



Waterway Leases, Licenses and Registrations (Division 82) RAC Meeting # 4 Summary

February 19, 2025; 9:00 a.m.

Overview

The Waterway Leases, Licenses and Registrations (Division 82) Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on February 19, 2025 via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules governing waterway authorizations.

RAC Members and Attendance

Name	Affiliation	Present?
RAC Members		
Alan Hanson	Oregon State Marine Board (OSMB)	x
Dylan Paul	City of Portland, Real Estate Services	x
Elizabeth Bowden	Columbia Crossings (Alternate)	x
Glenn Dolphin	Oregon State Marine Board (OSMB) (Alternate)	x
Garrett Phillips	Columbia River Estuary Study Taskforce (CREST)	x
Jim Ryan	Waterfront Organizations of Oregon (WOOO)	x
Jim Zimmer	Salmon Harbor Marina	
Jon Hie	Hyak Maritime, LLC / Hyak Tongue Point, LLC	x
Justin Teutsch	Columbia Crossings	x
Laurel Hillman	Oregon Parks and Recreation Department (OPRD)	x
Lindsey Hutchinson	Willamette Riverkeeper	x
Mike Dunning	Oregon Public Ports Association (OPPA)	x
Staff/Advisors		
Danielle Boudreaux	Department of State Lands	x
Blake Helm	Department of State Lands	x
Justin Russell	Department of State Lands	x
Sylvia Ciborowski (facilitator)	Mosaic Resolutions	x
Interested Parties		
Angel	Department of State Lands	x
Arlene Kavlock		x
AWACC Staff	Astoria-Warrenton Area Chamber of Commerce	x
B Brupbacher		x
Brandy McClay	Department of State Lands	x
Catina Piliaris		x
David Grant		x

Name	Affiliation	Present?
Erin Serra	Department of State Lands	x
Jacklyn Zatta		x
Jeff Ingegrigtsen	Paradise Moorage	x
Kelly Holtz		x
Kyler Danielson		x
Ron Schmidt	Waterfront Organizations of Oregon	x
Steve Hawkins		x
Tammy Scholder		x

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants. She introduced herself as facilitator and highlighted the purpose of the meeting as an opportunity to hear an update on changes to proposed rules for lease rates and application fees; discuss rules for financial assurances and the application review process; and to hear background information on rules for general provisions and lease conditions.

RAC members introduced themselves.

Agenda Review; Zoom Protocols

Sylvia reviewed the [meeting agenda](https://www.oregon.gov/dsl/pages/rulemaking.aspx) and noted materials in the packet, which are available on the rulemaking website: <https://www.oregon.gov/dsl/pages/rulemaking.aspx>

Sylvia also provided an overview of the upcoming process, noting that the team will email RAC members updated rule language in early March. It is anticipated that the next RAC meeting will be the final meeting and will include time for final RAC comments on rules for lease rate calculations and application fees; discussion on general provisions and lease conditions; and discussion in the Fiscal Impact Statement and Racial Equity Impact Statement.

Discussion – Changes to Draft Rules on Lease Rates and Application Fees (0305, 0306)

Blake Helm, DSL Proprietary Specialist, began with a response to a data request from the last RAC meeting, where a member had questions about the underlying assumptions that DSL uses to calculate the cost to the Department for reviewing an application. DSL uses a formula that multiplies the staff hourly rate by the approximate hours worked for a typical application. The formula accounts for hours for coordinators, specialists, managers, IT staff, and fiscal staff, and includes benefits for staff in addition to salary.

Blake noted that the DSL team met with Aquatic Resource Managers to review RAC input on the lease rate calculation and consider what changes could be made to the rules to address concerns. The managers agreed that the following changes could be made to the proposed rules:

- Have an annual rent escalation of 3 percent (rather than the 5 percent previously proposed).
- Remove the requirement to reassess leases every five years.
- Cap rent increases at 15 percent (rather than the 50 percent previously proposed).
- Remove the zoning and location modifiers.
- List out and define the modifiers in rule.

Blake noted that the team would send out updated proposed rules reflecting these changes in early March, for discussion at RAC 5.

RAC Comments and Questions

Sylvia invited RAC members to ask clarifying questions and provide any reflections on the updated changes.

- Dylan Paul expressed appreciation for the changes. He wanted to ensure that the modifiers include a provision to incentivize public access. He expressed concern about the 15% cap as applied to residential leases, which could contradict other laws that limit residential rent increases and could exacerbate the housing crisis. Blake clarified that the rules will include a reference to the ORS requirement that caps residential rent increases. Any DSL leases subject to ORS 90 will be capped as required by that statute.
- Jim Ryan thanked DSL for making changes that respond to RAC comments and appreciates that the modifiers have been updated to remove zoning and location. He echoed the concern about increases for moorages which should be treated as housing.
- Jim Ryan asked for clarity on whether DSL will continue to use Adjacent Land Value (ALV) in the formula, despite RAC concerns. Blake responded that the Department intends to continue to use ALV because the flat rate typically undervalues submerged lands. Submerged land provides an economic and environmental benefit. Development reduces that benefit, and ALV is an appropriate way to value the land.
- Jim Ryan noted that the \$150,000 and \$175,000 caps will result in similar moorages having significantly different rents per square foot, and asked how those caps were developed. Blake acknowledged that having the cap comes with benefits and consequences. He noted that the initial cap was set at \$150,000 because it is just above the amount of the current highest lease amount of around \$138,000. The \$175,000 cap kicks in after 15 years and reflects a 15% increase over 15 years to account for inflation and other market changes.
- Justin Teutsch asked for rationale for using the 3-8% rental rate. Blake noted that current rule uses a rental rate of 5% under one of the calculation methods. The 3-8% rental range was selected to be in line with the current rules but also offer flexibility. He noted that the 5% rate was developed some time ago and did not have information on how it was selected.
 - Justin expressed that DSL should seek to establish a relationship between the market value of submerged land and the market value of adjacent land. He would like to better

understand the justification for the rental rate. DSL will seek to bring more clarification to the next RAC meeting.

- Dylan explained that in the City of Portland, valuation for leases for open space is a challenge. Many of the valuations are punitive, rather than market-based, because the City takes into account the fact that the lease limits public access to the open space. He pointed out that ORS 141-082-0255 defines ALV as “the current real market value in dollars per square foot assigned to the land...within the adjacent riparian tax lot or comparable tax lot(s).” Hence commercial use would use commercial land value, and industrial use would use industrial land value. County appraisers would likely use the highest best value. Adjacent riparian or open space wouldn't have sufficient value for commercial leases rates.
- Jon Hie requested that DSL provide some examples at the next RAC meeting of calculations under the proposed formula for actual current leases.

Next Steps

Danielle Boudreaux, DSL Rules Coordinator, thanked members for their comments and encouraged them to email any suggested rule edits or changes to Sylvia. Blake added thanks for the submission of a letter from RAC members and noted that at the next meeting DSL will walk through the letter and show where it was able to accommodate the changes requested.

Mike Dunning requested a summary table that outlines what the rules were previously, and what changes are being made under the new rules. This would be helpful for RAC members to show their members the key changes. Staff noted that Sylvia would develop a summary at the conclusion of the process.

Discussion – Financial Assurances

Blake Helm reminded members that DSL proposes adding requirements in the rules for registration holders to obtain insurance. DSL displayed the [proposed rule language](#).

RAC Questions and Comments

Sylvia invited RAC members to ask questions and provide input.

- Jim asked whether lessees are required to be insured for the removal of derelict boats or pollution from boats that enter their leasehold areas. DSL noted that the Department requires general liability insurance; some marinas are required to have additional environmental or pollution assurances such as through mariners’ liability insurance. The current practice is that marinas are responsible for removing abandoned and derelict vessels (ADV) that come into their area.
- Alan Hanson suggested that marinas and moorages should be required to mandate that their customers have boat owners’ insurance and be registered. DSL noted that this topic would be covered under a different provision of the rules.

- Glenn Dolphin added that most moorages that are certified as Clean Marinas require that boat owners have insurance. He agreed that marina managers should be required to monitor and ensure that boats in their marinas be seaworthy and registered.
- Mike Dunning noted that this is a larger issue; arguing that state law should require that all vessels on the water be insured. The majority of ADVs are boats that were not marina-docked and are not insured. It should not be the onus of the marina owner to require and track insurance, which is a strain on staff time.
- Dylan requested a discussion on the issue of liability of boat owners and marinas at the next RAC meeting. He also wants to discuss requirements for obtaining leases or licenses when a boat drops anchor for more than a day. Alan added that restrictions on stretches of water outside of leaseholds fall under OSMB authority.

Blake asked members to please submit any additional comments in writing. If there are any suggested changes, this can be discussed at the next RAC meeting.

Discussion: Application review process for new & renewal applications (0280, 0281 & 0290)

Justin reminded members that at RAC Meeting 3 they heard background information on proposed changes to the application review process for new and renewal applications. He summarized that the purpose of the changes is to clarify processes, remove redundancies in the rules, and ensure compliance with existing law and statute.

The notable changes in the proposed rules include process tweaks, inclusion of the types of public comments DSL will consider, defining the preference right process, and adding language to clarify timing for applications and fees for the renewal process.

RAC Discussion on review process for new & renewal applications

DSL shared [proposed rule language](#) and Sylvia led RAC members through discussion on the key portions of the rules. Members had the following questions and comments:

OAR 141-082-0280(5): Reasons why DSL may reject or deny an application

- In response to a RAC member question, DSL clarified that applicants are required in their applications to confirm that their proposed use is in conformance with local zoning ordinance.
- Members had no suggested edits to this rule section.

OAR 141-082-0280(7): Types of public comments DSL may request as part of application review process

- DSL clarified that the intent of the rule change is to help the public understand the types of comments that are relevant for DSL's review.
- Several RAC members expressed appreciation for the rule clarification.
- Laurel Hillmann suggested adding "rare" species and/or "species of concern" to 7(a) in addition to listed threatened and endangered species. Some species are rare, but not ESA-listed, and it would still be important to hear comments on them. Laurel pointed to the ORBIC ranking system for reference: <https://inr.oregonstate.edu/rare-species/rare-species-ranking-definitions>.

She suggested that the rules could specify that DSL would check with ODFW and ODA about the species concerns. DSL noted it would look into this, and that natural resource agencies often comment on these types of species.

OAR 141-082-0281: Preference right and competitive bid process

- DSL clarified that the added language here mirrors language in the statute.
- Members had no suggested edits to this rule section.

OAR 141-082-0290(2): When an applicant should apply for a lease or public facility license renewal

- DSL noted that the rule clarifies that an applicant should apply for renewal not less than 180 days, but not more than 1 year, prior to expiration of its current lease.
- Dylan wondered if a penalty to incentivize renewal could be helpful. Blake noted that applicants would pay a higher fee if they miss the renewal window.
- Members had no suggested edits to this rule section.

OAR 141-082-0290(3) and (4): When a new application fee is required

- DSL explained that a lessee must pay a new application fee, rather than the renewal fee, in cases where: the lessee seeks a change in use, requests an increase to the size of the leasehold area; or the renewal application is late. The new application fee is higher than the renewal fee and may also trigger a public comment and land use review process. The rules clarify that renewal requests that involve a change in use or increase in size of the leasehold will be processed in the same manner as new applications.
- Members had no suggested edits to these rule sections.

Background: General Provisions and Lease Conditions (0260, 0285)

Justin provided background on draft rules for general provisions and lease conditions. He noted:

- Key changes to the general provisions include:
 - Clarification that DSL may deny an application if the proposed project is not consistent with the Total Maximum Daily Load (TMDL), or if existing structures are not in a state of good repair, uninsurable, or found to violate local building codes.
- Key changes to the lease conditions section of the rules (0285) include:
 - New language to clarify that DSL will not execute approval of an authorization until it receives all required documents and fees.
 - Change of the default term for new leases to 5 years. This allows DSL time to get a better sense of the business and management practices of the new lessee before getting into a longer lease agreement. In addition, there is additional language on the factors the Department will consider at renewal.
 - Allowance for leases longer than 15 years if approved by the director.

- Added language that improvements must be maintained in a state of good repair.

RAC Discussion on general provisions and lease conditions:

Members had the following questions and comments:

- Glenn Dolphin requested language that requires lessees to use foam encapsulation that meets current regulations, and conditions renewal on meeting those regulations. Blake noted that leases require users to comply with all relevant rules and laws, but the use of compliant foam encapsulation could be specifically called out here or be required in applications.
- Glenn Dolphin suggested language that a lessee's good standing with the Clean Marina Program can be factored into the decision on whether to allow a lease longer than 15 years. Blake appreciated the suggestion and noted that DSL will consider it.

Interested Party Comments

Sylvia invited interested parties to make comments. Four people provided comments.

- Ron Schmidt, President of Waterfront Organizations of Oregon (WOOO) thanked DSL and the RAC for their hard work. Through a review of state contracts and insurance requirements, there are some areas where the state is not requiring enough insurance, and in some cases requiring insurance that cannot be had. I have concerns about rules that would require a lessee to provide insurance to cover all terms of a contract; that can't be done. A marina owner can cover their own pollution, and a boat owner can cover their own pollution; but to cover a derelict vessel and its pollution is not insurance that can be had in the marketplace. Please engage with WOOO to learn what insurance requirements are reasonable.
- Steve Harkins, resident of West Hayden Island, asked questions to clarify what the lease increase would be at renewal. He also asked how long the \$175,000 cap will be in force. He commented that the new rules seem to value mud at the same rate as land. He asked for a better response to the questions that came up about how DSL assigns values to submerged lands based on adjacent land value, when the adjacent land is ground and not mud.
 - DSL clarified that at renewal, the Department will reassess the lease rate using the calculation in the rules. If the new number exceeds 15% over the last lease, then the lessee won't pay more than a 15% increase. Rents will go up by 3% every year. The cap will be \$150,000 initially, and the \$175,000 cap will come into effect in 2041. For a lease that is currently \$22,000, its increase will be limited by the 15% cap at renewal (it will not go up to \$150,000).
- David Grant, resident of Scappoose commented that the term "equitable" is applied to rates. The ALVs for moorages in my area run from \$4.95/square foot to 58 cents per square foot. It doesn't seem equitable to charge different rates based on those ALVs. The flat rate method is the proper way to go with leases, especially if you want them to be equitable.
- Jeff Ingegrigtsen, a Paradise Moorage leaseholder, commented that the ALV formula is wrong. Mud is not land. The flat rate method is the better method, and 70% of leases are flat rate. The CPI has exceeded 5% only two times in the last years. The proposed caps are not capped. HB

3054 will limit rents to CPI only; that will be very restrictive. There is no control on rates if market value is used for the lease rate calculation. Locally we can go up 20% per year, based on the local assessor's opinion.

Next Steps

Danielle reviewed next steps for the process:

RAC members will receive the RAC Meeting #4 summary and recording next week. They will receive the updated rules around March 5. The next RAC Meeting is on March 19, 2025. Based on that discussion, we will determine if a 6th RAC meeting is needed for April.

At least one week in advance of each RAC meeting, RAC members will receive a meeting agenda and related materials. All materials will be posted to the rulemaking website:

www.oregon.gov/dsl/Pages/rulemaking.aspx.

Adjourn

DSL staff thanked RAC members for their participation and adjourned the meeting.