holder shall obtain any permits required by local, state, or federal authorities and shall comply with Department of Environmental Quality and State Marine Board requirements for sewage collection and wastewater disposal for vessels and floating structures.

(22) The holder shall not use, store, or dispose of, or allow the use, storage, or disposal within the premises of any material that may pose a threat to human health or the environment, including, without limitation, hazardous substances, pesticides, herbicides, or petroleum products except in strict compliance with applicable laws, regulations, and manufacturer's instructions. The holder shall take all necessary precautions to protect human health and the environment and to prevent the release of any hazardous substances on or from the premises.

(23) The holder shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the premises as directed by the local county weed control district, the Department of Agriculture, or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests, or diseases, or as may be authorized or directed by the department or the State of Oregon.

(24) The premises shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all personas without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0290

Lease and Public Facility License Renewal

(1) Notwithstanding any provisions in the lease or public facility license to the contrary, a lessee or licensee under a lease or public facility license containing a right to renew shall exercise the right to renew as set forth in OAR 141-082-0290.

(2) The holder shall exercise the right to renew at least 180 calendar days, but not more than one year prior to the expiration of the then current term of the lease or public facility license. If the holder fails to renew within the time required, the lease or public facility license may terminate at the expiration of the current term at the department's discretion.

(3) To exercise the right to renew, the holder of a lease or public facility license shall submit to the department the following:

(a) A written statement, on a form provided by the department:

(A) Notifying the department of the holder's intent to renew;

(B) Certifying that the uses or structures that are the subject of the lease or public facility license are consistent with:

(i) local, state, and federal law; and

(ii) existing department authorizations.

(b) A nonrefundable renewal application fee, in accordance with OAR 141-082-0306(3), is payable if:

(A) No changes in use or size have been made within the premises or license area; or

(B) No change in use or a decrease in size has been requested within the premises or licensed area; and

(C) The application was received at least 180 calendar days prior to the expiration of the lease or license.

(c) A nonrefundable new application fee, in accordance with OAR 141-082-0306(2), is payable if:

(A) There are changes in use; or

(B) An increase in size has been requested within the premises or licensed area; or

(C) The application was received less than 180 calendar days prior to the expiration of the lease or license.

(4) Renewal requests involving either a change in use, an increase in the size of the premises or licensed area, or both, will be processed and reviewed in the same manner as a new application for a lease or public facility license as specified in these rules.

(5) Upon receipt of the written statement and appropriate fee, the department shall determine, in its sole discretion, whether:

(a) The right to renew was exercised at least 180 calendar days prior to the expiration of the then current term of the lease or public facility license;

(b) The lessee or licensee has fully complied with the terms of their lease or public facility license, the applicable statutes or Oregon Administrative Rules; and

(c) The lessee or licensee has fully complied with any other authorization granted to them by the department.

(6) As a condition of renewal, the department shall have the right to amend the terms and conditions of the lease or public facility license.

(7) If the department determines that the renewal complies with the requirements of section (5), the department shall provide written notice to the holder that the lease or public facility license has been renewed for an additional term. For leases, the written notice shall include the new parcel annual lease payment determined pursuant to the provisions in OAR 141-082-0305.

(8) If the department determines that the renewal does not comply with the requirements of section (5), the department shall provide written notice to the holder that the lease or public facility license shall not be renewed. In that event, the lease or public facility license shall terminate at the expiration of the current term.

(9) If the lease or public facility license does not contain a right to renew, the holder of the lease or public facility license may apply for a new lease or public facility license as provided in these rules.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0295

Lease and Public Facility License Modifications

(1) The department shall process and review all applications for changes of the authorized use or for an increase in the premises or licensed area under a lease or public facility license in the same manner as a new application for a lease or public facility license as specified in these rules. If the department accepts the changes, it shall offer an amendment of the current lease or public facility license.

(a) Change in Use.

(A) The holder may not change the authorized use without prior written approval from the department.

(B) The holder shall submit an application to the department that includes certification indicating that the proposed change is consistent with local, state, and federal law.

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable new application fee in accordance with OAR 141-082-0306(2).

(b) Increase in Premises or Licensed Area.

(A) The holder may not increase the premises or licensed area without prior written approval from the department.

(B) The holder shall submit an application to the department that includes certification indicating that the proposed expansion is consistent with local, state, and federal law.

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable new application fee in accordance with OAR 141-082-0306(2).

(c) Decrease in Premises or Licensed Area.

(A) The holder may reduce the size of the premises or licensed area without prior written approval from the department.

(B) The holder shall provide the department written notice of the reduction in the size of the premises or licensed area and a nonrefundable amendment application fee, in accordance with OAR 141-082-0306(4), no less than 90 calendar days after the change.

(C) The written notice to the department must include a drawing with dimensions and photographs documenting the change.

(d) Modifications of Terms or Conditions.

(A) The holder of a lease or public facility license may request changes to the terms or conditions of the authorization document.

(B) The holder shall submit an application that includes details of the request along with a justification of the modifications.

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable amendment application fee, in accordance with OAR 141-082-0306(4).

(D) The department, in its sole discretion, may deny the holder's request to change the terms or conditions of the authorization document.

(2) Reconfiguration of Existing Uses and Structures.

(a) The holder of a lease or public facility license may change the internal arrangement of the uses or structures within a premises or licensed area without prior written authorization from the department.

(b) The holder shall provide the department written notice of the change no less than 90 calendar days after the change.

(c) The written notice to the department shall include a drawing with dimensions and photographs documenting the change.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0300

Subleasing and Assignment of Leases and Public Facility Licenses

(1) Subleasing under a Lease.

(a) A lessee may not sublease any portion of a premises without the prior written consent of the department, unless subleasing is specifically permitted under the lease or by these rules. The department may terminate a lease where any portion of the premises has been sublet without the department's written consent.

(b) Notwithstanding any provisions in the lease to the contrary, the lessee shall comply with the process set forth below in subleasing any portion of area premises where department's consent is required by the lease or by these rules.

(c) In order to sublease any portion of area premises where the department's consent is required, the lessee shall submit, at least 90 calendar days prior to the date of the proposed subletting, the following:

(A) An application to the department on a form provided by the department;

(B) A copy of the proposed sublease agreement for review and approval; and

(C) A nonrefundable sublease application fee, in accordance with OAR 141-082-0306(7).

(d) The lessee may grant a sublease to another person without prior consent of the department when:

(A) The lease specifically authorizes subleasing without the department's prior written consent; or

(B) The sublease authorizes use of less than the entire premises and the use allowed under the sublease is within the scope of the authorized use of the lease (for example, the rental of boat slips) for a term not to exceed 12 months. The lessee shall provide the department written notice of the sublease within 30 calendar days.

(2) Assignment of a Lease.

(a) The lessee shall not assign the lease without the prior written consent of the department, unless assignment without the department's consent is specifically permitted under the lease or by these rules.

(b) Notwithstanding any provisions in the lease to the contrary, the lessee shall comply with the process set forth below in assigning the lease where the department's consent to assignment is required by the lease or by these rules.

(c) In order to assign a lease where the department's consent is required by the lease or by these rules, the lessee shall submit, at least 90 calendar days prior to the date of the proposed assignment, the following:

(A) An application to the department on a form provided by the department; and

(B) A nonrefundable assignment application fee, in accordance with OAR 141-082-0306(5).

(d) The department may deny an application for assignment of a lease if the department determines, in its sole discretion, that:

(A) The proposed assignee's financial status or past business/management practices or experience indicates that they may not be able to fully meet the terms and conditions of a lease.

(B) The proposed assignee is in default on any other authorization granted to them by the department.

(e) If the application for assignment is approved by the department, the department shall prepare an assignment form for the signature of the lessee, the proposed assignee, and the department. The assignment shall be effective on the date of signature by the department.

(f) As part of the consideration for the department's consent to the assignment, the department shall have the right to require amendment to the terms and conditions of the lease prior to the assignment.

(g) Lessee shall remain liable for the performance of all obligations under the lease following assignment, unless the department consents, in its sole discretion and in writing, to release lessee from liability.

(h) To assign a lease to a spouse or child upon the death of the lessee, the spouse or child shall submit an application to the department on a form provided by the department. There is no application fee associated with the assignment of a lease to the lessee's spouse or child upon the death of the holder.

(3) Assignment of a Public Facility License.

(a) The licensee shall not assign the public facility license without the prior written consent of the department, unless assignment without the department's consent is specifically permitted under the public facility license or by these rules.

(b) In order to assign a public facility license where the department's consent is required by the public facility license or by these rules, the licensee shall submit an application to the department on a form provided by the department.

(c) There is no application fee required for an assignment of a public facility license to another government agency.

(d) If the application for assignment is approved by the department, the department shall prepare an assignment form for the signature of the licensee, the proposed assignee, and the department. The assignment shall be effective on the date of signature by the department.

(e) As part of the consideration for the department's consent to the assignment, the department shall have the right to require amendment to the terms and conditions of the public facility license prior to the assignment.

(f) Licensee shall remain liable for the performance of all obligations under the public facility license following assignment, unless the department consents, in its sole discretion and in writing, to release licensee from liability.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0305

Parcel Annual Lease Payments (PALP)

(1) The initial annual lease payment under a lease is the parcel annual lease payment (PALP), or, if the premises are comprised of more than one parcel, the sum of the PALPs for each parcel.

(2) For each parcel that is part of the premises, the PALP is calculated as follows:

(a) $PALP = ALV \times \text{use rate} \times \text{parcel area}$.

(b) Notwithstanding subsection (2)(a), the PALP will be at least the greater of:

(i) the minimum competitive bid set by the department pursuant to ORS 274.040 and OAR 141-082-0281(2); or

(ii) the applicable amount set forth below based on the commencement date of the term of the lease:

Commencement Date of Lease Term	Minimum Rate
July 1, 2027, through June 30, 2031	\$1,200
July 1, 2031, through June 30, 2036	\$1,400
July 1, 2036, through June 30, 2041	\$1,600

(c) Notwithstanding subsection 2(a), the PALP will not exceed \$150,000.

(d) The PALP will escalate by three percent on every lease anniversary date. The department shall notify lessees in writing of the escalated PALP under their lease at least 60 calendar days before each lease anniversary date.

(e) Except for leases subject to the restrictions listed in ORS 90.324 or ORS 90.600, the PALP for a renewing lease will not exceed 15 percent of the most recent escalated PALP under the lease.

(3) The adjacent land value (ALV) is the value of the adjacent upland property per square foot, based on the square footage of the adjacent upland property and its value as determined by the County Assessor, but excluding, however, the value of any structures or improvements on the adjacent upland property. Notwithstanding the foregoing, if the department determines that the County Assessor's value of the adjacent upland property is artificially low, then the department shall use a comparable upland property or properties instead of the adjacent upland property to calculate the ALV.

(4) The "use rate" is a percentage, no lower than 3 percent and no higher than 8 percent, determined by the department as follows:

(a) The department shall assign a use rate for a parcel based on the following use classifications:

(i) Noncommercial use;

(ii) Personal recreational use;

(iii) Commercial use;

(iv) Aquaculture facilities;

(v) Historic vessel or structure;

(vi) Log raft and log storage;

(vii) Marinas;

(viii) Marine industrial/Marine service use;

(ix) Nonmarine use; and

(x) Other use classifications as determined by the director.

(b) After initially determining the use rate for a parcel pursuant to subsection (4)(a), the department may increase the use rate up to one half of 1 percent, or decrease the use rate by up to three quarters of 1 percent, based on any of the following considerations:

(i) The Lessee's or applicant's participation in programs that benefit the health and safety of waterways, such as the State Marine Board's Clean Marina Program;

(ii) The lessee or applicant will provide free or minimal-cost public access to the parcel;

(iii) The type of waterway designation, or other appropriate classification, that applies to the parcel; or

(iv) Other methods or information determined by the department.

(5) The parcel area is the area of the parcel, in square feet. Notwithstanding the foregoing, for parcels with individual noncommercial docks, boathouses, or floating recreational cabins that are not eligible for registration and that are not contained within marinas or moorages, the use rate will be based on the footprint of such structure, excluding gangways, protective booms, pilings or dolphins.

(6) The department shall publish on the department's website the formulas and rates relating to this section.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

OAR 141-082-0306

Application and Other Fees

(1) Persons submitting applications for new, proposed, or existing uses of state-owned submerged and submersible land, renewals of existing authorizations, requests for assignments, subleases, amendments, or bank consent agreements shall pay a fee set by the department. The department shall publish all fees and make any fee schedule maintained available to the public.

(2) A new application fee for a new lease or public facility license, whether for a new, proposed, or existing use shall be \$1,000 effective July 1, 2027.

(3) A renewal application fee to renew an existing lease or public facility license shall be \$500 effective July 1, 2027.

(4) An amendment application fee to amend an existing lease or public facility license shall be \$500 effective July 1, 2027.

(5) An assignment application fee to assign an existing lease or public facility license shall be \$1,000 effective July 1, 2027.

(6) A bank consent agreement application fee for a bank consent agreement for an existing lease or public facility license shall be \$500 effective July 1, 2027.

(7) A sublease application fee to sublease an existing waterway lease shall be \$1,000 effective July 1, 2027.

(8) In addition to the fees listed in sections (2) through (7) and effective July 1, 2027, the department may charge an additional \$500 fee when:

(a) A lease expires, and enters holdover status;

(b) A holder requests a change to any authorization document, which requires Department of Justice consultation or legal sufficiency review, pursuant to ORS 291.047 or 291.049, before execution;

(c) A renewal application is received less than 30 calendar days before the lease expiration date;

(9) Effective July 1, 2027, all leases issued under these rules are subject to an annual submerged lands enhancement fee of \$100 to be deposited into SLEF, as set forth in OAR 141-082-0311 below.

(10) Beginning July 1, 2028, the director may increase all fees annually by no more than 5 percent, except for the fees described in Section (8) and (9). The director may consider any available Consumer Price Index as published by the US Bureau of Labor Statistics, and any other relevant factors when determining the fee increase.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0310

Removal of Unauthorized Structures

(1) The department is authorized to seize a structure on, under, or over submerged and submersible lands if:

(a) The department determines, after providing notice and opportunity for a hearing, that the structure is an abandoned structure or a derelict structure; and

(b) The owner of the structure has failed to correct the problems identified in the notice within 20 calendar days or a longer reasonable time as specified in the notice or within any additional time that may be granted by the department.

(2) The notice required under section (1) must:

(a) Be delivered by certified mail, return receipt requested, to any person with an interest in the structure or the land upon which the structure is located, as determined by the department after diligent investigation. Diligent investigation shall include the following:

(A) A search of the county real property records to identify the record owner of the submerged and submersible land where the structure is located and the record owner of the adjacent upland.

(B) Additional investigation warranted by the circumstances.

(b) Be delivered to the record owner of the submerged or submersible lands where the structure is located, if the record owner is not the State of Oregon.

(c) Be delivered to the record owner of the adjacent upland.

(d) Identify, with specificity, the department's proprietary interest in and jurisdiction over the submerged and submersible land where the structure is located. If the record owner of the submerged and submersible land is not the State of Oregon, identify the department's basis for asserting state ownership of the submerged and submersible land, and state that the recipient has the right to contest the state's claim of ownership.

(3) The department shall contact the property owner(s) who own riparian land adjacent to the upland land owner identified in section 2(c).

(4) Any person with an interest in the structure shall, within 20 calendar days of service of the notice, either:

(a) Provide written notice to the department of their intent to either obtain an authorization or remove the structure; or

(b) Request a hearing. The request must be submitted to the department in writing.

(5) If a person with an interest in the structure wants to obtain an authorization from the department, the owner of the structure shall submit a complete application within 30 calendar days of service of the notice.

(a) Submission of an application under this section does not ensure that an authorization would be issued.

(b) If an application is submitted, the department may not seize the structure while the application is under review.

(6) If a person with an interest wishes to remove the structure, that person shall do so within 90 calendar days of notice or as otherwise agreed to by the department.

(7) If a person with an interest in the structure wants to challenge the actions proposed in the notice, the person may request a hearing.

(a) The hearing request must be received by the department within 10 calendar days of service of the notice.

(b) The request must indicate if the person contends that the structure is not an abandoned structure or derelict structure or indicate such other specific grounds on which seizure is challenged.

(c) Upon receipt of a request for a hearing, the department shall suspend further action to seize the structure until the director issues the department's final order.

(8) Upon receipt of a request for a hearing, the department shall process the hearing request as follows:

(a) The department shall refer the matter to the Office of Administrative Hearings for a contested case hearing.

(b) The Administrative Law Judge shall issue a proposed order, making a recommendation for the department's final order.

(9) After the hearing:

(a) The director shall issue a final order, which is an order in a contested case and is subject to review under ORS 183.482.

(b) If the department determines after a hearing that seizure of the structure is not warranted under the law, the department shall immediately release custody of the structure to the owner who requested the hearing and may not charge the owner any costs incurred by the department in removal, salvage, storage, or disposal of the structure.

(c) If the department determines after a hearing that seizure of the structure is warranted, the department may seize the structure and remove, salvage, store, or dispose of it, as the department deems appropriate.

(d) The department shall mail a written statement of the department's final order to all persons who requested a hearing under this section.

(10) The department may remove, salvage, store, or dispose of any structure seized under this section, if the owner fails to either:

(a) submit an application for the appropriate authorization,

(b) remove the structure, or

(c) request a hearing within the time allowed in the notice, the department's notice shall become a final order by default and the department may immediately seize the abandoned or derelict structure.

(11) Nothing in these rules affects the ability of the department to:

(a) Investigate and prosecute trespasses on and damage to state-owned submerged and submersible land under ORS 273.185; or

(b) Immediately seize without notice, a structure that presents a hazard to navigation or an imminent threat to public health or safety.

(12) If the department seizes a structure without notice under this subsection and the department decides to remove, salvage, store, or dispose of the structure, the department shall provide notice as provided for in section (2).

(13) The owner of an abandoned or derelict structure is liable to the department for all costs arising out of removal, salvage, storage, and disposal of a structure seized under this rule. However, an owner of a structure whose only interest in the structure is a security interest is not liable for costs arising out of the removal, salvage, storage, or disposal of a structure under these rules. Any order imposing liability for the costs is an order other than a contested case and is subject to review under ORS 183.484.

(14) If the department sells a structure seized under this rule, the liability imposed upon the owner shall be reduced by the net proceeds of the sale.

(15) For removal or seizure of abandoned and derelict vessels, the department shall follow the process outlined in ORS 830.908 through 830.944.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.376-274.385

141-082-0311

Submerged Lands Enhancement Fund (SLEF)

(1) SLEF is a separate fund from the General Fund and interest earned by SLEF is credited to SLEF.

(2) SLEF shall consist of:

(a) Moneys recovered by the department from owners of abandoned structures or derelict structures for payments from SLEF.

(b) Up to 20 percent of the revenue collected by the department per biennium pursuant to the department's granting of authorizations.

(3) Moneys in SLEF may be used to pay the expenses of the department associated with management and enhancement activities on state-owned submerged and submersible land, including but not limited to:

(a) Removal, salvage, storage, and disposal of abandoned structures and derelict structures;

(b) Removal and disposal of marine debris;

(c) Salvage, towing, storage, and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.944; and

(d) Activities to improve water quality, watershed enhancement, and fish and wildlife habitat.

(4) The department shall select and prioritize projects for SLEF funding using an application review team consistent with requirements specified in this rule.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.385-274.388

141-082-0312

SLEF Grant Eligibility

(1) Federal agencies are not eligible to request moneys from SLEF.

(2) The department may use moneys in SLEF to provide funding to the following entities to assist the department in completing any of the management or enhancement activities on state-owned submerged and submersible land provided for in OAR 141-082-0311(3):

(a) State agencies,

- (b) City or county governments,
- (c) Water improvement districts,
- (d) Watershed councils,
- (e) Park and recreation districts,
- (f) Port districts,
- (g) Federally recognized Indian Tribes, or
- (h) Nonprofit organizations.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.385- 274.388

141-082-0313

SLEF Application Process

- (1) Depending on availability of SLEF funds, the department shall periodically solicit applications for requesting moneys from the SLEF for eligible activities.
- (2) Applications for SLEF funding must be submitted to the department consistent with these rules and by the deadline established by the department.
- (3) Applications for SLEF funding shall be submitted using forms provided by the department and provide the following information:
 - (a) Applicant name and contact information.
 - (b) Participating partners, if any.
 - (c) Project name.
 - (d) Detailed description of purpose and need for project.
 - (e) Relevancy to protect public trust values (recreation, commerce, fisheries and navigation).
 - (f) Project location.
 - (g) Local jurisdiction approval.
 - (h) Project schedule including times of project beginning and completion.
 - (i) Amount of funding requested.
 - (j) Itemized budget.
 - (k) Confirmation of contributing match.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.385-274.388

141-082-0314

SLEF Application Review and Project Evaluation

(1) The department shall use a SLEF application review team to assist in the review and evaluation of eligible projects, prioritize funding requests and recommend funding allocation. Members of the review team may include, but are not limited to:

- (a) Department of Fish and Wildlife;
- (b) Department of Environmental Quality;
- (c) State Marine Board; and
- (d) Nonprofit organizations.

(2) The SLEF application review team shall make SLEF funding recommendations to the director based on the following criteria:

- (a) Significance of benefit to state owned land.
- (b) Protection or enhancement of public trust values.
- (c) Capacity of applicant to perform the work.
- (d) Likelihood of project success.
- (e) Ability to meet match obligation.

(3) Limitations of use of moneys from SLEF:

- (a) SLEF funds will not be used for activities associated with compensatory mitigation requirements.
- (b) A 25 percent match (in the form of direct payment or in-kind contribution) is required for projects that are not initiated by the department.
- (c) Activities receiving funds from the SLEF must be associated with management or enhancement of state-owned submerged and submersible land consistent with these rules.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043, ORS 274.385-274.388

141-082-0315

Civil Penalties

(1) The unauthorized use of state-owned submerged and submersible lands constitutes a trespass.

(2) In addition to any other penalty or sanction provided by law, the director may assess a civil penalty between \$50 and \$1,000 per calendar day of violation of any provision of these rules or ORS 274 that occurs on state-owned submerged and submersible land pursuant to ORS 274.992.

(3) The director shall give written notice of a civil penalty incurred under section (2) by registered or certified mail to the person incurring the penalty. The notice shall 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 date of service 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.

(4) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in section (3). Such a 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 by default imposing the penalty.

(5) In imposing a penalty under OAR 141-082-0315, the director shall consider the following factors as specified in ORS 274.994:

- (a) The past history of the person incurring a penalty with regard to other trespasses on state-owned submerged and submersible lands and the willingness of the person to take all feasible steps or procedures necessary or appropriate to correct any violation;
- (b) Any prior violations of statutes, rules, orders, and authorizations pertaining to submerged and submersible land;
- (c) The impact of the violation on public trust uses; and
- (d) Any other factors determined by the director to be relevant and consistent with the policy of these rules.

(6) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-082-0315 shall become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

(7) If a civil penalty is not paid as required by section (6), interest shall accrue at the maximum rate allowed by law. In addition, the department may record the order imposing the civil penalty with the county clerk in any county of this state. The department shall request that the clerk record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record to be a lien upon the person's real property in that county.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.990-274.994

141-082-0320

Registration of Structures and Uses

- (1) Structures and uses subject to registration under this section are set forth in OAR 141-082-0265(3).
- (2) If the director determines that a structure or use is subject to a registration, the director will establish an appropriate fee.
- (3) A person who fails to apply for and obtain a registration, or who fails to renew an expired registration, for a structure or use subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0325

Registration Requirements and Provisions

- (1) All persons:
 - (a) Owning or placing structures on or using state-owned submerged and submersible land in a way that is subject to registration under these rules, shall register the structure or use with the department.
 - (b) Changing the location of a registered structure or use, shall notify the department in writing 90 calendar days prior to such placement or change in location.
 - (c) Making any modifications, including a change in size of the registered structure or a change in the registered use, shall notify the department 90 calendar days prior to making such a modification.
- (2) Except as provided in section (3), an applicant for registration shall use a form provided by the department and submit a registration form for all applicable structures or uses.
- (3) A single registration form may be used to apply for a registration for all dikes, rip-rap, tide gates, erosion control barriers, and other structures that occupy state-owned submerged and submersible land if they are located within:
 - (a) The jurisdiction of, and actively maintained by, a diking or drainage district; or
 - (b) Contiguous parcels owned by the same person and maintained by that person.
- (4) Except as provided in OAR 141-082-0335(2), each registration shall be accompanied by a fee payment in the amount indicated in OAR 141-082-0335 of these rules.
- (5) The department shall not issue a registration where the department determines that the use or structure:
 - (a) Will unreasonably interfere with the public's right to use the waterway and state-owned submerged and submersible land for fishing, navigation, commerce, and recreation;

(b) Will not comply with all applicable local, state, and federal laws including the local comprehensive plan and zoning requirements.

(6) Prior to issuance of a registration for the uses described in OAR 141-082-0265(3) (f), (g), (h) and (i) of these rules, the applicant, as a condition of their authorization and as required by ORS 274.040(3)(d), shall indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation. The applicant's obligation to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation must be in writing on a form provided by the department.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0330

Registration Terms and Conditions

(1) A registration issued by the department shall be for a term of five years for all structures and uses.

(2) Unless otherwise prohibited by law, any registered structure or use in compliance with these rules may be repaired or replaced in a manner consistent with the requirements of OAR 141-082-0325 and remain authorized under the original registration issued by the department. However, any person making such repairs to a structure that changes its use or the area of the premises that the structure occupies, or who replaces a structure entirely, shall notify the department in writing within 90 calendar days of making such repairs or replacement as a condition of the registration.

(3) The holder of a registration must notify the department in writing of any:

(a) Change in the location or size of a registered structure or use 90 calendar days prior to such change.

(b) Change in ownership of a registered structure or use as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.

(c) Change in ownership by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision.

(4) Failure to notify the department of any changes outlined in section (3) within the time provided may result in the termination of the registration.

(5) Registrations for privately-owned structures and uses must be renewed every five years. An owner who fails to renew an expired registration is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

(6) The department may condition a registration to ensure compliance with law or these rules. The department may modify the conditions of a registration or terminate a registration, if during the term of the registration the department determined that the structures or uses do not comply with law or these rules.

(7) The department shall provide a copy of the registration to the appropriate county official in the county where the registered structure is located.

Statutory/Other Authority: ORS 273.045, ORS 274.040
Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0335

Registration Fees

(1) Except as provided in sections (2) and (3), the fee for a registration issued on or after July 1, 2027, is as follows:

(a) \$400, for a dock or float or boathouse 1,000 square feet or less in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms); and any boat ramp not associated with another authorized waterway structure.

(b) \$700, for a dock or float or boathouse from 1,001 square feet to 2,000 square feet in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms).

(c) \$800, for a dock or float or boathouse from 2,001 square feet to 2,500 square feet in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms).

(d) \$1,000, for a floating recreational cabin less than 1,500 square feet (measurement excludes calculation of pilings, dolphins, mooring buoys, and protective booms).

(e) \$400, for a water sport structure, pilings, or a boat ramp not associated with another authorized waterway structure.

(2) No fee or other compensation is required for registering or renewing a registration for the following uses or structures:

(a) Erosion control structures, rip-rap, and tide gates.

(b) Structures maintained by a diking or drainage district.

(c) Rights of way established prior to November 1, 1981, for any county road or city street.

(d) Voluntary habitat restoration work.

(3) The fee for structures or uses not listed above that are subject to registration and issued on or after July 1, 2027, under these rules as determined by the director under OAR 141-082-0265(3)(j) shall not exceed \$1,000.

Statutory/Other Authority: ORS 273.045, ORS 274.040
Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0336

Financial Assurance Requirements

(1) The department may require an applicant or holder of a lease or registration to obtain a form of financial assurance acceptable to the department to ensure that they will perform in accordance with all terms and conditions of the lease or registration.

(2) The amount and type of financial assurance shall be determined by the department in consultation with the Department of Administrative Services Risk Management and shall be reasonable and within generally accepted business practices.

(3) All insurance providers are subject to the department's acceptance.

(4) The holder of a lease or registration shall provide to the department proof of all coverages required prior to any activities occurring and prior to the department executing the lease or registration.

(5) If requested by the department, the applicant or holder shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the department for verification of meeting the financial assurance requirements.

(6) With director approval, the department may require a surety bond when the applicant or holder of a lease or registration:

(a) is in default with any authorization or permit granted to them by the department;

(b) was previously sent a notice of deficiency or default by the department;

(c) cannot obtain another form of financial assurance due to market conditions;

(d) has current or past business, financial, or management practices that indicate they may not be able to fully meet the terms and conditions of a lease or registration offered by the department; or

(e) has active construction related to the authorized or proposed use occurring in, upon, under, or affecting the lease premises.

(7) A certificate of deposit equal to the amount required for financial assurance and that names the State of Oregon as co-owner may be substituted in lieu of the required financial assurance.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

141-082-0340

Appeals; Contested Case Hearings

(1) Appeals.

(a) An applicant for an authorization or any other person adversely affected by a decision by the department concerning an authorization, or the closure of or restriction on the use of state-owned submerged and submersible land may appeal the decision to the director.

(A) Such an appeal must be received by the director no later than 30 calendar days after the delivery of the decision.

(B) The director shall decide the appeal within 60 calendar days after the date of delivery of the appeal.

(C) The director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

(D) A person qualifies as being adversely affected by a decision by the department concerning an authorization, or the closure of or restriction on the use of state-owned submerged and submersible land if:

(i) They are the owner(s) of, or otherwise have a property interest in, the upland property adjacent to, on, or overlapping with the premises of the authorized use, closure, or restriction;

(ii) They are the holder of an authorization issued under these or other rules administered by the department that is adjacent to, on, or overlapping with or the premises of the authorized use, closure, or restriction;

(iii) They are materially affected by the decision; or

(iv) The decision unreasonably interferes with the person's public trust rights.

(b) The department shall publish on the department's website a notice of decision concerning an authorization, or the closure of or restriction on the use of state-owned submerged and submersible land. Unless served personally or by certified mail, this publication is intended to serve notice to any person who may claim to be adversely affected by the decision.

(c) In addition to the notice described in section (2), the department shall provide notice by personal service or certified mail, and by regular mail, to:

(A) Applicants;

(B) Persons who own or have a property interest in the adjacent upland property adjacent to, on, or overlapping with the premises of the authorized use, closure, or restriction; and

(C) Holders of department-issued authorizations that are adjacent to, on, or overlapping with the premises of the authorized use, closure, or restriction.

(d) Persons claiming to be adversely affected under subsections 1(d)(C) or 1(d)(D) shall describe in their appeal how the decision materially affects them or unreasonably interferes with their public trust rights. The director shall determine if the person meets the criteria to be considered adversely affected.

(2) Contested Case Hearings.

(a) The Department shall provide a contested case hearing:

(A) When a person requests a hearing regarding a civil penalty issued under OAR 141-082-0315; or

(B) When an applicant for an authorization to use state-owned submerged and submersible land or any other person adversely affected by a decision of the department concerning an authorization requests a hearing after exhausting the appeal process before the director pursuant to OAR 141-082-0340,

(b) Requests for a contested case hearing must be submitted pursuant to ORS 183.413 through 183.470.

(c) The department will refer hearing requests to the Office of Administrative Hearings for a contested case hearing. The Administrative Law Judge assigned to the matter will issue a proposed order. Parties shall have 20 calendar days to file exceptions to the proposed order. The director of the department will issue a Final Order after reviewing the record from the hearing, the proposed order, and any exceptions filed.

(d) The department's notice shall become a final order by default if a party:

(A) fails to request a contested case hearing;

(B) withdraws a request for a hearing; or

(C) fails to appear at any hearing scheduled by the Office of Administrative Hearings.

(e) When a notice becomes a final order by default, the department designates its file on the matter, including any materials submitted by the aggrieved party as the record for the purpose of proving a prima facie case.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043