



Oregon

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**Regular Meeting
December 3, 2025
Agenda Item 4a**

SUBJECT

Rules for waterway leases, licenses, and registrations

ISSUE

Whether the State Land Board should adopt updated administrative rules in OAR 141-082 which govern the management and issuing of leases, licenses and registrations for structures on and uses of state-owned submerged and submersible land. Rulemaking is needed to implement best management practices to protect the health and safety of Oregon-owned waterways and achieve sustainable operations. See Appendix A for the final proposed rules.

AUTHORITY

- Oregon Constitution, Article VIII, Section 5, specifies that the State Land Board is responsible for managing lands placed under their jurisdiction by law.
- ORS 273.045; authorizing the Department of State Lands to exercise the administrative functions of the State Land Board.

BACKGROUND

The people of Oregon own the beds and banks of all title navigable and tidally influenced waterways throughout the state. Oregon-owned rivers, lakes, and the territorial sea are shared resources the public may use for navigation, recreation, commerce, and fishing. Marinas, ports, docks, floating homes, and other uses of public waterways require authorization from the Department. Some authorizations, including leases and registrations, compensate the public and ensure the use does not adversely affect the health and safety of public lands or waters or unreasonably interfere with other uses.

On April 9, 2024, the Land Board authorized the Department to initiate rulemaking for administrative rules in OAR 141-082 to:

- Achieve sustainable operations in managing waterway authorizations and ensure lease rates are consistent and fair.
- Protect the health and safety of Oregon's natural resources and minimize operational risks by addressing the serious environmental risks and unexpected financial liability from some private uses along waterways. This has included neglected structures and stockpiling of hazardous and derelict vessels.

Through this rulemaking, the Department has proposed changes to:

- **Use a single method for calculating compensation for waterway leases.** Currently, people and businesses can choose from three different methods. This creates inconsistency, administrative inefficiencies, undervalues the use of state-owned land, and can result in inequities for users on the same waterway.
- **Increase application fees and introduce new fees for late renewals and legal consultation.** Existing application fees do not cover the full administrative costs of processing. Adding new fees helps recover costs associated with delays and legal review when required.
- **Require financial assurances for more overwater structures, reduce lease terms for new leases, and update application requirements.** Oregon's waterways have experienced serious environmental harms and financial risk due to some private uses of public lands. Greater protections are needed to mitigate those risks.
- **Add clarity and minor updates.** It's been over 11 years since the last update to these rules. Minor updates provide clearer and simpler language where currently it is confusing or unnecessarily complex.

See Appendix D for a summary specific to the proposed application fees and waterway lease compensation changes.

PUBLIC INVOLVEMENT

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

Rulemaking Advisory Committee (RAC)

A RAC was convened a total of six (6) times online from November 2024 to March 2025 to inform the proposed changes.

Members of the RAC included:

- Alan Hanson, Oregon State Marine Board
- Dylan Paul, City of Portland (Real Estate Division)

- Garrett Phillips, Columbia River Estuary Study Taskforce
- Justin Teutsch, Columbia Crossings
- Jim Ryan, representing Waterfront Organizations of Oregon
- Jim Zimmer, Salmon Harbor Marina
- Jon Hie, Hyak Maritime, Hyak Tongue Point, LLC
- Laurel Hillman, Oregon Parks and Recreation Department
- Lindsey Hutchinson, Willamette Riverkeeper
- Mike Dunning, representing Oregon Public Ports Association

The RAC provided input on the proposed rules, development of a notice of proposed rulemaking, and an evaluation of fiscal impacts and racial equity impacts. RAC members provided feedback critical to making the Department's rulemaking efforts successful. RAC members identified where improvements could be made in the proposed lease formula and raised concerns about how rent will increase for lessees at renewal as well as the rate at which rent will escalate annually.

Public Review and Comment Period

A Notice of Proposed Rulemaking was filed with the Secretary of State's Office on June 30, 2025 (see Appendix B). A 45-day public review and comment period was held from July 1 to August 15, 2025. The Department informed interested and impacted parties by:

- Issuing a news release to Oregon media outlets,
- Emailing a public notice to the Department's mailing lists and targeted contacts,
- Mailing approximately 3,900 postcards to all active waterway authorization holders,
- Inviting consultation and comments from all nine federally recognized Tribes in Oregon,
- Notifying House Speaker Fahey and Senate President Wagner, and
- Posting all rulemaking materials on the Department website:
<https://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx>

During the public comment period, the Department held six public hearings, with additional time for an information session and questions:

- Four in-person meetings on July 22 (Florence), July 23 (Bay City), July 30 (Bend) and August 7 (Portland).
- Two virtual meetings on July 21 and July 30.

In total, the Department received 51 comments expressing both support and concern; comments received are in Appendix C. Key themes are summarized as follows:

- Many comments were made with concerns about the revised definition of a "floating recreational cabin". In response, the Department reverted to the term's original definition.

- Additional comments concerned codifying in rule an exemption for stiff booms when calculating square footage for a lease's premises. This is the Department's current practice. In response to comments, the Department has added a definition for stiff booms and clarified this practice in rule.
- Many general comments were received against an increase in fees, and an interest in waterway improvements from the money collected. In response, the Department highlighted the need for increased fees, and that a portion of funds are dispersed as grants for projects that enhance and protect state-owned waterways.

RECOMMENDATION

The Department recommends the Land Board permanently adopt the proposed rules for OAR 141-082, Rules Governing the Management of, and Issuing of Leases, Licenses and Registrations for Structures on, and Uses of State-Owned Submerged and Submersible Land. If adopted, the proposed rules will go into effect on July 1, 2026.

APPENDICES

- A. Final Rules (OAR 141-082)
- B. Notice of Proposed Rulemaking including the Statement of Need and Fiscal Impact and Draft Rules
- C. Public Comments and DSL Responses
- D. Summary of Fees and Compensation Changes for Waterway Leases, Licenses, and Registrations (November 2025)

Department of State Lands
Chapter 141
Division 82

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, neither 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, and 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, and protective 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 persons 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) Effective July 1, 2026, 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, 2026, 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 the applicable amount set forth below based on the commencement date of the term of the lease:

| Commencement Date of Lease Term | Maximum Rate |
|-------------------------------------|--------------|
| July 1, 2026, through June 30, 2031 | \$150,000 |
| July 1, 2031, through June 30, 2036 | \$150,000 |
| July 1, 2036, through June 30, 2041 | \$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, 2026.
- (3) A renewal application fee to renew an existing lease or public facility license shall be \$500 effective July 1, 2026.
- (4) An amendment application fee to amend an existing lease or public facility license shall be \$500 effective July 1, 2026.
- (5) An assignment application fee to assign an existing lease or public facility license shall be \$1,000 effective July 1, 2026.
- (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, 2026.
- (7) A sublease application fee to sublease an existing waterway lease shall be \$1,000 effective July 1, 2026.
- (8) In addition to the fees listed in sections (2) through (7) and effective July 1, 2026, 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, 2026, 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) Except for the fees described in Section (8) and (9), all fees shall increase annually by 5 percent.

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, 2026, 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, 2026, 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 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

OFFICE OF THE SECRETARY OF STATE

TOBIAS READ
SECRETARY OF STATEMICHAEL KAPLAN
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701**NOTICE OF PROPOSED RULEMAKING**
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141

DEPARTMENT OF STATE LANDS**FILED**06/30/2025 3:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Changes rent, fees, financial assurance, and updates term and general conditions for waterway use authorizations.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/15/2025 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Danielle Boudreaux

503-798-6846

DSL.Rules@dsl.oregon.gov

775 Summer St NE

Suite 100

Salem, OR 97301

Filed By:

Danielle Boudreaux

Rules Coordinator

HEARING(S)

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

DATE: 07/21/2025

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

REMOTE HEARING DETAILSMEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-444-9171

CONFERENCE ID: 2508868653

SPECIAL INSTRUCTIONS:

Web Passcode: w#EnJ067

Phone Passcode: 87671005

DATE: 07/22/2025

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

IN-PERSON HEARING DETAILS

ADDRESS: Florence Events Center, 715 Quince Street, Florence, OR 97439

DATE: 07/23/2025

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

IN-PERSON HEARING DETAILS

ADDRESS: Bay City Community Hall (at City Hall), 5525 B Street, Bay City, OR 97107

DATE: 07/30/2025

TIME: 10:00 AM

OFFICER: Danielle

REMOTE HEARING DETAILS

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

PHONE NUMBER: 1-669-444-9171

CONFERENCE ID: 2508868653

SPECIAL INSTRUCTIONS:

Web Passcode: w#EnJ067

Phone Passcode: 87671005

DATE: 07/30/2025

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

IN-PERSON HEARING DETAILS

ADDRESS: Larkspur Community Center, 1600 SE Reed Market Road, Bend, OR 97702

SPECIAL INSTRUCTIONS:

Multipurpose Room

DATE: 08/07/2025

TIME: 6:00 PM

OFFICER: Danielle Boudreaux

IN-PERSON HEARING DETAILS

ADDRESS: The Portland Building, 1120 SW 5th Ave, Portland, OR 97204

SPECIAL INSTRUCTIONS:

Meeting Room 108

NEED FOR THE RULE(S)

In recent years the Department has explored strategies to achieve sustainable operations in managing waterway use authorizations. Some of these strategies did not require rulemaking and have been implemented, however, there are additional opportunities to achieve sustainable operations that require rulemaking, and the Department plans to address these issues via rulemaking. Through rulemaking, the Department seeks to: 1) reduce the number of methods used to calculate rent for waterway leases from three to one; 2) use a method that is market driven, accounting for location and the type of activity; 2) mitigate financial impacts to lessees; 3) amend financial assurance requirements to cover more waterway structures; 4) update general conditions to include requirements concerning the condition of overwater structures and the impact of an authorized use; 5) increase application fees and allow fees to increase over time, to account for inflation and other market increases.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 274; https://www.oregonlegislature.gov/bills_laws/ors/ors274.html

County Assessors, for value of adjacent land value (RMV of land)

Waterway Leasing Study (available upon request)

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Oregon Department of State Lands is committed to the fair, just, and unbiased treatment of people of all races. Actively identifying and addressing inequities to ensure inclusive public service is one of the Department's five core values.

Evaluating who a proposed administrative rule will impact, and how the rule may impact some groups of people differently than others, is essential to providing equitable service. During the OAR 141-082 rulemaking process, the Department and the Rulemaking Advisory Committee determined that the rules are unlikely to impact racial equity in Oregon.

FISCAL AND ECONOMIC IMPACT:

State agencies, city and county government entities, special districts, and any member of the public that holds a lease, license, or waterway registration issued under these rules, will be affected by the proposed changes. Those include, ODFW, OPRD, ODF, city and county parks or public works departments, Port districts, other special districts, residential and commercial dock owners, and owners of other over water structures requiring authorization under OAR 141-082.

Impacts for each party will depend on several factors, specifically, the number and type of authorizations the party has with the Department, when the authorization expires and is subject to renewal, the nature of the activity authorized, and the real market value of the adjacent property, among other considerations.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) State agencies, city and county government entities, special districts, and any member of the public that holds a lease, license, or waterway registration issued under these rules, will be affected by the proposed changes. Those include, ODFW, OPRD, ODF, city and county parks or public works departments, Port districts, other special districts, residential and commercial dock owners, and owners of other over water structures requiring authorization under OAR 141-082.

(2)(a) The Department cannot estimate the exact number of small businesses affected by the rule change, but the type of small businesses affected include any business connected with water dependent uses and structures or other structures and activities occurring over water. These businesses include but are not limited to, marinas, marine services, fabrication, and other marine oriented entities, as well as other businesses conduct business over Oregon-owned waterways.

(2)(b) The proposed changes will not require additional recordkeeping or additional administrative activities to comply with the rules.

(2)(c) The proposed changes will not require professional services, equipment supplies, labor and increased administration to comply with the rules.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The Department conducted outreach that included small business owners and associations representing them and

specifically sought representation on the Rule Advisory Committee (RAC) for small business owners. In addition, the Department notified all holders of a waterway lease about the proposed rulemaking and invited them to attend the RAC as interested parties.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

141-082-0250, 141-082-0255, 141-082-0260, 141-082-0265, 141-082-0270, 141-082-0275, 141-082-0280, 141-082-0281, 141-082-0285, 141-082-0290, 141-082-0295, 141-082-0300, 141-082-0305, 141-082-0306, 141-082-0310, 141-082-0311, 141-082-0312, 141-082-0313, 141-082-0314, 141-082-0315, 141-082-0320, 141-082-0325, 141-082-0330, 141-082-0335, 141-082-0336, 141-082-0340, 141-145-0060

AMEND: 141-082-0250

RULE SUMMARY: This rule is amended to clarify that OAR 141-082 includes the management and distribution of the Submerged Lands Enhancement Fund, the removal of abandoned and derelict structures, and the assessment of civil penalties.

CHANGES TO RULE:

141-082-0250

Purpose and Applicability ¶¶

(1) These rules:¶¶

~~(a) Govern~~ provide that 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 of State Lands pursuant to these rules.¶¶

(2) These rules govern:¶¶

~~(a) The issuance of wharf certifications and the granting and renewal of leases, public facility licenses and registrations (hereafter collectively referred to as waterway use authorizations) for a wide variety of~~ marine, commercial, non-commercial, and public uses in, on, under, or over state-owned submerged and submersible land.¶¶

~~(b) Do not apply to the granting of:~~¶¶

~~(A) The Submerged Lands Enhancement Fund and outline the process for dispersing grant funds to eligible projects.~~¶¶

~~(c) The removal of abandoned and derelict structures on state-owned submerged and submersible lands.~~¶¶

~~(d) The assessment of civil penalties for unauthorized use of state-owned land managed by the department.~~¶¶

~~(e) The process for appealing decisions made by the department.~~¶¶

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

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

~~(b) Easements on state-owned submerged and/or submersible land governed by Division 122 or Division 123 of the Department's administrative rules; and~~¶¶

~~(Bc) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land governed by Division 87 of the Department's administrative rules; and~~¶¶

~~(Cd) Authorizations for the removal or use of rock, sand, gravel, and silt from state-owned submerged and/or submersible land governed by Division 14 of the Department's administrative rules; and~~¶¶

~~(De) Authorizations for special uses of state-owned submerged and/or submersible land such as for short term access; the conduct of scientific experiments and the removal of sunken logs governed by Division 125 of the Department's administrative rules; and~~¶¶

~~(Ef) Authorizations for ocean energy conversion devices and fiber optic and other cables in, on, or over the Territorial Sea governed by Divisions 140 and 83 of the Department's administrative rules; and~~¶¶

~~(Fg) Authorizations for remediation and habitat restoration activities governed by Division 145 of the Department's administrative rules; and~~¶¶

~~(Gh) Authorizations for uses and structures specifically governed by any other chapter/division of the Department's administrative rules.~~¶¶

~~(c) Provide that 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) The Director may determine other uses and structures similar to those specified in OAR 141-082-0265 that are subject to a specific authorization under these rules.~~

Statutory/Other Authority: ~~ORS 183, 273, 274~~273.045, ORS 274.040

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

AMEND: 141-082-0255

RULE SUMMARY: This rule is amended to remove definitions that will no longer be applicable, amend definitions to current standards, and add definitions to address proposed rule changes as well as new rules.

CHANGES TO RULE:

141-082-0255

Definitions ¶¶

- (1) "Abandoned Structure" means a structure that has been left without authorization on, under, or over state-owned submerged or 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) ~~"Actual Annual Gross Income" means the gross revenue received by a lessee during the prior lease year~~adjacent Land Value" or "ALV" means the current real market value in dollars per square foot from the authorized use(s) of state-owned submerged and submersible land, including but not limited to the rental of boat slips, boat rental, launch fees or from associated incidental services within the authorized area~~oot assigned to the land as determined by the County Assessor, excluding the value of any structures or improvements, within the adjacent riparian tax lot or comparable tax lot(s).~~¶¶
- (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) ~~"Annual Lease Compensation" mean~~Payment" or "ALP" is the amount of compensation a lessee pays to money, as determined by the D~~department for the use of an authorized area.~~¶¶
- (7) ~~"Applicant" is any person applying for in accordance with OAR 141-082-0305, paid by a holder of a waterway use authorization.~~¶¶
- (8) ~~"Appraised Value" means an estimate of current fair market value of a parcel (expressed in dollars per square foot) derived by a state-certified appraiser or a salaried public employee of the federal government, the State of Oregon, or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee as defined in ORS 674.100(2)(h)~~lease to the department for the use of department-managed land.¶¶
- (7) ~~"Applicant" is any person applying for a waterway use authorization.~~¶¶
- (98) "Aquaculture" means the culture, farming, or harvesting of food fish, shellfish, and other plants ~~(exclusive of kelp which is governed by Division 125 of the Department's administrative rules)~~ 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.¶¶
- (10) ~~"Assessed Value" means the current value in dollars per square foot assigned to the land within the adjacent riparian tax lot or comparable tax lot by the county tax assessor. For purposes of this definition, "aquaculture" excludes kelp, which is governed by Division 125 of the department's administrative rules.~~¶¶
- (119) "Assignment" or "Assign" means a transfer by the lessee or licensee, with the D~~department's approval of the rights of use and occupancy of the leasehold authorized area or premises to another person or entity.~~¶¶
- (120) "Authorization" or "Waterway Use Authorization" means a lease, registration, or public facility license granted by the Ddepartment to an applicant conveying a right to limited use of a specific area of state-owned submerged and submersible land for a specific purpose for a fixed period of time.¶¶
- (131) "Authorized Area" or "Premises" is the area of state-owned submerged and submersible land defined in the waterway use authorization for which a use is authorized.¶¶
- (142) ~~"Bank Consent Agreement" is a document used when rights under a waterway use authorization are held as collateral for repayment of a loan.~~¶¶
- (13) "Boat House" 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 boat house. 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.¶¶
- (154) "Boat Lift" is a device that is used to lift a boat from the water for out-of-water moorage or storage; movement to another location; or to enable maintenance to be conducted on the watercraft.¶¶

- (165) "Boat Ramp", "Boat Launch", or "Boat Landing" is 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.¶¶
- (176) "Commercial Marina" is a marina, the operation of which results in; or is associated with any monetary consideration or gain.¶¶
- (187) "Commercial Use" means an 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, or retail service outlets.¶¶
- (198) "Compensation" or "Compensatory Payment" is the amount of money paid by an applicant for, or holder of an authorization to Formula" or "Formula" is the formula determined by the Department for the use of Department-managed land.¶¶
- (20) "Consent Agreement" is a document used when rights under a Waterway Use Authorization in accordance with OAR 141-082-0305(5) and used to calculate the compensation and held as collateral for repayment of a loan. The Department for use of State Lands must authorize the agreement prior to final owned submerged and submersible loan approval.¶¶
- (219) "Department" means the Department of State Lands.¶¶
- (220) "Derelict Structure" means a structure that is on, under, or over state-owned submerged or submersible lands 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.¶¶
- (231) "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 such a dilapidated condition 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.¶¶
- (242) "Diking District" means a public body organized under the provisions of ORS Chapter 551 for the purposes of improving by diking or damming the lands contained therein which are subject to overflow by tidewater or by freshets.¶¶
- (253) "Director" means the Director of the Department of State Lands or their designee.¶¶
- (264) "Dock/Float" means an individual, unenclosed, structure which may either be secured to the adjacent or underlying land or that floats that if 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/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.¶¶
- (275) "Dolphin" is a cluster of piles or piling which is bound together berthing or mooring structure that extends above water level and is not connected to the shore or any other structure.¶¶
- (286) "Drainage District" means a public body organized under the provisions of 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.¶¶
- (297) "Dwelling" means a structure designed or occupied as the permanent or temporary living quarters which is equipped with, but not limited to, any or a combination of: sleeping, cooking, bathing, toilet, and heating facilities.¶¶
- (3028) "Float-Rate Method" means a manner of calculating annual compensation based on a fixed dollar amount per square foot of leasehold area that varies by use classification.¶¶
- (31) "Floating Home" means a moored floating structure that is used as a dwelling and may be physically connected to upland utility services.¶¶
- (329) "Floating Recreational Cabin" is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, not either physically connected to any upland utility services (for example, i.e., water, sewer, or electricity) nor equipped with cooking, bathing, toilet, or heating facilities, and used only periodically or seasonally.¶¶
- (330) "Gangway" means a walkway or access ramp which connects; and is used exclusively for the purpose of traversing from the upland to the first structure or use which is subject to an waterway use authorization by the Department such as a dock/float, marina, floating home, or boat house.¶¶
- (341) "Goods or Merchandise" means products and raw materials transported in pursuit of trade, business, and/or economic gain. Goods and/or merchandise does not include passengers or materials used by a vessel for its

maintenance, alteration, or operation.¶

(352) "Government Functions" are activities federal, state, or local 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.¶

(363) "Highest Qualified Bidder" is a person who provides the highest bid ~~at an auction~~ through the competitive bid process outlined in OAR 141-082-0281(3), and who submits a complete application to, and meets all the requirements of the ~~D~~department for an authorization as provided in OAR 141-082-0280.¶

(374) "Historical Vessel" or "Historical Structure" is 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 non-profit organizations for which their primary purpose is youth-oriented, historical, educational, or scientific purposes.¶

(385) "Holder" is the person who has been issued a waterway use authorization under these rules.¶

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

(37) "Incidental Services" include, but are not limited to, restrooms; showers; minor boat and motor repair facilities; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; fish cleaning stations; a small office(s) for marina management; club house and/or meeting room; vending machines; small retail area for marine, fishing and other outdoor supplies and equipment; ice, packaged beverages and foods; limited service restaurants; and temporary restaurants.¶

(4038) "Industrial Use" means an activity conducted on, under, within, or over state-owned submerged and submersible land 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, but not limited to storage, warehouses, factories, or shipyards.¶

(4139) "Lease" ~~for the purposes of these rules, it means~~ a valid, enforceable contract executed by the ~~D~~department and signed by the lessee allowing for the use of a specific area of state-owned submerged and submersible land for a specific use ~~underregulated by the terms and conditions of the lease and these rules.~~¶

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

(431) "Limited Duration Use" means any temporary or infrequent use of state-owned waterways, with no long term or extended use intended. Limited ~~D~~duration ~~U~~use includes any commercial use of state-owned submerged or submersible land which ~~does not more than a fourteen~~ (occur for longer than 14) consecutive day ~~periods~~ in any ~~one (1) single~~ location. Commercial use may include, but is not limited to, barge staging to facilitate movement of goods ~~and services 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 merchand-iservices. Limited ~~D~~duration ~~U~~use also includes any non-commercial use of state-owned submerged or submersible land which ~~does not more than thirty~~ (occur for longer than 30) calendar days during any contiguous 12-month time period; within a distance of five miles.¶

(442) "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).¶

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

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

(475) "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.¶

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

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

(5048) "Marina" means a small harbor, boat basin, or moorage facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial and/or charter fishing boats.¶

(5149) "Marine Debris" means any manufactured or processed solid material that:¶

(a) Persists in the marine environment; and¶

(b) Is disposed of or abandoned, either with intentionality or unintentionally, in any waters of which the submersible or submerged lands belong to the State of Oregon.¶

(520) "Marine Industrial/Marine Service" means structures or uses which are commercial or industrial in nature and which need to be located in or adjacent to water ~~are always~~ because the use requires water access. Such uses include, but are not limited to: dry dock, ship, tugboat, barge and workboat moorage and storage; used for industrial uses such as vessel repair facilities; aquaculture ship breaking or building facilities, vessel repair, and

maintenance facilities; fish or seafood processing facilities; sea water desalination, mineral extraction, and other related processing facilities.¶

(51) "Maximum Rent Payment" is the maximum annual compensation due the department for each use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(7).¶

(52) "Minimum Rent Payment" is the minimum annual compensation due the department for each use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(6).¶

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

(54) "Multi-Family Dock" means a non-commercial 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.¶

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

(56) "Non-Marine Uses" means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to ~~water areas~~ 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.¶

(57) "Non-Commercial" means a use which does not result in and/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 "non-commercial."¶

(58) "Non-Commercial Marina" is one that is neither operated for, nor is associated with any monetary consideration or gain.¶

(59) "Not-for-Profit" or "Non-Profit" refers to 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 ~~D~~department, also qualify as a not-for-profit or non-profit organization for the purposes of these rules.¶

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

(61) "Ownership-Oriented Facility" means non-commercial 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.¶

(62) "Person" ~~include 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, not-for-profit organizations, or Indian Tribe.¶

(63) "Personal Recreational Use" means non-commercial structures or uses which are dedicated to private recreation and leisure and adjacent to property zoned residential or that otherwise allows residential activities.¶

(64) "Pile" or "Piling" is 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.¶

(64~~5~~) "Preference Right" means a riparian property owner's statutory privilege, as found 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 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 submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested lease area.¶

(65~~6~~) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).¶

(66~~7~~) "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.¶

(67~~8~~) "Protective Boom" or "Shear Boom" refers to logs or similar floating devices attached to each other to protect a structure or bank from floating debris, erosion, or wave action.¶

(68~~9~~) "Public Agency" or "Government Agency" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.¶

(69~~70~~) "Public Facility License" is a form of waterway use authorization issued by the Department for structures owned, operated, and maintained, or uses made, by a public agency such as transient use docks/floats, boat ramps, boat landings and/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.¶

(70~~1~~) "Public Trust Use(s)" means those uses embodied in the ~~P~~public ~~T~~trust ~~D~~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 ~~P~~ublic ~~T~~rust ~~U~~ses include, but are not limited to, short term moorage, camping, bank fishing, ~~picnic~~crabbing, clamming, picnicking, walking, hiking, and boating.¶

(712) "Recreation Area" means an area of an authorized use or structure dedicated to day-use recreation.¶

(723) "Redetermination" or "Redetermine" means, for the purposes of these rules, a revision, conducted in accordance with the administrative rulemaking process (ORS Chapter 183), of lease compensation using the methods, formulas, classifications or other factors~~gistration~~ is a form of waterway use authorization issued by the department allowing a qualifying non-commercial structure or use to occupy state-owned submerged and submersible land.¶

(74) "Rental Rate" means the rate, expressed as specified in OAR 141-082-0305.¶

(73) "Registration" is a form of authorization issua percentage, used to determine the annual lease payment for a waterway lease. The rate is determined by the Ddepartment allowing a qualifying structure or use to occupy state-owned submerged and submersible land and calculated based on the considerations outlined in OAR 141-082-0305(3).¶

(745) "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.¶

(756) "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, ~~and. This~~ also 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).¶

(76) "Riparian Land Value Method" means a manner of calculating the annual lease rental payment by multiplying the assessed value times five percent times the area of the leasehold for each use classification.¶

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

(78) "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. The ~~D~~department is the administrative arm of the State Land Board.¶

(79) "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 a waterway use authorization. Structures include boat houses, floating homes, and other structures secured to a pier or piling, ~~except vessels, it cannot be both.~~¶

(80) "Sublease" means a subordinate lease between the lessee and a third party of all or part of the authorized area, where the lessee remains contractually and primarily liable under the lease with the ~~D~~department.¶

(81) "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.¶

(82) "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.¶

(83) "Temporary Restaurant" means the same as ORS 624.010.¶

(84) "Tide gGate" means a device mounted to a bridge or culvert to regulate the tidal flow or water level on the inside of the gate.¶

(85) "Total Maximum Daily Load (TMDL)" as defined in OAR 340-042-0030(15) means a written quantitative plan and analysis for attaining and maintaining water quality standards and includes the elements described in OAR 340-042-0040.¶

(86) "Use" means an activity with or without associated structures on state-owned submerged and submersible land that requires a waterway use authorization under these rules.¶

(867) "Use Classification" means the specific category of similar uses and structures subject to authorization described in OAR 141-082-030265.¶

(878) "Vessel" means a ~~boat or small~~ship, boat, watercraft, or vehicle that is used for traveling on water. A vessel is not a structure as defined in this subsection (79) above.¶

(889) "Voluntary Habitat Restoration Work" means the same 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.¶

(890) "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.¶

(901) "Wharf" or "Wharves" as defined in ORS 780.040 and as used in these rules means 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 ships, boats, or 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 submersible or submerged lands 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 governmental functions.¶

(912) "Wharf Certification" means a written certification from the Department that a structure is a wharf as defined in ORS 780.040 and as used in these rules.

Statutory/Other Authority: ORS 183, 273, 274, 273.045, ORS 274.040, ORS 274.043

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

AMEND: 141-082-0260

RULE SUMMARY: This rule is amended to include the ability for the Department to deny applications for uses that are inconsistent with a Total Maximum Daily Load Plan (TMDL) or when a structure is not in a state of good repair. Additionally, prevents the Department from executing authorizations until all documents, fees, payments, financial assurances, or other requirements have been received by the Department.

CHANGES TO RULE:

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 State 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 this state, 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 waterway use 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 authorize an existing or proposed use or structure if it:¶
 - (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 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; ~~a Total Maximum Daily Load Plan;~~ or the Oregon Territorial Sea Plan);¶
 - (f) ~~It is~~ inconsistent with any endangered, 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¶
 - (gh) ~~If 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 ~~in excess of 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 requires a structure ~~into excess of~~ 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 certificate or waterway use authorization until all documents, fees, payments, financial assurances, or any other remaining documents required by the department have been received by the department. Certificates, registrations, leases, and licenses issued under these rules are executed upon signature by the department.¶

(10) All references in these rules to "state-owned submerged and submersible land" include state-owned submerged lands or submersible lands or both.

Statutory/Other Authority: ORS 183.273, 274.273.045, ORS 274.040, ORS 274.043

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

AMEND: 141-082-0265

RULE SUMMARY: This rule is amended to add language which helps clarify what types of uses require a lease, license, or registration under OAR 141-082.

CHANGES TO RULE:

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 ~~D~~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) Fish or other processing facilities, sea water desalination and mineral extraction facilities;~~¶

~~(e)~~ Log raft, log storage, or log booming areas;¶

~~(f)~~ Historical structures and historic vessel moorages;¶

~~(g)~~ Commercial and non-commercial marinas;¶

~~(h)~~ Multi-family docks not qualifying for registration;¶

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

~~(j) Individual~~ Non-commercial docks/floats, boathouses, and floating recreational cabins not qualifying for registration or public facility license;¶

~~(k)~~ Commercial, industrial, or residential uses;¶

~~(l)~~ Water taxi, cruise ship, and tour boat moorages;¶

~~(m)~~ Ownership-oriented facilities; and¶

~~(n)~~ Other similar uses and structures not exempted by statute or these administrative rules, and determined by the ~~D~~director to be subject to lease.¶

(3) Uses and structures requiring a registration are:¶

(a) Non-commercial structures including docks/floats, multi-family docks, boat lifts, and/or boat-houses of 2,500 square feet or less; measurement excludes calculation of associated gangways, pilings, dolphins, mooring buoys, protective and 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, and protective booms;¶

(c) Water sport structures ~~unless~~including those authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application for Special Use Device Permits);¶

~~(d) Rip-rap, p~~Erosion control structures and rip-rap;¶

~~(e)~~ Pilings, dolphins, and private boat ramps;¶

~~(f)~~ Structures constructed by a drainage 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 ~~D~~director to be eligible for registration.¶

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

(a) Boat ramps~~, boat launches, and~~ landings;¶

(b) Viewing structures;¶

~~(c) Fishing, decks, and boardwalks;~~¶

~~(d) Fishing, crabbing, or otherwise public~~ piers;¶

(d) Recreational boating, transient docks/floats;¶

(e) Structures, piers, docks/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 public 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 183,273,274~~273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0270

RULE SUMMARY: This rule is amended to add requirements that structures not open and clear of debris, materials, or other equipment, do not qualify as a wharf. Additionally, when a wharf changes its use, the owner must obtain the appropriate authorization from the Department.

CHANGES TO RULE:

141-082-0270

Wharf Certification ~~¶~~

- (1) Any person owning a wharf located on state-owned submerged and submersible lands must certify that the structure is a wharf. The certification of the wharf shall be on a form provided by the ~~D~~department. There is no fee associated with submission of a wharf certification. ~~¶~~
- (2) Upon receipt of a wharf certification form, the ~~D~~department shall review it for completeness. If the structure is a wharf as defined in ORS 780.040 and in these rules, the ~~D~~department shall issue to the owner a written certification that the structure is a wharf. There is no compensation due the ~~D~~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 federal, state, or local government agencies in order to perform the function of that agency or protect the health and safety of the public they serve; ~~¶~~
 - (b) A ship, boat or vessel owned by a federal, state, or local 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 lands, the structure will be subject to a waterway lease or other appropriate waterway use authorization. ~~¶~~
- (4) A wharf certification is valid for a term of ~~ten~~five years from the date it is issued. Upon expiration of a wharf certification, the owner thereof must recertify that the structure is a wharf as set forth above. ~~¶~~
- (5) If the ~~D~~department does not certify the structure as a wharf, the owner thereof must obtain the appropriate authorization from the ~~D~~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 ~~D~~department. However, the owner of the wharf must notify the ~~D~~department in writing describing the repair or replacement within 90 calendar days of making such repairs or replacement. ~~¶~~
- (7) The ~~D~~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 ~~D~~department of a change in the location, size, use, or the ownership of the wharf within the time provided ~~shall~~may result in the automatic termination of the wharf certification. ~~¶~~
- ~~(89)~~ If the owner changes the use to a use that is subject to another authorization under these rules, and therefore cannot be certified as a wharf, the owner must obtain the appropriate authorization for such use or uses from the department in compliance with these rules. ~~¶~~
- ~~(10)~~ The ~~D~~department shall provide a copy of the wharf certification to the appropriate county official in the county where the wharf is located. ~~¶~~
- ~~(911)~~ 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 must obtain the appropriate waterway use authorization for such use or uses from the Department in compliance with these rules.

Statutory/Other Authority: ~~ORS 183, 273, 274~~ORS 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0275

RULE SUMMARY: This rule was amended to make the rules more readable and to clarify what needs to be submitted to the Department when applying for a lease or public facility license.

CHANGES TO RULE:

141-082-0275

~~Application Requirements for a Lease or~~ and Public Facility License-Application Requirements ¶

(1) Any person wanting to use state-owned submerged and submersible land that is subject to a lease or public facility license must, apply for the use using a form provided by the ~~D~~department, ~~apply for and obtain the required authorization~~ prior to using the submerged and submersible land.¶

(2) All applications for a lease or public facility license must be fully submitted signed and completed and accompanied by a ~~non-refundable~~ fee payable to the ~~D~~department ~~in the amount of \$750~~.

Statutory/Other Authority: ~~ORS 183, 273, 274~~ 273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0280

RULE SUMMARY: This rule was amended to remove references to application fees and timelines, which are addressed in a new rule and to clarify the conditions under which the Department can reject or deny applications. The rule was also amended to establish criteria for public comments.

CHANGES TO RULE:

141-082-0280

Lease and Public Facility License Application Review Process ¶

- (1) Upon receipt of an application for a lease or public facility license to use state-owned submerged and submersible land, the Department shall review it for completeness and to 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 application shall be deemed accepted by the Department.¶
- (2) 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. ~~If a rejected application is resubmitted within 120 calendar days from the date the Department returned the application, no additional application fee shall be assessed.~~¶
- (3) If more than one application for a specific 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 accept and proceed with that application and deny the others.¶
- (4) Notwithstanding the provisions of OAR 141-082-0260(6)(a), the Department may accept 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).¶
- (5) The Department may reject or 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 other form of authorization offered by the Department; 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.¶
- (6) ~~Following acceptance of an application for a lease, the Department shall offer a preference right to lease to the eligible party as defined in OAR 141-082-0255(64) and (65), hereafter referred to as the preference right holder. The Department shall take the following steps to offer a preference right:¶~~
 - (a) ~~If the riparian property adjacent to the proposed lease area consists of tax lots having different owners, the Department shall subdivide the requested lease area 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 lease area 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 ordinary high water, perpendicular to the thread of the stream creating a single lease area.~~ The application does not contain complete information or otherwise does not provide the information requested on the application form.¶
 - (d) ~~The applicant has not responded to a request for more information for 120 calendar days or more.~~¶
 - (ce) ~~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 amount of lease area subject to the preference right of an adjacent riparian owner.~~ The use does not conform to the provisions of these rules.¶
 - (d6) ~~Following identification of the preference right holder, or 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 must provide the Department written notice of the preference right holder's intent to exercise the preference right to lease the proposed lease area, and submit a new application for a lease to the Department for the use applied for or any other use.~~¶
 - (e) Upon receipt of an application from a preference right holder, the Department shall review it for completeness and to 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 preference right holder's application shall be deemed accepted by the Department shall offer a preference right to the preference right holder, following the process outlined in OAR 141-082-0281.¶¶

(f) Upon acceptance of a preference right holder's application, the Department shall process the application as set forth in OAR 141-082-0280(8)-(13), below.¶¶

(g) If the preference right holder does not exercise the preference right, or if the preference right holder's application is rejected, or if application is accepted but the preference right holder fails to execute a lease with the Department within 120 calendar days of the date of the preference right holder's notice of intent to the Department to exercise the preference right, the preference right holder shall be deemed to have waived the preference right and the Department shall process the application initiating the offering of the preference right as set forth in OAR 141-082-0280(7)-(13), below.¶¶

(7) If the preference right holder waives the preference right, 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) 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 a bid. Except as provided in OAR 141-082-0280(9), the department, upon acceptance of the application, shall circulate the application to various local, state, and federal agencies and other interested persons including Tribal governments, adjacent property holders, affected lessees, permittees, grantees, and other authorization holders for review and comment. The department may require the applicant to respond to comments where an annual lease compensation rate equal to or greater than the minimum bid amount. The highest bidder shall be awarded the right to lease, subject to compliance with the provisions of these rules.¶¶

(c) Following the closing of bids applicable. As a part of this review, the Department shall provide written notice to the highest 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 must provide the Department written notice of the bidder's intent to enter into a lease for the proposed lease area.¶¶

(a) The presence of state or federal listed threatened, endangered, submit a new application for a lease for the use that was the subject of the bid, and submit a bid deposit in a sum equal to one-half of the annual lease compensation for the use that was the subject of the bid. The purpose of the bid deposit and candidate plant, fish, and wildlife species and archaeological and historic resources is to ensure the bidder enters into a lease with the Department.¶¶

(d) Upon receipt of the application, the Department shall review it for completeness and to 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 application shall be deemed accepted by the Department. Upon acceptance of the application, the Department shall process the application as set forth in OAR 141-082-0280(8)-(13), below.¶¶

(e) If the bidder awarded the right to lease does not exercise the right to lease, or if the bidder's application is rejected, 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 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 bidder according to the procedures set forth in OAR 141-082-0280(7)(c).¶¶

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

(8) Except as provided in OAR 141-082-0280(10), the Department shall notify the appropriate city or county planning department, pertinent state and federal agencies, federally recognized tribal governments, ports and all lessees and adjacent riparian property owners (as available from the local county assessor's office records) of the application and request review and comment. The Department may require the applicant to respond to comments where applicable. 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 public trust uses of the requested 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 authorized area or use of that area since the time ~~those~~any city or county approvals were given.¶

(140) Based on the evaluation of the application and the comments received, the ~~D~~Department shall:¶

- (a) Approve the application and ~~continue to process~~execute the lease or public facility license;¶
- (b) Require that the applicant modify and resubmit the application; or¶
- (c) Deny the application.¶

(121) The ~~A~~Authorized ~~A~~Area shall include all state-owned submerged and submersible lands ~~not available for public trust uses~~ including the area between moorage slips, boat wells, and all gangways, except those uses qualifying as a registration.¶

(132) In the event the ~~D~~Department cannot readily determine the limits/boundaries of the authorized area requested from the description provided by the applicant or, if in the judgment of the ~~D~~Department, a dispute may arise concerning the description, the ~~D~~Department may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The applicant ~~wi~~shall be responsible for any costs of the survey.

Statutory/Other Authority: ~~ORS 183, 273, 274~~273.045, ORS 274.040, ORS 274.043

Statutes/Other Implemented: ORS 274.040, ORS 274.043

ADOPT: 141-082-0281

RULE SUMMARY: This rule was adopted to create a separate rule detailing the existing preference right and competitive bid process. Sections were added to clarify what an advertisement for a bid and what a submitted bid should contain, as well as when the Department is required to perform a preference-right review.

CHANGES TO RULE:

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 lease area consists of tax lots having different owners, the department shall subdivide the requested lease area 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 lease area 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 lease area.¶

(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 amount of lease area subject to the preference right of an adjacent riparian owner.¶

(d) Following identification of the preference right holder, or 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 must provide the department written notice of the preference right holder's intent to exercise the preference right to lease the proposed lease area 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 preference right holder's application shall be deemed accepted by the department.¶

(f) Upon acceptance of a preference right holder's application, the department shall process the application as set forth in OAR 141-082-0280(7) through (12).¶

(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 rejects or denies the preference right holder's application, in accordance with OAR 141-082-0280(5); or¶

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

(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 bidder shall be awarded the right to lease, 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) The amount per year the bidder intends to pay the department for use of the requested lands.¶

(e) Following the closing of bids, the department shall provide written notice to the highest 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 must provide the department written notice of the bidder's intent to enter into a lease for the proposed lease area 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 application shall be deemed accepted by the department. Upon acceptance of the application, the department shall process the application as set forth in OAR 141-082-0280(7) through (12).[¶]

(g) If the bidder awarded the right to lease does not exercise the right to lease, or if the bidder's application is rejected, 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 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.

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

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0285

RULE SUMMARY: This rule was amended to establish a 5-year term for new waterway leases, and criteria for how the department determines the term for renewals. In addition sections were added to address the condition of overwater structures, the removal of structures, improvements, or vessels upon receiving notice from the State, and how the authorization holder conducts operations within the premises.

CHANGES TO RULE:

141-082-0285

~~General Lease and Public Facility License~~ General Conditions and Form ¶

(1) The ~~D~~department shall ~~only~~ offer a ~~standard~~ 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 ~~D~~department, the applicant shall have ~~ninety (90)~~ calendar days from the date of offer to execute a lease or public facility license with the ~~D~~department. The ~~D~~department may revoke the offer after ~~ninety~~ 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 Ddirector, the initial term for a lease or public facility license for state-owned submerged and submersible land shall not exceed 15 years. Tissued 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 initial renewal term for a lease or public facility license shall not exceed 15 years and shall be determined by the Ddepartment and shall be 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~~ ¶

(c) Whether the applicant'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 or other form of authorization offered by the department; ¶

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

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

(f) Whether the holder provides free or low-cost public access; ¶

(g) The general provisions contained in these rules; and ¶

(4g) The Department may include in a lease or public facility license, the right of the holder of a lease or 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 to renew issued under the authorization for an additional term not to exceed 15 years, subject to the requirements of OAR 141-082-0290, se rules shall not exceed 15 years and shall be determined by the department and based on: ¶

(5a) The Department may require an applicant or holder of a lease to obtain a surety bond or other form of financial assurance acceptable to 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 Ddepartment to ensure that the lessee will perfo; ¶

(c) The general provisions contained in these rules; and ¶

(d) Additional criteria or rationale, consistent with these rules and as determ-in accordance with all terms and conditions of the lease. The surety bond amountd 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 Ddepartment and shall be reasonable and within generally accepted business practices. A certificate of deposit in an amount equal to the amount requi based on the criteria listed in section (5). ¶

(7) Each lease issued under these rules shall consist of one or more parcels. ¶

(8) When a proposed or existing lease area 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 for a surety bond and that names the State of Oregon as co-owner may be substituted in lieu of a bof stream, making a separate parcel fronting and abutting each adjacent riparian tax lot. ¶

(9) For a multi-use lease, the department shall subdivide the lease area into separate parcels for each use classification. A parcel cannot have more than one use classification.

(10) 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 authorized area to public trust uses, or restrict public trust uses within all or a portion of the authorized 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 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 Oregon 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 Oregon State Marine Board.

(c) The holder must provide written notice to the department no less than fourteen (14) calendar days prior to the implementation of any closure or restriction. The written notice must 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 Oregon State Marine Board regarding the closure or restriction, if required under OAR 141-082-0285(6) subsection (9)(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.

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

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

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

(14) 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.

(15) 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.

(16) 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.

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

(18) The holder shall comply with all the provisions of the waterway use authorization and is liable for any violation of law, 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.

(19) Within 90 calendar days after the expiration or earlier termination of a public facility license or waterway lease, 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 lands as a result of removing any structures, vessels, or other improvements.

(20) Prior to issuance of a lease to use or occupy state-owned submerged and submersible land for the uses described in OAR 141-082-0265(2) of these rules, the applicant, as a condition of their authorization and as required by ORS 274.040(3)(d), must 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.

(21) 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.¶

(22) The holder must 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.¶

(23) 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 Oregon State Marine Board requirements for sewage collection and wastewater disposal for vessels and floating structures.¶

(24) 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.¶

(25) 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 Oregon 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.¶

(26) 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 183,273,274273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0290

RULE SUMMARY: This rule was amended to adjust the timeline for when authorizations can start the renewal process and to clarify when the Department charges a new application fee or a renewal application fee.

CHANGES TO RULE:

141-082-0290

Lease and Public Facility License Renewal ¶¶

(1) Notwithstanding any provisions in the lease or public facility license to the contrary, the holder of a lease or public facility license containing a right to renew, shall exercise the right to renew as set forth below.¶¶

(2) The holder of a lease or public facility license shall exercise the right to renew not less than ~~9~~180 calendar days, but not more than 1 year prior to the expiration of the then current term of the lease or public facility license. If the holder of a lease or public facility license fails to renew within the time required, the lease or public facility license ~~shall~~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 must submit to the ~~D~~department at least 180 calendar days prior to the expiration of the current term.¶¶

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

(A) Notifying the ~~D~~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 local, state, or federal law; and¶¶

(C) Certifying that the existing uses and structures are consistent with those authorized under the lease or public facility license.¶¶

(b) A non-refundable renewal ~~fee of \$375 payable to the Department if;~~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 leasehold area; or¶¶

(~~AB~~) No changes in size or use and a decrease in size have ~~been made~~requested within the leasehold area; and¶¶

(~~BC~~) The application was received ~~within~~not less than 90 days of ~~calendar days prior to the expiration of the lease.~~¶¶

(c) ~~If~~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 made~~requested within the leasehold area, ~~then a non-refundable \$750 application fee is required; or~~¶¶

(C) The application was received less than 90 calendar days prior to the expiration of the lease.¶¶

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

(~~45~~) Upon receipt of the written statement and ~~renewal~~appropriate fee, the ~~D~~department shall determine, in its sole discretion, whether:¶¶

(a) The right to renew was exercised not less than ~~9~~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 authorization, the applicable statutes; or Oregon Administrative Rules; and¶¶

(c) The holder of the lease or public facility license has fully complied with any other authorization granted to them by the ~~D~~department.¶¶

(~~56~~) If the Department determines that the renewal complies with the requirements of OAR 141-082-0290(4)As a condition of renewal, the ~~D~~department shall ~~provide written notice to the holder that have the right to amend the terms and conditions of~~ the lease or public facility license ~~has been renewed for the additional term stated in the notice. As a condition of renewal.~~¶¶

(7) If the department determines that the renewal complies with the requirements of section (4), the Ddepartment shall have thprovide wright to require amendment to the terms and conditions of the lease at the time of renewal. If the lease or public facility license contains a provision requiring that the annual compensation be re-determined on renewal, the written notice from the Department shall include the new annual compensation ratetten 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 annual lease payment determined pursuant to the provisions in OAR 141-082-0305.¶¶

(~~68~~) If the ~~D~~department determines that the renewal does not comply with the requirements of ~~OAR 141-082-0290~~section (4), the Ddepartment shall provide written notice to the holder that the lease or public facility license 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.¶¶

(79) 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 licenses as provided in these rules.

Statutory/Other Authority: ORS 183.273, 274.273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0295

RULE SUMMARY: This rule was amended to reformat and reorganize the rule for readability and to clarify the process for requesting a modification of lease or license terms.

CHANGES TO RULE:

141-082-0295

Lease and Public Facility License Modifications ~~for Size and Use~~ ¶

~~(1) Change in Use: The holder of a lease or public facility license~~ The department will process and review all applications for changes of the authorized use or for an increase in the authorized area under a lease or public facility license in the same manner as a new lease or public facility license application as specified in these rules. If the department accepts the changes, it will 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 authorization~~ 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, or federal law.~~ ¶

~~(C) The holder shall submit an application to the Department on a form provided by the Department together with an application fee of \$750 nonrefundable~~ new application fee in accordance with OAR 141-082-0306(2). ¶

~~(2b) Reconfiguration of existing Uses and Structures: The holder of a lease or public facility license may change the internal arrangement of the uses or structures within an~~ Increase in Area. ¶

~~(A) The holder may not increase the authorized 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, or 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 Area.~~ ¶

~~(A) The holder may reduce the size of the authorized area without prior written authorization~~ approval from the Department. However, t ¶

~~(B) The holder must provide the Department written notice of the change~~ reduction in the size of the authorized 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.~~ ¶

~~(3d) Increase in area: Modifications of Terms or Conditions.~~ ¶

~~(A) The holder of a lease or public facility license may not increase the authorized area without prior written authorization from the Department~~ request changes to the terms or conditions of the authorization document. ¶

~~(B) The holder shall submit an application to the Department that includes certification indicating that the proposed expansion is consistent with local, state, or federal law.~~ hat 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 an application fee of \$750 nonrefundable~~ amendment application fee, in accordance with OAR 141-082-0306(4). ¶

~~(4D) Decrease in area: The department, in its sole discretion, may reject 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 reduce~~ change the size of the internal arrangement of the uses or structures within an authorized area without prior written authorization from the Department. However, t ¶

~~(b) The holder must provide the Department written notice of the reduction in the size of the authorized area, and an administrative fee of \$375,~~ change 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.~~ ¶

~~(5) The Department will process and review all applications for changes of the authorized use or for an increase in the authorized area under a lease or public facility license in the same manner as a new lease or public facility license application as specified in these rules.~~

Statutory/Other Authority: ~~ORS 183,273,274~~ 273.045, ORS 274.040

Statutes/Other Implemented: ~~ORS 274.040,~~ ORS 274.043

AMEND: 141-082-0300

RULE SUMMARY: This rule was amended to reformat and reorganize the rule for readability, to clarify that sublease agreements of less than 12 months are exempt from subleasing requirements, and to change the deadline for assignments from 60 days to 90 days.

CHANGES TO RULE:

141-082-0300

Subleasing and Assignment of Leases and Public Facility Licenses ¶

(1) Subleasing a Lease. ¶

(a) The holder of a lease may not sublease any portion of the authorized area 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 authorized area has been sublet without the Department's written consent. ¶

(b) Notwithstanding any provisions in the lease to the contrary, the holder of a lease shall comply with the process set forth below in subleasing any portion of an authorized area where Department's consent is required by the lease or by these rules. ¶

(c) In order to sublease any portion of an authorized area where the Department's consent is required, the holder must submit a, no less than 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, together with a; ¶

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

(C) A non-refundable application fee of \$750 payable to the Department. The application, proposed sublease, and application fee must be submitted to the Department no less than 60 calendar days prior to the date of the proposed subletting, in accordance with OAR 141-082-0306(7). ¶

(ed) The holder of a lease 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 authorized area and the use allowed under the sublease is included in the authorized use of the lease (for example, the rental of boat slips) for a term not to exceed 12 months. The lease holder must provide the department written notice of the sublease within 30 calendar days. ¶

(2) Assignment of a Lease. ¶

(a) The holder of a lease 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 holder of a lease 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 holder of a lease must submit an application, no less than 90 calendar days prior to the Department, on a form provided by the Department, together with a non-refundable application fee of \$750 payable the following: ¶

(A) An application to the Department. The application and application fee must be submit on a form provided to by the Department no less than 60 calendar days prior to the date of the proposed assignment; and ¶

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

(ed) The Department may reject 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. ¶

(de) 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 all parties the department. ¶

(ef) 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. ¶

(fg) 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. ¶

(gh) To assign a lease to a spouse or child upon the death of the holder, the spouse or child must 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 holder's spouse or child upon the death of the holder.¶

(3) Assignment of a Public Facility License.¶

(a) The holder of a public facility license shall not assign the public facility license without the prior written consent of the ~~D~~department, unless assignment without the ~~D~~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 ~~D~~the ~~d~~epartment's consent is required by the public facility license or by these rules, the holder of a public facility license must submit an application to the ~~D~~department; on a form provided by the ~~D~~department.¶

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

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

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

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

Statutory/Other Authority: ~~ORS 183, 273, 274~~273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0305

RULE SUMMARY: This rule was amended to change from the methods for calculating rent from three methods to one, to adjust application fees to account for inflation and to establish future increases, to cap rent increases at renewal, adjusting the minimum rent and establishing a maximum allowed rent that the Department charges.

CHANGES TO RULE:

141-082-0305

Lease Compensation Annual Lease Payment Formulas; and Methods and Annual Lease ¶

Compensation Adjustments ¶

(1) The Department shall establish three methods to determine the compensation a single compensation formula to determine the annual lease payment (ALP) owed for the use of state-owned submerged and submersible land. For some uses, more than one method is available. ¶

(2) The three methods are termed the: ¶

(a) "Flat Rate Method" (which is determined by multiplying the number of square feet of an area requested requiring a lease under these rules, effective January 1, 2026. The department shall publish the established formula, as well as all fees established in these rules, on that has been authorized, by a specific rate unique to the use) ¶

(b) "Riparian Land Value Rate Method" (which is based on a percent of the assessed value of the upland adjacent to the area which has been requested, or that has been authorized) under these rules shall be determined using the following factors: ¶

(c) "Percent of Gross Method" (which is based on the percent of the actual annual gross income received by the lessee from using the area that has been requested, or that has been authorized). ¶

(3) Regarding the adjacent upland property's land value (ALV), as determined by the County Assessor, and excluding the value of any structures of which method (OAR 141-082-0305(2)(a), (b) or (c)) is used, under no circumstances shall the compensation owed be less than the base minimum rate, set forth in OAR 141-082-0305(6). ¶

(4) For many use classifications, an applicant has the option of choosing among the above three methods to determine the compensation owed for their use of state-owned submerged and submersible land. Under their improvements, or another comparable upland property or properties selected by the department, in the event the adjacent upland property's land value is artificially depressed due to the presence of hazardous materials or some other extenuating circumstance as identified in OAR 141-082-0305(7), the department shall choose the method to be used to determine the compensation owed. ¶

(b) A rental rate (RR), expressed as a percentage, as determined by the Department for a use of state-owned submerged and submersible land. ¶

(5) Once an applicant or the Department has selected a method of determining compensation, that method shall remain in effect for the entire term of the lease unless there is a change in the use and within generally accepted appraisal policies and practices; and ¶

(c) The area, in square feet, authorized for lease (AA) by the department. ¶

(6) The base minimum annual compensation for any lease shall be the greater of: ¶

(a) \$0.0085 per square foot times the lease area or four hundred and six dollars (\$406) which the department may adjust the rental rate for any individual lease based on the following considerations: ¶

(a) Lessee's or applicant's participation in programs that benefit the health and safety of waterways, such as rate in effect in July 2017. The base minimum annual compensation the Clean Marina Program at Oregon States shall be increased by three percent each year on July 1st; or Marine Board; ¶

(b) The lessee or applicant provides free or low-cost public access; ¶

(c) The annual compensation resulting from a competitive bid award. ¶

(7) In the event the lessee and the Department cannot agree on the method of calculating the annual compensation type of waterway designation, or other appropriate classification, the activity occurs on, such as state scenic waterway, essential salmonid habitat, Coastal Management Zone, or estuary classification; ¶

(d) The use classifications or any aspect of outlined in section (12); or ¶

(e) Other method to be used, the annual compensation owed by the lessee shall be determined by the Department using the flat rate method which shall remain in effect until such time as a new rate is implemented at the next lease anniversary date. If, during the term of the lease, the lessee and the department or information based on generally accepted appraisal practices and principles. ¶

(4) The rental rate shall not be less than 3 percent or more than 8 percent. The Department reach agreement on the method of compensation, the new lease rate shall be implemented on the next lease anniversary date. ¶

(8) The annual compensation will only increase the rental rate by up to one half of one percent or reduce the rental

rate by up to three quarters of one percent for any individual non-commercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages consideration identified in section (3). The department shall be calculated based on the area encompassed by the perimeter of the structures, excluding gangways, protective booms, pilings, and dolphins ntal rate starting at 3 percent.¶¶

(95) The following eight use classifications and related lease compensation formulas described in OAR 141-082-0305(9)(a) through (h) shall be used to establish annual lease compensation payments or minimum bid, whichever is applicable, subject to the base minimum annual lease compensation payment established in OAR 141-082-0305(6). For the riparian land value method descannual lease payment shall be determined by multiplying the rental rate by the value of the adjacent land and the authoribzed below, utility, railroad or publicly-owned land shall not be used for establishing the assessed or appraised value [AV] unless the assessed value is readily available and reflective of comparable similarly situated tax lots. If not, the assessed or appraised value [AV] of privately owned comparable tax lots shall be substituted. In cases where the adjacent riparian tax lot is less than 100 feet deep, the Department shall assume the adjacent riparian tax lot has a depth of 100 feet and calculate the assessed or appraised value [AV] based on area, as illustrated in the formula below:¶¶

$(ALV \times RR) \times AA = ALP$ ¶¶

(6) Under no circumstances shall the annual lease payment owed be less than the minimum rent payment set forth below. The minimum rent payment for any individual use or parcel shall be the greater of:¶¶

(a) \$1,200 effective July 1, 2026;¶¶

(b) \$1,400 effective July 1, 2031;¶¶

(c) \$1,600 effective July 1, 2036;¶¶

(d) \$1,800 effective July 1, 2041; or¶¶

(e) The minimum bid set by thise derived area.¶¶

Formula Factors:¶¶

AV = Assessed value or appraised value (as defined in OAR 141-082-0255(8) and (10) of these rules) whichever is less except as stated in OAR 141-082-0305(14) and (15).¶¶

LA = Authorized lease area in square feet of state-owned submerged and submersible land.¶¶

AC = Annual compensatory payment¶¶

Uses and Compensation Determination Methodologies:¶¶

(a) Commercial marinas and docks, and commercial floating home moorages. The annual lease compensation payment calculation is partment for a competitive bid, pursuant to the requirements of ORS 274.040 and in accordance with OAR 141-082-0281(3).¶¶

(7) The annual lease payment for any individual use or parcel shall not be more than the maximum rent payment as set forth below:¶¶

(a) Effective July 1, 2026: \$150,000.¶¶

(b) Effective July 1, 2041: \$175,000.¶¶

(8) Excepting leases subject to the lesser of the:¶¶

(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or¶¶

(B) Threertrictions listed in ORS 90.324 or ORS 90.600, a renewing lease's annual lease payment shall not exceed 15 percent of actual annual gross income; or¶¶

(C) Riparian land value method of $AV \times LA \times \text{five percent} = AC$ the last annual lease payment charged by the department.¶¶

(b9) Non-commercial marinas and docks. The annual lease compensation payment calculation is the lesThe annual lease payment for any individual user of the:¶¶

(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or¶¶

(B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$; r parcel shall be the greater of:¶¶

(a) The minimum rent payment, as determined in section (6);¶¶

(cb) Non-commercial floaThe compensation resulting home moorages includfrom using those operated by ownership-oriented organizations. The annual lease compensation calculation is the lesser of the:¶¶

(A) Flat rate method of \$0.0298 per square foot (whiche formula set forth in section (5).¶¶

(10) The annual lease payment for an individual lease issued under these rules shall be increase each year on July 1st byd annually on three percent) x LA; or¶¶

(B) Riparian land value method of $AV \times LA \times \text{five lease anniversary date by 3 percent} = AC$.¶¶

(d) Individual floating homes and similar structures and uses. The annual lease compensation calculation is the lesser of the:¶¶

(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or¶¶

(B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.¶

(e) Historical vessels or structures not eligible for registration. The annual lease compensation is \$348 (which shall increase each year on July 1st by three percent) per structure or combination of structures at a single location or facility.¶

(f) Log boom areas, log raft storage areas. The annual lease compensation calculation is the les.¶

(11) The annual lease payment for individual noncommercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages shall be calculated based on the:¶

(A) Flat rate method of \$0.0148 per square foot (which shall increase each year on July 1st area encompassed by three percent) $\times LA$; or¶

(B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.¶

(g) Marine industrial and marine service commercial uses/structures. The annual compensation payment calculation is the lesser of the:¶

(A) Flat rate method of \$0.5109 per square foot (which shall increase each year on July 1st by three percent) $\times LA$; or¶

(B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$.¶

(h) Non-Marine Uses. The annual compensation payment calculation is the lesser of the:¶

(A) Flimeter of the structures, excluding gangways, protective booms, pilings, and dolphins. This provision does not apply to uses that, rate method of \$0.5967 per square foot (which shall increase each year on July 1st by three percent) $\times LA$; or¶

(B) Riparian land value method of $AV \times LA \times \text{five percent} = AC$ regardless of size, are ineligible for registration.¶

(102) The above described flat rate method factors (OAR 141-082-0305(9)(a) through (h)) are those in effect in July 2017. Each flat rate method factor Leases issued by the department under these rules shall be increased by three percent every year on July 1st. Annual lease compensation shall be billed on the basis of the adjustments described in OAR 141-082-0305(9). For any newly executed lease, the applicable flat rate that shall be applied is that which is in effect at the time of the execution of the lease. The annual compensatory payment for executed leases shall also be adjusted/redetermined annually on each lease anniversary date by increasing the annual lease compensation payment by three percent. This annual compensatory payment adjustment/redetermination for executed leases shall not apply to those calculated based on actual annual gross income.¶

(11) Compensation rates classified by the department using the following use classifications:¶

(a) Noncommercial use:¶

(b) Personal recreational use:¶

(c) Commercial use:¶

(d) Aquaculture facilities:¶

(e) Historic vessel or structure:¶

(f) Log raft and log storage:¶

(g) Marinas:¶

(h) Marine industrial use:¶

(i) Marine services use:¶

(j) Nonmarine use; and¶

(k) Other use classifications as determined by the director.¶

(13) The annual lease payment for each use within each authorized area shall be calculated by the Department on a square foot basis of state-owned submerged and submersible lands as applicable for each use classification (for example, non-commercial marina use), and based on the lessee's choice of rate calculation methods except as noted in OAR 141-082-0305(7) above. method published by the department in accordance with section (1).¶

(a) More than one use (known as a "mixed use") may be permitted by the Department within an authorized area. Compensation rates shall be calculated for each use area based on the most applicable use classification, as specified in OAR 141-082-0305(9)(a) through (h), and added together to derive the total annual compensation payment or minimum bid for the entire leasehold. Compensation for each use classification is subject to the base annual minimum compensation as specified in OAR 141-082-0305(6).¶

(12) Documentation supporting the annual reporting statement submitted to the Department by a lessee must be available upon request by the Department if the lessee reports annual compensation based For mixed use leases, the rent for each individual use shall be calculated based on the square footage on three percent of actual annual gross income.¶

(13) The Department shall notify lesat use. Each usee's in writing of the new annual compensatory payment not less than 60 calendar days in advance of the lessee's lease anniversary date.¶

(14) In calculating the initial annual compensatory payment using the riparian land value method, a lessee or lease applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Department, a comparable tax lot. The Department reserves the right to evaluate, review, and challenge the appraisal. If

required, the appraisal shall be conducted at the lessee or lease applicant's expense and prepared by a state-certified appraiser. The Department shall provide instructions to the appraiser prior to conducting the appraisal. In the event of a dispute between the Department and the lessee or lease applicant, the value shall be determined through the three-appraiser method specified in ORS 274.929(3).¶

(15) If in the process of using the riparian land value method for calculating the initial annual compensation payment, the AV is found to be artificially depressed due to the presence of hazardous materials or some other extenuating circumstance(s) as determined by ~~trent~~ shall be added together to derive the annual lease payment or minimum bid for the waterway lease.¶

(b) The annual lease payment for each individual use is subject to the minimum and maximum rent payment as specified in sections (6) and (7).¶

(14) The ~~D~~department, another comparable upland tax lot shall be selected by the Department as the basis for calcula shall notify lessees in writing the initial of their annual lease compensatory payment.¶

(16) The Director reserves the right to establish a rate of compensation due to the Department for all other structures and uses that do not fit into any of the above categories, or which are unique. However, the rate of compensation shall not be less than the base minimum annual compensatory payment as defined by OAR 141-082-0305(6) payment due not less than 60 calendar days in advance of the lease's anniversary date.

Statutory/Other Authority: ORS ~~183, 273, 274~~273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

ADOPT: 141-082-0306

RULE SUMMARY: This rule lists and outlines all the application fees charged under OAR 141-082. Application fees were increased from previous levels to account for inflation and new application fees were established to address situations where the Department incurs additional costs when processing applications or managing authorizations. In addition, a new fee charged annually to all lessees was established to add funds to the Submerged Lands Enhancement Fund.

CHANGES TO RULE:

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 waterway use authorizations, requests for assignments, subleases, amendments, or bank consent agreements must 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 applications for a new public facility license or waterway lease, whether for a new, proposed, or existing use shall be \$1,000 effective July 1, 2026.¶

(3) A renewal application fee for applications for renewal of an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.¶

(4) An amendment application fee for applications to amend an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.¶

(5) An assignment application fee for applications to assign an existing public facility license or waterway lease shall be \$1,000 effective July 1, 2026.¶

(6) A bank consent agreement application fee for applications for a bank consent agreement for an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.¶

(7) A sublease application fee for applications to sublease an existing waterway lease shall be \$1,000 effective July 1, 2026.¶

(8) In addition to the fees listed in sections (2) through (7) and effective July 1, 2026, the department may charge an additional \$500 fee when:¶

(a) A waterway lease expires, and, if applicable, any holdover provision becomes effective;¶

(b) A change to the waterway use authorization document requires Department of Justice consultation or a waterway lease requires legal sufficiency review, pursuant to OAR 137-045 et. seq., before execution;¶

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

(9) Effective July 1, 2026, all waterway leases issued under these rules are subject to an annual submerged lands enhancement fee of \$100 to be deposited into the Submerged Lands Enhancement Fund described in OAR 141-082-0311 below.¶

(10) Except for the fee described in Section (9), all fees shall increase annually by 5 percent.

Statutory/Other Authority: ORS 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0310

RULE SUMMARY: This rule was amended for grammar, punctuation, and readability, to clarify the use of calendar and not business days, and to amend timelines for responding to a Department notice to current legal standards.

CHANGES TO RULE:

141-082-0310

Removal of Unauthorized Structures ¶

(1) The ~~D~~department is authorized to seize a structure on, under, or over state-owned submerged or submersible lands, if:¶

(a) The ~~D~~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 ~~d~~Department.¶

(2)~~(a)~~ The notice required under subsection (1) of this section must ~~b~~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 ~~D~~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 or submersible lands where the structure is located; and the record owner of the adjacent upland.¶

(B) Additional investigation warranted by the circumstances.¶

~~(b)~~ The notice required under subsection (1) of this section must:¶

~~(A)~~ 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.¶

~~(B)~~ Be delivered to the record owner of the adjacent upland.¶

~~(C)~~ Identify, with specificity, the ~~D~~department's proprietary interest in and jurisdiction over the state-owned submerged or submersible lands where the structure is located. If the record owner of the submerged or submersible lands is not the State of Oregon, identify the ~~D~~department's basis for asserting ~~S~~state ownership of the submerged or submersible lands, and state that the recipient has the right to contest the ~~S~~state's claim of ownership.¶

(3) The ~~D~~department shall contact the property owner(s) who own riparian land that is adjacent to where the abandoned or derelict structure is located.¶

(4) Any person with an interest in the structure must, within 210 calendar days of service of the notice, either:¶

(a) Provide written notice to the ~~D~~department of their intent to authorize or remove the structure; or,¶

(b) Request a hearing. The ~~notice request~~ must be ~~on a form provided~~ submitted by to the ~~D~~department in writing.¶

(5) If a person with an interest in the structure wants to obtain an authorization from the ~~D~~department, the owner of the structure must 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 ~~D~~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 must do so within 90 calendar days of notice; or as otherwise agreed to by the ~~D~~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 ~~D~~department within 210 calendar days of service of the notice.¶

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

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

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

(a) The ~~D~~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 ~~D~~department's ~~F~~final ~~O~~order.¶

(9) After the hearing:¶

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

(b) If the ~~D~~department determines after a hearing that seizure of the structure is not warranted under the law, the

~~D~~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 ~~D~~department in removal, salvage, storage, or disposal of the structure.¶

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

(d) The ~~D~~department shall mail a written statement of the ~~D~~department's ~~F~~final ~~O~~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 an~~the appropriate waterway use authorization, ~~¶~~

~~(b) remove the structure, or¶~~

~~(c) request a hearing within the time allowed in the notice, the ~~D~~department's ~~N~~notice shall become a ~~F~~final ~~O~~order by ~~D~~default and the ~~D~~department may immediately seize the abandoned or derelict structure. The ~~D~~department may remove, salvage, store or dispose of any structure seized under this section.¶~~

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

(a) Investigate and prosecute trespasses on and damage to state lands 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 ~~D~~department seizes a structure without notice under this subsection and the ~~D~~department decides to salvage, store, or dispose of the structure, the ~~D~~department shall provide notice as provided for in ~~OAR 141-082-0310~~section (2).¶

(13) The owner of an abandoned or derelict structure is liable to the ~~D~~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 ~~D~~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 ~~D~~department shall follow the process outlined in ORS 830.908 through 830.944.

Statutory/Other Authority: ~~ORS 183, 273, 274~~273.045, ORS 274.040

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

AMEND: 141-082-0311

RULE SUMMARY: This rule was amended to clarify that the Submerged Lands Enhancement Fund was established through legislative action.

CHANGES TO RULE:

141-082-0311

Submerged Lands Enhancement Fund ¶

(1) The ~~legislature established the~~ Submerged Lands Enhancement Fund (fund) ~~is a fund established~~ in the State Treasury separate from the General Fund. Interest earned by the Submerged Lands Enhancement Fund ~~shall be~~ credited to the fund. Moneys out of the fund are intended to be used to enhance, improve or protect state-owned submerged and submersible lands. ¶

(2) The fund shall consist of: ¶

(a) Moneys recovered by the ~~D~~department for payments made from the fund from the owner of an abandoned or derelict structure. ¶

(b) Up to 20 percent of the revenue collected by the ~~D~~department per biennium pursuant to the ~~D~~department's granting of leases, easements, registrations, and other permissions to use or occupy state-owned submerged or submersible lands. ¶

(3) Moneys in the Submerged Lands Enhancement Fund may be used to pay the expenses of the ~~D~~department associated with management and enhancement activities on state-owned submerged and submersible lands, including but not limited to: ¶

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

(b) Removal and disposal of marine debris; ¶

(c) Assistance with the salvage, towing, storage, and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.944. ¶

(d) Engagement in activities to improve water quality, watershed enhancement, and fish and wildlife habitat on submerged and submersible lands. ¶

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

Statutory/Other Authority: ORS ~~183, 273, 274~~273.045, ORS 274.040

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

AMEND: 141-082-0312

RULE SUMMARY: This rule was amended to clarify that federal agencies are not eligible to receive moneys from the Submerged Lands Enhancement Fund.

CHANGES TO RULE:

141-082-0312

Submerged Lands Enhancement Fund Grant Eligibility ¶

Eligibility Requirements: ~~(1) Federal agencies are not eligible to request moneys from the Submerged Lands Enhancement Fund.~~ ¶

~~(2) The Department may use moneys in the Submerged Lands Enhancement Fund to provide funding to the following entities to assist the Department in completing any of the management or enhancement activities on state-owned submerged or submersible land provided for in subsection (3) above;~~ OAR 141-082-0311(3): ¶

~~(1a) State agencies,~~ ¶

~~(2b) County,~~ ¶

~~(3) City or county governments,~~ ¶

~~(4c) Water improvement districts,~~ ¶

~~(5d) Watershed councils,~~ ¶

~~(6e) Park and recreation districts,~~ ¶

~~(7f) Port districts,~~ ¶

~~(8g) Federally recognized Indian Tribes, or~~ ¶

~~(9h) Non-profit organizations.~~

Statutory/Other Authority: ~~ORS 183, 273, 274~~ 273.045, ORS 274.040

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

AMEND: 141-082-0313

RULE SUMMARY: This rule was amended to remove the eligibility language as that is addressed in 141-082-0312 and to clarify that this rule applies to Submerged Lands Enhancement Fund applications.

CHANGES TO RULE:

141-082-0313

Submerged Lands Enhancement Fund Application Process ¶¶

Application Requirements:¶¶

(1) Depending on availability of funds, the ~~D~~department shall periodically solicit applications for requesting moneys from the Submerged Lands Enhancement ~~F~~und for eligible activities.¶¶

(2) ~~Entities are limited to those identified in OAR 141-082-0312.~~ Applications must be submitted to the ~~D~~department consistent with these rules and by the deadline established by the ~~D~~department.¶¶

(3) Applications for funding shall be submitted using forms provided by the ~~D~~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 ~~P~~ublic ~~T~~rust ~~V~~alues (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 183, 273, 274~~273.045, ORS 274.040

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

AMEND: 141-082-0314

RULE SUMMARY: This rule was amended to clarify that this rule applies to Submerged Lands Enhancement Fund applications.

CHANGES TO RULE:

141-082-0314

Submerged Lands Enhancement Fund Application Review and Project Evaluation-

(1) The ~~D~~department shall use an 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) Oregon Department of Fish and Wildlife,¶
- (b) Oregon Department of Environmental Quality¶
- (c) Oregon Marine Board¶
- (d) Non-~~P~~profit Organization¶

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

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

(3) Limitations of ~~U~~se of Submerged Lands Enhancement Funds:¶

- (a) Activities associated with compensatory mitigation requirements shall not be funded.¶
- (b) ~~25%~~25 percent match is required for projects not initiated by the ~~D~~department (may be in-kind or cash).¶
- (c) Activities must be associated with management or enhancement of state-owned submerged or submersible lands consistent with these rules.

Statutory/Other Authority: ORS ~~183, 273, 274~~273.045, ORS 274.040

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

AMEND: 141-082-0315

RULE SUMMARY: This rule was amended to remove redundant information, to simplify language, and to clarify that the Department can record an order imposing a civil penalty, with the local county clerk, as allowed by law.

CHANGES TO RULE:

141-082-0315

Civil Penalties ¶

- (1) The unauthorized use of state-owned land managed by the Department constitutes a trespass.¶
- (2) In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of not less than \$50 per day, and not more than between \$50 and \$1,000 per day of violation of any provision of these rules or ORS 274 that occurs on state-owned submerged and submersible lands pursuant to ORS 274.992.¶
- (3) The Director shall give written notice of a civil penalty incurred under ~~OAR 141-082-0315~~ 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 party's right to request a hearing within 210 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 210 calendar days of the date of service of the notice provided in ~~OAR 141-082-0315~~ 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 party requesting a hearing fails to appear, the Director may make a final order imposing the penalty.¶
- (5) ~~The amount of a civil penalty shall not be less than \$50 per day, or more than \$1,000 per day for violation of an authorization issued under ORS 274.992 or violation of any administrative rule adopted under ORS 274.~~¶
- (6) In imposing a penalty under OAR 141-082-0315 of these rules, 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 land managed by the Department 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 lands;¶
 - (c) The impact of the violation on public trust uses of commerce, navigation, fishing, and recreation; and¶
 - (d) Any other factors determined by the Director to be relevant and consistent with the policy of these rules.¶
- (7) 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.¶
- (8) If a civil penalty is not paid as required by ~~OAR 141-082-0315~~ 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 will 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 ~~183, 273, 274~~273.045, ORS 274.040
- Statutes/Other Implemented: ORS 274.040, ORS 274.990-274.994

AMEND: 141-082-0320

RULE SUMMARY: This rule was amended to conform to model rulemaking guidelines.

CHANGES TO RULE:

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) The ~~D~~director may determine that other structures and uses similar to those specified in OAR 141-082-0265(3) are also subject to registration and the rules governing registrable structures and uses. If the ~~D~~director determines that a structure or use is registrable, ~~s/he shall assign an appropriate fee~~ shall be assigned.~~¶~~

(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 ~~183, 273, 274~~273.045, ORS 274.040

Statutes/Other Implemented: ORS ~~274.040~~, ORS 274.043

AMEND: 141-082-0325

RULE SUMMARY: This rule was amended to correct multiple citations and to conform to model rulemaking guidelines.

CHANGES TO RULE:

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, must register the structure or use with the Department.¶

(b) Changing the location of a registered structure or use, must 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, must notify the Department 90 calendar days prior to making such a modification.¶

(2) Except as provided in ~~OAR 141-082-0325~~section (3), an applicant for a registration must use a form provided by the Department and submit a registration form for all registrable 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 must 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 to use or occupy state-owned submerged and submersible land for the uses described in OAR 141-082-0265(3) (e), (f), (g) and (h) of these rules, the applicant, as a condition of their authorization and as required by ORS 274.043(6)(3)(d), must 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 ~~183, 273, 274~~273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0330

RULE SUMMARY: This rule was amended to conform to model rulemaking guidelines and for readability.

CHANGES TO RULE:

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 it occupies, or who replaces a structure entirely, must notify the Department in writing within 90 calendar days of making such repairs or replacement as a condition of the registration.¶

(3) The Department must be notified 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 change in the location, size, or the ownership of a registered structure or uses outlined in section (4) within the time provided shall~~ may result in the automatic termination of the registration.¶

~~(45)~~ Registrations for privately-owned structures and uses subject to registration must be renewed every five years. An owner 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.¶

~~(56)~~ 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.¶

~~(67)~~ 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 ~~183, 273, 274~~ 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-082-0335

RULE SUMMARY: This rule was amended to increase registration fees to account for inflation.

CHANGES TO RULE:

141-082-0335

Registration Fees ¶

- (1) Except as provided in ~~OAR 141-082-0335(2) and (3)~~, the fee for a registration is as follows:¶
- (a) ~~\$25400~~ on and after January 1, 2017~~26~~, for a dock/float or boat house 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) ~~\$5700~~ on and after January 1, 2017~~26~~, for a dock/float or boat house from 1,001 square feet to 2,000 square feet in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms).¶
 - (c) ~~\$6800~~ on and after January 1, 2017~~26~~, for a dock/float or boat house from 2,001 square feet to 2,500 square feet in size. ~~¶ (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms).~~¶
 - (d) ~~\$71,000~~ on and after January 1, 2017~~26~~, for a floating recreational cabin. ~~¶ less than 1,500 square feet (measurement excludes calculation of pilings, dolphins, mooring buoys, and protective booms).~~¶
 - (e) ~~\$25400~~ on and after January 1, 2017~~26~~, 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, ~~R~~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 under these rules as determined by the ~~D~~director under OAR 141-082-0265(3)(ij) shall ~~be determined on a case by case basis and be not less than \$25~~ exceed \$1,000.

Statutory/Other Authority: ORS ~~183, 273, 274~~273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

ADOPT: 141-082-0336

RULE SUMMARY: This rule outlines and identifies all the application fees charged under OAR 141-082 and describes the circumstances under which the Department may charge each different fee identified in rule.

CHANGES TO RULE:

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 the lessee will perform in accordance with all terms and conditions of the lease.¶
 - (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 must 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

AMEND: 141-082-0340

RULE SUMMARY: This rule was amended to clarify how a person qualifies as being adversely affected by Department decisions and how the Department will notify persons adversely affected by Department decisions.

CHANGES TO RULE:

141-082-0340

Appeals ¶

(1) An applicant for an authorization, or any other person adversely affected by a decision by the Department concerning an authorization, closure of, or restriction to 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.¶

(2d) A person qualifies as being adversely affected by a decision by the department concerning an authorization, closure of, or restriction to the use of state-owned submerged and submersible land if:¶

(A) 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;¶

(B) 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;¶

(C) They are materially affected by the decision; or¶

(D) The decision unreasonably interferes with their public trust rights.¶

(2) The department shall publish on their website a notice of decision concerning an authorization, closure of, or restriction to the use of state-owned submerged and submersible land.¶

(3) In addition to the notice described in section (2), the following notice shall be provided:¶

(a) Applicants shall receive by personal service or certified mail a notice describing the department's decision and their rights to appeal, and, if applicable, a copy of the waterway use authorization.¶

(b) Adjacent owner(s) or persons with a property interest in the adjacent upland property shall receive by certified and regular mail a notice describing the department's decision and their rights to appeal.¶

(4) Persons claiming qualification under Section 2(c) or (d) must 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 of Section 2(c) or (d).¶

(5) 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 has exhausted the appeal process before the Director, s/they may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.

Statutory/Other Authority: ORS 183, 273, 274, 273.045, ORS 274.040

Statutes/Other Implemented: ORS 274.040, ORS 274.043

AMEND: 141-145-0060

RULE SUMMARY: This rule is being amended to remove reference to OAR 141-082 in order to conform with amendments to that Division. The method of calculation in this rule is not changing, and the flat rate is being updated to reflect what the current rate will increase to on July 1, 2026.

CHANGES TO RULE:

141-145-0060

Compensation ¶

(1) The compensation for an authorization for remediation necessitated by operations at an orphan site as determined by and under the management of the ODEQ or EPA shall be five hundred (\$500) dollars. If at any point a party is located to perform or pay for the remediation of what had previously been designated an orphan site, that party must compensate the Department for the cost of that use of state-owned land according to these rules.¶

(2) The minimum compensation for any authorization issued under these rules shall be one thousand dollars (\$1,000), with the following exceptions:¶

(a) Authorizations meeting the provisions of OAR 141-145-0060(1), and;¶

(b) Proposed uses determined by the Department to have a "no or minimal impact" in OAR 141-145-0060(4)(a). Uses considered to have a "no or minimal impact" in 141-145-0060(4)(a) require no compensation.¶

(3) Subject to the base minimum compensation established in OAR 141-145-0060(2), the method for calculating compensation due for an authorization issued under these rules shall be determined through the following formula.¶

$COMP = AV \times LA \times SDI$ ¶

NOTE: Formula Explanation¶

AV= Appraised value or assessed value (as defined in OAR 141-145-0005(3) and (4) of these rules) whichever is less except as stated in OAR 141-145-0060(7). AV is expressed as a value per square foot.¶

LA= Authorized use area in square feet of state-owned submerged and submersible land.¶

SDI= Defined in OAR 141-145-0005(32). SDI is expressed as a percentage in this formula.¶

COMP= Compensation due to the Department for the authorization.¶

(a) For access authorizations, compensation due to the Department for the authorization will be a one-time payment determined by the formula $COMP = AV \times LA \times SDI$.¶

(b) For easements, compensation due the Department for the authorization will be a one-time payment that is the lesser of:¶

(A) $[(AV \times LA \times SDI)/30] \times$ number of years authorized; or¶

(B) ~~Flat rate method for a non-marine use (as described in Division 82)~~Effective July 1, 2026, the flat rate of \$0.53017559 per square foot ~~(which x LA x number of years authorized (this flat rate will be increased each year annually on July 1st by three percent) x LA x number of years authorized, and published on the Department's website).~~¶

(c) For conservation easements, compensation due the Department for the authorization will be a one-time payment equal to $AV \times LA \times 50\%$.¶

(d) For lease authorizations, annual lease payment calculation is the lesser of the:¶

(A) $AV \times LA \times SDI \times 5\%$; or¶

(B) ~~Flat rate method for a non-marine use (as described in Division 82)~~Effective July 1, 2026, the flat rate of \$0.53017559 per square foot ~~(which x LA (this flat rate will be increased each year annually on July 1st by three percent) x LA and published on the Department's website).~~¶

(4) The Site Diminishment Impact percentage for an access authorization is calculated by the Department as follows:¶

(a) A proposed use is considered to have a "no or minimal impact" and an SDI of 0% if the Department determines:¶

(A) The proposed use would not impose any public trust use restrictions that last more than ~~fourteen~~(14) consecutive days per calendar year, and¶

(B) The proposed use would not limit or constrain the Department in issuing other waterway authorizations administered under Division 82.¶

(b) A proposed use is considered to have a "moderate impact" and an SDI of 3.5% if the Department determines:¶

(A) The proposed use would impose one public trust use restriction that lasts more than ~~fourteen~~(14) consecutive days, or¶

(B) The proposed use would limit or constrain the Department in issuing other waterway authorizations

administered under Division 82.¶¶

(c) A proposed use is considered to have a "significant impact" and an SDI of 7% if the Department determines:¶¶

(A) The proposed use would impose more than one public trust use restrictions that last more than ~~fourteen~~(14) consecutive days, or;¶¶

(B) The proposed use would preclude the Department from issuing any other waterway authorizations administered under division 82.¶¶

(5) The Site Diminishment Impact for an easement or lease is calculated by the Department as follows:¶¶

(a) A proposed use is considered to have "no or minimal impact" and an SDI of 1% if the Department determines that:¶¶

(A) The proposed use would not impose any public trust use restrictions that last more than ~~fourteen~~(14) consecutive days per calendar year, and¶¶

(B) The proposed use would not limit or constrain the Department in issuing other waterway authorizations administered under Division 82.¶¶

(b) A proposed use is considered to have a "moderate impact" and an SDI of 50% if the Department determines that:¶¶

(A) The proposed use would impose one public trust use restriction that lasts more than ~~fourteen~~(14) consecutive days, or¶¶

(B) The proposed use would limit or constrain the Department in issuing other waterway authorizations administered under division 82.¶¶

(c) An easement or lease is considered to have a "significant impact" and an SDI of 100% if the Department determines that:¶¶

(A) The proposed use would impose more than one public trust use restrictions that last more than ~~fourteen~~(14) consecutive days, or;¶¶

(B) The proposed use would preclude the Department from issuing any other waterway authorizations administered under division 82.¶¶

(6) In calculating compensation under these rules, applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Department, a comparable tax lot in place of the assessed value. The Department reserves the right to evaluate, review, and challenge the appraisal. The appraisal shall be conducted at the applicant's expense. If the appraisal is used by the Department to calculate the compensation, the Department will credit one-half of the cost of the appraisal to the applicant's compensation. In the event of a dispute between the Department and the applicant, the value shall be determined through the three-appraiser method specified in ORS 274.929(3).¶¶

(7) If in the process of calculating compensation, the AV is found to be depressed due to the presence of hazardous substances or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the compensation. The applicant may suggest a comparable tax lot or may appeal the Department's selection as allowed in OAR 141-145-0090.

Statutory/Other Authority: ORS 183, 273, 274

Statutes/Other Implemented: ORS 274

OAR 141-082 Rulemaking Public Comments and Agency Responses



Comments & Agency Response

The comment period was open from July 1, 2025, to August 15, 2025, at 5:00 PM. The Department held six public rule hearings (two virtual and four in-person). Fifty-one written comments were received in total; 23 of those comments were regarding the definition of floating recreational cabin (commonly referred to as “duck shacks”) and the inclusion of the term stiff boom. All oral comments were submitted as written comments.

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first and all floating recreational cabin and stiff boom comments grouped together. Comments that were received via PDF are attached at the end of the document.

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Ron Schmidt – August 15 (via email)

Comment:

You have an opportunity to remove a horrible burden that could bankrupt Oregon residents and businesses through no fault of their own. Either don't hold your submerged lands lessees responsible for the removal of derelict vessels which floated into the leasehold areas from your waterways (either due to or not due to your non enforcement of your own laws regarding transient boats) OR allow the same funds you use to remove derelict vessels on your non leased submerged lands be used to remove derelict vessels on ALL your submerged lands including those leased.

It would make sense to hold the lessee responsible for a derelict vessel arising out of their operations but not to hold them responsible for something not of their own doing.

The State with all its resources is much more able to take a hit like Portland Yacht Club did a few years ago when a derelict vessel floated into their facilities. It cost them over \$100,000 and should have never happened if the laws were being upheld on transient boats. That \$100,000 bill would bankrupt or severely hinder most of your lessees.

If it's good for the goose, it should be good for the gander. Protect all DSL submerged lands from derelict vessels sinking but for the direct negligence of the lessee.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. Lessees are given exclusive use of state-owned submerged and submersible land and therefore have an obligation to maintain those lands in good condition. Ensuring derelict or abandoned vessels are removed upon notice from the Department is one of the conditions a lessee must consent to, to maintain that right. Submerged Land Enhancement Funds are available to assist with the removal, salvage, and disposal of abandoned and derelict vessels and are dispersed on a biannual basis.

Dale Mack, dock owner – August 15 (via PDF letter)

Comment:

See Attachment A

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. Please note that the Submerged Lands Enhancement Fund fee is not subject to an annual increase of 5% per year. And your authorization type, a waterway registration, would not be subject to the proposed fee. The increased fees also reflect an increase in the cost of conducting state business. The removal of trees from upland properties is not within the authority of the proposed rulemaking to the Department. Your local planning authority is better suited at handling this concern. A portion of the increased fees will be reserved for use in the Submerged Lands Enhancement Fund, to be dispersed biannually as grant funding for projects that enhance and protect state-owned submerged and submersible lands.

Richard Litts – August 15 (via email)

Comment:

I wish to comment on the proposed lease fee update. I live on North Tenmile Lake in Coos County near Lakeside. I am also retired from the Tenmile Lakes watershed council. I worked as the watershed biologist.

During my 10+ years of work, I saw almost no money returned to the Tenmile Lakes for water quality enhancement. For several years there was a few hundred dollars spent per year to help test for toxic algae, and I can't think of anything else. These lakes produce thousands of dollars in DSL fees, yet we see almost no benefit to our water from that money.

If this fee increase is simply to make more money for admin to keep track of the extra money coming in, then I am totally opposed to this increase.

I would like to see an addition to this rule change that requires a certain amount of money be spent on the areas where the money is collected from.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business. A portion of the increased fees will be reserved for use in the Submerged Lands Enhancement Fund, to be dispersed biannually as grant funding for projects that enhance and protect state-owned submerged and submersible lands.

Victor Alvarado, dock owner – August 15 (via online form)**Comment:**

As a dock owner who takes pride in maintaining safe, environmentally sound access to the river, I oppose the adoption of OAR 141-082 in its current form. While I support reasonable oversight and stewardship of our waterways, this rule imposes new burdens on responsible dock owners without offering clear, proportional benefits.

The fee structure, though labeled as “manageable,” adds recurring costs that penalize those of us who already invest time and resources into dock upkeep. It risks discouraging private stewardship by shifting more financial responsibility onto individuals who are already doing their part.

Moreover, while the rule references bank erosion techniques and river dredging, it lacks concrete commitments to ensure these efforts are consistently funded and executed. Without guaranteed removal of hazardous logs and debris, dock owners remain vulnerable to damage—despite paying higher fees.

I urge the Department to revisit this rule with meaningful input from dock owners, ensuring that any regulatory changes truly support safety, environmental health, and fairness.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business. A portion of the increased fees will be reserved for use in the Submerged Lands Enhancement Fund, to be dispersed biannually as grant funding for projects that enhance and protect state-owned submerged and submersible lands.

Jeff Ingebrigtsen, Paradise Moorage – August 15 (via PDF letter)**Comment:**

See Attachment B

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

Real Market Value is calculated for individual properties and maintained by professionals to specific standards and is what the Department currently uses to determine land value. By using objective, third party data like RMV to calculate rent, establishing new minimum and maximum rates, and limiting rent increases at renewal, the Department can create a sustainable program that produces rents which compensate the public fairly for the use of public land.

Janet Webster, Front St. Marine, LLC – August 15 (via PDF letter)

Comment: *See Attachment C*

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration.

Phil Evans, Oregon Yacht Club, Commodore – August 14 (via PDF letter)

Comment: *See Attachment D*

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

Real Market Value is calculated for individual properties and maintained by professionals to specific standards and is what the Department currently uses to determine land value. By using objective, third party data like RMV to calculate rent, establishing new minimum and maximum rates, and limiting rent increases at renewal, the Department can create a sustainable program that produces rents which compensate the public fairly for the use of public land.

Chris Sumpter, private dock owner – August 10 (via online form)

Comment:

I disagree whole heartedly to these costs!! The State of Oregon has no additional yearly costs imposed on them by a private dock. This increases "Tax" is taxation without representation.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking.

Bridghid McMonagle – July 27 (via online form)

Comment:

I do not think paddle boards should have to be licensed. I do not think homeowners with docks should pay fees. We already pay very high property taxes. Please start using the tax dollars you have more efficiently. Also, homeowners that purchased before wakesurfing rule changes should be grandfathered in and be able to wakesurf in front of their homes. The Willamette jet boats blasts through several times a day creating a very large wake. Thank you.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking.

Ron Schmidt, president Waterfront Organizations of Oregon (WOOO) – July 26 (PDF via email)

Comment: *See Attachment E*

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

Real Market Value is calculated for individual properties and maintained by professionals to specific standards and is what the Department currently uses to determine land value. By using objective, third party data like RMV to calculate rent, establishing new minimum and maximum rates, and limiting rent increases at renewal, the Department can create a sustainable program that produces rents which compensate the public fairly for the use of public land.

Lauren Hesse, resident in Lane County with licensed dock – July 22 (via online form)

Comment:

I do not know the impact of this update on our property but have related concerns:

- 1) our neighbor has had a dangerously-insecure excess of attachments (rope-tied broken dock parts) added to his dock for the last 2-3 years. We made multiple phone calls and emails to various agencies we were told to contact and never got a response. The neighbor's dock attachments easily could have damaged our dock and property. We, as licensed dock owners, deserve contact info that would respond in a timely manner. What is that? Who is it? How to contact?
2. We also paid the higher rate this year for our dock licensing. Our neighbor has now enlarged his dock using working individuals who did not seem to know what they were doing. The larger dock is convex, sloping upwards in center, and the boards nearly touch the water. We do not trust that it is safe and wish the OD of Land Use were more vigilant in checking such property.
3. At least two neighbors have pillars that are atilt and/or rotten, and should be replaced or removed for the safety of neighboring properties and river-goers. Who does this? How to contact?

These docks are about 1-2 miles upriver from the Port of Siuslaw, Mapleton.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking. Without more specific location data, the Department cannot follow up with any enforcement issues. Please reach out to the Proprietary Coordinator for your county ([link](#)) about the docks and pilings in question. You may also contact your local city or county code enforcement office, to see if there are any city or county ordinance violations.

Brian O'Halloren – July 21 (via public hearing)

Comment:

We are unable to find an insurance company to insure the duck shacks. We just can't do it. We had Red Shield, but they said, We're not insuring anymore, and no other insurance company would do it. But we do have it named in our personal umbrella for our homeowners. Insurance.

Would that suffice for you guys if we had a State farm, or all State or Chubb that said, yes, that's covered for liability in your personal umbrella.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking. Please reach out to the Proprietary Coordinator for your county ([link](#)) if you're having trouble obtaining insurance. The Department, if needed, can work with the Department of Administrative Services, Risk Management to identify an insurance underwriter(s) who can provide you with the appropriate insurance policy.

Sarah Nebeker – July 21 (via email)

Comment:

I do not support any increase in waterway leases. It already increases 3% per year. I received a comment card re: possible increases in the leases to track with inflation. As for simplifying the process for payment, I can support this but I have a waterway lease and do not support any increase in the yearly leases other than what I entered into originally by contract.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration.

Tom Tomczyk, Home owner, boat owner – July 21 (via online form)

Comment:

This regulation is way too broad and should not apply to very small structures, docks and floats etc. under 250-300 square feet unless said structure protrudes into the active use portion of the waterway. This would be consistent with rules in other states such as Minnesota where there are literally hundreds of thousands of docks on many thousand of lakes and rivers. Permits are only needed when a structure presents a hazard to navigation. At the very least there should be No fees charged for very small structures and docks etc.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration.

Scott Willi – July 20 (via email)

Comment:

I have a dock on Recreation Creek on Klamath Lake. I launch my kayak from it to fish on the lake 3 times a year. Please do not increase my really high dock fees. I already pay a lot for just having a small personal dock. These increasing fees are killing me..

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration.

Dale Patton – July 14 (via email)

Comment:

Rules are not much good when the weed problem is so bad. My boat hasn't left the dock in a month and won't till late fall when the lake rises. It's a state lake that is rapidly becoming unusable.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration.

Ann Migliaccio – July 14 (via email)

Comment:

We have a "small private structure on submerged land" and are currently paying \$250.00 for the term of five years.

In the summary data sheet it stated that the increased fee, \$400.00, is "to reflect staff time required to process applications." This represents a 62% increase which we find quite high. I assume there would be more paperwork with a new application for the staff to process but for renewals with no changes seems expensive. I don't recall if we are able to renew the permit online with no human interaction or not. However if there is a simple online renewal printing a report/s doesn't appear to take much staff time.

Please reconsider this fee for renewals.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business, including managing the online portal for submitting applications and payment.

Brian C. Smith – July 12 (via email)

Comment:

I have a dock at 14835 SE River Forest Drive 98267. Your notice seems to indicate that this is another State effort to increase taxes on Oregonians. We all know the State has a problem with bloat, waste and inefficiency and increasing fees will only further cement the ineffective bureaucracy.

The existing Waterways Registration system for boathouses and docks is an acceptable inconvenience for property owners. Converting the Waterway Registration to another Property Tax will only price out Oregonians and ensure that only Californians or AirBnBs will be able to afford to reside along our scenic waterways.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business, including managing the online portal for submitting applications and payment.

Randy Morgan – July 11 (via email)

Comment:

First of all you do not provide enough information for floating home owners to know how this proposed change will affect them.

How could we possibly know as home owners the numbers you are using in your formula? You also only show percentage increases and do not provide what the current rates even are. As well you post maximum proposed rates, but nothing about what current maximums are ... This means there is no way for us to know what the increase will be compared to current rates charged to the marina owner where we live, but no doubt it is going to result in an increase which will be passed on to the residents of the marina. Moorage owners in the area have already raised rental / lease rates to a barely tolerable level so much so that many people are having to sell their homes and move out of the marinas. We are not all rich cash cows in fact many of us are on fixed incomes which are not increasing near enough to compensate for these increases in living cost.

I say look elsewhere for your riches as like everything else you disguise this as a fee to a business, but in reality it is yet another way to tax the working man without calling it a tax. Any imposed fee is nothing more than a tax in sheep's clothing .. so I say absolutely not. The state and in fact all of government should spend what they are given more responsibly .. read my lips "No New Taxes!"

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. If you are interested in learning how the new rent formula will affect your lease, please send an email to dsl.rules@dsl.oregon.gov with your lease information and someone will respond with the relevant information. Currently there is no maximum rent set in rule. You can find the current rates, fees and formulas published on the Department's website [here](#). A comparison table can be found in the summary sheet [here](#).

Jim Moulton – July 10 (via email)

Comment:

I received a card for comments on rates for docks, floating homes, etc. If you raise rates, what will you do differently, from what I see, nothing has been done, except take the floating toilets off the lake. There's no enforcement for wake boarder, jet skies, etc. They tear up docks, boat houses. I would like to see where the money goes, other than wages. The lake has such a difference in water level, it's hard on floating structures. One feeble attempt to regulate it was an expensive failure.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. For questions about the operation of wake boards, jet skis, and boats on Oregon's waterways you can contact the Oregon State Marine Board [here](#).

Steve Harkins, West Hayden Island Moorage – July 10 (PDF via email)**Comment:** *See Attachment F*

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

Real Market Value is calculated for individual properties and maintained by professionals to specific standards and is what the Department currently uses to determine land value. By using objective, third party data like RMV to calculate rent, establishing new minimum and maximum rates, and limiting rent increases at renewal, the Department can create a sustainable program that produces rents which compensate the public fairly for the use of public land.

Jenny Johnson – July 9 (via email)**Comment:**

The fee increase seems to be quite excessive. I am affected by two of them. One will be raised 42.8% and the second one 60%. Inflation has ranged between 2.4% - 3.4% since 2023. These huge increases are hurting the people who use and love the waterways of Oregon. I would encourage looking elsewhere for invasive species funding. Perhaps your agency needs a spending audit?

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

WM and Glenda Hales – July 6 (via email)**Comment:**

I strongly oppose any increase in fees for waterway leases, licenses, registrations. Since 2005 my family has been paying dock lease fees, and the fees for 5 yr. Lease were \$125, now they are \$250. The fees hav increased \$125 in 20yrs.. the projected inflation rate for 2025 is 3.2%, the inflation rate for 2024 was 2.4%. The lease fees hav increased MORE than inflation rate. How much can the Oregon taxpayer be burdened to payout for governmental fee increases? ODSL claims to need the changes to implement best practices to protect the health & safety of waterways. My question is what has ODSL done in the past years to protect health & safety of waterway's? I like the idea of simplifying the method for calculating the dock lease rates, but I feel this may be a coverup to increase the fees. ODSL makes a last reason for fee hikes and changes, "require financial assurances, and more." In my opinion ODSL wants more money, I don't see where ODSL has been a good steward of the money the taxpayers have given them.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The increased fees reflect an increase in the cost of conducting state business.

Amber Meske – July 6 (via email)

Comment:

I vote to keep waterway leases, licenses and registrations the same.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking.

Steven Swenson, Mercer Lake Homeowners – July 6 (via online form)

Comment:

I recently received the notice soliciting input on proposed increases for private docks on waterways, specifically an increase from \$250 to \$400 for family sized docks under 1,000 sq ft. The reason given is to offset the increased processing costs of renewing registrations.

This is ridiculous! We receive Absolutely NO SERVICES for our existing fees paid. As an example, the residents of Mercer Lake have reached out to various state agencies in recent years to solicit help removing derelict docks and dock debris that have washed up on the shore and clogged the creek between Mercer and Sutton Lakes, making it impassable and increasing the flood risks. We have been told this is either not a priority or not a service provided by the state, county, Marine Board or any other government entity. We have taken it upon ourselves to remove decades of debris in the range of 5-7 tons using volunteer labor and paying for the removal and disposal of this litter. If/when the state were to step up and lead this effort, I would gladly pay for an increase in our fees. Until then, to leverage a 60+% increase as increased administrative costs is absurd.

Concerned residents of Mercer Lake.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking. The increase in fees and rates in this rulemaking are to cover the inflationary increases in the cost of conducting state business. The rulemaking also includes a new fee that will fund projects with the purpose of enhancing Oregon-owned waterways.

Matt Meske – July 6 (via email)

Comment:

I believe the rates and methods are adequate and are priced accordingly. There are enough rising costs and I believe we don't need to raise fees just because everything else is expensive. I'm certain that the current structure was believed fair and reasonable and we don't need to change anything.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking.

Donald Palomaki, retired gillnet fisherman – July 5 (via online form)**Comment:**

I own a boat house on the Columbia river in Wallace slough, about a 1000 ft west of the mouth of the Clatskanie river. I've had a permit from the County since the early 1960's. Also paid for a permit when the state decided they wanted money. I'm not reading 50 pages of whatever. I'm against the state taking away more rights and property. Current administrations have closed employment in the fishing industry and replaced us with alien seals and sea lions. If the state wants to do more damage to the citizens I guess they will do it. I'm against whatever they are trying now.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking.

Stanley Petrowski, South Umpqua Rural Community Partnership – July 1 (via online form)**Comment:**

As a community nonprofit organization the water leasing process has become a critical component in our habitat restoration projects and agricultural upgrading work. Raising the fees for participating in important tool is going impede many of our options to lease valuable water rights. Don't raise the fees.

Agency Response: Thank you for submitting a comment; the Department appreciates your interest in this rulemaking and will take your comments into consideration. The proposed rules do not include changes to water rights nor will they affect any fees associated with obtaining a water right. The increased fees reflect an increase in the cost of conducting state business.

Floating Recreational Cabins and Stiff Booms

Note: While the following written comments are either about floating recreational cabins (“duck shacks”), stiff booms, or both, none of the written comments are identical (i.e., form letter). However, the comments are similar enough in nature that the Department has provided one agency response for these comments.

Agency Response: The Department thanks these individuals for submitting their comments and appreciates their interest in this rulemaking. Based on public comment, the Department has decided to retain the current definition of floating recreational cabin, add a definition for stiff boom, and include stiff booms in the list of things excluded from the total square footage for registered structures.

Kristian Hellberg, floating recreational cabin owner – August 15 (via online form)

Comment:

I am a party of interest in a “Floating Recreational Cabin” on the Lower Columbia River. The Duck Shack has been in our family for 3 generations and is planned to continue to be passed down in the family.

I am writing to oppose the proposed changes to the definition of a “Floating Recreational Cabin.” The current definition is sufficient and well-understood. The proposed revisions offer no clear benefit and instead introduce confusion by blurring the line between “Floating Recreational Cabin” and “Floating Home.”

This proposed change risks confusion, misclassification, and unintended regulatory consequences for leaseholders and registrants.
Thank you for your consideration.

Tim Nelson, floating recreational cabin owner – August 15 (via online form)

Comment:

I am writing to oppose the proposed change to the definition of “Recreational Floating Cabin” (RFC). Our family maintains interest in a four-generation cabin, established on the Lower Columbia River in 1939, and is a Department of State Lands registered floating recreational cabin.

I am writing to oppose the proposed change to the definition of “Recreational Floating Cabin” (RFC). The existing definition is adequate. The proposed rules do not provide justification for altering the definition or an explanation of any operational, regulatory, or enforcement need for such a change. There is no benefit to changing the rules. Revising the definition is completely unnecessary. The rule change will just create a lot of confusion.

The use of “stiff booms” or “protective booms” is a necessary component for mooring certain recreational floating cabins in tide zones to extreme wind/weather on the lower Columbia River. Our float house has three piling and a stiff boom dock that is not part of the float house footprint.

Changing this rule will significantly reduce the size of habitable space and utility of our float house. In my opinion, this is a partial taking of the value and utility of our leasehold estate and may result in emanant domain litigation. Stiff booms should not be considered part of the square footage of recreational floating cabins, especially for existing float houses with stiff booms. These structures have historically been excluded from square footage calculations; however, I recommend clarifying the language in OAR 141-082-0265(3)(b) to explicitly exclude “stiff or protective booms” from the calculation. This can be accomplished by revising OAR 141-082-0265(3)(b) as follows:

Uses and structures requiring registration are: Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated pilings, dolphins, recreational use mooring buoys, and stiff or protective booms.

Douglas Heater, floating recreational cabin owner – August 15

Comment:

My comments are related to our family owned floating recreational cabin, in Woody Island on the Columbia River, within the Lewis & Clark Wildlife Refuge. There is a small number of floating recreational cabins within the Wildlife Refuge, numbering less than 50. These remote cabins support our recreational activities on the Refuge and the surrounding Columbia River. Our structure was originally built about 70 years ago, we are the second owner of this structure. This shows how valued the families deem these structures for their unique historical and practical use for our recreational activities.

Under “need for the rules” on page 2, we would like to comment on #4, and requirements concerning the condition of waterway structures. While older cabins such as ours, still provide adequate storage of fishing, hunting, and recreational gear, they also provide shelter from the elements of weather and provide heat for drying gear, bbq and smokers, and cooking means, as well as living quarter’s. Which bring up our next concern.

Under “Definitions” 141-082-0255 on line 29 “Floating Recreational Cabin”, this has to be a mistake of definition and reference to (nor) that has been added. How can you take away cooking, bathing, toilet, or heating? This would be effectively eliminating every recreational cabin on the Refuge, perhaps more elsewhere. I cannot envision what your recreational cabin description would look like, and would not be practical for any use. If these type of changes go thru, we will be financially harmed.

Our cabin being on a Federal Wildlife Refuge, as related to application reviews by division of state lands should consider the Threatened and endangered resources disturbance within our cabin area as very low impactable with our recreational cabin activities, as compared to the commercial and industrial user your new rules making is addressing.

Under financial assurance requirements on 141-082-0336, relating to #1, 3, 4. we are concerned due to small numbers of recreational cabins on the Lewis & Clark Refuge, finding a firm or getting access to insurance providers for the stated requirements may not be available in our market. Currently around the country, insurance carriers are dropping homeowners owners insurance coverage, what can the state offer to assist us in adherence to this? My brother just had his home insurance canceled in clatsop County, after 40+ years with carrier, and no claims. This problem will occur.

My comments again are pertaining to our recreational cabin activities, if rules on our cabin change us to something other than a recreational cabin, we have a much broader concerns on proposed changes. We agree that fees need to be changed to keep up with inflation.

We concur and agree to “registration Fees” 141-082-0335 line d changing the fee to 1,000.

In review of 51 pages of proposed changes, it's well more for a regular citizen to take in, and I may have misunderstood some of the confusing wording, but it should noted, we understand the broad waterway system your trying to address in one document, we just hope to not get stepped on, due to our understanding of proposed rule changes. We hope more clarity and assistance is available before final rules are implemented.

Nolan Johns, floating recreational cabin owner – August 15 (via email)

Comment:

We are owners of a Department of State Lands registered floating recreational cabin on the Lower Columbia River. I have used this cabin since my childhood for duck hunting and fishing with my father, I hope to use it soon with my children. This “shack” is an important part of our family history.

I am writing to oppose the proposed change to the definition of “Recreational Floating Cabin” (RFC). The existing definition is adequate. There is no reason to change the definition. I don't see any benefit to changing the rules. Revising the definition is completely unnecessary. In my opinion the change will just create a lot of confusion.

The use of “stiff booms” or “protective booms” is a necessary component for mooring many recreational floating cabins on the lower Columbia River. Our footprint is very small. Changing this rule will significantly reduce the livable area of or float house to the point it is almost useless. Stiff booms should not be considered part of the square footage of recreational floating cabins. These structures have historically been excluded from square footage calculations. I recommend clarifying the language to explicitly exclude “stiff or protective booms” from the calculation.

Ed Wallmark, floating recreational cabin owner – August 15 (via email)

Comment:

Thank you for the opportunity to comment on the proposed rule and rate changes effecting duck shack owners. My name is Ed Wallmark and I've had the privilege of using a duck shack off Tenisillie Island since around 2010. I want to state on the record that I agree with everything stated on the letter sent by John North dated on 8/12/25. I also support the statements made by Ryan O'Halloran during the public hearing process. These rules as drafted would basically render all duck shacks useless. I would rather see the DSL focusing thier efforts on cleaning up all the derelict vessels along the Willamette and Columbia Rivers. Thanks again for the opportunity to comment

Jay Nelson, floating recreational cabin owner – August 15 (via email)**Comment:**

I am an owner of a Department of State Lands registered floating recreational cabin on the Lower Columbia River. My grandfather built this cabin in 1939 and past it down to my father, then my father passed it down to my family and kids.

I am writing to oppose the proposed change to the definition of “Recreational Floating Cabin” (RFC). The existing definition is adequate. The proposed rules do not provide justification for altering the definition or an explanation of any operational, regulatory, or enforcement need for such a change. There is no benefit to changing the rules. Revising the definition is completely unnecessary. The rule change will just create a lot of confusion.

The use of “stiff booms” or “protective booms” is a necessary component for mooring certain recreational floating cabins in tide zones to extreme wind/weather on the lower Columbia River. Our float house has three piling and a stiff boom dock that is not part of the float house footprint. Changing this rule will significantly reduce the size of habitable space and utility of our float house. In my opinion, this is a partial taking of the value and utility of our leasehold estate and may result in emanant domain litigation. Stiff booms should not be considered part of the square footage of recreational floating cabins, especially for existing float houses with stiff booms. These structures have historically been excluded from square footage calculations; however, I recommend clarifying the language in OAR 141-082-0265(3)(b) to explicitly exclude “stiff or protective booms” from the calculation. This can be accomplished by revising OAR 141-082-0265(3)(b) as follows:

1. **Uses and structures requiring registration are:** Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated pilings, dolphins, recreational use mooring buoys, and stiff or protective booms.

Brian O'Hollaren, Mark O'Hollaren, and Ryan O'Hollaren, floating recreational cabin owners – August 14 (via PDF letter)**Comment:**

See Attachment G

Ed Fisher, floating recreational cabin owner – August 14 (via email)**Comment:**

It has come to my attention that there are some potential changes in the definition of “Floating Recreational Cabins”.

I find these proposed rules difficult to understand. The proposed definition in the new rules for FRCs as written would mean that most FRCs can not qualify as FRCs because they DO have “cooking, bathing, toilet or heating facilities”.

Our cabin is used predominantly in the cold and wet duck season and is NOT hooked up to upland or shore-based utilities. Since Oregon DEQ and USF&G regulations control our cabins

usage, please reconsider the proposed rule change that restricts the use of heat, cooking, toilet and bathing facilities in our FRC cabins.

Douglas Sampson, partner Clifton Athletic Club, LLC – August 14 (via email)

Comment:

I am writing to share my interest regarding some of the proposed modifications/rules changes to OAR 141-082: Leases, Licenses, and Registrations on Oregon-Owned Waterways. I am partner in an LLC of Clifton Athletic Club, we hunt and maintain a public use of a floating recreational cabin in the lower Columbia River which the founders of Bumble Bee tuna originally owned. The floating structure has been out on the Columbia river in one form or another since before the 1900's, so this topic is important to me and our members. Below I have expounded on some concerns and considerations:

141-082-0255: Definitions

Subsection (29): The proposed edits ("..nor equipped with cooking, bathing, toilet, or heating facilities") to the definition of a floating recreational cabin makes the structure useless and uninhabitable at certain times of the year. If that is your purpose, you would succeed in making these recreational cabins not worth having. The original definition of a floating recreational cabin was created to specifically address the unique structures in the lower Columbia River.

Prohibiting cooking and heating sources would defeat the whole purpose of having the structure and create safety concerns if anything were to happen due to extreme cold weather conditions. I hope the State of Oregon is not looking to create hazardous situations on the river and to its citizens.

141-082-0335: Registration fees

Subsection (1)(d): The proposed increase in fees to the floating recreational cabins of \$1,000 every five years is a little excessive for the limited access and work required to maintain these structures over the years. Our initial lease in 1999 cost \$300 which when adjusted for inflation at 3% would be approximately \$578 in 2025. The rate of inflation seems more than reasonable as a cost increase.

141-082-0336: Financial Assurance Requirements

Subsections (1-5 and 7): This proposed rule is unclear and very confusing to me. The terms such as "may require", "a form of", "acceptable to the department", "amount and type shall be determined by the department...and shall be reasonable", and "...subject to the department's acceptance" are not specific and subject to interpretation. If you are trying to undermine the owners of recreational cabins you have succeeded again. What is your purpose? How do people who have never used these structures even know the history, heritage value or meaning of the generational activities that have been passed down over the decades of legacy of the Columbia river.

Is the state just looking for another form of revenue?

As the holder of the authorization, as written, may require insurance of unknown cost which is not subject to public notification and I don't believe was satisfactorily addressed in the "Fiscal Impact Statement." The amounts of insurance that are already being required of some authorization holders is excessive (in terms of coverage expectations) considering the minor threat these structures pose to the State of Oregon and the environment.

Thank you for providing me the opportunity to comment on these proposed Administrative Rule changes. I hope you will consider my concerns from a floating recreational cabin owner's perspective.

Ryan Lampi, floating recreational cabin owner – August 14 (via email)

Comment:

My name is Ryan Lampi, and I am the owner of a duck shack/floating recreation cabin located in Mud Slough near Russian Island in Clatsop County. I am writing regarding OAR 141-082, and specifically the proposed change to the definition under OAR 141-082-0255 (32) – Floating Recreational Cabin. I am concerned that the proposed definition change would directly impact our shack and potentially render it unusable.

It is important to note that in the mid-1990s, we faced a similar situation. That issue was resolved through a Memorandum of Understanding between the U.S. Fish and Wildlife Service, the Oregon Department of State Lands, Clatsop County, and the owners of floating recreational cabins, houseboats, boathouses, docks, or floats within the Lewis and Clark National Wildlife Refuge. Given this prior agreement, I strongly believe our shack, and others in Clatsop County, should be grandfathered in and exempt from the new definition.

For reference, I have included the current and proposed definitions below:

Current Definition:

“(32) ‘Floating Recreational Cabin’ is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, not physically connected to any upland utility services (for example, water, sewer, or electricity), and used only periodically or seasonally.”

Proposed Definition:

“(29) ‘Floating Recreational Cabin’ is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, not either physically connected to any upland utility services (i.e., water, sewer, electricity) nor equipped with cooking, bathing, toilet, or heating facilities, and used only periodically or seasonally.”

Our Situation:

- **Accessibility:** Our duck shack is only accessible by boat—approximately a 30-minute ride from the nearest launch (John Day).
- **Use:** It is used periodically for short leisure trips.
- **Utilities:** It is not connected to any upland utility services (water, sewer, or electricity).
- **Facilities:** It includes a wood stove for heat, a propane range for cooking, and an eco-toilet that we responsibly transport back to mainland sanitary facilities.
- **No Bathing:** There is no bathing facility.

If the proposed definition is adopted as written, particularly the restriction on cooking, toilet, or heating facilities, our duck shack would no longer qualify under the rule and would become unusable.

I respectfully ask that you take our circumstances into consideration before finalizing any definition changes. These cabins represent a longstanding and responsible recreational use and

should not be unnecessarily restricted through regulation. If a definition change does happen, I urge you to consider exempting these existing structures from the new regulation to avoid unnecessary hardship to their use.

Dick Matthews, floating recreational cabin owner – August 7 (written); **August 14** (received via PDF email)

Comment:

See Attachment H

Brad Gitchell, Clifton Athletic Club LLC, member, floating recreational cabin owner – August 14 (via email)

Comment:

It has been brought to my attention that the state is proposing a rule change for FRC's.

The current rulemaking activity and consideration of whether a stiff boom should count toward the 1,500 sq ft and under 0265(3)(b) rule is what I would like to express my opinion on.

- The stiff boom is a lot like a protective boom, only it serves a different purpose. It is a means by which the float house is secured to the pilings in some cases and not all but, it is by far the safest approach for the job and alternative approaches carry serious safety risks. It should be excluded because it's a necessary tool for safe and secure operation – just like a mooring buoy or a protective boom (which are currently excluded in the rule).
- A. The stiff boom is a tool (a mechanism, a technique) to secure the cabin to the pilings, and it's far better than the alternatives, such as using chains, which get hung up and can flip a shack, or break and send a shack down river.
- B. It would never make any sense to include stiff booms in the calculation for a single FRC, since stiff booms are often **shared** by multiple FRCs. How the square footage of one stiff boom is apportioned between different shack owners would create needless calculation knots that can easily be avoided.
- C. The rule already excludes pilings, and a stiff boom is how we *use* the pilings to secure the shacks. A piling by itself is useless, and we can't put a piling through the cabin, so we use a stiff boom to attach to the piling. If the rule excludes pilings, it should exclude the complementary tool that allows shack owners to *use* the pilings.
- D. The DSL has historically *excluded* stiff booms from their 1,500 square foot threshold (even though it's not expressly in the rule), and therefore, this addition to the rule will simply harmonize the text with DSL's practice.

If the stiff boom is not excluded, it will be dangerous. Either duck shack owners will remove the planking from their stiff boom so they're under 1,500 sq ft, or they will lash their shacks directly to pilings and get rid of the stiff boom altogether. Both approaches are bad, both are dangerous. Without the planking on the stiff boom, logs will be free floating, wet, mossy, slippery, and dangerous. That will make maintenance very hazardous. And again, securing a shack to a piling with a chain leads to shacks flipping on their side or breaking free. The DSL shouldn't

encourage dangerous behavior – it should encourage the safest and best technique for shack security – usage of a stiff boom.

Jeff Salo and Myron Salo, floating recreational cabin owners, Horseshoe Island – August 12 (via PDF letter)

Comment: *See Attachment I*

David Hunnicutt, Oregon Property Owners Association, President – August 13 (via PDF letter)

Comment: *See Attachment J*

Elroy Olson – August 11 (via PDF letter)

Comment: *See Attachment K*

Scott Carpenter – August 11 (via email)

Comment:

This letter is to the DSL rulemaking committee and OAR 141-082-0265(3)(b).

As the rule is currently written, it's unclear if stiff booms are excluded for the 1,500 square foot calculation in that rule. I believe that needs to be clarified, and as some other shack owners have said, it only requires two words. Add "stiff" or "in front of protective booms" and that will make it very clear. The DSL already excludes stiff booms from their assessment, so it might as well be in the rule.

I am a partner of a recreational float house in Mud Slough of Russian Island in the lower Columbia River, and I have a lot of familiarity with stiff booms and just how important they are for the shacks. They are absolutely necessary. In some places, a protective boom is a necessary precaution for a floating house to safely exist. In other places, like the floating recreational cabins on the Columbia (commonly called "the duck shacks"), a stiff boom is necessary for them to exist. Just as DSL recognizes that a protective boom should be excluded from the 1,500 square foot calculation because of its safety purpose, DSL should also acknowledge the stiff boom in that same sentence, and exclude it for the same reason.

This change would sync the rule's words with DSL's practice, which is a good idea for consistency and predictability, especially over the years as people come and go within DSL.

I think these two words would be a very helpful change and I hope you will include them in your final rule.

Rodney Leback – August 10 (via online form)**Comment:**

I would like to take issue with your proposed redefining of a "Floating Recreational Cabin". I am a co-owner of just such a cabin located on Russian Island in the Columbia River. My partners and I purchased this cabin (duck shack) in 1987 from the original owner who built it and moored it at its current location in the 1960's. Our cabin, along with every other duck shack I have been in, has always had facilities for sleeping, cooking, heating and toilet. We use our cabin mostly in the winter during duck hunting season, mostly for one or two days at a time, and I can't imagine not having those facilities during the coldest, wettest, and windiest time of the year. Our cabin provides a refuge from the storms and a place to warm up, dry out, and nourish ourselves, not just a place to sleep. The proposed new definition is unclear as to what is meant by a "facility". If we brought out a propane cookstove or heater and left them in the cabin through the duck hunting season, would they be considered a "facility"? Are the port-a-potties we currently use considered a toilet facility? For our health, safety and hygiene, cooking, heating, and toilet facilities are a necessity in these cabins, even for something as short as an overnight stay. The existing definition of a "floating recreational cabin" has been accurate and adequate for years and doesn't need changing. Please reconsider making these changes.

Bill Whitmore – August 9 (via email)**Comment:**

My name is Bill Whitmore and I own a FRC on Russian Island, I bought it 30 + years ago from 3 brothers that had some health issues. Their father who was a commercial fisherman had built it many years earlier. I was lucky to get it they didn't come up for sale very often. Some 20 years ago we reached an agreement and the duck shacks became floating recreational cabins, that description has served us well over the years and I see no reason to change it. The moorage fee has gone up several times and I guess that's normal within reason. The bond or insurance issue I don't feel is applicable to FRC's, boat owners (the derelict boats that some people live on anchored wherever are the big problem) don't have to have a bond or insurance so why should we? It seems like these updates that you are suggesting are only going to complicate the issue for the DSL and the FRC people. I hope you reconsider these changes I don't think they are good for anyone .

Stephen Fulton, Self (duck shack owner) – August 7 (via online form)**Comment:**

I am writing for the second time to provide public comment after I have further contemplated the proposed amendments to OAR 141-082, specifically the definition of a "floating recreational cabin" (FRC) under OAR 141-082-0255, which prohibits cooking, bathing, toilet, and heating facilities. As an owner of an FRC primarily used during the wet and cold months of November through January, I respectfully request that the Department reconsider the prohibition on heating and cooking facilities to ensure safe and practical use of these structures.

My FRC, located on state-owned submerged and submersible land, is used seasonally during the winter months when temperatures often drop significantly, and weather conditions can be

harsh. Heating facilities are critical to maintaining a safe and habitable environment, preventing health risks such as hypothermia, especially for families or individuals using the cabin during cold, wet conditions. Similarly, cooking facilities are essential for preparing warm meals, which are vital for comfort and safety during extended stays in winter. Without these facilities, the usability of FRCs is severely limited, potentially discouraging safe recreational use of Oregon's waterways during these months.

I support the Department's goal of protecting water quality, preventing full time use of the cabins and ensuring environmental compliance, as outlined in OAR 141-082-0285. However, allowing limited, environmentally responsible heating and cooking facilities would not conflict with these objectives. Such facilities could be regulated to ensure compliance with Department of Environmental Quality requirements for sewage and wastewater.

To balance environmental concerns with practical use, I propose the following modifications to OAR 141-082-0255:

1. Allow Limited Heating and Cooking Facilities: Permit FRCs to include heating and cooking devices that meet safety and environmental standards, with clear guidelines to prevent pollution or hazards.
2. Maintain Registration Status: Ensure that FRCs with approved heating and cooking facilities remain eligible for registration (for cabins $\leq 1,500$ sq ft) rather than requiring a more costly lease, reducing financial burdens on owners.
3. Seasonal Use Clarification: Acknowledge that FRCs used in winter months require these facilities for safety, while maintaining the prohibition on permanent residential features like toilets and bathing facilities to preserve the recreational, non-commercial intent.
4. Restricted Use: The FRC can be occupied no more than seven (7) consecutive days and/or no more than fifteen (15) days in any month.

These changes would enhance the safety and accessibility of FRCs for seasonal use, particularly in winter, while aligning with the Department's commitment to public trust uses like recreation (OAR 141-082-0260). I urge the Department to consider these adjustments to support responsible recreational use of Oregon's waterways without compromising environmental protections.

Thank you for the opportunity to comment. I am happy to provide further details or participate in discussions to refine these rules.

John O'Halloren – August 6 (via email)

Comment:

My name is John and I am writing to comment on section 3b of OAR 141-082-0265.

It is important to exclude stiff booms in the calculation of square footage for floating recreational cabins. This change will ensure recreational cabin owners can safely secure shacks to pilings, and prevent owners from attempting unsafe methods to secure to pilings in order to avoid a lease. This change will also make the rule consistent with the current practice.

I hope you will consider an update for this definition.

Jon Hellberg – July 31 (via online form)

Comment:

Subject: Opposition to Proposed Definition Change – Floating Recreational Cabin

Good afternoon,

I am a party of interest in a “Floating Recreational Cabin” on the Lower Columbia River. As previously mentioned in the public comment portions of your meetings, these floating structures—colloquially known as “duck shacks”—have existed on the river since the late 1800s. They are a longstanding part of the cultural and historical fabric of the Lower Columbia River communities.

I am writing to respectfully oppose the proposed changes to the definition of a “Floating Recreational Cabin.” The current definition is sufficient and well-understood. The proposed revisions offer no clear benefit and instead introduce ambiguity by blurring the line between “Floating Recreational Cabin” and “Floating Home.”

This proposed change risks confusion, misclassification, and unintended regulatory consequences for leaseholders and registrants.

Thank you for your consideration.

Stephen Fulton – July 23 (via online form)

Comment:

I am Stephen Fulton from Astoria, an owner of a floating recreational cabin in the Columbia River Estuary near Knappa, affected by the proposed rule change under OAR 141-082-0255(29), which defines floating recreational cabins.

I respectfully urge the Department to reconsider prohibiting heating, bathing, toilet, and cooking facilities in these cabins.

My cabin is used during November to January, when cold, wet weather makes heating and cooking essential for safety and comfort. Tidal restrictions and unpredictable weather in the estuary complicate short visits, making these amenities necessary for responsible use. Without them, we’d rely on portable devices, risking fire hazards and environmental harm to Oregon’s waterways.

I support the Department’s commitment to protecting public trust uses, but this restriction limits safe, seasonal enjoyment of our cabins. I propose striking the prohibition on these facilities and allowing Oregon DEQ regulations, such as those for wastewater management, to ensure environmental safety.

Thank you for considering my input and for your dedication to Oregon’s waterways.

Monte Campbell – July 17 (via online form)

Comment:

I am having problems understanding your change to definition #29 "Floating Recreation Cabin is a moored floating structure, only acceptable by boat, used wholly or in part as a dwelling either physically connected to any upland utility service water, sewer, electricity, nor equipped with cooking, bathing, toilet, or heating facilities, and used only periodically or seasonally."

Does this mean that a cabin that has cooking items like a stove and a bathroom is not considered a floating recreational cabin? Seems the definition does not conform to "a dwelling" if you can't cook or have bathroom facilities. Further it states "heating facilities" without a definition. Does that mean woodstoves or propane heaters? So if I have a cabin that I try to heat with a propane heater it is no longer a floating recreational cabin? It would appear this is a typo and should say "or equipped" rather than nor but please explain or correct.

TO: Oregon DLS

Subject: Public Comment on Updates to Waterway Leases

Date: 15 August 2025

I can understand the fee increase being considered since these collected monies will help boost the common school fund in Oregon. I also see remarks made by DSL about wanting to protect the health and safety of our waterways.

What makes me suspicious about this rulemaking are the statements made in 142-081-0306 which mention (a) an annual submerged lands enhancement fee of \$100 per year and (b) all fees shall increase annually by 5% per year.

Initially, it looked like my 5 year lease for my private dock was increasing from \$250 to \$400. This added wording is indicating the lease amount grows in price every 5 years plus the added \$100 per year for the "enhancement fee."

The 5% annual increase is being presented to me as necessary to keep up with inflation how can you know what the inflation rate will be in the future? An automatic 5% increase per year would have no limits to how high the lease fee could reach.

I have lived along the Newberg Pool section of the Willamette River for 20+ years and I haven't seen any efforts by DSL to protect the health of this section of the Willamette River. Homeowners along the river are subject to the rules of the Willamette Greenway and yet private homeowners along the river are regularly removing trees to improve their river view. There is less shade on the river which promotes warmer river temperatures. An algae problem has been increasing in the past 10 years and the algae is appearing at the water surface farther from the embankment. I am seeing fewer raptors (hawks, eagles, osprey) and blue heron in this area. The eagles may have left because their nests have been disturbed by new construction and tree removal.

With these increased fees, I do hope DSL will expend some efforts to preserve the health of Oregon's waterways. They are a valuable resource. However, invasive species (e.g. algae in the river, ivy on trees) combined with human activity are impacting this resource.

Regards,

Dale Mack
Aurora, OR

Paradise Moorage
Jeff Ingebrigtsen
50350 Cowen Rd ., Space 21
Scappoose, Ore. 97056
503.250.3349

August 15, 2025

Division of State Lands
Submitted via email; DSL.rules@dsl.oregon.gov

RE: Waterway Leases and Fees

To whom it may concern;

The new fee formula is flawed. It does not reflect equality to all leases.

- You ignore most of your lessees (70.4%) or 295 entities who vocalized the choice of flat rate system and went with a riparian value of 21.5% for 90 leases.
- How is the value of land next to a state line shopping center equal to a rural cow pasture?
- Your 5% lease renewal rates are double the 26-year CPI average of 2.42% per the Bureau of Labor Statistics data.

Please use the Oregon Landlord /Tenant rate published each September 30 by the Oregon Department of Administrative Services. DAS was implemented by law 2019 to publish this data.

Most tenants I have are on fixed incomes. Any increase in my expenses will be passed on therefore generating a burden YOU are able to mitigate.

Please STOP your flawed process. The task force was FORCE FED this proposal by DSL staff. Any questions please contact me directly.

Thank you for your consideration.

Regards,

Jeff Ingebrigtsen

FRONT ST MARINE, LLC.
Newport, OR
541-265-6919
[*jlgwebster113@gmail.com*](mailto:jlgwebster113@gmail.com)
113 SE Bay Blvd, Newport, OR 97365

August 15, 2025

To: Department of State Lands Rules Coordinator

RE: OAR 141-082: Leases, Licenses, and Registration on Oregon-Owned Waterways

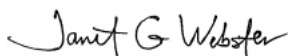
Our business, Front St Marine, LLC, has three properties on Newport's Bay Front with waterway leases of varying sizes. The wharf at 267 SW Bay Blvd represents our significant investment in Newport's fishing community. When you build on the waterfront in a fishing community, you demonstrate a commitment to that industry. A large wharf built to current construction standards is not movable or easily converted to another use. It becomes a part of landscape of this port.

It is a privilege to extend over state lands and that comes with a responsibility financial and environmental. I understood the financial one when we undertook the project. However, I am concerned with the proposed changes in the formula for assessing the annual lease payments. The narrow strip of adjacent land is assessed at a premium given the location in a prime tourist town. I checked with the Lincoln County Assessor's Office on the potential impact of the proposed change and it would increase our annual lease at least eightfold. While one statewide formula will promote efficiency, I suggest there needs be some nuance to adjust for local conditions.

I read the proposed changes and know that the changes will not take place before we renew our leases in several years. I am confused as to what happens then. The proposed rule 41-082-0305 states that "a renewing lease's annual lease payment shall not exceed 15 percent of the last annual lease payment charged by the department." Yet, the information in your Summary of Proposed Fees states that the annual payment will be calculated using the new formula. I suggest that this be clarified for current lease holders wondering when to expect major increases in annual payments.

Finally, throughout your discussions, the Department did not identify a financial goal. You seek to increase efficiency. Our interactions with the Department have been very mixed with inadequate invoicing to lack of local presence. I hope that the Department articulates how the increased funds will be spent and allocated to the Common School Fund as this will be more convincing for the need for change.

Thank you for the opportunity to comment.



Janet Webster



Rules Coordinator
775 Summer Street NE, Suite 100
Salem, Oregon 97301-1279

RE: Oregon Yacht Club comment on Oregon Department of State Lands Submerged
Land Lease Rulemaking, August 2025

To Whom It May Concern:

The Oregon Yacht Club (OYC) is a shareholder-owned noncommercial moorage with 39 floating homes in the Holgate Channel of the Willamette River east of the south end of Ross Island in Portland. We have been residents of this section of the river for over a century. We appreciate the DSL's work on behalf of all Oregonians to preserve and protect our public waterways.

We endorse the response to this rulemaking by the Waterfront Organizations of Oregon (W000). We join W000 in thanking the DSL for engaging with a rulemaking advisory committee (RAC) and for responding to the input from the RAC and other stakeholders. OYC can accept the need for a rent increase of up to 15% upon renewal of a waterway lease that then includes annual 3% rent increase. We also accept the relevant sections of the rental rate formula that would add 0.1% to the base 3% rate for noncommercial uses such as ours, along with a 0.5% increase for being in an essential salmonid habitat. Naturally, as a longstanding participant in the Clean Marina program, we welcome the rate discount offered to qualifying participants. Incentivizing Clean Marina participation benefits the river and all who use it.

On the other hand, we have to agree with W000 that the proposed rent formula produces strange and inconsistent results. We are strongly in favor of the proposed cap of 15% on rent increases at lease renewal, because without that cap, the formula would levy a massive and nonsensical rent increase of over 600%!

In our case, the reliance on county assessor's determinations of market value produces particularly odd results. We actually have two leases with DSL, one for the main section of our moorage adjacent to our privately-owned uplands and one for a small section at the north end that is adjacent to a city-owned land parcel. The county assessor considers our uplands to have a value of almost \$9 per square foot. By contrast, the market value of the neighboring city parcel is deemed to be worth only \$1 per square foot. About 70% of our uplands is undeveloped and undevelopable under current environmental zone rules. It is essentially

indistinguishable from the city parcel. The remaining 30% is merely used for parking cars and boats. There are no structures and there could never be any structures or other uses under current city rules. Yet, the DSL formula slavishly applies the nine-fold difference in market value. It doesn't make sense.

There are some sections of the proposed rule that could benefit from clarification and explanation:

- 141-082-0280: Lease and Public Facility License Application Review Process
 - o We have been told that "DSL policy is that lease renewals do not go out for public comment unless the lessee requests (1) a change in the lease area or (2) a change to the use classification." But we do not see that policy clearly included in the proposed rule. Without making that policy explicit and binding, we could be subject to intolerable uncertainty, fearing that each lease renewal could drag us into a fraught public process with the potential risk of eviction from our century-old home. While that scenario may be extremely unlikely, it is not clearly ruled out in the proposed language.
- The DSL should be more clear in its communications about the proposed rent formula that it is relying on county assessor's determination of real market value and not the "assessed" value of adjacent lands. These figures are often wildly different.

We also join W000 is asking that the DSL provide an analysis of the fiscal impact of the proposed rule changes.

In summary, OYC understands the need for the DSL to raise revenue in order to pursue its mission on behalf of the people of Oregon. We understand that it is right and proper for us to contribute. We appreciate your attention to our concerns as spelled out in our comment.

We look forward to seeing the next version of the proposed rule.

Respectfully,

DocuSigned by:

Philip H. Evans

Phil Evans

Commodore
Oregon Yacht Club



WATERFRONT ORGANIZATIONS OF OREGON

July 24, 2025

Waterfront Organizations Of Oregon (WOOO)
23586 NW Saint Helens Road
Portland, OR 97231

WOOO Response to DSL Submerged Land Lease Rulemaking

Overview

Part of WOOO's mission is to:

- Enhance educational programs for waterway users, boosting public river access and diverse activities.
- Cultivate stewardship for Oregon's waterways, focusing on environmental care and recreation.
- Keep tabs on and relay updates from governmental agencies about waterway regulations affecting waterfront community members.
- Collaborate with groups to support the shared interests of all waterway users.

WOOO represents boat marinas, floating home moorages, and other waterway businesses, including modest, non-profit residential communities that do their best as stewards, as well as Clean Marina adherents.

This mission is very much in line with the mission of the DSL in its management of Oregon coastlines and waterways. With this in mind, WOOO views the DSL as an important partner as it strives to meet this mission. Toward that end, WOOO respectfully submits this response to the current proposed rules.

DSL Rulemaking Goals

At the April 2024 DSL Board Meeting, DSL staff presented a proposal to initiate rulemaking to do the following regarding submerged land leases:

- simplify how lease rates are calculated;
- ensure lease rates are equitable and fair, and that application fees can cover administrative costs;
- tie fee and rate increases to a price index;
- use clear and simple language where the current rule is confusing or unnecessarily complex;
- clarify the initial term of a lease; and
- require financial assurance for registrations and wharf certifications.

Additionally, DSL staff stated the following:

“Upon Land Board approval to initiate rulemaking, the Department will convene a rulemaking advisory committee (RAC), representing those who are likely to be affected by the rule, to review and provide input on the proposed rule language, development of a notice of proposed rulemaking, and **an evaluation of fiscal impact**. The Department will also gather input on the proposed rule language through a public comment period and will hold at least one public hearing. The Department will take into consideration public comment, input from the RAC, and input from other local and state agencies, Tribal governments, and affected stakeholders to determine the final proposed rule language which will go to the Land Board for adoption at a future meeting.” (boldface text added)

The DSL Board was presented with a report written by a summer intern in 2018 that attempted to provide both the rationale for new rules and suggestions for their modification. This report served as the basis for all proposed rule changes at the beginning of the process.

WOOO’s initial reaction to this report was that several of its assumptions and recommendations were seriously flawed. It is to DSL staff’s great credit, however, that by the end of the RAC process, most of WOOO’s concerns were addressed and, with few exceptions (see below), were rendered moot.

RAC Meetings

The RAC meetings were extremely well facilitated. Questions were addressed in a timely manner, most data requested was provided (with some exceptions), and robust discussions were always welcomed. The RAC members were a diverse group of interested parties, although only a subset actively participated. As might be expected, the issue of lease rates provided the most lively interaction but they were always good natured and informative. At the end of the day, initial rule proposals were significantly modified. Again, kudos to the DSL staff for listening to the RAC and adjusting their thinking accordingly.

Outstanding Issues

The Formula

From the beginning of the RAC process, the use of the formula found in the intern's paper has been a sticking point. Calculations of lease rates for several of our members using the formula show rates up to **40 times** higher than current rates (in one case a moorage with a \$35,000 annual rate would see its 'formula' rate balloon to \$1,400,000). Even DSL recognized this flaw and had to provide lifetime caps of \$150,000 to \$175,000. Most existing lease holders would take years or decades to reach the cap based on current proposed rules. This begs the question of why the formula is still in the rules, since the lifetime caps make its calculations irrelevant.

Curiously, a newly established large leaseholder in a high market value area might immediately reach the cap, while a neighboring, long-standing leaseholder could be decades away from doing so. While this is just one example, it illustrates a real and possible outcome—one that results in significant inequity. This scenario strongly argues for eliminating the current formula in its present form.

Fiscal Impact

One of DSL's initial goals (see above) was to provide an analysis of the fiscal impact of the proposed rule changes. As of yet, WOOO has not seen such an analysis. Several times during the RAC meetings, this question was raised without an answer. It is hoped that this analysis can be completed and posted before final rule adoption.

Final thoughts

The current proposal (15 year lease for lessees in good standing, a 15% rate increase at renewal followed by a 3% annual increase with lifetime caps as described) is acceptable. It may cost somewhat more than current rates but the addition of caps mitigates that issue.

In the final analysis, DSL staff should be commended for their hard work and willingness to modify their original positions to accommodate those of us who share many of their goals for the use of Oregon's coastlines and waterways.

Respectively submitted,

Ron Schmidt
President
On behalf of the Board of the
Waterfront Organizations Of Oregon

On March 13, 2025, DSL announced that the Common School Fund would send a record-breaking \$76.8 million to Oregon schools in 2025. This contribution followed the 2024 contribution of \$74.2 million and the 2023 contribution of \$72.2 million, all of which come from the Common School Fund, which was valued at \$2.38 billion as of February 2025. Given this as a backdrop, the reasonable increase in lease rates for submerged lands that DSL claimed it was seeking made sense. Thus, it came as an unwelcome surprise to find that DSL's proposal is anything but reasonable.

In fact, in the initial version of the proposal, it seemed that virtually all of its features were designed to make more money. For example, DSL shifted from the 15-year lease that we now have to a five-year lease. They went from the 3% annual increase that is now in force to an annual increase of 5%. However, the largest charge by far came from changing the formula basis from assessed value (AV), 3% gross, or flat rate to real market value (RMV) alone.

In response to suggestions made by members of the Rulemaking Advisory Committee (RAC). DSL did make some changes to their proposal. For example, they shifted back to the 15-year lease period and the 3% annual increase that are now in force. However, despite compelling arguments made by several RAC members, DSL remains strongly committed to using RMV as the basis for their rate formula, rather than considering other approaches (e.g., flat rate).

DSL's strong commitment to using RMV relies on an argument made by Andrea Celentano, a Hatfield Oregon Summer Fellow, in a report she wrote in 2018. In this paper, Ms. Celentano showed the great gap between the assessed values (AVs) and RMVs of properties in Oregon, and argued that it is Oregon's Measure 50, which limits increases in AV to 3% per year, that accounts for this large difference. In Ms. Celentano's view, DSL made a serious error by using AV (with its 3% cap) in its formula for calculating lease cost rather than RMV, which would produce much, much more money for the state.

DSL's use of RMV in the current proposal represents their effort to rectify this "error." However, this approach is fatally flawed in two ways. First, DSL's own data show that this approach produces exorbitant lease charges. (See Note 1.) For example, in the first iteration of the proposal, a floating home moorage was informed that its lease was estimated to be over \$1.4 million dollars per year, more than a 32-fold increase. In response to this case, and others like it, DSL proposed a cap of \$175,000 for annual lease costs. (See Note 2) As Blake Helm, Proprietary Specialist, DSL, writes: "The maximum allowed rent is intended to limit the exceptionally high land values or large areas from influencing any one lease's annual rent." In other words, their formula does not produce reasonable outcomes for the full range of lease costs, and so, they propose to overrule it with a cap. This cap helps with high-cost leases, but it is critical to note that all of the leases, not just high-cost leases, are calculated using this approach, which produces unreasonably high lease costs across the whole distribution of lease costs.

The second problem is caused by DSL's effort to solve the first problem (i.e., the exorbitant lease costs for high-cost leases) by imposing the \$175,000 cap. Implementing this cap ensures that the high-cost leases will top out relatively quickly. However, over time, all of the other leases will also move toward this cap, and, ultimately, they will reach it too. When leases are renewed, the proposal stipulates that the charge for the first new year will be 15% more than the charge in the last year (15th) of the previous lease. The charge will then increase 3% for each of the following 14 years, and so on for each of the subsequent 15-year lease periods. One might imagine that this process would continue until the lessee reaches the calculated lease charge. However, this will not happen because the charge for the lease will keep increasing. That is, at each renewal, the RMV for the adjacent upland is highly likely, if not certain, to have gone up, producing a new, higher lease cost to reach. This process will continue until the \$175,000 cap is reached.

One of the goals of DSL's proposal was to make lease costs more equitable. As can be seen, over time, the current DSL proposal eliminates any semblance of equity. Of course, it will take some time for this process to play out, but with each passing lease cycle, it is certain that the lease distribution will become less and less equitable. It is highly unlikely that this is the outcome that DSL sought, but this is the outcome that their logic produces.

Why should DSL propose an approach that they know produces lease costs that are so high that DSL itself believes that their formula needs correction, and that, over time, undermines equity, when there are viable alternatives that can produce reasonable outcomes for the full range of lease costs? For example, it would be simpler and more straightforward to just do away with the formula altogether and do what DSL suggests for the first two 15-year lease cycles. That is, as DSL proposes, the lease cost could be increased by 15% for the first year in the first year of the lease renewal followed by 3% increases for 14 years, and the same could be done in the second lease cycle: 15% increase in the first year and 14 3% increases for the next 14 years. Assuming that this process begins as leases renew in 2026, DSL could assess progress in 2053 and decide what they would like to propose for 2056. In the meantime, this proposed approach provides a consistent and growing revenue stream for DSL and expense predictability for the leaseholders for the next 30 years.

Steve Harkins

West Hayden Island Moorage

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Notes

1. Using RMV by itself in the formula would produce high lease costs, but DSL goes even beyond this. The DSL approach calculates the cost per square foot of the adjacent upland and then makes the highly questionable claim that the submerged lease land should cost the same amount per square foot. That is, river mud should cost the same amount per square foot as the adjacent upland, even though the latter has much greater utility than the former. RAC members argued forcefully against DSL's position to no avail. It should be noted that a neighboring state, Washington, uses the same formula as DSL's, but discounts the value of the mud 70% compared to the land. This comparison shows how DSL's lease costs become so exorbitant.
2. There were other leases with lease costs exceeding \$175,00 in the first iteration of DSL's proposal, but it's not possible for us to know exactly how many. RAC members asked to see a spreadsheet with basic information like what was provided in Appendix E of the 2018 paper (e.g., the cost of individual leases in the last year of the current system; the cost of the leases calculated with the new formula), but this information was never provided. DSL did not even provide the RAC with frequency distributions that summarize this information.

Over the course of the RAC meetings, DSL did provide 12 examples of how lease costs were calculated. However, of these 12, six were less than \$4,000 and the largest was only \$43,733.33. The problem with DSL's approach is most obvious when high-cost leases are examined, and DSL did not present even one. DSL also did not show the numbers for even one floating home moorage, even though these are likely to be high-cost leases, especially in Multnomah County. Hundreds of people live in these homes, many of whom are elderly and live on fixed incomes. These unexpected increases in lease costs are going to come right out of their pockets. One would think that these moorages deserve special consideration, but this was not the case.

August 14, 2025

To the Staff of the Oregon Department of State Lands,

This comment is submitted by Brian O'Hollaren, Mark O'Hollaren, and Ryan O'Hollaren.

We own a Floating Recreational Cabin (“duck shack”) that is located between Woody Island and Horseshoe Island, accessible via the Aldrich Point boat ramp, and we submit this comment to assist the Department with its rule-making efforts and in response to invitations from Department Staff to propose language that is consistent with our requests, our public testimony, and the historical practice of the Department.

I. Adding “Stiff Boom” to OAR 141-082-0265(3)(b)

We propose the addition of two words to the rule found at OAR 141-082-0625(3)(b) to harmonize the rule’s text with the Department’s policy.

Proposed language **change** to OAR 141-082-0265(3)(b):

Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated, pilings, dolphins, recreational use mooring buoys, and **stiff or** protective booms.

At the Portland hearing on August 7, 2025, Justin Russell of the DSL asked us to provide a proposed definition of a stiff boom for inclusion in OAR 141-082-0255’s “Definitions” section. We suggest the following:

“Stiff Boom” means a log boom with supportive planking used to secure a Floating Recreational Cabin to Pilings.

Mr. Russell also asked for exemplar photos, which we’ve included below.

There are multiple reasons for this addition.

First and foremost, the Department *already* excludes the stiff boom from the 1,500 square foot calculation in its current regulatory practice. Accordingly, this addition will not change the Department’s policy at all. Rather, it will remove uncertainty for future years of interaction between the Department and FRC owners and prevent the confusion that has concerned so many FRC owners in recent years because “stiff boom” isn’t currently written into the rule.

In 2017, FRC owner Donald Guthrie received a letter from the Department informing him that, based on satellite imagery and measurements, his FRC

exceeded the 1,500 square foot threshold. Mr. Guthrie wrote back to the Department to explain that they were mistaken, and that he had not made any changes or additions to his FRC. The obvious source of the confusion was that the Department was including the stiff boom in its calculation. After some discussions, the Department agreed that the stiff boom should not be included, since it is the mechanism by which the FRC utilizes the pilings (which are excluded). This decision made good sense then, and it continues to make good sense now. The stiff boom allows the FRCs to use the pilings in a safe and predictable manner, and since pilings are excluded from the 1,500 sq ft threshold, so too should stiff booms be excluded as they are a method of using the piling.

What is a stiff boom?

A stiff boom is a method of securing a floating house to pilings. It is a log boom (typically 4 logs wide) with structural supports and planking on top. These structural elements make the boom “stiff” – in stark contrast to a normal log boom, where the logs will move, undulate, and bob in the water. Multiple pilings slide through holes in the middle of the boom. The holes are reinforced by the stiff boom’s logs themselves. The holes allow the stiff boom to rise and fall with the tide, up and down the pilings. The cabin attaches to the stiff boom, and therefore stays securely attached to the pilings, and follows the stiff boom as it rises and falls. This arrangement is, in a word, ingenious. It is the safest method for securing an FRC to pilings in the brutal conditions on the lower Columbia river. Indeed, it is the *only* appropriate method.

Here are some photos of FRC stiff booms to illustrate the principle:



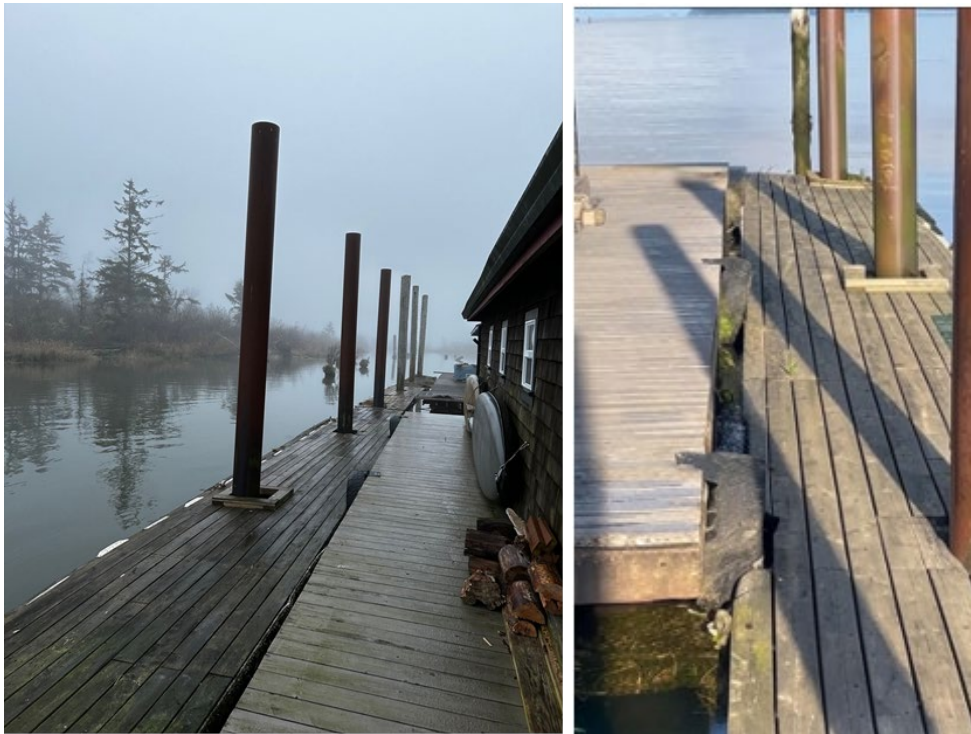
^ Photo 1

^ Photo 2



^ Photo 3

^ Photo 4



^ Photo 5

^ Photo 6

The genius of the stiff boom comes from solving the problems faced by FRCs on the lower Columbia. To understand why the design is so crucial to the existence of the duck shacks, it is first necessary to understand the environmental context of the FRCs. Unlike other floating structures, FRCs are not connected to land by gangways, docks, or scaffolding. FRCs are free-floating structures accessible only by boat, and the environmental conditions in which they exist are brutal. First, the tidal swings on the lower Columbia are massive – commonly exceeding 9 feet (which means the FRC rises and falls 9 feet in a matter of hours). Second, wind waves are

regularly 3-4 feet tall, with a frequency of every 2-5 seconds. This barrage takes a toll on any structure. The stiff boom addresses ***both*** of these factors at the same time, and brilliantly solves them.

The large tidal swings on the lower Columbia create a risk of a cabin getting “stuck” on a piling, and either flipping, breaking, or coming unmoored. To be sure, these are very real, and very dangerous risks. Using a chain or metal bracket to attach an FRC to a piling invites those exact risks because of the small surface area in contact with the pilings (for clarity, pilings are *not* perfectly smooth cylinders). But a stiff boom ameliorates these risks. A stiff boom is simultaneously attached to *all pilings* and, because it’s stiff, it rises and falls evenly with the tide and remains at the water level. Because it’s stiff, it stays perpendicular to the pilings. As the tide fluctuates, the stiff boom brings the cabin up and down with it. Also, because it’s stiff, it is very unlikely that any part of the boom will get “stuck” on any of the pilings. Furthermore, the sheer forces of currents, winds, and waves are distributed across the logs, and across the pilings, so stiff booms are remarkably durable. By contrast, chains or brackets lashed to pilings concentrate those forces at a single point, and mother nature will always find their limit.

The stiff boom also serves to insulate and protect the FRC from the veritable bombardment of wind waves that occur almost every single day. The stiff boom is connected to the FRC via chains with a small amount of “slack” or “play.” This ranges from 24-36 inches, and that cushion is absolutely crucial for the safety of the cabins. The stiff boom absorbs the waves and shields the cabin. The slack in the connection ensures that the energy of the waves is *not* directly transmitted to the cabin. By contrast, using a chain or bracket connection to a piling, without a stiff boom, would expose the cabin *directly* to the waves. The direct force of the waves would rip the cabin and its mooring chains apart.

In sum, the stiff boom is a core component of the FRCs on the lower Columbia. Without it, the duck shack owners invite foreseeable and unnecessary risks. This, we believe, is why the Department has decided in recent years not to include the stiff boom in their assessment. We agree with the Department’s judgment on this issue, and simply ask the Department to codify that judgment by adding stiff boom into the exclusions in OAR 141-082-0265(3)(b).

What a stiff boom is *Not*.

The stiff boom is not a workaround for FRC owners to expand their structures. For the avoidance of any doubt, nobody in their right mind would ever build a structure on their stiff boom. There are multiple reasons for this. First, the stiff boom is separated from the cabin float (*see above* re: the slack separating the stiff boom from the cabin float). Second, stiff booms need constant maintenance. As any FRC owner will tell you, stiff boom maintenance is a constant job that often requires removing planking and ensuring that the chains and fixtures are healthy, logs are in good

condition, and structural supports are securely fixed. Without that maintenance, the stiff boom will cease to function properly. Putting a structure onto a stiff boom would prevent an FRC owner from performing that necessary maintenance. And indeed, that is precisely why nobody does it. The stiff boom is not a loophole or a workaround, it's an important tool, just like the other features that are excluded in 0265(3)(b).

Adding Stiff Boom to the Rule Is a Good Idea for Additional Reasons

First, and as noted above, adding “stiff or” into the rule would harmonize the Department’s practice with the text of the rule. This is simply good administrative practice, and will increase predictability and reduce confusion going forward.

Second, and as explained at various public hearings on these proposed rules, if the Department changes its policy and begins to count stiff booms toward the 1,500 square foot threshold in the future (because it is not written into the rule), FRC owners will make foreseeable and dangerous changes to fall beneath the threshold. FRC owners will remove the planking from their stiff booms to expose the logs and render the boom no longer “stiff.” This alone will compromise the boom. But moreover, because of the constant maintenance needs, this will create a dangerous circumstance that should be avoided. Float logs are wet, slimy, and slippery, and without the structural supports of the planking, they will *move*. FRC owners will need to walk, kneel, and lay across the logs to perform constant checks and maintenance in hazardous weather and conditions. This will almost certainly result in injury and could *very well* result in deaths. There is no reason to invite this risk. It is foreseeable, severe, and preventable.

The other change that FRC owners will make is to get rid of their stiff boom altogether, and resort to chains or brackets to attach their cabin to pilings. This would be a terrible result, as it would obviate the virtues of the innovation (discussed above) and invite the precise risks that the stiff boom solves. Chains and brackets will get stuck on pilings. Shacks will tip, break, flip, or come unmoored (or all three). People will get hurt, property will be damaged, and the cabins will break loose and float downriver. Again, there is no reason to invite these risks.

Finally, including a stiff boom in the calculation of the 1,500 square foot threshold would prove impractical, since FRCs regularly share the same stiff boom (*See Photo 5* above). Because stiff booms are such a secure and safe method of utilizing pilings, multiple FRCs, under separate registrations, will often share one. Deciding how to distribute the square footage of a *shared* stiff boom would be difficult, arbitrary, and impractical. But again, there is no affirmative reason to create that difficulty and impracticality, and the Department has to date not done so.

II. The Definition of Floating Recreational Cabin

The proposed changes to the definition of Floating Recreational Cabin (“FRC”) at OAR 141-082-0255(29) is unworkable. The Department has recognized this in multiple public hearings, and has asked us to propose some alternative language, which we are more than happy to do.

The proposed change adds a clause after the parenthetical to exclude those structures that have any “cooking, bathing, toilet, or heating facilities[.]” If read literally, this change would render the definition a nullity because no such structure exists. During public hearings, the Department said that the proposed language does not reflect the Department’s intent. The Department’s actual intent with the proposal was to clarify that the named facilities cannot be connected to any upland utilities. We understand and appreciate this intent, and we believe the Department can best effectuate that intent with the current definition of FRC.

The current definition *already* excludes any cabins that are physically connected to *any* upland utility services. The current definition provides “examples” of water, sewer, or electricity, but those are only *examples*, and the list is therefore not exhaustive. To be sure, the current definition, by its terms, disclaims “*any*” facilities that are physically connected to an “upland utility services.” Thus, if the Department’s intent is to ensure that FRCs cannot be connected to any upstream utility whatsoever, the current definition already accomplishes that purpose.

Current definition:

- “**Floating Recreational Cabin**” is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, not physically connected to *any* upland utility services (for example, water, sewer, or electricity), and used only periodically or seasonally. (emphasis added).

Additionally, the proposed change from “for example” to “i.e.” in the parenthetical is incongruous with the Department’s stated intent. “I.e.” and “for example” are not synonymous. The current verbiage is much stronger. “I.e.” (short for the Latin “*id est*”) is used to illustrate a sentence’s meaning, and typically implies an exhaustive list (meaning *only* those utilities listed). “For example,” by contrast, signals a non-exhaustive list of utilities. Thus, if the Department intends to exclude *all* upland utility connections from the definition of FRC, then the current verbiage and parenthetical does just that. It excludes “any” utility connections, and provides a helpful but non-exhaustive list of examples.

The current definition avoids the pitfalls of the proposal, which would add an additional clause that would disqualify structures with self-contained facilities from the definition of FRC, and render the definition a nullity (because no such structures exist). The current definition vindicates the Department’s intent to disqualify cabins with *any* upstream utility connections. We thank the Department

for recognizing that the proposed rule is unworkable, and we hope that this explanation will help the Department realize the virtue of the current definition.

Thank you for your attention to these two matters concerning the duck shacks. As you can see, we care immensely about this small historical community, and we are committed to preserving this legacy for the next generation of owners and stewards. We greatly appreciate the engagement we've received from the Department throughout this process, and we are encouraged by productive conversations we've had with Department staff.

Please let us know if you have any questions about any of this or would like to discuss it further.

Sincerely,

Brian O'Hollaren
Mark O'Hollaren
Ryan O'Hollaren

From: Dick Matthews dnd@pacifier.com
Subject: Duck shack info- please forward
Date: Aug 7, 2025 at 1:17:14 PM
To: jssalo828@gmail.com

I am an owner of a "Duck Shack" with a partner, Jeff Canessa. This Duck Shack has been at its location since 1940 when my father and two friends purchased it from two elderly people from the John Day area on the lower Columbia River. Dad started taking me hunting with him when I was four years old. I am now 85 and am looking forward to the coming duck season.

We have insurance on the shack including liability. This past year we also paid property taxes to Clatsop County. We also paid for our third 5 year lease to the D.S.L.

We were charged more this year by the D.S.L.

We are not connected to any up stream utilities as our electricity is provided by a portable generator. We use the shack during duck season and maybe a couple of times during spring salmon season. Sometimes it is used for upkeep or cleaning inside and out or to check anything that might need fixing.

Dick Matthews
Sent from my iPad

August 12, 2025

Attention: Department of State Lands [DSL]

I am a Co-Owner of a Floating Recreational Cabin [Duck Shack] located in the Lewis and Clark Refuge Inside of Horseshoe Island. I have Co-Owned this Shack for about 60 years.

I am sending this comment to you for consideration in your rulemaking procedures that I understand are currently underway. From what I have read, and from what I have been told, there is a question as to whether or not a stiff boom counts towards the 1500 square foot total for a recreation cabin to qualify for a registration.

In my experience and based on all conversations I have had with Floating Home Builders, Pilebucks including the Refuge Managers the stiff Boom does not and should not, count toward that 1500 Square Feet. The stiff Boom is a configured docking tool for securing the FRC to the Piling. It is a tried-and-true accepted marine practice and Marine Contractors will tell you they are stronger and safer way to Moor. This is not the time to consider changes to something that has worked for over a century.

The general consensus among all of us located in the refuge, who do not have any shoreside hook-ups, or amenities, we are some of the longtime owners who have abided by the regulations set forth in the Memorandum of Understanding with the refuge.

The records will reflect the Duck Shacks [FRC] have been recognized by the DSL since 1980's. It is time to let things alone.

Regards,



Jeff Salo-----HORSESHOE ISLAND SHACK OWNER

Myron Salo---HORSESHOE ISLAND SHACK OWNER



August 13, 2025

Oregon Department of State Lands
775 Summer St. NE
Suite 100
Salem, OR 97301-1279
ATTN: Danielle Boudreaux, Rules Coordinator

Re: OAR 141-082 Proposed Rules (Leases, Licenses and Registrations)

Dear Danielle:

Thank you for the opportunity to comment on DSL's proposed rules updating Division 82. Please enter this letter into the record.

As we testified during the Department's last virtual hearing on the proposed rule amendments, our concern with the proposed rules are minor, and center on the proposed amendment to the definition of "floating recreational cabin" in OAR 141-082-0255(32). The Department's concern appears to center on the need to assure that a FRC does not receive utilities (sewer, water, electricity etc.) through an upland connection. The current rule already contains that limitation, and addresses staff's expressed concerns.

By contrast, the proposed new rule language would prohibit FRC owners from providing portable facilities to serve the cabin when occupied. As you heard from the testimony of FRC owners, portable heaters, toilet facilities, and cookstoves are transported via boat when the facility is in use and transported back to shore at the end of each use. Prohibiting FRC owners from using portable facilities to serve basic needs during each cabin use does not appear to be the intent of the Department. We suggest retaining the existing definition, which addresses the Department's concerns.

We also support and recommend changes to OAR 141-082-0265(3)(b) to ensure that stiff booms are not included in the square footage calculation for FRC's under that rule. The testimony from Ryan O'Hollaren at the last virtual hearing addressed this issue in detail. It is our understanding that current Department practice is to exclude the square footage of the stiff boom from the calculation under the rule, but the current rule does not specifically mention stiff booms, which are simply another form of mooring and protection device to ensure that the FRC remains in its present location and is not destroyed by significant tidal changes and wind chop. Mentioning them directly in the rule will clarify existing Department policy and eliminate ambiguity.

Very Truly Yours,

David J. Hunnicutt, President, Oregon Property Owners Association

To the Department of State Lands Rule Making Body

My name is Elroy Olson. I've been a co/owner, now the sole owner of a floating recreational cabin or "duck shack" on the Columbia River, in the Burnside area of Clatsap County. My duck shack was in my co/owners' family until his recent death since the early 1900's.

I understand that the DSL has an opportunity to clarify that the stiff boom should be excluded from the 1,500 square feet threshold. I want to provide my view on the matter, because this issue came up a few years ago with another shack owner and although DSL got it straightened out, I think that your practice should be written into the rule. For as long as I can remember, the stiff boom was excluded, and that's the correct approach. Stiff booms are "how" we make use of our pilings. Without them, we would need to use far more dangerous approaches.

If DSL writes "stiff boom" into the rule, just like the other booms that are excluded, we can avoid confusion or hassle in the future.

Thank you.

A handwritten signature in black ink, appearing to read "Elroy Olson". The signature is stylized with a large "E" and "O".

Elroy Olson

Summary of Proposed Fees and Compensation

Waterway Leases, Licenses, and Registrations on Oregon-Owned Waterways

About the Summary of Proposed Fees and Compensation

This document provides an accessible summary of proposed changes by the Oregon Department of State Lands (DSL) to fees and compensation for structures located on submerged and submersible land along Oregon-owned waterways.

While the full set of proposed changes to Oregon Administrative Rules 141-082 includes a wide range of updates—such as revisions to definitions, terminology, and policy language—this summary focuses specifically on the proposed changes to fees and compensation.

This summary highlights what’s changing for:

- Waterway registration authorizations (for small private structures)
- Waterway leases (for medium or large private structures)
- Public facility licenses

Only proposed revisions under OAR 141-082 are highlighted here. There are no changes proposed to application fees or compensation for wharf certifications, or other fees related to Oregon’s waters—such as special use licenses, waterway and the territorial sea easements, or sand and gravel leases. These are not part of the current rulemaking effort.

Waterway Registration Authorization (Small Private Structures on Submerged and Submersible Land)

Small or medium-sized private structures placed in, upon, or over Oregon-owned waterways require a waterway registration authorization. These include docks, boat houses, and other similar structures 2,500 square feet or smaller, as well as floating recreational cabins smaller than 1,500 square feet. This excludes commercial activity.

Waterway registration authorizations must be renewed **every five (5) years**.

Application Fees

| Waterway Registration Authorizations: New and Renewals | Current Fee (2025) | Proposed Fee |
|---|---------------------|-----------------------|
| Dock/float or boat house (1,000 square feet or less) | \$250 | \$400 |
| Dock/float or boat house (1,001 to 2,000 square feet) | \$500 | \$700 |
| Dock/float or boat house (2,001 to 2,500 square feet) | \$600 | \$800 |
| Floating recreational cabin | \$700 | \$1,000 |
| Other structures determined by Director | Not less than \$250 | Not to exceed \$1,000 |
| Riprap and tide gates | None | None |
| Structures maintained by a diking or drainage district | None | None |
| Rights of way established prior to November 1, 1981 for any county or city road | None | None |
| Voluntary habitat restoration work | None | None |

Annual Compensation

No annual compensation is required.

Related to these fees, what notable changes are proposed?

- **Revised application fees:** Increase current application fees to reflect staff time required to process applications. An annual increase in application fees is not proposed.
- **Redefine fee limits for “other structures determined by Director” to keep costs affordable:** Under current rules, it is not possible to have a no cost (\$0) application for small, low-risk structures and there is no maximum limit. In the proposed rules, the fee limit is flipped to have a maximum of \$1,000 and no minimum. This approach can help people and nonprofits access a low or no-cost registration when seeking to place a low-impact waterway structure.

Waterway Lease (Medium or Large Private Structures on Submerged and Submersible Land)

Large private structures placed in, upon, or over Oregon-owned waterways require a waterway lease. These include docks, floating homes, and other structures 2,500 square feet or larger, as well as floating recreational cabins over 1,500 square feet. This includes all commercial activity.

Effective July 1, 2026, all new leases will have a term of **five (5) years**. If you renew your existing lease, the term can be **up to fifteen 15 years**. This is dependent on DSL approval and considering factors such as access to the waterway for the public, length of structure use, and more (see rule language in section OAR 141-082-0285 for more details.)

Application Fees

| Fee Type | Waterway Lease Application Fees | Current Fee (2025) | Proposed Fee |
|--|---|--------------------|--------------|
| Applying for or renewing a lease | New application | \$750 | \$1,000 |
| | Renewal | | |
| | No change of area or use classification | \$375 | \$500 |
| | Includes change(s) | \$750 | \$1,000 |
| Modifying an active lease | Amendment | | |
| | No change of area or use classification | \$375 | \$500 |
| | Includes change(s) | \$750 | \$1,000 |
| | Assignment or Sublease | \$750 | \$1,000 |
| | Bank consent agreement | \$375 | \$500 |
| Additional fees (as applicable) | Late renewal | No fee | \$500 |
| | Lease holdover | No fee | \$500 |
| | DOJ consultation | No fee | \$500 |
| All application fees for waterway leases shall increase by 5% annually on July 1 st . | | | |

Definitions:

- **Assignment:** A transfer by the lessee or licensee, with DSL's approval of the rights of use and occupancy of the authorized area or premises to another person or entity.
- **Sublease:** An agreement between the lessee and a third party to use the lease area.
- **Bank consent agreement:** A document used when rights under a waterway use authorization are held as collateral for repayment of a loan.
- **Late renewal:** A renewal application submitted less than 30 days prior to the authorization's expiration date.
- **Lease holdover:** When a lease expires without a renewal being approved. With a few exceptions, the terms and conditions of the expired lease are in "holdover", meaning they still apply despite the expiration.
- **DOJ consultation:** When a lease requires DOJ sufficiency review (a statutory requirement for authorizations where the lease payment over the term of the agreement exceeds a specific value: currently \$250K) or when someone requests substantive changes to the terms and conditions.

Annual Compensation

Waterway use authorizations allow certain uses of Oregon-owned rivers, lakes, territorial sea, and other waterways while compensating Oregonians for usage of these public resources. Revenue from waterway leases goes into the Common School Fund, benefitting K-12 education. A limited amount of revenue is used for the Submerged Lands Enhancement Fund grants (learn more on page 6).

Parcel Annual Lease Payment Formula

This formula calculates the first year of the annual lease payment for each parcel in a lease. The boundary of a parcel is defined by individual use or by adjacent tax lot boundaries, and **a lease may contain more than one parcel**.

$$\begin{array}{ccccc} \text{Adjacent Land} & & & & \\ \text{Value} & \times & \text{Use Rate} & \times & \text{Parcel Area} & = & \text{Parcel Annual} \\ \text{(Value per} & & \text{(Percentage)} & & \text{(Square Feet)} & & \text{Lease} \\ \text{Square Foot)} & & & & & & \text{Payment} \end{array}$$

For leases with more than one parcel, the total annual payment due is the sum of all parcel annual lease payments.

Following the first year, the annual lease payment for each parcel will **increase 3% annually** for the duration of the lease. Upon renewal of a lease, the annual lease payment for each parcel will be re-calculated using the formula.

- **Adjacent Land Value:** as determined by the [County Assessor's office](#), expressed as a value per square foot
- **Use Rate:** expressed as a percentage.
 - The rate starts at 3%. It can't go below 3% or above 8%.
 - The rate goes up or down based on the activity type authorized by DSL or applied for (see below table for Use Rate Modifiers). These modifiers are cumulative. The same modifier can also be applied multiple times, for example, a waterway can be both a State Scenic Waterway as well as Essential Salmonid Habitat, combining for an additional one (1) percent added to the total Use Rate.
 - For multi-use leases, the Use Rate will be calculated separately for each individual use.
- **Parcel Area:** the area or premises requested for use, expressed in square feet.
- **Parcel Annual Lease Payment:** calculated by multiplying the Adjacent Land Value, Use Rate, and Parcel Area together, as seen in the formula.

Use Rate Modifiers

Below are the additional considerations, as identified in the proposed changes to OAR 141-082-0305(3), when calculating the Use Rate. These are discretionary and intended to be used by DSL to adjust use rates due to case specific considerations related to the location and/or the nature of the activity or due to the actions of the lessee/applicant. Some authorized activity types are listed that have no impact on the use rate.

| Use Rate Modifier | +/- (%) | Additional Information |
|--|---------|---|
| a) Beneficial Waterways Program | - 0.75% | Applies when lessee/applicant participates in a local, state, federal program that requires them to meet certain standards (which often exceed current legal requirements). For example, the Clean Marina Program with Oregon State Marine Board. |

| | | |
|--|---|--|
| b) Public access provided | - 0.75% | Provides free or at a nominal cost access to the waterway to all members of the public, without restriction. |
| c) Waterway or other designation | + 0.5% | Used when the activity occurs on a waterway that has or is within a local, state, or federal designation because of the waterway's environmental, recreational, or cultural value. For example, Essential Salmonid Habitat, State Scenic Waterway, Oregon's coastal management zone, or OAR 141-142 designated marine protected areas, etc. |
| d) Use classifications | <i>Categories of activities identified in rule OAR 141-082-0305(12) and used by DSL to adjust the use rate used for calculating a lease's annual payment due.</i> | |
| (a) Noncommercial Use | + 0.10% | Owner oriented structures not open to the public (i.e. HOA docks; Yacht club marinas). |
| (b) Personal Recreational Use | no change | Structures associated with residential use and dedicated to recreational purposes. |
| (c) Commercial Use | + 0.25% | Activity that results in or is associated with monetary gain. |
| (d) Aquaculture Facilities | + 0.10% | Structures dedicated to aquaculture not otherwise regulated by the Oregon Department of Agriculture. |
| (e) Historic Vessel and/or Structure | no change | Vessels or structures owned by a not-for-profit and eligible or listed in the National Register of Historic Places, as determined by State Historic Preservation Office (SHPO). |
| (f) Log Raft and Log Storage | no change | Structures and areas used for mooring and storing log rafts or used for confining loose logs, grading and sorting logs, or feeding wood products to a mill. |
| (g) Marinas | + 0.25% | A facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial, and/or charter fishing boats. |
| (h) Marine Industrial Use | + 0.50% | Structures or uses which involve (in-part or wholly) the fabrication, assembly, processing, or manufacture of products, structures or vessels from raw materials or fabricated parts, or otherwise involves industrial activities requiring proximity to a waterway. Included in this definition is sea water desalination and mineral extraction and processing facilities. |
| (i) Marine Services Use | + 0.50% | Structures or uses which provide boat berthing, docking and mooring for tugboats, barges, and other marine industrial workboats and structures associated with other marine service uses such as fish processing plants. |
| (j) Non-Marine Use | + 0.50% | Structures or uses, which otherwise do not require proximity to a waterway. Uses include but are not limited to: single and multi-family residences, hotels and motels, restaurants, offices, retail stores, parking lots and structures, and warehouses. |
| (k) Other use classifications | case by case | Reserved for exceptional cases when a use does not fit in any of the above classifications. Requires Director consent and approval. Director will set the amount to modify the use rate on a case-by-case basis. |
| (f) Other methods or information case by case | case by case | Reserved for exceptional cases and intended to apply only when there are reasonable and valid considerations not listed in rule that otherwise should be utilized by DSL, or DSL is required by law to consider. Requires Director consent and approval. Director will set the amount this classification modifies the use rate on a case-by-case basis. |

Minimum and Maximum for Parcel Annual Lease Payment

Regardless of the amount calculated for the parcel annual lease payment, a minimum and maximum applies for each parcel within the lease area.

| Effective Date | Minimum Annual Lease Payment (per parcel) | Maximum Annual Lease Payment (per parcel) |
|----------------|---|---|
| July 1, 2026 | \$1,200 | \$150,000 |
| July 1, 2031 | \$1,400 | ---- |
| July 1, 2036 | \$1,600 | ---- |

New Annual Surcharge for Leases: Submerged Lands Enhancement Fund

Projects that enhance, improve, or protect the beds and banks of Oregon-owned waterways often benefit water quality, surrounding wildlife, and waterway users. In 2017, DSL worked with the state legislature to establish the [Submerged Lands Enhancement Fund](#), which makes grants available for these types of projects. The fund is financed by up to 20 percent of the revenue from waterway authorizations.

This proposed surcharge would be billed annually, along with the total annual lease payment due. The surcharge is per lease, not per parcel within the lease.

| Annual Surcharge | Current Fee (2025) | Proposed Fee |
|----------------------------------|--------------------|--------------|
| Submerged Lands Enhancement Fund | \$0 | \$100 |

Related to these fees and compensation, what notable changes are proposed?

- **Revised application fees:**
 - Increase application fees to reflect staff time required to process applications, and to increase annually by 5% to track with inflation.
 - Introduce three new additional fees that (as applicable) reflect the additional staff time and resources needed to process: 1) late renewal, 2) lease holdover, and 3) DOJ consultation.
- **Reduce to a single approach to compensation, using “modifiers” to adjust the rates based on location and type of activity.** Currently DSL uses three different methods, this change ensures fair and consistent annual lease payments for all parcels. Introducing the “modifiers” allows the compensation to reflect the nuanced and unique nature of each leasehold parcel.
- **Update the minimum for compensation rates and add a maximum:** Addresses concerns of inequality arising from lessees with intensive uses or exceptionally large leaseholds paying the same amount as small leaseholds with high value adjacent property.
- **Add an annual surcharge for waterway improvement grants:** This is a sustainable funding source that contributes to the percentage set aside for the Submerged Lands Enhancement Fund.
- **Limit the duration of new leases to five (5) years:** Reduce lease terms to align with industry standards, allowing staff to review leases and waterway use more often and making sure DSL is more active in managing waterways. New leases are limited to five years, with extensions available upon renewal for lessees in good standing.

Public Facility License (Structures on Submerged and Submersible Land)

Structures owned, operated, maintained, or used by public agencies that charge no or minimal fees to users may hold a public facility license. Examples that may qualify for a public facility license include boat ramps, transient use docks, public fishing or crabbing piers, viewing structures, and navigational aids.

Licenses must be renewed **every fifteen (15) years**.

Application Fees

| Fee Type | Public Facility Licenses | Current Fee (2025) | Proposed Fee |
|--|---|--------------------|--------------|
| Applying for or renewing a license | New application | \$750 | \$1,000 |
| | Renewal | | |
| | No change of area or use classification | \$375 | \$500 |
| | Includes change(s) | \$750 | \$1,000 |
| Modifying an active license | Amendment | | |
| | No change of area or use classification | \$375 | \$500 |
| | Includes change(s) | \$750 | \$1,000 |
| | Assignment or Sublease | \$750 | \$1,000 |
| | Bank consent agreement | \$375 | \$500 |
| All application fees for public facility licenses shall increase by 5% annually on July 1st. | | | |

Annual Compensation

No annual compensation is required.

Related to these fees, what notable changes are proposed?

- **Revised application fees:** Increase application fees to reflect staff time required to process applications and increase annually by 5% to track with inflation.