



Waterway Leases, Licenses, and Registration (Division 82) Rulemaking Advisory Committee Overall Summary and Outcomes

March 2025

Overview

The Division 82 Rulemaking Advisory Committee (RAC) was convened by the Oregon Department of State Lands to advise the Department on rules relating to leases, licenses, and registration for the use of State-owned waterways.

The RAC met five times between November 2024 and March 2025. It had ten members representing a variety of interests:

- City of Portland (Real Estate Services)
- Columbia Crossings
- Columbia River Estuary Study Taskforce (CREST)
- Hyak Maritime, LLC / Hyak Tongue Point, LLC
- Oregon Parks and Recreation Department (OPRD)
- Oregon Public Ports Association (OPPA)
- Oregon State Marine Board (OSMB)
- Salmon Harbor Marina
- Waterfront Organizations of Oregon (WOOO)
- Willamette Riverkeeper

Summary of Input

At the beginning of the RAC process, DSL provided members with proposed changes to key portions of Division 82. Members provided input and made comments and were encouraged to suggest specific alternatives and proposed language to update the rules to better meet their interests. Many comments resulted in changes to the proposed rules. Below are summarized comments on key portions of Division 82 and how DSL responded to comments.

Annual Lease Payment Formulas and Methods (OAR 141-082-0305)

Most comments on the rules were on the calculation of the lease payment.

- **Use of Adjacent Land Value (ALV) to calculate lease rates:**
 - Some RAC members commented that the value of unimproved submerged land is a fraction of the value of improved and zoned land; and suggested that the lease calculation formula consider the market rate of comparable unimproved unentitled submerged land rather than ALV. They noted there are limitations to commercial

activities that can occur on submerged lands, and land-based businesses do not have those restrictions. They were concerned that rental rates would be inflated using ALV.

- On the other hand, several RAC members supported using ALV because it provides for a uniform valuation method that captures geographic value difference throughout the state. They also supported lease rates that represent market rates, since submerged land leases inhibit public access to a public good.
- A few members supported a flat rate method instead of using ALV s because it is simpler, more administratively efficient, and easier to understand for lessees; some suggested a flat rate method that has tiers based on location and other escalators. One cautioned that flat rates are not a good tool for leasing purposes because they need to be supported by a fee rate study.
- Members also had comments on the proposed method to calculate ALV. Some suggested using county-assessed value rather than current real market value. Others noted that assessed value would not be applicable for leasing purposes. As an alternative, a member suggested using the Oregon Department of Revenue appraisal method.
- *In the amended rules, the department continues to propose the use of ALV to calculate lease rates as originally proposed, but amended other rules to limit rate increases for higher value leases.*
- **Annual rate increases:** Many members commented that the proposed 5% annual increase in lease rates seemed too high. Several suggested a 3% annual increase, which is more consistent with other recent DSL annual rate increases, consistent with ODOT’s 3% annual lease rate increase, and more in line with longer-term CPI projections. *In response, the department amended rules to propose a 3% annual increase.*
- **Rental Rate (RR) and modifiers:** Members had several comments on the proposed modifiers to adjust rental rates up or down based on specific considerations.
 - Members suggested removing the “Location” modifier that would increase rental rates for leases in urban areas, since such leases would already be higher due to a higher ALV. One member suggested a reduced rate for moorages and marinas that are non-profit operations or are residential.
 - Several members supported adding a modifier to reduce the rental rate for leaseholds that provide public access, to incentivize and reward commercial lessees and others that provide more recreation and public benefit opportunities. One suggested a modifier for public marinas and ports, which operate for the public benefit and cannot recoup costs the way commercial marinas can.
 - Members also suggested defining the modifiers in the rules.
 - Some members suggested a lower rental rate overall, noting that ground leases often have a rental rate of 3% of the ground value.
 - *In response to comments, the department removed the “Location” modifier, added a modifier that would reduce the rental rate for leaseholds that provide public access, reduced the rental rate modifiers for “Noncommercial Use” (which includes non-profit marinas), and reduced the modifiers for marina uses.*

- **Annual increases in rental rates for residential leases:**
 - Several members agreed that the rule changes should not lead to a loss in housing. There was a suggestion to treat residential and commercial leases differently, and to indicate in the rules that any leases for housing should be bound by ORS 90 which caps rent increased for residential leases (currently 10% annually). Members agreed that residential leases should follow state guidance and be bound by residential rent caps. *In response to comments, the department amended the rules to indicate that any DSL leases subject to ORS 90 will be capped as required by that statute.*
 - Another member flagged that there are cases in which DSL has leases with residential moorages and Home Owners Associations (HOAs) not bound by ORS 90, yet the moorages has leases with individual floating homes that are subject to ORS 90. *DSL noted that it would further consider how to handle this situation.*
- **Lease rate caps and maximum lease rates:**
 - A few members were concerned about potential dramatic increases for some lessees under the new calculation, and inequity between lessees that are underpaying today versus those that have rents closer to market rate. Some suggestions to curb this included a multi-year rollout to allow rates to increase more slowly over time; or a change to the proposed rule that limits a renewing lease's annual lease payment to ½ times the last annual lease payment.
 - Members noted that the maximum rent payment (i.e., cap of \$150,000 in 2026 and \$175,000 in 2041) is necessary to help mitigate against very high lease rates but had concerns that the caps create inequity for smaller leaseholds. The cap will be reached in the future by many leaseholders, and this will result in inequitable impacts on smaller moorages versus larger ones.
 - *In response to comments, the department updated the amended rules to indicate that for renewals, rates will not increase by more than 15 percent of the last annual lease payment (rather than 50 percent as originally proposed). This does not apply to residential leases that are bound by ORS 90.*

Application and Other Fees (OAR 141-082-0306)

- RAC members had few comments on the proposed application fees and generally supported the proposed increases in application fee amounts.
- There was a suggestion to reduce annual increases in application fees from 5 percent to something closer to average inflation levels. Others recognized that annual increases in application fees may have a different justification than annual increase for leases because they are more based on staff time. One member suggested a reduced fee for applicants with projects that have a public benefit or provide public use and access.

Financial Assurance Requirements (OAR 141-082-0336)

- Members were generally supportive of requiring lessees to show financial assurance but were concerned about a burdensome surety bond requirement on some lessees. *DSL modified the language to make it clearer that proof of insurance coverage is the standard method for lessees to show financial assurance, and listed conditions under which DSL would require surety bond.*

Lease and Public Facility License Application Review Process (OAR 141-082-0280)

- Members generally had no comments, concerns, or suggestions to change the proposed rules.
- One member suggested adding "rare" species and/or "species of concern" to 7(a) in addition to listed threatened and endangered species, as within scope of consideration for public comments. *DSL noted it would look at this in coordination with ODFW and ODA.*

Lease and Public Facility License General Conditions and Form (OAR 141-082-0285)

- Members had several comments on rules around leaseholders' responsibility to remove unauthorized vessels. They noted fairness concerns if leaseholds must remove unauthorized vessels that float into or are dropped off at their moorage. They supported limiting the scope of liability on leaseholders that generally operate responsibly and manage vessels within their control. One suggestion was to update the language to indicate that lessees should not be liable for actions caused by the negligence of the department (for example, in cases where the department knows about an authorized vessel on the water but does not address it). 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. *DSL noted that it would consider these suggestions in amended rules.*
- A member suggested that the rules should allow lessees to put up buoys and police the waters in their leasehold.
- There was some concern about rules that require leaseholders to manage noxious and aquatic weeds, as a lot of weed growth is beyond human control and aquatic weeds need to be dealt with at the watershed level.
- Members generally had no concerns with the remaining rules in this section (i.e., rules that outline why DSL may deny an authorization, the rule that sets the new lease term to five years, and the outline of factors for consideration in a longer lease term).