



## Waterway Leases, Licenses and Registrations (Division 82) RAC Meeting # 5 Summary

March 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 March 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?
<b>RAC Members</b>		
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	
Laurel Hillman	Oregon Parks and Recreation Department (OPRD)	x
Lindsey Hutchinson	Willamette Riverkeeper	x
Mike Dunning	Oregon Public Ports Association (OPPA)	x
<b>Staff/Advisors</b>		
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
<b>Interested Parties</b>		
Angel	Department of State Lands	x
Arlene Kavlock		x
B Brupbacher		x
Brandy McClay	Department of State Lands	
Bethany Harrington	Department of State Lands	x
Catina Piliaris		
David Grant		x

Name	Affiliation	Present?
Denise Olson		x
Dario Frisone	Department of State Lands	x
Erin Serra	Department of State Lands	
Jacklyn Zatta		x
Jeff Ingegrigtsen	Paradise Moorage	x
Kelly Holtz	Oregon Yacht Club	x
Kyler Danielson		x
Steve Hawkins	West Hayden Island Moorage	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 provide final comments on updated rules for proposed lease rates and application fees; to discuss draft rules for general provisions and lease conditions; and to provide input on the Fiscal Impact Statement and Racial Equity Statement

RAC members and staff introduced themselves.

### Agenda Review; Zoom Protocols

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

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

Blake Helm, DSL Proprietary Specialist, thanked RAC members for their comments on rules for lease rates and application fees, and noted that their feedback has made a difference and affected the outcome of the rules. If after today's meeting RAC members feel that additional changes are needed, they are welcome to engage in the public comment period this summer, or submit comments in writing to [dsl.rules@dsl.oregon.gov](mailto:dsl.rules@dsl.oregon.gov).

Blake reminded members that at the last RAC meeting, they heard an overview on revised changes to the rules on lease rates and application fees. The key rules changes include:

- Reduced the cap on rate increases at renewals. Originally a 50% cap was proposed. Under the amended rules, lease rates cannot increase more than 15% over the previous rent.
- Reduced the annual increase for leases to 3% instead of the 5% that was originally proposed.
- Removed the requirement to reassess rent for leases exceeding 5 years.
- Removed some modifiers that affect the rental rate, including those that increase rent based on zoning of upland property and for activities within city limits or within port district boundaries.
- Added a discount for leases that provide public access.

- Added a modifier for leases within a Coastal Management Zone.
- Added a reference to ORS 90 regarding limits to increases on rent for residential leases.

Blake showed the [revised Fees and Formulas Sheet](#) that provides an overview of the fees and formulas used to calculate rent or to apply for renewal. The document reflects changes made in updated rules.

Blake then provided some examples of how the lease rate would be calculated under sample leases.

#### *RAC Comments and Questions*

Sylvia invited RAC members to ask clarifying questions and provide input on the proposed rules:

- Members asked about the effective date of the rules and staff clarified rules will be effective beginning July 1, 2026.
- Jim Ryan asked whether non-profit residential floating home moorages are considered non-commercial. Blake clarified that HOA facilities and non-profits are non-commercial.
- Members asked how leases are calculated for mixed-use facilities. Blake responded that these leaseholds are split into parcels, and each parcel is assessed a lease rate based on the use and other factors of that parcel. Multi-use leases are handled as one lease agreement. Insurance requirements may be different based on the individual activities within the multi-use area.
- Jim Ryan sought clarity on the potential lease increases for residential floating home moorages. Blake responded that ORS 90 limits increases to residential leases, but only applies to leases where there is a direct landlord-tenant relationship. A lease between DSL and an individual floating home would be subject to ORS 90, but a lease between DSL and an HOA would not. Jim flagged concern in cases where DSL can increase lease rates with the moorage, but the moorage is subject to ORS 90 in increasing rents to the individual floating homes. Dylan Paul expressed concern about this situation, especially if it results in behavioral change where hundreds of homes individually seek leases with the state to try to be covered under ORS 90. Blake noted that DSL is following Department of Justice advice in the application of ORS 90, but can go back to DSL managers and discuss how to handle this situation policy-wise and potentially make an exception or carve out for HOA leases.
- Jim Ryan noted it would have been helpful to see examples of the lease calculation for larger, more expensive leases in the Multnomah County area. He suggested that it is important to show the public the spectrum of leases, and to help them understand how the lease rate caps work. Danielle Boudreaux thanked Jim for the suggestion and noted that during the public comment process and hearings event, DSL will provide examples of lease rate calculations that are most applicable to the regions and include a broader set of examples. Jon Hie added that seeing examples of marine industrial leases would also be helpful.
- Jim expressed ongoing concern with the lease rate formula and its impact on some leaseholders. The \$175,000 cap will be reached in the future by many leaseholders, and this will result in inequitable impacts on smaller moorages versus larger ones. He hopes that DSL will consider reevaluating this cap in the future, to seek better equity in lease rates.

Blake explained that DSL will take the proposed rules through an internal review for grammar and consistency and send to the Department of Justice for a legal sufficiency review. Members will see a link to the updated rules in the coming weeks.

### **Discussion – General Provisions and Lease Conditions (0260, 0285)**

Blake reminded members that at the last RAC meeting, they heard a background presentation on changes to rules for general provisions and lease conditions. The proposed rules:

- Require that all necessary payments, documents, and financial assurances be submitted before execution of any authorization.
- Set the term for new leases to 5 years. This allows DSL to pilot test the business relationship before getting into a longer lease term.
- Allow lease renewals of up to 15 years and outline factors for consideration in setting the renewal term.
- Create a single section that lists the reasons why DSL may deny or reject an application.
- Require improvements to be maintained in good state of repair.
- Require leaseholders to use the premises in non-discriminatory manner.

Blake recapped comments from members from RAC Meeting # 4:

- There was a request to include a rule around foam encapsulation requirements. Blake noted that lessees are already required to comply with applicable foam encapsulation requirements, so an additional rule is unnecessary.
- There was a suggestion to add language that a lessee’s participation in the Clean Marina Program could be used as a factor in considering a longer lease term. Blake noted that under the rules, the director can take into account multiple factors in considering longer lease terms.
- There was a suggestion to include language around “rare” species to OAR 141-082-0280(7) as within scope of consideration for public comments. Blake noted that DSL is working with the Oregon Department of Agriculture to include this in the revised rules.

#### *RAC Discussion on General Provisions and Lease Conditions:*

Sylvia invited members to provide input and suggested changes to the rules. Members had the following questions and comments:

- OAR 141-082-0260(6): Reasons why DSL may deny an authorization
  - Blake noted that this section consolidates language that is already in rule. The only addition is that DSL may reject an application if it is inconsistent with a Total Maximum Daily Load (TMDL) or implementation plan.
  - Members asked for clarification on how TMDL Plan is defined and had no other substantive comments on this section.

- OAR 141-082-0260(9): What needs to be submitted for DSL to execute an authorization
  - Members had no comments on this section.
- OAR 141-082-0285(3): New lease term set to 5 years
  - Members had no comments on this section.
- OAR 141-082-0285(4): List of factors to be considered in a request for a longer lease term
  - Blake clarified that DSL intends to offer 15-year renewals, and this section outlines the serious concerns that could prevent long-term lease renewal. Leases longer than 15 years are also permissible and can be approved by the director. In some cases, a bank consent agreement may be required.
  - Members had no other comments on this section.
- OAR 141-082-0285(12 through 21): Requirements to keep structures in a good state of repair and other requirements regarding lease conditions
  - Blake clarified that the requirements in these rules mirror terms that currently exist in lease agreements. The intent is to put these lease requirements into rule. The provisions require the leaseholder to keep structures in a state of good repair, remove unauthorized vessels when notified, remove improvements after the lease term is over, dispose of hazardous waste, and control for pests and aquatic weeds.
  - Members had a lengthy discussion on the leaseholder responsibility to remove unauthorized vessels in subsections (14) and (15).
    - Several members noted that it seems unfair to require moorages to take on the responsibility of removing vessels that float into their moorages, as removal can be very expensive and difficult.
    - Blake clarified that the issue of unauthorized vessels within existing leaseholds does not come up often, and recognized the position that it puts moorages in. DSL does attempt to notice the owner of the vessel when this does happen. Blake noted that these rules subsections are more about requiring marina owners to manage vessels that were harbored and then abandoned in their slip, and less about dealing with vessels that float into the leasehold.
    - Dylan suggested amending the rule language to state that the leaseholder be required to remove abandoned and derelict vessels *attributable to the holders' approved use*; and to add language to indicate that the *lessee shall not be liable for actions or claims to the extent caused by the negligence of the department, its officers, agents or employees*. This would limit the scope of responsibility on leaseholders and allow for more joint responsibility between the Department and lessees. Dylan noted that he could send in proposed rule language on this. Blake welcomed the additional language and noted that any changes to the rules on this topic would need review by managers and the DOJ.

- Dylan proposed that lessees should be allowed to put up buoys and police the waters in their leasehold and permit the lessee to give out fines or take other actions against vessels that are causing problems. Blake responded that the Department is open to lessees enforcing restrictions within their leaseholds, especially if they are intended to protect the lessee's authorized use. Glenn Dolphin noted that placement of buoys requires approval from the Oregon State Marine Board (OSMB).
  - Jon Hie agreed with softening the language in subsection (14) to create some joint responsibility between DSL and the marina for unauthorized vessels. It is important to have partnership with the State to address these issues.
  - Alan Hanson pointed out that private property owners in general are obligated to remove items that are dumped on their property, regardless of how it got there. At the same time, he agreed that the language in subsection (14) could be softened to allow for more partnership in vessel removal in cases where marinas are responsible managers and take steps to prohibit ADVs in their leaseholds.
  - Glenn Dolphin noted that in cases where the Department knows about an unauthorized vessel on the water, but fails to deal with it, and then the vessel drifts into a marina, it is not fair to hold the marina responsible for cleanup. On the other hand, in cases where marinas harbor ADVs, or hold boats that are not seaworthy, they should be responsible for dealing with those vessels. The rule language should hold marinas accountable for things that are tied to their docks but not make them responsible for vessels outside their control.
  - Several members echoed the desire for coordination between DSL, OSMB and private marina owners to find a holistic solution and joint responsibility for the issue of abandoned vessels.
  - Glenn mentioned that DSL's Waterways and Stewardship Program is currently undergoing a legislative process to change state statutes on ADVs through Senate Bill 795. The proposals would facilitate easier removal of vessels moving forward. The definitions within the Division 82 rules should match up with terms defined through this legislative process.
  - Blake thanked members for their comments and noted that DSL would like make some changes to the rules in response to this conversation, and will need to do so in coordination with managers and the DOJ. He will send any proposed changes via email.
- Garrett Phillips asked a clarifying question about regulation of federal dredge material. He also noted that the definition for "government function" seems circular.
  - Glenn noted some concern with the rule that requires holders to manage noxious and aquatic weeds in subsections (18) and (21). A lot of weed growth is beyond human control. Aquatic weeds are very different to control in just one leasehold area; they need to be dealt with at the watershed level. Blake noted that the expectation is that

lessees should ensure that their actions do not contribute to the proliferation of weeds, but they are not expected to eradicate all weeds. Glenn noted that he would work offline with Blake on this language.

- OAR 141-082-0285(22): Requirement to use premises in a non-discriminatory manner.
  - Members had no comments on this section.

DSL staff thanked members for their comments and noted that the RAC would receive an updated version of the rules with redline edits so members can see what has changed as a result of RAC input.

## **Review – Notice of Proposed Rulemaking Components**

### *Fiscal Impact Statement*

Danielle Boudreaux, DSL Rules Coordinator, provided background on notices that are required for rulemaking by the Secretary of State. When DSL publishes its notice of proposed rulemaking, it will include two components: a Fiscal Impact Statement (FIS) and a Racial Equity Statement.

### *Fiscal Impact Statement*

The FIS outlines the anticipated fiscal and economic impact and cost of compliance with the rules. The statement broadly describes who is impacted by the rules economically and how, what units of government are affected, and potential effects on small businesses.

She then shared the [draft FIS](#) and invited member comments

- Jim Ryan asked how floating home moorages fit in. Danielle noted that they are considered “members of the public that holds a lease, license or waterway registration” in the first paragraph.
- Glenn Dolphin noted that DSL recently required additional reporting by leaseholders at renewals and asked if that is captured in the FIS. DSL noted that because that additional reporting is not part of this rulemaking, its impacts are not described in the FIS.

### *Racial Equity Statement*

Danielle provided background on what a Racial Equity Statement is and how it is used. In 2021, HB 2993 required every state agency to include a statement that indicates how any rule changes impacts racial groups in the state.

She shared a [worksheet and Model Racial Equity Statement](#) and invited members to reflect on and provide responses to the questions:

- Members had no additional responses to the worksheet questions.
- Dylan noted that there are a significant number of minority groups that use public docks; if the rules make it more affordable for leaseholders to provide public access to docks, the public and minority groups would benefit. Danielle thanked Dylan for the comment and noted this is an environmental justice benefit and will check with the agency’s DEI committee and environmental justice representative on this.

- Dylan also suggested noting the rules' impact on housing. It would be helpful to state that the rules are not increasing the problem with housing in the state (i.e., they have a neutral impact). He noted he would follow up with language on this.

### **Interested Party Comments**

Sylvia invited interested parties to make comments. One person provided comments.

Steve Harkins, West Hayden Island Moorage, noted that Blake has not provided examples of lease rate calculations for a high-cost lease or floating home moorage. RAC input has led to welcome rules changes, but despite comments from the RAC, DSL still proposes using real market value of adjacent uplands for the calculation. This results in unreasonable leases. For example, the lease rate for the Jantzen Beach moorage would be \$1.4 million per year if there were no cap. The formula does not produce reasonable outcomes, which makes caps necessary. This results in leases of very different sizes that pay the same capped amount. This is inequitable. All of the leases, not just high-cost leases, are calculated using this flawed approach, but without the benefit of the cap. Why should DSL use this flawed approach, when there are viable alternatives that would produce reasonable lease amounts.

### **Next Steps**

Danielle reviewed next steps for the process:

- There will be a public comment period from July 1 through August 15, 2025. This 45-day period is longer than the typical comment period. DSL will accept written comments during the 45-day period and will also accept oral comments during public hearings. Six public hearings will be held, beginning the week of July 21. Two will be virtual, and four will be in-person at the following locations: Tillamook, Florence, Portland Metro Area, and Bend. Each hearing will include a half-hour presentation on changes to the rules, including examples of lease calculations specific to the geographic areas. This will be followed by an opportunity for Q&A and formal public comments.
- DSL anticipates taking final proposed rule language to the State Land Board in October or December 2025.
- The rules will have an effective date of July 1, 2026.

RAC members will receive the RAC Meeting #5 summary and recording next week, along with a link to a survey to provide their input on the meetings process. They will also receive an overall summary of the RAC process. Any changes to the rules will be sent to RAC members, as well as information about the public hearing process.

All materials will be posted to the rulemaking website: [www.oregon.gov/dsl/Pages/rulemaking.aspx](http://www.oregon.gov/dsl/Pages/rulemaking.aspx).

### **Adjourn**

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