

Division 83

RULES FOR GRANTING EASEMENTS FOR UNDERSEA INFRASTRUCTURE ON STATE-OWNED SUBMERGED AND SUBMERSIBLE LANDS WITHIN THE TERRITORIAL SEA

141-083-0800

Purpose and Applicability

(1) All uses of the state-owned lands within the territorial sea and ocean shore for any undersea infrastructure require prior written authorization from the Department of State Lands and approval by the State Land Board. These rules govern easements for such uses.

(2) These rules:

(a) Govern the granting and renewal of easements for undersea infrastructure and encroachments;

(b) Establish a process for authorizing easements for undersea infrastructure;

(c) Establish application fees, application renewal fees, and compensation rates for easements for undersea infrastructure projects.

(3) Unless otherwise determined by the director under subsection (4), these rules do not apply to:

(a) The granting of easements on other state-owned submerged and submersible lands, as governed by OAR 141-123 of the department's administrative rules;

(b) Authorizations for ocean energy conversion devices on, in or over state-owned land in the territorial sea, as governed by the department's other administrative rules;

(c) Authorizations for remediation activities under an order by DEQ or EPA, and habitat restoration activities, as governed by OAR 141-145 of the department's administrative rules;

(d) Existing valid easements granted by the department or State Land Board before the adoption of these rules, although existing easements will be subject to these rules at renewal; and

(e) 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 these rules also require authorization under these rules.

Statutory/Other Authority: Oregon Constitution Article VIII, Section 5(2), ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

History:

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141-083-0810

General Provisions

(1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the department, manages all land 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."

(2) Pursuant to Oregon law, all tidally influenced and tidal navigable waterways (referred to as state-owned submerged and submersible lands) 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.

(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 undersea infrastructure or make use of state-owned submerged and submersible lands, regardless of the length of time the infrastructure may have existed, 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 infrastructure or use has been in existence.

(5) All uses of the seafloor for undersea infrastructure within the territorial sea and ocean shore must conform to international treaties, federal, state (including Statewide Planning Goal 19 and the Territorial Sea Plan), and local laws.

(6) Undersea infrastructure is considered vulnerable critical infrastructure under the USA PATRIOT Act (2001), the Critical Infrastructure Information Act (2002), and the Oregon Territorial Sea Plan. Easement holders shall cooperate with federal, state, and local agencies to improve the resilience of this critical infrastructure. Easement holders shall follow the recommendations for critical infrastructure sectors developed by the Cybersecurity and Infrastructure Security Agency under the U.S. Department of Homeland Security.

(7) In granting easements, the department will follow the guiding principles and requirements contained in the Territorial Sea Plan. The department will consider comments from various interested parties received during the Joint Agency Review Team's pre-application and application meetings convened under the Territorial Sea Plan, as well as public comments received during public comment periods established by law.

(8) The State Land Board's approval of an easement is conditional and not valid until the applicant has received all other authorizations and permits required by the department and other applicable federal, state, and local governing bodies for the placement of the undersea infrastructure, and paid all required fees and compensation provided in these rules.

(9) The department may conduct field inspections at any phase of the project development to ensure the project conforms with the terms and conditions of the easement and applicable laws. If a project

does not conform, the department will pursue all legally available remedies and actions to ensure compliance.

Statutory/Other Authority: Oregon Constitution Article VIII, Section 5(2), ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

History:

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Definitions

- (1) "Affix(ed)" means to attach to the seafloor permanently.
- (2) "Applicant" means a person applying for an easement.
- (3) "Burial" means to place into the seabed below the local mean surface of the ocean floor at the time of burial.
- (4) "Cable" means a conductor of electricity or light, and any facilities associated with the cable. Cables are often insulated or armored.
- (5) "Critical infrastructure" means infrastructure that is so vital to the United States that the incapacity or destruction of such infrastructure would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters.
- (6) "Department" means the Department of State Lands. The department is the administrative arm of the State Land Board.
- (7) "Director" means the director of the Department of State Lands or their designee.
- (8) "Easement" means an authorization issued by the department to a holder allowing the placement of infrastructure on, affixed to, or buried under the seafloor of the territorial sea and ocean shore. An easement does not grant the holder any other proprietary rights. An easement is issued to a specific person, for a specific use of a parcel of state-owned land, for a specific amount of time.
- (9) "Encroachment" means a development or use, such as, but not limited to a structure, fill, or pile of aggregate, that overlaps on, or otherwise occupies or restricts the full use of state-owned land. An encroachment may be a cable, pipe, conduit, fixture, or other structure that has been abandoned in place. An encroachment may also occur when the holder of an easement, granted by the department, extends their use outside of the area authorized by that easement or adds a use or development not authorized. Encroachments are generally unauthorized, unless an encroachment easement is granted pursuant to these rules.
- (10) "Fixture(s)" means any structure affixed to or permanently placed on the seafloor, not otherwise defined in this rule, but that is considered infrastructure for purposes of these rules, unless specified otherwise.

(11) "Goal 19" means the Statewide Planning Goal to conserve the long-term values, benefits, and natural resources of the nearshore ocean and the Continental Shelf. The Oregon Department of Land Conservation and Development coordinates the implementation of Goal 19 in accordance with OAR 660-036 – Ocean Planning.

(12) "Holder" means the person who has been issued an easement under these rules.

(13) "Joint Agency Review Team (JART)" means a team of representatives of the agencies, jurisdictions, and organizations gathering under the Territorial Sea Plan, with a purpose to facilitate coordination and communication between state agencies and other affected jurisdictions in the early stages of project planning throughout the pre-application and application process.

(14) "Landing" means the site on shore where undersea infrastructure is attached to land-based infrastructure. Examples include, but are not limited to, a manhole, receiving building, or associated equipment.

(15) "Ocean Users" means persons using the territorial sea or ocean shore for public trust uses.

(16) "Ocean Shore" means the land lying between the extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland, as defined in ORS 390.605(2).

(17) "Person" means a person as defined by ORS 274.705(7).

(18) "Pipeline(s)" means any line of pipe, with or without equipped pumps, valves, and other control devices, used to move liquids, gases, or slurries.

(19) "Project" means the evaluation, siting, routing, placement, operation, decommission, or removal of undersea infrastructure.

(20) "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.

(21) "Seafloor" means the solid surface underlying the ocean; specifically, the submerged and submersible lands within the boundaries of the territorial sea or ocean shore.

(22) "SMART Cables" means the Science Monitoring and Reliable Telecommunications Undersea Cables.

(23) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing state-owned submerged and submersible lands of the territorial sea, as well as other lands placed under its jurisdiction.

(24) "Submerged lands" except as provided in ORS 274.705, means lands lying below the line of ordinary low water of all navigable waters within the boundaries of this state as heretofore or hereafter established, whether such waters are tidal or nontidal, as provided in ORS 274.005(7).

(25) "Submersible lands" except as provided in ORS 274.705 means lands lying between the line of ordinary high water and the line of ordinary low water of all navigable waters and all islands, shore lands or other such lands held by or granted to this state by virtue of her sovereignty, wherever applicable,

within the boundaries of this state as heretofore or hereafter established, whether such waters or lands are tidal or nontidal, as provided in ORS 274.005(8).

(26) "Territorial Sea" means the ocean and seafloor area from the mean low water seaward three nautical miles.

(27) "Territorial Sea Plan" means the plan for managing Oregon's territorial sea and ocean shore.

(28) "Tidal submerged lands" means lands lying below the line of mean low tide in the beds of all tidal waters within the boundaries of this state as heretofore or hereafter established, as provided in ORS 274.705(11).

(29) "Utility" means water, wastewater, gas, electric, or communication service lines, fixtures, and other related facilities.

(30) "Undersea infrastructure" or "Infrastructure" includes cables, pipelines, utilities, or fixtures on, affixed to, or buried under the seafloor in the state territorial sea or ocean shore or both.

Statutory/Other Authority: Oregon Constitution Article VIII, Section 5(2), ORS 196.438, ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714

Statutes/Other Implemented: ORS 196.438, ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

History:

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141-083-0830

Easement Application Requirements

(1) Any person wanting to place undersea infrastructure in the territorial sea or ocean shore shall contact the department to request a JART pre-application meeting as required by OAR 141-083-0835 and the Territorial Sea Plan.

(2) Following the JART pre-application meeting, the applicant shall apply for an easement to the department at least 180 days before the intended placement of any infrastructure, construction of any associated landing-related facility, or placement of equipment on state-owned submerged and submersible lands within the territorial sea or ocean shore, unless the department has otherwise authorized such use.

(3) The applicant must submit an application that is signed, complete, and accompanied by a non-refundable application fee payable to the department.

(4) In order to be determined to be complete, an application must include the following:

(a) The appropriate non-refundable application fee identified in OAR 141-083-0854;

(b) An application on the form provided by the department and signed by the applicant or the applicant's agent;

(c) The Resource and Use Inventory and Effects Evaluation report required under the Territorial Sea Plan. The applicant is required to provide information and data sufficient for the department to

determine the scope, likelihood, and significance of reasonably anticipated potential effects on coastal resources and uses. Following the JART pre-application meeting, depending on the nature and complexity of the project, the department will advise the applicant if any elements of the required report are waived and not required for a complete application;

- (d) Construction and operation plans;
- (e) Operating agreement;
- (f) The emergency response plan covering accidental emergency situations, including human-made and natural disaster factors, as highlighted in the Territorial Sea Plan; and
- (g) Any additional information or attachments required by the department.

(5) The department may require the applicant to provide written evidence of communication between the applicant and affected ocean users.

Statutory/Other Authority: Oregon Constitution Article VIII, Section 5(2), ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

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141-083-0835

JART Pre-Application Meeting

(1) Before submitting an application, the applicant must request a JART pre-application meeting on a form provided by the department, along with any other information required by the department. The department will schedule a JART pre-application meeting. The applicant must attend the JART pre-application meeting and present information about the project.

(2) The applicant is encouraged to meet with affected ocean users and industries before the JART pre-application meeting to discuss possible use conflicts and other issues attendant with the proposed project.

(3) Within 30 calendar days after the JART pre-application meeting, the department will provide the applicant with a written summary of comments and recommendations made by JART. The written summary will include information and suggestions discussed at the meeting and identify the next steps for an application, including identification of other applications that are required by the department (e.g., removal-fill permit application).

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

141-083-0840

Application Review Process

- (1) Upon receipt of an application, the department will determine whether it is complete.
- (2) If the department determines that the application is incomplete or deficient, the department will notify the applicant in writing about the information required to complete the application. The department's review of the application will be suspended while awaiting revision. To initiate a new completeness review, the applicant must resubmit the entire amended application package for consideration, unless the department instructs otherwise.
- (3) If a revised application is not resubmitted within 120 calendar days of an incompleteness determination, the department may deny the application. If the department denies the application for failure of the applicant to respond in a timely fashion to the request for additional information, the department will retain the application fee. A subsequent application for the same or a similar project will require the submission of a new application and payment of an application fee.
- (4) Once the department has determined the application is complete, the department will circulate the application to federal, state, local agencies, and other interested parties, such as federally recognized Tribes. As a part of this review, the department will specifically request comments concerning:
 - (a) The evaluation of potential impacts on federal- or state-listed threatened, endangered, and candidate species and archaeological and historical resources within the requested area that may be disturbed by the proposed use;
 - (b) Conformance of the proposed use with federal, state, and local laws and rules; and
 - (c) Conformance of the proposed use with Goal 19 and the Territorial Sea Plan.
- (5) The department may hold public information meetings prior to, or after receiving an application, to obtain public comments concerning the proposed project. The department may also provide notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations to ensure that minority and low-income communities are included and aware of a proposed use.
- (6) The department will make paper copies of an application available at the department to any person upon request.
- (7) The applicant shall attend any public meetings scheduled by the department and be prepared to discuss the proposed project. Meetings will be scheduled at mutually agreeable times.
- (8) The department may convene the JART as identified in the Territorial Sea Plan in order to facilitate the coordination of federal and state agencies and local jurisdictions as they apply their separate regulatory, proprietary, or other authorities to the review of the proposed project.
- (9) If the department determines that it needs to acquire the services of technical experts to assist with the application review, the department will notify the applicant and provide an estimate of the costs for such services. Once the department receives payment for the estimated costs, the department will acquire the services and continue reviewing the application. If costs exceed the estimate, the department will provide the applicant with a new estimate. If the applicant does not pay the estimated

costs and there are no alternatives to receive the required information, the department may deny the application.

(10) After receiving comments concerning the proposed project, the department will determine whether additional information is needed or modifications are required to the proposed project. The department will then notify the applicant in writing of the department's determinations.

(11) The applicant may provide additional information, revise their proposed project, or explain why suggested changes are not feasible. The department will consider the applicant's response in developing its recommendation to the State Land Board regarding the easement and related requirements for the location, construction, operation, maintenance, or decommission of the undersea infrastructure.

(12) The department may deny an application for an easement if:

(a) The applicant's financial status or past business/management practices or experience indicates that they may not be able to meet the terms and conditions of an easement fully;

(b) The applicant is in default or has a documented history of non-compliance with the terms of any other authorization granted by the department;

(c) The applicant has not provided the information requested by the department within 120 calendar days of the department's request;

(d) The use does not conform to the provisions of these rules, Statewide Planning Goal 19 and the Territorial Sea Plan;

(e) The use is inconsistent with federal, state, or local laws;

(f) The use would result in an unreasonable interference with public trust uses;

(g) The use would have unacceptable impacts on public health, safety, or welfare, or would result in the unreasonable loss of, or damage to, natural, historical, cultural, or archaeological resources;

(h) The use is prohibited by a State Land Board or department-adopted area closure, use restriction, or waterway management plan ; or

(i) It would have unreasonable impacts on federal- or state-listed threatened, endangered, and candidate species, or would be inconsistent with any threatened, endangered, and candidate species management plan adopted by a state agency within the territorial sea under the Oregon Endangered Species Act.

(13) Unless the easement application is denied, the department will send the easement to the State Land Board for consideration at the next available meeting. The State Land Board may approve or deny the easement based on the recommendation of the department, the JART, or the requirements of these rules.

(14) The holder must pay the compensation fee based on the compensation rates provided in OAR 141-083-0855.

(15) Unless otherwise allowed by the director, the department shall not execute an easement until all information, documents, fees, financial assurances, or any other remaining documents required by the

department for that easement have been received by the department. Easements issued under these rules are executed upon signature by the department.

(16) The applicant may withdraw an application at any time prior to execution of the easement. There will be no refund of the application fee.

(17) In the event the applicant fails to respond to the department's requests for information or otherwise fails to reasonably proceed with any stage of the application process, the department may deny the application with at least 30 calendar days' notice to the applicant. There will be no refund of the application fee.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

History:

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141-083-0850

Easement Terms and Conditions

(1) All easements issued by the department under these rules shall require approval by the State Land Board.

(2) The department will offer easements for a term not to exceed 20 years, except as otherwise authorized by these rules.

(3) The department may include in an easement the right of the holder to renew the easement for an additional term, not to exceed 20 years, subject to the requirements of OAR 141-083-0851.

(4) The department will offer easements for the minimum area and term determined by the department to be required for the requested use or development. Unless otherwise authorized by the State Land Board, the minimum width of an easement will be no less than 15 feet.

(5) Unless otherwise determined by the State Land Board, the department will require a minimum separation distance of 985 feet (300 m) between cables or pipelines to allow space for de-trenching and recovery of buried cables or pipelines.

(6) All cables and pipelines shall be buried at least 1 meter beneath the substrate using the best available proven technology to minimize conflicts with other ocean users and industries and retain the feasibility to retrieve the cable or pipeline for repair or removal.

(a) The holder shall minimize the potential environmental impact associated with cable and pipeline installation and operation by using the following approaches where possible:

(A) Avoid protected and environmentally sensitive or valuable areas;

(B) Use the shortest possible length;

(C) Bundle existing cables and pipelines where safe; and

(D) Minimize crossings of other undersea infrastructure.

(b) The department may allow for an exception for burial for a limited portion of a cable or pipeline if the holder cannot practicably bury the cable or pipeline and the adverse effects of not burying that portion of the cable or pipeline have been avoided, minimized, or mitigated to the maximum extent practicable.

(7) The holder shall verify and document the extent of burial to the department in writing within 120 days of completing construction of the cable or pipeline.

(a) The holder should report to the department the locations of any unburied portions of the cable;

(b) The department may require video, photography, or other evidence of burial or any unburied portions of the cable from the holder.

(8) The department will incorporate the terms and conditions of a removal or fill state permit, if required for the undersea infrastructure, into the easement issued.

(9) The easement holder shall:

(a) Take all reasonable precautions to protect persons, property, and equipment from harm;

(b) Properly dispose of all waste and not permit debris, garbage, or other refuse to either accumulate within the authorized area or be discharged into any waters of the state;

(c) Conduct all operations in a manner that conserves federal- and state-protected and endangered species, fish, and wildlife habitat, and protects marine water and air quality pursuant to the requirements of Goal 19 and the Territorial Sea Plan; and

(d) Maintain all undersea infrastructure located within the authorized area in a good state of repair.

(10) The holder shall obtain approval from the department in writing at least 90 days prior to:

(a) Any pre-planned change in the location or burial depth of the undersea infrastructure;

(b) Any change in ownership of the undersea infrastructure; or

(c) Any abandonment or termination of use of the undersea infrastructure.

(11) The holder shall notify the department in writing immediately after the discovery of any change in the location or burial depth of the undersea infrastructure resulting from accidental contact or natural causes, including geological events.

(12) The holder shall decommission and remove the undersea infrastructure from the state-owned lands within the territorial sea and ocean shore as indicated in OAR 141-083-0852.

(13) The holder shall inspect the infrastructure, and notify the department of any issues:

(a) As part of the installation;

(b) After installation, at a frequency to be determined by the department in consultation with the holder and other interested parties;

(c) After any major geologic event, such as a subduction-zone earthquake, to confirm continued burial and infrastructure integrity.

(14) The holder shall indemnify the State of Oregon and the Department of State Lands against any claim, liability, or costs arising from or related to an action by the holder. Such indemnification shall specifically include any release of a hazardous substance on or from the undersea infrastructure and any equipment during construction, operation, maintenance, and decommission, or physical damage caused by any part of the infrastructure to persons or coastal structures.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

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141-083-0851

Renewal Application Review Process

(1) A holder may request to renew an easement if the easement terms and conditions specify that the easement may be renewed and if the holder has complied with all terms and conditions of the easement. To renew the easement, the holder must submit a renewal application on a form provided by the department, along with the appropriate fees, at least 180 days before the expiration of the current term.

(a) The department may amend the terms and conditions of the easement at the time of renewal;

(b) Amendments may be subject to the JART, public review, and approval by the State Land Board.

(2) If the holder fails to submit a renewal application within the time required, the easement shall terminate at the expiration of the current term. Any infrastructure covered by the easement will be subject to the provisions of OAR 141-083-0852.

(3) To exercise the right to renew, the holder shall submit to the department a renewal application that includes:

(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 infrastructure that are the subject of the easement are consistent with:

(i) local, state, and federal laws; and

(ii) existing department permits and authorizations.

(b) A non-refundable renewal application fee, in accordance with OAR 141-083-0854.

(4) If the holder does not submit a renewal application with the appropriate fees to the department at least 180 days before the expiration of the current term, then the renewal application will be processed

and reviewed in the same manner as a new application for an easement and a new application fee will be required.

(5) If the holder requests either a change in use or infrastructure, or both, then the renewal application will be processed and reviewed in the same manner as a new application for an easement and a new application fee will be required.

(6) Upon receipt of the renewal application, the department will determine whether it is complete.

(7) If the department determines that the application is incomplete or deficient, the department will notify the applicant in writing about the information required to complete the application. The department's review of the application will be suspended while awaiting revision. To initiate a new completeness review, the applicant must resubmit the entire amended application package for consideration, unless the department instructs otherwise.

(8) If a revised renewal application is not resubmitted within 120 calendar days of an incompleteness determination, the department may deny the application. If the department denies the application for failure of the applicant to respond in a timely fashion to the request for additional information, the department will retain the application fee. A subsequent application for the same or a similar project will require the submission of a new renewal application and payment of the renewal application fee as identified in OAR 141-083-0854.

(9) If the renewal application is determined complete by the department, the department will determine, in its sole discretion, whether:

(a) The renewal application was received not less than 180 calendar days before the expiration of the current term of the easement;

(b) The holder has fully complied with the terms of their easement, the applicable statutes and rules; and

(c) The holder has fully complied with any other permits or authorizations granted to them by the department.

(10) The department will not renew an easement if it determines the proposed use or infrastructure:

(a) Does not meet the requirements of Statewide Planning Goal 19 and the Territorial Sea Plan;

(b) Is inconsistent with federal, state, or local laws;

(c) Is not in compliance with these rules;

(d) Would result in an unreasonable interference with the public trust uses;

(e) Would have unacceptable impacts on public health, safety, or welfare, or would result in the unreasonable loss of, or damage to, natural, historical, cultural, or archaeological resources;

(f) Is prohibited by a State Land Board or department-adopted area closure, use restriction, or waterway management plan; or

(g) Would have unreasonable impacts on federal- or state-listed threatened, endangered, and candidate species, or would be inconsistent with any threatened, endangered, and candidate species management plan adopted by a state agency within jurisdiction in the territorial sea under the Oregon Endangered Species Act.

(11) If the department determines that the renewal application complies with the requirements of statutes and rules, the department will provide written notice to the holder that the easement has been renewed for an additional term of 20 years.

(12) If the department determines that the renewal application does not comply with the requirements of statutes and rules, the department will provide written notice to the holder that the easement will not be renewed.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

141-083-0852

Decommission and Recovery

(1) Within one year following termination of the easement, the holder shall decommission all infrastructure, by removing it from the seafloor and restoring the easement area to a natural condition at their own costs.

(2) At least 180 days before decommissioning any undersea infrastructure, the holder shall submit to the department for approval a decommissioning plan pursuant to ORS 274.714, the Territorial Sea Plan, and these rules.

(3) The department may convene the JART under the Territorial Sea Plan in order to facilitate the coordination of decommissioning activities among federal and state agencies, and local jurisdictions as they apply their separate regulatory, proprietary, or other authorities in the decommissioning activities .

(4) A decommissioning plan shall include:

(a) Risk assessment of potential impacts associated with the decommissioning of undersea infrastructure or fixtures, considering the environmental, social, and economic impacts along the cable or other utilities route, scale of impact (spatial or temporal), and interaction with other sea users;

(b) A cost estimate, prepared by a person qualified by experience and knowledge to prepare the estimate, for decommissioning the infrastructure and restoring the area authorized by the easement to a natural condition;

(c) A detailed description of the proposed methods for decommissioning the infrastructure;

(d) A detailed description of and proposed schedule for the decommissioning and restoration work, including any corrective action that may be required under the easement;

(e) A detailed description of location, segments of pipeline, cable, or other infrastructure proposed to be left in place to avoid or minimize impacts on aquatic resources;

- (f) Maps, graphics, drawings, photos, or videos depicting the undersea infrastructure before decommissioning and depicting the proposed decommissioning activities;
- (g) A proposed form of financial assurance pursuant to OAR 141-083-0857.

(5) In developing a decommissioning plan, the holder shall consider and provide an assessment of options for reduced repeat seafloor disturbance, where it is possible. Reduced repeat seafloor disturbance could be achieved by conducting a single-activity, longer-duration operation versus multiple, smaller route-clearance efforts over time.

(6) Within 30 days of receiving a decommissioning plan under subsection (4) of this section, the department will either approve the plan or request revisions to the plan or additional information. If, after receiving revisions to the decommissioning plan or additional information, the department rejects the plan, the holder must, within 180 days, submit to the department an application for an encroachment easement created by the undersea infrastructure.

(7) The holder may not begin decommissioning and restoration work unless:

- (a) The department has approved a decommissioning plan under subsection (4) of this section;
- (b) The holder has acquired the financial assurance approved by the department; and
- (c) The holder has provided the department with notice that the work will begin at least 60 days before beginning the work.

(8) Within 90 days of finishing the activities described in its decommissioning plan, the holder shall submit to the department a post-decommissioning and recovery report.

(9) If the holder determines that leaving some infrastructure, or a portion of the infrastructure, in place is less environmentally damaging than removing the infrastructure, or a portion of the infrastructure, then the holder shall provide a written notice of its determination to the department and submit to the department a complete application for an encroachment easement, as provided in OAR 141-083-0853.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

141-083-0853

Encroachment Easement Application Process

- (1) The holder shall submit to the department a complete application for a permanent encroachment easement if the holder determines that leaving some infrastructure in place is less environmentally damaging than removing it.
- (2) The holder shall apply for an encroachment easement to the department within 180 days of termination of the easement.

(3) The holder must submit an application that is signed, complete, and accompanied by a non-refundable encroachment easement application fee payable to the department as identified in OAR 141-083-0856.

(4) In order to be determined to be complete, an encroachment easement application must include the following:

- (a) The appropriate encroachment easement application fee identified in OAR 141-083-0856;
- (b) A form provided by the department and signed by the holder or the holder's agent;
- (c) Comprehensive assessment of the options available and the environmental impact of each option (removing the infrastructure or a portion of the infrastructure, or leaving some infrastructure or a portion of the infrastructure). The department will evaluate the assessment and any other information available to determine, in the department's sole discretion, whether to allow any infrastructure to remain in place.

(5) The department may require the holder to provide written evidence of communication with affected ocean users.

(6) If the department determines that an application is incomplete, the department will return the application to the holder with a notification of the additional information required. The holder must submit the additional information within 120 calendar days.

(7) Once the department has determined the encroachment easement application is complete, the department will circulate the application to federal, state, local agencies, and other interested parties, such as federally recognized Tribes. As a part of this review, the department will specifically request comments concerning:

- (a) The evaluation of potential impacts on federal- or state-listed threatened, endangered, and candidate species and archaeological and historical resources within the requested area that may be disturbed by the proposed use;
- (b) Conformance of the proposed use with federal, state, and local laws and rules; and
- (c) Conformance of the proposed use with Goal 19 and the Territorial Sea Plan.

(8) The department may hold public information meetings prior to or after receiving the encroachment easement application to obtain public comments and identify possible issues concerning the proposed encroachment.

(9) The department will make paper copies of the encroachment easement application available at the department to any person upon request.

(10) The holder shall attend any public meetings scheduled by the department and be prepared to discuss the proposed encroachment.

(11) The department may convene the JART under the Territorial Sea Plan in order to facilitate the coordination of federal and state agencies and local jurisdictions as they apply their separate regulatory, proprietary, or other authorities.

(12) If the department determines that it needs to acquire the services of technical experts to assist with the application review, the department will notify the holder of this determination and an estimate of the costs for such services. If the holder pays the estimated costs, then the department will acquire the services and continue reviewing the application. If the holder does not pay the estimated costs, the department may deny the application.

(13) The holder may amend their application at any time to address issues, concerns, or information shortfalls identified by the department, the JART, or other commentators.

(14) After receiving comments concerning the proposed encroachment, the department will determine whether additional information is needed or modifications are required to the proposed encroachment. The department will then notify the holder in writing of the department's determinations.

(15) The department may deny the encroachment easement application if:

(a) The applicant's financial status or past business/management practices or experience indicates that they may not be able to meet the terms and conditions of an easement fully;

(b) The applicant is in default or has a documented history of non-compliance with the terms of any other authorization granted by the department;

(c) The applicant has not provided the information requested by the department within 120 calendar days of the department's request;

(d) The use does not conform to the provisions of these rules and the Territorial Sea Plan;

(e) The use is inconsistent with federal, state, or local laws;

(f) The use would result in an unreasonable interference with public trust uses;

(g) The use would have unacceptable impacts on public health, safety, or welfare, or would result in the unreasonable loss of, or damage to, natural, historical, cultural, or archaeological resources;

(h) The use is prohibited by a State Land Board or department-adopted area closure, use restriction, or waterway management plan; or

(i) It would have unreasonable impacts on federal- or state-listed threatened, endangered, and candidate species, or would be inconsistent with any threatened, endangered, and candidate species management plan adopted by a state agency within the territorial sea under the Oregon Endangered Species Act.

(16) The department will not grant an encroachment easement if it determines the proposed use or infrastructure:

(a) Does not meet the requirements of Statewide Planning Goal 19 and the Territorial Sea Plan;

(b) Is inconsistent with federal, state, or local laws;

(c) Is not in compliance with these rules;

(d) Would result in an unreasonable interference with the public trust rights of commerce, navigation, fishing, or recreation;

- (e) Would have unacceptable impacts on public health, safety, or welfare, or would result in the unreasonable loss of, or damage to, natural, historical, cultural, or archaeological resources;
- (f) Is prohibited by a State Land Board or department-adopted area closure, use restriction, or waterway management plan ; or
- (g) Would have unreasonable impacts on federal- or state-listed threatened, endangered, and candidate species, or would be inconsistent with any threatened, endangered, and candidate species management plan adopted by a state agency within jurisdiction in the territorial sea under the Oregon Endangered Species Act.

(17) The applicant may withdraw an encroachment easement application at any time prior to the department granting an encroachment easement. In the event the applicant fails to respond to the department's requests for information or otherwise fails to reasonably proceed with the application process, the department may deny the encroachment easement application with at least 30 calendar days' notice to the applicant. There will be no refund of the application fee in either case.

(18) The State Land Board may approve or deny the encroachment easement application based on the recommendation of the department, the JART, and the requirements of these rules.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

141-083-0854

Application Fees

- (1) Applicants for new or renewal easements must pay the appropriate nonrefundable fee. The department will make the fee schedule available to the public.
- (2) Effective January 1, 2027, the application fee for a new easement will be \$15,000.
- (3) Effective January 1, 2027, the application fee to renew an existing easement will be \$7,500.
- (4) Effective January 1, 2035, the director may increase application fees annually by no more than 5 percent. The director may consider any available Consumer Price Index as published by the US Bureau of Labor Statistics, and any other relevant factors when determining the fee increase.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994.

141-083-0855

Compensation Rates

(1) The applicant for a new easement and the holder of an existing easement who is seeking renewal shall pay a compensation fee for undersea infrastructure.

(a) Effective January 1, 2027, compensation fees for cables and other utilities will be determined as follows:

(A) For cables and other utilities with a diameter up to 3 inches: $COMP = \$3 \times L \times T$;

(B) For cables and other utilities with a diameter of 3 or more inches: $COMP = \$3 \times L \times D \times T$;

(C) The variables include:

L = Linear feet of the proposed easement.

D = Diameter (in inches) of the cable or other utilities.

T = Term of the proposed easement (in years).

$COMP$ = Compensation due to the department for the authorization.

(b) Effective January 1, 2027, compensation fees for fixtures will be determined as follows:

(A) $COMP = \$3 \times LA \times T$.

(B) The variables include:

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

T = Term of the proposed easement (in years).

$COMP$ = Compensation due to the department for the authorization.

(2) The department may reduce required compensation for new undersea infrastructure installations or existing infrastructure in place that is subject to renewal that incorporates sensing, monitoring, or data-collection technologies that advance public safety, environmental monitoring, climate resilience, infrastructure integrity, or resource management (e.g., SMART cables).

(3) To qualify, the sensors must:

(a) Provide operational, environmental, or infrastructure condition data relevant to state management and public benefit;

(b) Meet department technical standards; and

(c) Be maintained in working condition for the duration of the authorization or a minimum period specified by the department.

(4) The department will determine the amount of the compensation reduction, in coordination with the JART and with approval by the State Land Board, based on the public benefit, data accessibility, installation cost, and long-term maintenance commitment. The compensation reduction will not exceed 40 percent of the easement term.

(5) If the sensors become non-operational during an easement term, the holder must notify the department. The holder will pay the department a portion of the original reduction in required compensation based on the number of years remaining in the easement.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994

141-083-0856

Encroachment Easement Application Fee and Compensation

(1) Applicants for a permanent encroachment easement must pay the appropriate non-refundable application fee. The department will make the fee schedule available to the public.

(a) Effective January 1, 2027, the encroachment easement application fee will be \$7,500.

(b) Effective January 1, 2035, the director may increase the application fee annually by no more than 5 percent. The director may consider any available Consumer Price Index as published by the US Bureau of Labor Statistics, and any other relevant factors when determining the fee increase.

(2) The holder of a permanent encroachment easement must pay a one-time encroachment easement compensation fee for permanently leaving undersea infrastructure or a portion of the infrastructure in place.

(a) Effective January 1, 2027, the encroachment easement compensation fee for cables or other utilities will be determined as follows:

(A) Cable and other utilities with a diameter up to 3 inches: $COMP_{enc} = \$7 \times L \times T$;

(B) Cable and other utilities with a diameter of 3 inches or more: $COMP_{enc} = \$7 \times L \times D \times T$;

(C) The variables include:

L = Linear feet of the proposed encroachment easement.

D = Diameter (in inches) of the cable or other utility.

T = Term of the proposed permanent encroachment easement will be 100 years.

$COMP_{enc}$ = Compensation due to the department for the authorization.

(b) Effective January 1, 2027, the encroachment easement compensation fee for fixtures will be determined as follows:

(A) Fixtures: $COMP_{enc} = SM \times LA \times T$.

(B) The variables include:

SM = Statewide Maximum value per square foot.

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

T = Term of the proposed encroachment easement (100 years).

COMP_{enc} = Compensation due to the department for the authorization.

(3) The statewide maximum value per square foot is \$11.93, effective July 1, 2018, and will increase each year on July 1 by 3 percent.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994

141-083-0857

Financial Assurance Requirements

(1) Applicants and holders shall 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 easement.

(a) An applicant for an easement shall acquire and maintain, until construction of the undersea cable is completed, financial assurances as required by ORS 274.714(2) and these rules.

(b) A holder of an easement shall acquire and maintain during decommissioning work, financial assurances in an amount equal to the decommissioning and restoration costs, as required by ORS 274.714(3) and these rules.

(c) The financial assurance requirements may be satisfied by furnishing a financial assurance instrument that is:

(A) A surety bond, cash deposit, or certificate of deposit; and

(B) In the name of the State of Oregon.

(2) The department:

(a) Will determine the amount, type, and terms of financial assurance required. In making this decision, the department will consider the cost estimates of the applicant or holder, the nature and location of the infrastructure, and the use in relation to other uses and resources, any requirements of law, and any other factors of the proposed use determined to be relevant by the department;

(b) May consult with the Oregon Department of Justice, the Oregon Department of Administrative Services Risk Management, the JART, or other qualified persons in determining the amount, type, and terms of financial assurance required.

(3) The department, in its sole discretion, will determine whether to accept the proposed form and providers of financial assurances.

(4) The applicant must provide to the department proof of all coverages and financial assurance required by the department before any use of the easement area.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994

141-083-0860

Unauthorized Uses and Penalties

(1) Uses and developments not authorized by an easement issued by the department constitute a trespass and must be removed as directed by the department unless otherwise authorized in writing by the department.

(2) In addition to any other penalties provided or permitted by law, the unauthorized use of state-owned lands, including the placement of any undersea infrastructure on state-owned land without an easement or otherwise not in compliance with these rules, shall constitute a trespass and be subject to civil penalties and prosecuted pursuant to governing law.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994

History:

DSL 21-1999, f. & cert. ef. 11-1-99

141-083-0870

Appeal of Decision

(1) An applicant for an authorization or any other person adversely affected by the issuance or denial of an authorization under this Division may request a contested case hearing.

The hearing request must be filed with the State Land Board no later than 20 calendar days after the State Land Board makes its decision, or serves the person with notice of the decision, whichever is later.

(2) A person qualifies as being adversely affected under subsection (1) if:

(a) The person is the owner of, or otherwise has a property interest in, the upland property adjacent to, on, or overlapping with the premises of the authorized use;

(b) The person holds an authorization issued by the department for an area that is adjacent to, on, or overlapping with or the premises of the authorized use;

(c) The person is materially affected by the decision; or

(d) The decision unreasonably interferes with the person's public trust rights.

(3) Due to the complexity of the program, a hearing request must provide details of the dispute, including the issues to be addressed in a hearing, the claims and defenses to be asserted at the hearing, and the relief sought. A person claiming to be adversely affected by a decision of the State Land Board under subsection (2)(c) or (2)(d) must describe in their hearing request how the State Land Board's decision materially affects them or unreasonably interferes with their public trust rights.

(4) If the Director determines that a hearing request fails to provide details of the dispute, or if the Director determines that the person requesting the hearing does not qualify as being adversely affected, then the Director will deny the hearing request. Otherwise, the Director will refer the hearing request to the Office of Administrative Hearings for a contested case hearing.

(5) If an applicant or person adversely affected requests a hearing, but then withdraws the hearing request or fails to appear at the hearing, then the State Land Board's decision will become a Final Order by Default. In such a situation, the contested case record will include the record of the contested case proceeding to date, along with the information in the Department's file and all materials submitted by the party, for the purpose of proving a *prima facie* case on default.

(6) The Office of Administrative Hearings will appoint an Administrative Law Judge to conduct a contested case hearing pursuant to the Administrative Procedures Act and Model Rules. The Administrative Law Judge will prepare a proposed order to be filed with the State Land Board.

(7) After issuance of a proposed order, the parties to the contested case may file exceptions to the proposed order with the State Land Board. Exceptions must be filed within 10 business days of the date that the proposed order was issued. Exceptions may address factual or legal issues that are essential to the resolution of the proceeding. Exceptions must cite to the disputed fact or legal issue in the proposed order and provide alternative language.

(8) The State Land Board will review the record of the contested case proceeding, the proposed order, and any exceptions that have been filed. The State Land Board may then issue a Final Order adopting the proposed order, issue a Final Order modifying the proposed order, refer the matter back to the Office of Administrative Hearings for further hearing, or take other action as it deems appropriate.

(9) As a condition of judicial review, a party must request reconsideration or rehearing with the State Land Board. The request must state with specificity the grounds for objection to the decision, and the remedy sought. The State Land Board will issue a decision on the request within 60 days. If the State Land Board does not act on the request, then pursuant to ORS 183.482, the request shall be deemed denied on the 60th day following the date the request was filed.

(10) A petition for judicial review may be filed pursuant to ORS 183.482 within 60 days following the date that a request for reconsideration or rehearing was denied.

Statutory/Other Authority: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714.

Statutes/Other Implemented: ORS 196.485, ORS 273.045, ORS 273.058, ORS 274.710-274.714, ORS 274.755, ORS 274.760 & ORS 274.990-274.994

History:

DSL 21-1999, f. & cert. ef. 11-1-99