

# Waterway Leases, Licenses, and Registrations: Division 82 Proposed Rule Changes

OREGON DEPARTMENT OF STATE LANDS

The people of Oregon own the beds and banks of all 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](#). The Department of State Lands (DSL) oversees these waterways by promoting healthy, safe, and responsible waterway use. Marinas, ports, docks, floating homes, and other [uses of public waterways require authorization from DSL](#). Some authorizations, including leases and registrations, compensate the public and ensures the use does not adversely affect the health and safety of public lands or waters or unreasonably interfere with other uses.

In recent years DSL has explored strategies to achieve sustainable operations in managing waterway authorizations. Some of these strategies did not require rulemaking and have been implemented, such as the use of real market land values in calculating some lease rates, adding new lease requirements for marinas for vessel reporting, and creating a 3-year schedule for lease site inspections. However, there are additional ways to achieve sustainable operations and ensure lease rates are consistent and fair that require rulemaking.

In addition, Oregonians have experienced serious environmental risks and unexpected financial liability from some private uses along waterways such as neglected structures and stockpiling of hazardous and derelict boats. DSL has identified best management practices for waterway leases that will help protect the health and safety of public lands and waters and minimize operational risks.

**Some of the proposed updates to [Oregon Administrative Rules 141-082](#) include:**

- Simplify from three methods to one method for calculating lease rates.
- Increase application fees to track with inflation and increase by 5% annually.
- Add a Submerged Lands Enhancement Fund annual fee for leases.
- Add fees for applications requiring review by the Department of Justice and for when leases are not renewed before expiration.
- Shorten the initial term of a lease to five years.
- Require financial assurance for registrations.
- Use clear and simple language where current rule is confusing or unnecessarily complex.

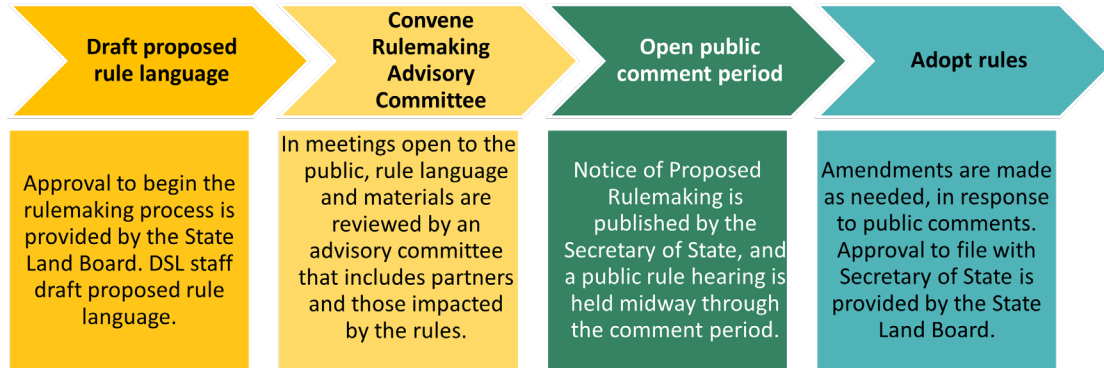
See below for more details on these proposed rule changes. The full set of Division 82 rules with proposed changes tracked as well as the proposed application fees and lease rates will be posted on the DSL website **on or before Friday, November 15<sup>th</sup>** at: [www.oregon.gov/dsl/Pages/rulemaking.aspx](http://www.oregon.gov/dsl/Pages/rulemaking.aspx)

**Questions?** Contact DSL at [dsl.rules@dsl.oregon.gov](mailto:dsl.rules@dsl.oregon.gov)

# DSL Rulemaking Process

Rules may be adopted, amended, repealed, suspended, or renumbered through a process known as rulemaking. Our rulemaking process offers several opportunities for people and organizations to provide feedback on a proposed rule.

See current meeting information and materials at [www.oregon.gov/dsl/Pages/rulemaking.aspx](http://www.oregon.gov/dsl/Pages/rulemaking.aspx)



## Proposed Rule Changes

### WATERWAY LEASE RATES

**Currently, people and businesses leasing waterways can choose from one of three different methods to calculate their lease rate. This inconsistency between rates leads to administrative inefficiencies, undervalues land, and creates opportunities for inequities for users on the same waterway.**

DSL partnered with [Portland State University \(see study here\)](#) to review the funding mechanisms for waterway leases. The study recommended pursuing a single method that would calculate similar rates for similar users, as well as adjust for both a project’s location and activity. The study found:

1. The Flat Rate method often undervalues the land used.
2. The Percent of Gross method is administratively inefficient, requiring more staff time to determine lease rates and collect rent.
3. The Riparian Land Value Rate method results in significantly different rental rates for similar uses.

Proposed changes to address this challenge:

- Use one method of calculating lease rates that ties rates to real market value.
- Adjust rates based on the location and type of activity.
- For renewals, rates will not increase by more than 1.5 times the previous lease.

As a result, some leases upon renewal will see an increase in rates, some will not have any change, and some will see a decrease in rates – it will depend on the method of calculation that was used on the previous lease.

## APPLICATION FEES

**In addition to some lease rates undervaluing the land being used, often the application fees do not cover the administrative costs of processing them.**

Leasing rates have not changed since 2013. Both immediate and ongoing increases are needed to keep pace with inflation.

In addition to keeping up with inflation, application fees should accurately represent the staff time required to process applications. Future Division 82 rule reviews may consider data gathered on staff time and the fees adjusted, if necessary, through a public rulemaking process.

Proposed changes to address this challenge:

- An initial increase of current application fees adjusted using the Consumer Price Index (a national measure of the average change over time in prices).
- Following this initial increase, fees will be increased annually by 5%.
- Add fees when applications require review by the Department of Justice. This review can be triggered if significant changes are needed for a lease or if the total compensation exceeds \$250,000).
- Add fees when leases are not renewed before expiration.

## MITIGATING ENVIRONMENTAL RISKS

**Oregon's waterways have experienced serious environmental risks and unexpected financial liability from some private uses of public lands. Greater protections are needed to mitigate those risks.**

For example, unauthorized and illegal activity within a leasehold near Goble, Oregon cost the state over \$24M in clean-up costs, requiring the removal of derelict vessels and disposal of hazardous waste. Routine site visits, most recently at Blind Slough in Clatsop County, have revealed risks such as neglected structures, including some structures over water that are starting to fail, and stockpiling of derelict and sunken boats. Incidents like these have highlighted the need to tailor contract conditions, such as the lease duration, insurance requirements, and other financial assurances to the risks associated with these uses to better protect Oregon's waterways.

Proposed changes to address this challenge:

- Ensure application requirements gather all necessary information, such as other required permits associated with the activity.
- Require accurate financial assurances for registrations in case of damage to a structure or state-owned lands.
- 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.

- Establish in rule that lessees are to maintain structures in good repair, remove debris from leasehold, conduct all activities in a manner that conserves fish and wildlife habitat, among other requirements.
- Add a \$100 fee to leases for the [Submerged Lands Enhancement Fund](#) to provide a sustainable grant funding source. Established by the Legislature in 2017, this fund makes grants available for projects that enhance, improve, or protect the beds and banks of Oregon-owned waterways.

## CLARITY AND MINOR UPDATES

**It has been over 11 years since the last update to Division 82 rules. Minor updates are necessary to provide clearer and simpler language where currently it is confusing or unnecessarily complex.**

Additional changes to existing rules have been identified by staff and customers as needing greater clarity. These were all changes that were too minor to initiate rulemaking on their own.

Examples of proposed changes to address this challenge:

- Modernize definitions that are unclear or too limiting
- Provide longer noticing periods (both for DSL and applicants/users) for some instances where a 14-day period was too short, and a 30-day period was needed.
- Clarify agency authorities, for example the Oregon Department of Agriculture governs leases for the commercial cultivation of oysters, clams, and mussels.
- Clarify the use of calendar days, not business days, when calculating deadlines.
- For appeals of agency decisions, specify how one qualifies as an adversely affected party.