

Gold/yellow track changes are the original proposed changes.
Blue track changes are those edits made as a result of RAC member input.

Department of State Lands
Chapter 141
Division 82

RULES GOVERNING THE MANAGEMENT OF, AND ISSUING OF LEASES, LICENSES AND REGISTRATIONS FOR STRUCTURES ON, AND USES OF STATE-OWNED SUBMERGED AND SUBMERSIBLE LAND

141-082-0250
Purpose and Applicability

(1) ~~These rules:~~

~~(a) Govern~~ (1) These rules provide that all uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the Department of State Lands pursuant to these rules.

(2) These rules govern:

(a) The issuance of wharf certifications and the granting and renewal of leases, public facility licenses and registrations (hereafter collectively referred to as waterway use authorizations) for a wide variety of marine, commercial, non-commercial, and public uses in, on, under, or over state-owned submerged and submersible land.

(b) The Submerged Lands Enhancement Fund and outline the process for dispersing grant funds to eligible projects.

(c) The removal of abandoned and derelict structures on state-owned submerged and submersible lands.

(d) The assessment of civil penalties for unauthorized use of state-owned land managed by the department.

~~(e) De~~ The process for appealing decisions made by the department.

(3) These rules do not apply to the granting of:

~~(A)~~ (a) Leases on state-owned submerged and/or submersible lands located in coastal estuaries for the commercial cultivation of oysters, clams, or mussels governed by Chapter 603 Division 82 of the Oregon Department of Agriculture's administrative rules; and

(b) Easements on state-owned submerged and/or submersible land governed by Division 122 or Division 123 of the Department's department's administrative rules; and

~~(B)~~ (c) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land land governed by Division 87 of the Department's department's administrative rules; and

~~(C)~~ (d) Authorizations for the removal or use of rock, sand, gravel, and silt from state-owned submerged and/or submersible land governed by Division 14 of the Department's department's administrative rules; and

Commented [BH1]: Note that DOJ recommends capitalizing the first instance of "Department of State Lands" and to use a lowercase "department" for the remaining references. In addition, defined terms, when referenced, should be lowercase.

Commented [BH2]: This section was reorganized into two categories, what the rules govern and what the rules do not govern. This section was previous one long list of what the rules do and do not govern. Also included references to SLEF, structure removal, civil penalties & appeals, and clarifies that Div. 82 rules do not govern ODA aquaculture leases.

Commented [BH3]: Previously not included, added for clarity.

~~(De)~~ Authorizations for special uses of state-owned submerged and/or submersible land such as for short term access; the conduct of scientific experiments and the removal of sunken logs governed by Division 125 of the ~~Department's~~department's administrative rules; and

~~(Ef)~~ Authorizations for ocean energy conversion devices and fiber optic and other cables in, on, or over the Territorial Sea governed by Divisions 140 and 83 of the ~~Department's~~department's administrative rules; and

~~(Fg)~~ Authorizations for remediation and habitat restoration activities governed by Division 145 of the ~~Department's~~department's administrative rules; and

~~(Gh)~~ Authorizations for uses and structures specifically governed by any other ~~chapter~~division of the ~~Department's~~department's administrative rules.

~~(c) Provide that all uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the Department pursuant to these rules.~~

~~(2)(4)~~ The ~~Director~~director may determine other uses and structures similar to those specified in OAR 141-082-0265 that are subject to ~~a specific~~ authorization under these rules.

141-082-0255
Definitions

(1) "Abandoned Structure" means a structure that has been left without authorization on, under, or over state-owned submerged or submersible lands.

(2) "Abandoned Vessel" means a vessel that has been left without authorization on public or private land, the waters of this state, or any other water.

~~(3) "Actual Annual Gross Income" means the gross revenue received by a lessee during the prior lease year from the authorized use(s) of state-owned submerged and submersible land, including but not limited to the rental of boat slips, boat rental, launch fees or from associated incidental services within the authorized area.~~

Commented [BH4]: Removed because proposed changes to lease rate calculation would not allow rent to be based on annual gross income.

~~(3) "Adjacent Land Value" or "ALV" means the current real market value in dollars per square foot assigned to the land as determined by the County Assessor, excluding the value of any structures or improvements, within the adjacent riparian tax lot or comparable tax lot(s) .~~

Commented [BH5]: Replaces "Assessed Value" & "Appraised Value"; use of the term "assessed" implied the department could not use real market value to determine annual lease payments.

(4) "Adjacent Riparian Owner" or "Riparian Owner" means a person holding recorded title to property that fronts or abuts state-owned submerged and submersible land.

(5) "Adjacent Riparian Property" or "Adjacent Riparian Tax Lot" means the non-state-owned portion of a tax lot that fronts or abuts state-owned submerged and submersible land.

~~(6) "Annual Lease Compensation" means Payment" or "ALP" is the amount of compensation money, as determined by the department in accordance with OAR 141-082-0305, paid by a lessee paysholder of a~~

Commented [BH6]: Changes to definition made to simplify language (payment instead of compensation; department managed land instead of authorized area).

waterway lease to the Department~~department~~ for the use of an authorized area~~department-managed land~~.

(7) "Applicant" is any person applying for a waterway use authorization.

~~(9)~~ "Appraised Value" means an estimate of current fair market value of a parcel (expressed in dollars per square foot) derived by a state-certified appraiser or a salaried public employee of the federal government, the State of Oregon, or a political subdivision of the federal government or the State of Oregon while engaged in the performance of the duties of the employee as defined in ORS 674.100(2)(h).

Commented [BH7]: Removed, replaced with ALV (see above comment).

~~(9)~~⁽⁸⁾ "Aquaculture" means the culture, farming, or harvesting of food fish, shellfish, and other plants (exclusive of kelp which is governed by Division 125 of the Department's administrative rules) and animals in fresh or salt-water areas. Aquaculture practices include, but are not limited to, the hatching, seeding or planting, cultivating, feeding, raising, and harvesting of planted or natural species so as to maintain an optimum yield, and the processing of plants or animals~~those plants or animals~~. For purposes of this definition, "aquaculture" excludes kelp, which is governed by Division 125 of the department's administrative rules.

Commented [BH8]: Changes made to make definition more readable.

~~(10)~~ "Assessed Value" means the current value in dollars per square foot assigned to the land within the adjacent riparian tax lot or comparable tax lot by the county tax assessor.

Commented [BH9]: Removed, replaced with ALV (see above comment)

~~(11)~~⁽⁹⁾ "Assignment" or "Assign" means a transfer by the lessee or licensee, with the Department's~~department's~~ approval of the rights of use and occupancy of the leasehold~~authorized area or premises~~ to another person or entity.

Commented [BH10]: Changes clarify assignments apply to both leases and licenses; updated "leasehold" to "authorized area or premises".

~~(12)~~⁽¹⁰⁾ "Authorization" or "Waterway Use Authorization" means a lease, registration, or public facility license granted by the Department~~department~~ to an applicant conveying a right to limited use of a specific area of state-owned submerged and submersible land for a specific purpose for a fixed period of time.

~~(13)~~⁽¹¹⁾ "Authorized Area" or "Premises" is the area of state-owned submerged and submersible land defined in the waterway use authorization for which a use is authorized.

~~(14)~~⁽¹²⁾ "Bank Consent Agreement" is a document used when rights under a waterway use authorization are held as collateral for repayment of a loan.

Commented [BH11]: Renamed; added "bank" to term to clarify what type of consent agreement rules are referencing.

(13) "Boat House" means a covered or enclosed structure used to store, shelter, or protect a boat, or boats and boating equipment. A structure containing a dwelling does not qualify as a boat house. A boathouse may include an unenclosed recreation area, or a roof that is:

- (a) Used as a viewing platform, for sunbathing, or for other related short-term recreational uses;
- (b) Surrounded by a railing or other safety device;
- (c) Accessible from the lower deck by a permanent or temporary stairway; or

(d) Used to gain access to a waterslide, or other recreational structure.

Commented [BH12]: Add "other recreational structure" to clarify that this section isn't only referring to waterslides but to other similar structures.

(1514) "Boat Lift" is a device that is used to lift a boat from the water for out-of-water moorage or storage; movement to another location; or to enable maintenance to be conducted on the watercraft.

(1615) "Boat Ramp", "Boat Launch", or "Boat Landing" is a specific area that has been improved through the placement of a concrete pad or strips, steel mats, rails, gravel, or other similar durable material that is used for the launching of boats into a waterway.

(1716) "Commercial Marina" is a marina, the operation of which results in, or is associated with any monetary consideration or gain.

(1817) "Commercial Use" means an activity conducted on, within, or over state-owned submerged and submersible land that results in, or is associated with any monetary consideration or gain, including but not limited to: offices, stores, hotels, banks, marinas, restaurants, or retail service outlets.

~~(1918)~~ "Compensation Formula" or "Compensatory Payment Formula" is the amount of money paid formula determined by an applicant for, or holder of an authorization to the Department for department in accordance with OAR 141-082-0305(5) and used to calculate the compensation due the department for use of Department managed state-owned submerged and submersible land.

Commented [BH13]: Definition updated to include reference to the formula defined in rule.

~~(20)~~ "Consent Agreement" is a document used when rights under a Waterway Use Authorization are held as collateral for repayment of a loan. The Department of State Lands must authorize the agreement prior to final loan approval.

Commented [BH14]: See comment to bank consent agreement definition.

(2119) "Department" means the Department of State Lands.

(2220) "Derelict Structure" means a structure that is on, under, or over state-owned submerged or submersible lands and that is:

- (a) Sunk or in imminent danger of sinking due to its dilapidated condition;
- (b) Obstructing a waterway;
- (c) Endangering life or property; or
- (d) In dilapidated condition such that it is in danger of becoming an environmental hazard as evidenced by instances of leaking fuel, sewage, or other pollutants.

(2321) "Derelict Vessel" means a vessel that is on the waters of this state and that is:

- (a) Sunk or in imminent danger of sinking;
- (b) Obstructing a waterway;
- (c) Endangering life or property; or
- (d) In such a dilapidated condition that it is in danger of becoming a significant environmental hazard as evidenced by repeated and documented instances of leaking, fuel, sewage, or other pollutants.

(2422) "Diking District" means a public body organized under the provisions of ORS Chapter 551 for the purposes of improving by diking or damming the lands contained therein which are subject to overflow by tidewater or by freshets.

(2523) "Director" means the Director of the Department of State Lands or their designee.

(2624) "Dock/Float" means an individual, unenclosed, structure which may either be secured to the adjacent or underlying land or ~~that floats that is~~ used for mooring boats and for similar recreational uses such as sunbathing, or as a swimming platform. A structure does not lose its designation as a dock/float if it has an unenclosed recreation area, or includes a second level that may be used for a recreational purpose such as a viewing platform or sunbathing deck.

Commented [BH15]: Updated for readability.

(2725) "Dolphin" is a ~~cluster of piles berthing or piling which~~ mooring structure that extends above water level and is ~~bound together~~ not connected to the shore or any other structure.

Commented [BH16]: Updated to allow for modern dolphin designs.

(2826) "Drainage District" means a public body organized under the provisions of ORS Chapter 547 for the purpose of having swamp, wet, or overflowed lands or irrigated lands reclaimed and protected by drainage or otherwise from the effects of water for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience, and welfare or of public utility or benefit.

(2927) "Dwelling" means a structure designed or occupied as ~~the~~ permanent or temporary living quarters which is equipped with, but not limited to, any ~~or a~~ combination of, sleeping, cooking, bathing, toilet, and heating facilities.

(30) "~~Flat Rate Method" means a manner of calculating annual compensation based on a fixed dollar amount per square foot of leasehold area that varies by use classification.~~"

Commented [BH17]: Removed; this method for calculating lease payments will be removed with the proposed changes to compensation.

(31)(28) "Floating Home" means a moored floating structure that is used as a dwelling and may be physically connected to upland utility services.

Commented [BH18]: Updated to clarify that floating homes can be physically connecte to upland utility services.

(3229) "Floating Recreational Cabin" is a moored floating structure, only accessible by boat, used wholly or in part as a dwelling, ~~not~~ ~~neither~~ physically connected to any upland utility services (for example, i.e., water, sewer, ~~or~~ electricity), ~~nor equipped with cooking, bathing, toilet, or heating facilities,~~ and used only periodically or seasonally.

Commented [BH19]: Updated to clarify that a floating recreation cabin cannot be connected physically to the upland or utility services.

(3330) "Gangway" means a walkway or access ramp which connects, and is used exclusively for the purpose of traversing from the upland to the first structure or use which is subject to a waterway use authorization by the Department ~~such as a dock/float, marina, floating home, or boat house.~~

Commented [BH20]: Updated to remove unnecessary references to dock/float, marina, etc.

(3431) "Goods or Merchandise" means products and raw materials transported in pursuit of trade, business, and/or economic gain. Goods and/or merchandise does not include passengers or materials used by a vessel for its maintenance, alteration, or operation.

(3532) "Government Functions" are activities federal, state, or local government agencies are assigned to perform to protect the health and safety of the public they serve. A ship, boat or vessel exclusively engaged in, or currently inactive but dedicated to, helping to maintain public health and safety is said to be performing a government function.

~~(3633)~~ “Highest Qualified Bidder” is a person who provides the highest bid ~~at an auction~~ through the competitive bid process outlined in OAR 141-082-0281(3), and who submits a complete application to, and meets all the requirements of the ~~Department~~ department for an authorization as provided in OAR 141-082-0280.

Commented [BH21]: Updated to include reference to the section of rule governing the competitive bid process.

~~(3734)~~ “Historical Vessel” or “Historical Structure” is a vessel or structure listed or eligible for listing on the National Register of Historic Places as determined by the State Historic Preservation Office. In addition, these structures or vessels are owned by non-profit organizations for which their primary purpose is youth-oriented, historical, educational, or scientific purposes.

~~(3835)~~ “Holder” is the person who has been issued a waterway use authorization under these rules.

~~(3936)~~ “Houseboat” is a vessel which is or can be moored for use as a dwelling.

Commented [BH22]: Previous rules did not include a definition for “houseboat”.

~~(37)~~ “Incidental Services” include, but are not limited to, restrooms; showers; minor boat and motor repair facilities; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; fish cleaning stations; a small office(s) for marina management; club house and/or meeting room; vending machines; small retail area for marine, fishing and other outdoor supplies and equipment; ice, packaged beverages and foods; limited service restaurants; and temporary restaurants.

~~(4038)~~ “Industrial Use” means an activity conducted on, under, within, or over state-owned submerged and submersible land for business purposes that involves wholly or in part the fabrication, assembly, processing, or manufacture of products, structures, or vessels from raw materials or fabricated parts, or that provides services such as, but not limited to storage, warehouses, factories, or shipyards.

~~(4139)~~ “Lease” for the purposes of these rules, is means a valid, enforceable contract executed by the ~~Department~~ department and signed by the lessee allowing for the use of a specific area of state-owned submerged and submersible land for a specific use underregulated by the terms and conditions of the lease and these rules.

Commented [BH23]: Updated for readability.

~~(4240)~~ “Lease Anniversary Date” means the date the lease was initially entered into and on which, in subsequent years, the annual lease ~~compensation~~ payment is due.

~~(4341)~~ “Limited Duration Use” means any temporary or infrequent use of state-owned waterways, with no long term or extended use intended. Limited ~~Duration Use~~ duration use includes any commercial use of state-owned submerged or submersible land which ~~is does not more occur for longer~~ than a fourteen (14) consecutive day period days in any ~~one (1) single~~ location. Commercial use may include, but is not limited to, barge staging to facilitate movement of goods ~~and services or merchandise~~. For purposes of this section, “location” means, for example, an area necessary to moor at a dolphin or piling that is used by a vessel as it temporarily stops on its passage to its final location to off-load goods ~~and services or merchandise~~. Limited ~~Duration Use~~ duration use also includes any non-commercial use of state-owned submerged or submersible land which ~~is does not more occur for longer~~ than thirty (30) calendar days during any contiguous 12-month time period; within a distance of five miles.

Commented [BH24]: Updated for readability.

~~(4442)~~ “Limited Service Restaurant” means a business serving only pre-wrapped or pre-prepared food products; and nonperishable beverages as defined in ORS 624.010(5).

(4543) "Line of Ordinary High Water" as defined in ORS 274.005(3), means the line on the bank or shore to which the high water ordinarily rises annually in season.

(4644) "Line of Ordinary Low Water" as defined in ORS 274.005(4), means the line on the bank or shore to which the low water ordinarily recedes annually in season.

(4745) "Log Boom Area" means a water surface area bounded by floating, connected logs or other devices, used for confining loose logs, grading and sorting logs, making log rafts, or to feed whole or partially processed wood products to a mill.

(4846) "Log Raft" means a group of loose or bundled logs which can be stored or moved on water.

(4947) "Log Raft Storage Area" means the unbounded water surface area used for mooring and storing log rafts, usually marked by piles and dolphins to which the rafts are fastened.

(5048) "Marina" means a small harbor, boat basin, or moorage facility providing boat berthing, docking and mooring, and incidental services for recreational, commercial and/or charter fishing boats.

(5149) "Marine Debris" means any manufactured or processed solid material that:

(a) Persists in the marine environment; and

(b) Is disposed of or abandoned, either ~~with intention~~ intentionally or unintentionally, in any waters of which the submersible or submerged lands belong to the State of Oregon.

Commented [BH25]: Updated for readability.

(5250) "Marine Industrial/Marine Service" means structures or uses which are commercial or industrial in nature and which need to be located in or adjacent to ~~water areas~~ waterways because the use requires water access. Such uses include, but are not limited to: dry dock, ship, tugboat, barge and workboat moorage and storage; ~~used for industrial uses such as~~ ship breaking or building facilities, vessel repair, and maintenance facilities; ~~aquaculture~~ fish or seafood processing facilities; sea water desalination, mineral extraction, and other related processing facilities.

Commented [BH26]: Added language to expand uses listed in the definition (ship breaking or building, dry dock, etc.); removed aquaculture as there is a separate definition and classification for aquaculture.

(51) "Maximum Rent Payment" is the maximum annual compensation due the department for use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(7).

Commented [BH27]: Added definition because of proposed changes to compensation section.

(52) "Minimum Rent Payment" is the minimum annual compensation due the department for use of state-owned submerged and submersible land in accordance with OAR 141-082-0305(6).

Commented [BH28]: Added definition because of proposed changes to compensation section.

(53) "Mooring Buoy" means a floating device anchored to the bed of a waterway to which a boat is fastened ~~through the use of~~ using lines or ropes for the purpose of mooring the boat in a stationary position in the water.

Commented [BH29]: Changed to "using" for readability.

(54) "Multi-Family Dock" means a non-commercial dock, maintained and owned in common by two or more families, and where no dues or fees are required to be paid for use of the dock. A multi-family dock is not an ownership-oriented facility.

(55) "Navigation Aids" are structures or devices such as navigation buoys, channel markers, beacons, approach and landing lights, and radio navigation and landing aids, etc., placed in, ~~on~~ over or along a

waterway, by or with the consent of appropriate public agencies, to aid persons engaged in navigation of a waterway or aviation.

(56) "Non-Marine Uses" means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to ~~water areas~~ waterways. Such structures and uses include, but are not limited to: multi-family residences, hotels, motels, residences, restaurants, offices, retail stores, manufacturing plants, and warehouses.

(57) "Non-Commercial" means a use which does not result in and/or is not associated with any monetary consideration or gain. For example, a use which includes the renting, leasing, or sale of space would not qualify as "non-commercial."

(58) "Non-Commercial Marina" is one that is neither operated for, nor is associated with any monetary consideration or gain.

(59) "Not-for-Profit" or "Non-Profit" refers to an association or group organized for purposes other than generating profit, such as an educational, charitable, scientific, or other organization qualifying under Section 501(c) of the Internal Revenue Code. In addition, organizations such as soil and water conservation districts and watershed councils may, at the discretion of the ~~Department~~ department, also qualify as a not-for-profit or non-profit organization for the purposes of these rules.

(60) "Owner" means a person who has a property interest in a structure or vessel.

(61) "Ownership-Oriented Facility" means non-commercial facilities where the access and privilege to use is limited to a membership group of persons who pay dues or fees of some type to maintain membership and to operate the facility.

(62) "Person" ~~includes or~~ "Persons" means individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies, as well as any state or other governmental or political subdivision or agency, public corporation, public authority, ~~not-for-profit~~ organizations, or Indian Tribe.

~~(63)~~ "Personal Recreational Use" means non-commercial structures or uses which are dedicated to private recreation and leisure and adjacent to property zoned residential or that otherwise allows residential activities.

Commented [BH30]: Added definition because of changes to compensation (new classification for determining lease payments).

(64) "Pile" or "Piling" is a wood, steel, or concrete beam driven or jetted into the bed or bank of a waterway to secure a floating structure, log raft, or boat.

~~(6465)~~ "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The preference right does not apply to the renewal of an existing lease or an amendment to change the use or size, where the lessee is in compliance with all the terms and conditions of the lease. The preference right shall be offered, in accordance with OAR 141-082-0281(1), if there is a gap in the term of the lease, for example, because of lease termination. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested lease area.

Commented [BH31]: Added language to clarify that amendments (either change of use or size) do not require a preference right review; also added language to clarify that a preference right is required when there is a gap in the authorization, either because of a mutual termination, termination due to an enforcement, or other reason to terminate the lease.

(6566) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).

(6667) "Processing Facility" means a structure or vessel where the cleaning, freezing, canning, preserving, and storing of fish, crustaceans, or other forms of aquatic life are conducted.

(6768) "Protective Boom" or "Shear Boom" refers to logs or similar floating devices attached to each other to protect a structure or bank from floating debris, erosion, or wave action.

(6869) "Public Agency" or "Government Agency" means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.

(6970) "Public Facility License" is a form of waterway use authorization issued by the Department for structures owned, operated, and maintained, or uses made, by a public agency such as transient use docks/floats, boat ramps, boat landings and/or viewing structures where no or minimal entry or use fees are charged; and navigation aids, excepting those navigation aids operated and maintained by the United States Coast Guard.

Commented [BH32]: Added language excepting USCG navigation aids, as they are constructed/maintained to regulate a federally navigable channel and therefore are not subject to there requirement.

(7071) "Public Trust Use(s)" means those uses embodied in the Public Trust Doctrine 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. Examples of Public Trust Uses public trust uses include, but are not limited to, short term moorage, camping, bank fishing, crabbing, clamming, picnicking, walking, hiking, and boating.

Commented [BH33]: Changes made to clarify types of uses protect by the public trust doctrine.

(7172) "Recreation Area" means an area of an authorized use or structure dedicated to day-use recreation.

(72) "~~Redetermination" or "Redetermine" means, for the purposes of these rules, a revision, conducted in accordance with the administrative rulemaking process (ORS Chapter 183), of lease compensation using the methods, formulas, classifications or other factors as specified in OAR 141-082-0305.~~

Commented [BH34]: Removed definition because it was determined unnecessary.

(73) "Registration" is a form of waterway use authorization issued by the ~~Department~~ department allowing a qualifying non-commercial structure or use to occupy state-owned submerged and submersible land.

Commented [BH35]: Changes made to clarify that structures authorized under RGs are non-commercial.

(74) "~~Rental Rate" means the rate, expressed as a percentage, used to determine the annual lease payment for a waterway lease. The rate is determined by the department and calculated based on the considerations outlined in OAR 141-082-0305(3).~~

(75) "Residential Use" means an activity conducted on, in, or over state-owned submerged and submersible land devoted to, or available for single or multiple dwelling units, single-family homes, floating homes, apartments or condominiums.

(7576) "Restaurant" means any establishment where food or drink is prepared for consumption by the public or any establishment where the public obtains food or drink so prepared in form or quantity consumable then and there, whether or not it is consumed within the confines of the premises where prepared, ~~and. This~~ also includes establishments that prepare food or drink in consumable form for

service outside the premises where prepared, but does not include railroad dining cars, bed and breakfast facilities, or temporary restaurants as defined in ORS 624.010(9)(10).

~~(76) "Riparian Land Value Method" means a manner of calculating the annual lease rental payment by multiplying the assessed value times five percent times the area of the leasehold for each use classification.~~

Commented [BH36]: Removed definition as this method to calculate lease payments will be discontinued.

(77) "Rip Rap" as defined in ORS 196.815(2)(e)(D), means the facing of a streambank with rock or similar substance to control erosion.

(78) "State Land Board" means the constitutionally created body consisting of the Governor, Secretary of State, and State Treasurer that is responsible for managing the assets of the Common School Fund as well as for additional functions placed under its jurisdiction by law. The ~~Department~~department is the administrative arm of the State Land Board.

(79) "Structure" ~~or "Improvement"~~ means anything placed, constructed, or erected on, in, under, or over state-owned submerged and submersible land that is associated with a use that requires a waterway use authorization. Structures include boat houses, floating homes, and other structures secured to a pier or piling, except vessels, ~~it cannot be both.~~

(80) "Sublease" means a subordinate lease between the lessee and a third party of all or part of the authorized area, where the lessee remains contractually and primarily liable under the lease with the ~~Department~~department.

(81) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(82) "Submersible Land" means land lying between the line of ordinary high water and the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.

(83) "Temporary Restaurant" means the same as ORS 624.010.

(84) "Tide gate" means a device mounted to a bridge or culvert to regulate the tidal flow or water level on the inside of the gate.

(85) "Use" means an activity with or without associated structures on state-owned submerged and submersible land that requires a waterway use authorization under these rules.

(86) "Use Classification" means the specific category of similar uses and structures subject to authorization described in OAR 141-082-~~0305~~0265.

(87) "Vessel" means a ship, boat, watercraft, or ~~small~~ vehicle that is used for traveling on water. A vessel is not a structure as defined in this ~~subsection~~section (79) above.

~~(88) "Voluntary Habitat Restoration Work" means the same as set forth in ORS 274.043(5)(d). Voluntary habitat restoration work does not include:~~

Commented [BH37]: Language added in (b) to clarify that compensation would not include grants or donations (as non-profits often receive for their work).

(a) Activities undertaken to satisfy any actual or potential legal obligation;

(b) Activities for which the person undertaking the work receives compensation of any kind to do the work; (as used in this definition compensation does not include grants or charitable donations); or

(c) Work completed by an entity to satisfy an environmental mitigation obligation or to generate, sell, or obtain credit as an offset against actual or potential natural resource damages liability.

(89) "Water Sport Structures" means water ski buoys, jumps and ramps, kayak race gates, and other such devices used in association with a water recreational sport. Such devices are typically temporary in nature; and not permanently attached to a piling, dolphin, or other fixed object.

(90) "Wharf" or "Wharves" as defined in ORS 780.040 and as used in these rules means a structure constructed or maintained by the owner of any land lying upon any navigable stream or other like water, and within the corporate limits of any incorporated town or within the boundaries of any port, that extends into the navigable stream or other like water beyond the low-water mark so far as may be necessary for the use and accommodation of any ships, boats, or vessels engaged exclusively in the receipt and discharge of goods or merchandise or in the performance of governmental functions upon the navigable stream or other like water. A "wharf" does not include new lands created upon submersible or submerged lands by artificial fill or deposit. To qualify as a "wharf", a structure must be exclusively used for the receipt and discharge of goods or merchandise or in the performance of governmental functions.

Commented [BH38]: Added language to clarify that a wharf must exclusively be used as a wharf (i.e., no offices/buildings and limited equipment/storage allowed)

(91) "Wharf Certification" means a written certification from the ~~Department~~department that a structure is a wharf as defined in ORS 780.040 and as used in these rules.

141-082-0260
General Provisions

(1) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and submersible land) have been placed by the Oregon State Legislature under the jurisdiction of the State Land Board and the ~~Department~~department, as the administrative arm of the State Land Board.

(2) The State Land Board, through the ~~Department~~department, has a constitutional responsibility to manage "the lands 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" pursuant to Article 8, Section 5(2) of the Oregon Constitution.

(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 a structure or vessel on, or make use of state-owned submerged and submersible land, regardless of the length of time the structure may have existed on, or the use may have occurred on the land, without the required waterway use 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 structure or use has been in existence.

(5) All uses of state-owned submerged and submersible land must conform to local (including local comprehensive land use planning and zoning ordinance requirements), state, and federal laws.

~~(6) The Department~~department shall not authorize ~~a-an existing or~~ proposed use or structure if it:

(a) ~~It is~~ is inconsistent with local, state, or federal laws;

(b) ~~It is~~ is not in compliance with these rules;

(c) ~~Would it would~~ result in an unreasonable interference with the public trust rights of commerce, navigation, fishing, and recreation;

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

(e) ~~It is~~ is prohibited by a State Land Board or ~~Department~~department-adopted area closure, use restriction, or waterway management plan (such as the Lower Willamette River Management Plan; ~~a Total Maximum Daily Load Plan;~~ or the Oregon Territorial Sea Plan);

(f) ~~It is~~ is inconsistent with any endangered species management plan adopted by the ~~Department~~department under the Oregon Endangered Species Act (ORS 496.171 to 496.192); ~~or~~

~~(g) If it~~ ~~(g) It is inconsistent with a Total Maximum Daily Load Plan or the department's implementation plan as a designated management agency; or~~

(h) It extends from the bank of a waterway for a distance that exceeds 25 percent of the width of the waterway, unless authorized by the ~~Director~~director. In determining whether to authorize a structure that extends ~~in excess of more than~~ 25 percent of the width of the waterway, the ~~Director~~director shall consider:

(A) Whether the structure alone, or in combination with existing structures within the waterway, would unreasonably interfere with the public trust rights of commerce, navigation, fishing, and recreation;

(B) Whether the physical conditions of the land or waterway ~~requires~~require a structure ~~in excess of to exceed~~ 25 percent of the width of the waterway in order to engage in the proposed use.

~~(i) The existing structure is not in a state of good repair, has been inspected by an insurance company and cannot be properly insured, or has been inspected by the local planning authority or building inspector and is found to be in violation of local building codes.~~

(7) No applicant for, or person holding an authorization from the ~~Department~~department shall request from any government agency a change in the zoning for, or approved uses of a parcel of state-owned submerged and submersible land without first applying to, and receiving written approval from the ~~Department~~department to request such a change.

Commented [BH39]: Restructured this list because of the addition of section (i).

Commented [BH40]: Added to accommodate legal requirements for Total Maximum Daily Load plans (TMDL).

Commented [BH41]: Section (i) added to address structures in disrepair that, if authorized or renewed, would pose a serious threat to the health and safety of waterway users and property owners.

(8) When a use or structure subject to written authorization from the ~~Department~~department becomes exempt from written authorization, compensation, or both, by a change in the law or in these rules, the holder may terminate the written authorization or allow the written authorization to expire by its terms. If the written authorization is terminated, the holder is not entitled to receive any reimbursement from the ~~Department~~department for any compensation or other fees paid by the holder to the ~~Department~~department under the written authorization prior to expiration or termination.

~~(9)~~(9) Unless otherwise allowed by the director, the department shall not execute a wharf certificate or waterway use authorization until all documents, fees, payments, financial assurances, or any other remaining documents required by the department have been received by the department. Certificates, registrations, leases, and licenses issued under these rules are executed upon signature by the department.

Commented [BH42]: Added this requirement to allow the department to withhold authorization when documents/fees/payments/etc. are not submitted to the department.

(10) All references in these rules to “state-owned submerged and submersible land” include state-owned submerged lands or submersible lands or both.

141-082-0265

Types of Uses and Required Authorizations

(1) All uses of, and structures occupying state-owned submerged and submersible land not otherwise exempt from authorization under these rules, require prior written authorization from the ~~Department~~department pursuant to these rules.

(2) Uses and structures requiring leases include, but are not limited to:

(a) Aquaculture facilities;

(b) Marine industrial/marine service uses;

(c) Floating homes, floating home moorages, houseboats, and other dwellings;

~~(d)~~ Fish or other processing facilities, sea water desalination and mineral extraction facilities;

Commented [BH43]: Removed reference to “fish or other processing facilities, etc.” because these uses are defined as marine industrial/marine services uses (which is referenced in (b)).

~~(e)~~ Log raft, log storage, or log booming areas;

~~(f)~~ Historical structures and historic vessel moorages;

Commented [BH44]: Added clarifying language to include historic structures.

~~(g)~~ Commercial and non-commercial marinas;

~~(h)~~ Multi-family docks not qualifying for registration;

~~(i)~~ Non-marine uses (for example, restaurants, warehouses, offices, motels, etc.);

~~(j)~~ Individual non-~~(i)~~ Non-commercial docks/floats, boathouses, and floating recreational cabins not qualifying for registration or public facility license;

~~(k)~~ Commercial, industrial, or residential uses;

(~~h~~) Water taxi, cruise ship, and tour boat moorages;

(~~m~~) Ownership-oriented facilities; and

(~~n~~) Other similar uses and structures not exempted by statute or these administrative rules, and determined by the ~~Director~~ director to be subject to lease.

(3) Uses and structures requiring a registration are:

(a) Non-commercial structures including docks/floats, multi-family docks, boat lifts, and/or ~~boat houses~~ boathouses of 2,500 square feet or less; measurement excludes calculation of associated gangways, pilings, dolphins, mooring buoys, protective and shear booms, and boat ramps;

(b) Floating recreational cabins of 1,500 square feet or less; measurement excludes calculation of associated, pilings, dolphins, recreational use mooring buoys, and protective booms;

(~~c~~) Water sport structures ~~unless including those~~ authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application for Special Use Device Permits);

(~~d~~) ~~Rip~~ Erosion control structures and rip-rap, pilings;

(~~e~~) Pilings, dolphins, and private boat ramps;

(~~f~~) Structures constructed by a drainage or diking district;

(~~g~~) Tide gates, not connected to a roadway, bridge, or culvert;

(~~h~~) Rights of way established prior to November 1, 1981, for any county road or city street;

(~~i~~) Voluntary habitat restoration work; and

(~~j~~) Other similar structures or uses determined by the ~~Director~~ director to be eligible for registration.

(4) Uses and structures that are eligible for a public facility license are publicly-owned, operated and maintained:

(~~a~~) ~~Boat ramps,~~ boat launches, and landings;

(b) Viewing structures, decks, and boardwalks;

(c) Fishing, crabbing, or otherwise public piers;

(d) Recreational boating, transient docks/floats;

(e) Structures, piers, docks/floats owned, operated by, or under contract to a government agency as long as they are in active service and used exclusively by the government agency to perform the function of that agency; and

Commented [BH45]: Changed to include structures permitted under OSMB's Special Use Device Permits, as these structures occupy department managed lands.

Commented [BH46]: Added reference to erosion control structures, as these uses are allowed under RG but weren't identified in this list.

Commented [BH47]: Language added to clarify that tide gates under RGs should not be connected to another use or structure.

Commented [BH48]: Added uses to (a), (b), and (c) to clarify what types of structures are covered.

(f) Navigation aids, excepting those maintained and operated by the United States Coast Guard, placed by public agencies including approach and landing lights, and radio navigation and landing aids for aviation.

(5) Limited Duration uses are exempt from authorization under these rules.

141-082-0270
Wharf Certification

(1) Any person owning a wharf located on state-owned submerged and submersible lands must certify that the structure is a wharf. The certification of the wharf shall be on a form provided by the Departmentdepartment. There is no fee associated with submission of a wharf certification.

(2) Upon receipt of a wharf certification form, the Departmentdepartment shall review it for completeness. If the structure is a wharf as defined in ORS 780.040 and in these rules, the Departmentdepartment shall issue to the owner a written certification that the structure is a wharf. There is no compensation due the Departmentdepartment for a wharf certification.

(3) In applying the definition of a wharf as set forth in ORS 780.040 and in these rules, the following criteria will apply, where appropriate:

(a) A “government function,” as used in this section, is an activity engaged in by federal, state, or local government agencies in order to perform the function of that agency or protect the health and safety of the public they serve.

Commented [BH49]: Added clarify language so that “government function” isn’t focused only on health and safety but include performing the function of the agency.

(b) A ship, boat or vessel owned by a federal, state, or local government agency is engaged in a government function if it is exclusively dedicated to the performance of a government function and is either currently engaged in the performance of a government function (such as a ship owned or under contract to a government agency such as the United States Navy, United States Coast Guard, United States Army Corps of Engineers, or a fire, police, or sheriff’s department), or if not currently engaged in the performance of a government function, is able to be quickly activated to perform the function for which it is dedicate (such as a United States Maritime Administration Ready Reserve Force ship).

(c) A structure used to load and unload passengers from a ship, boat, or vessel transporting passengers (such as a passenger ferry, cruise ship, or tour boat) is not a structure engaged in the receipt and discharge of goods or merchandise.

(d) A structure must be open and clear of all debris and materials when not actively being used in the receipt and discharge of goods or merchandise; if any cranes or other permanent infrastructure such as offices, conveyor belts, forklifts, pallets, shipping containers, and other equipment and materials are stored on state owned lands, the structure will be subject to a waterway lease or other appropriate waterway use authorization.

Commented [BH50]: Added section (d) to clarify that wharfs should be free of debris, materials, and any offices/buildings or other equipment.

(4) A wharf certification is valid for a term of ~~ten~~five years from the date it is issued. Upon expiration of a wharf certification, the owner thereof must recertify that the structure is a wharf as set forth above.

(5) If the ~~Department~~department does not certify the structure as a wharf, the owner thereof must obtain the appropriate authorization from the ~~Department~~department in compliance with these rules. Unauthorized structures must be removed pursuant to OAR 141-082-0310.

(6) A wharf certified in compliance with these rules may be repaired or replaced without prior notice to the ~~Department~~department. However, the owner of the wharf must notify the ~~Department~~department in writing describing the repair or replacement within 90 calendar days of making such repairs or replacement.

(7) The ~~Department~~department must be notified in writing of any:

(a) Change in the location, size, or use of the wharf at least 90 calendar days prior to such change;

(b) Change in ownership of the wharf as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.

(c) Change in ownership of the wharf by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision.

~~(8)~~ Failure of the owner to notify the ~~Department~~department of a change in the location, size, use, or the ownership of the wharf within the time provided ~~shall~~may result in the automatic termination of the wharf certification.

~~(9)~~ If the owner changes the use to a use that is subject to another authorization under these rules, and therefore cannot be certified as a wharf, the owner must obtain the appropriate authorization for such use or uses from the department in compliance with these rules.

Commented [BH51]: Added section (9) to clarify that when a wharf changes uses and can no longer be certified as a wharf, the holder will need to obtain the appropriate authorization.

(10) The ~~Department~~department shall provide a copy of the wharf certification to the appropriate county official in the county where the wharf is located.

~~(911)~~ If a structure is used in part as a wharf and in part for a use or uses that are subject to authorization under these rules, the owner must obtain the appropriate waterway use authorization for such use or uses from the ~~Department~~department in compliance with these rules.

141-082-0275

~~Application Requirements for a Lease or~~ Public Facility License Application Requirements

Commented [BH52]: Changed for readability.

(1) Any person wanting to use state-owned submerged and submersible land that is subject to a lease or public facility license must apply for the use using a form provided by the ~~Department~~department, ~~apply for and obtain the required authorization~~department prior to using the submerged and submersible land.

Commented [BH53]: Changed for readability and to remove the “obtained” requirement, as the department cannot require an applicant to obtain a lease or license (i.e., the use applied for may not be allowed, or there could be other reasons the use does not get authorized).

(2) All applications for a lease or public facility license must be fully completed ~~submitted signed and complete~~ and accompanied by a ~~non-refundable~~ fee payable to the ~~Department in the amount of \$750~~department.

Commented [BH54]: The term “fully complete” was unclear; added language to clarify that the app needs to be submitted signed and complete (clarifying that a signature is required on the application). Removed “non-refundable” (at times, fees need to be refunded) and reference to fee amount (fees are listed in a new section).

141-082-0280

Lease and Public Facility License Application Review Process

(1) Upon receipt of an application for a lease or public facility license to use state-owned submerged and submersible land, the ~~Department~~department shall review it for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application shall be deemed accepted by the ~~Department~~department.

~~(2) If an application for a lease or public facility license is determined by the Department to be incomplete, the Department shall notify the applicant of the additional information required. If a rejected application is resubmitted within 120 calendar days from the date the Department returned the application, no additional application fee shall be assessed.~~

Commented [BH55]: Removed the last sentence referencing rejected applications submitted within 120 days. Section 0306 below addresses application fees and when they are charged.

(3) If more than one application for a specific area is received by the ~~Department~~department, the ~~Department~~department shall determine which proposed use best fulfills the general provisions specified in OAR 141-082-0260. The ~~Department~~department shall then accept and proceed with that application and deny the others.

(4) Notwithstanding the provisions of OAR 141-082-0260(6)(a), the ~~Department~~department may accept an application for a use or structure that is not currently allowed under local land use laws, or that requires a conditional use permit from the local government agency, if the applicant is actively pursuing in good faith a change to the local land use laws or a conditional use permit that would enable the use to occur, provided the ~~Department~~department has approved the change under OAR 141-082-0260(7).

(5) The ~~Department~~department may reject or deny an application for a lease or public facility license if:

Commented [BH56]: Added to clarify that DSL can reject or deny an application.

(a) The applicant's financial status or past business/management practices or experience indicates that they may not:

(A) Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the ~~Department~~department; or

(B) Use the land applied for in a way that meets the provisions of OAR 141-082-0260(2) and (3).

(b) The applicant is in default on any other authorization granted to them by the ~~Department~~department.

~~(c) Following acceptance of an application, the applicant shall provide the Department with the information requested on the application form.~~

Commented [BH57]: Added 5(c), (d), and (e) to allow for expand allowable reasons for rejecting/denying an application.

(d) The applicant has not responded to a request for more information for 120 calendar days or more.

(e) The use does not conform to the provisions of these rules.

~~(6) Once the department has determined the application complete, the department shall offer a preference right to lease to the eligible party as defined in OAR 141-082-0255(64) and (65), hereafter referred to as the preference right holder, following the process outlined in OAR 141-082-0281.~~

(7) Except as provided in OAR 141-082-0280(9), the department, upon acceptance of the application, shall circulate the application to various local, state, and federal agencies and other interested persons

including Tribal governments, adjacent property holders, affected lessees, permittees, grantees, and other authorization holders for review and comment. The department may require the applicant to respond to comments where applicable. As a part of this review, the department will specifically request comments concerning:

Commented [BH58]: New language to establish criteria for public comments.

(a) The presence of state or federal listed threatened and endangered species (including candidate species) and archaeological and historic resources within the requested area that may be disturbed by the proposed use;

Commented [RAC459]: Add "rare" species? Add species of concern? (Consult with ODFW and ODA)

(b) Conformance of the proposed use with local, state, and federal laws and rules;

(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;

(d) Conformance with the general provisions described in OAR 141-082-0860 of these rules; and

(e) Potential conflicts of the proposed use with existing or public trust uses of the requested area.

(8) The department may provide notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The department shall make paper copies of an application available to any person upon request.

(9) The department shall not request review and comment on an application to obtain a lease or public facility license as provided in OAR 141-082-0280(7) if the use or structure:

(a) Has already received the necessary city or county approvals;

(b) Has been subjected to public comment during a prior circulation; and

(c) Has not changed in terms of the size of the authorized area or use of that area since the time any city or county approvals were given.

(10) Based on the evaluation of the application and the comments received, the department shall:

(a) Approve the application and execute the lease or public facility license;

(b) Require that the applicant modify and resubmit the application; or

(c) Deny the application.

(11) The authorized area shall include all state-owned submerged and submersible lands including the area between moorage slips, boat wells, and all gangways, except those uses qualifying as a registration.

(12) In the event the department cannot readily determine the limits/boundaries of the authorized area requested from the description provided by the applicant or, if in the judgment of the department, a dispute may arise concerning the description, the department may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The applicant shall be responsible for any costs of the survey.

141-082-0281

Preference Right and Competitive Bid Process

(1) ~~The Department~~The department shall take the following steps to offer a preference right:

(a) If the riparian property adjacent to the proposed lease area consists of tax lots having different owners, the ~~Department~~department shall subdivide the requested lease area into smaller parcels by extending lines from the boundaries of, or within the boundaries of the adjacent riparian tax lots, beginning at the point on which the boundaries intersect with the line of state-ownership perpendicular to the thread of the stream so that there is a separate area offered for each adjacent riparian tax lot under separate ownership.

(b) If the riparian property adjacent to the proposed lease area consists of a single tax lot, or two or more contiguous tax lots owned by the same person, the ~~Department~~department shall extend the boundaries of the single tax lot or combined group of tax lots beginning at the point on which the boundaries intersect with the line of ~~ordinary high water~~state-ownership, perpendicular to the thread of the stream creating a single lease area.

(c) For applications to use state-owned submerged and submersible land within a cove or lake, the ~~Department~~department shall apply generally accepted surveying principles to determine the amount of lease area subject to the preference right of an adjacent riparian owner.

(d) Following identification of the preference right holder, or holders, the ~~Department~~department shall provide written notice to each preference right holder that a lease application has been accepted by the ~~Department~~department. Within 30 calendar days from the date of written notice from the ~~Department~~department, each preference right holder must provide the ~~Department~~department written notice of the preference right holder's intent to exercise the preference right to lease the proposed lease area, and submit a new application for a lease to the ~~Department for the use applied for or any other use~~department.

(e) Upon receipt of an application from a preference right holder, the ~~Department~~department shall review it for completeness ~~as set forth in OAR 141-082-0280(1) and to determine if it is for a use that conforms to the provisions of these rules.~~(2). If the application is complete and the use conforms to the provisions of these rules, the preference right holder's application shall be deemed accepted by the ~~Department~~department.

(f) Upon acceptance of a preference right holder's application, the ~~Department~~department shall process the application as set forth in OAR 141-082-0280(8) ~~-(12), below~~(7) through (12).

(g) ~~The preference right shall be considered waived by the Department for the following reasons:~~

(A) ~~if the~~The preference right holder does not exercise ~~the~~their preference right;

(B) ~~The department rejects or if~~denies the preference right holder's application ~~is rejected, or if application is accepted but the,~~ in accordance with OAR 141-082-0280(5); or

Commented [BH60]: Reformat/reorganization; created separate rule for preference right and competitive bid process, previous this language was in the application review rule above.

Commented [BH61]: Reorganized as a list for readability.

~~(C) The preference right holder fails to execute a lease with the Departmentdepartment within 120 calendar days of the date of the preference right holder's notice of intent to the Department to exercise the preference right, the preference right holder shall be deemed to have waived the preference right and the Department shall process the application initiating the department offering of the preference right as set forth in OAR 141-082-0280(7) (13), below a lease.~~

~~(72) If the preference right holder waives the preference right, the Departmentas outlined in subsection (1)(g) above, the department shall put the lease out for competitive bid pursuant to the requirements of ORS 274.040, and in accordance with the following process:~~

~~(a) The Departmentdepartment shall prepare and publish an advertisement for bids. The minimum bid amount shall be set by the Departmentdepartment.~~

~~(b) The advertisement shall contain the following:~~

~~(A) The type of auction and the minimum bid set by the department;~~

~~(B) The location and size of the requested area;~~

~~(C) ~~(b)~~The deadline for submitting a complete application to the department;~~

~~(c) A bidder may bid on the use applied for in the application initiating the offering of the preference right or any other use that conforms to the provisions of these rules and that requires an annual lease compensationpayment rate equal to or greater than the minimum bid amount. The highest bidder shall be awarded the right to lease, subject to compliance with the provisions of these rules.~~

~~(d) All bids submitted to the department must contain the following:~~

~~(A) An application for use of state-owned submerged and submersible lands, identifying an activity that conforms to the provisions of these rules.~~

~~(B) ~~€~~A new application fee, in accordance with OAR 141-082-0306(2).~~

~~(C) The amount per year the bidder intends to pay the department for use of the requested lands.~~

~~(e) Following the closing of bids, the Departmentdepartment shall provide written notice to the highest bidder of the award and of the right to enter into a lease with the Departmentdepartment. Within 30 calendar days from the date of written notice from the Departmentdepartment, the person notified must provide the Departmentdepartment written notice of the bidder's intent to enter into a lease for the proposed lease area, submit a new application for a lease for the use that was the subject of the bid, and submit a bid deposit in a sum equal to one-half of the annual lease compensationpayment for the use that was the subject of the bid. The purpose of the bid deposit is to ensure the bidder enters into a lease with the Departmentdepartment.~~

~~(d) Upon receipt(f) After written notice of the application, bidder's intent and the Departmentbid deposit is received, the department shall review the application for completeness and to determine if it is for a use that conforms to the provisions of these rules. If the application is complete and the use conforms to the provisions of these rules, the application shall be deemed accepted by the~~

Commented [BH62]: New language to establish criteria for advertising a competitive bid.

Commented [BH63]: New language to establish criteria for a bid.

~~Department~~department. Upon acceptance of the application, the ~~Department~~department shall process the application as set forth in OAR 141-082-0280(8) ~~(13), below~~(7) through (12).

(eg) If the bidder awarded the right to lease does not exercise the right to lease, or if the bidder's application is rejected, or if the application is accepted but the bidder fails to execute a lease with the ~~Department~~department within 120 calendar days of the date of the bidder's notice of intent to the ~~Department~~department to exercise the right to lease, the right to lease shall be deemed to have been waived. If ~~the~~ bidder's right to lease is waived, the bidder's bid deposit will be forfeited to the ~~Department~~department and the ~~Department~~department shall offer the right to enter into a lease to the next highest bidder according to the procedures set forth in OAR 141-082-~~0280(7)~~(c0281(2)(e)).

(fh) If the bidder enters into a lease with the ~~Department~~department, the amount of the bid deposit shall be applied to the first annual lease ~~compensation~~ payment.

~~(g) Except as provided in OAR 141-082-0280(10), the Department shall notify the appropriate city or county planning department, pertinent state and federal agencies, federally recognized tribal governments, ports and all lessees and adjacent riparian property owners (as available from the local county assessor's office records) of the application and request review and comment. The Department may require the applicant to respond to comments where applicable.~~

~~(9) The Department may provide notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low income communities are included and aware of a proposed use. The Department shall make paper copies of an application available to any person upon request.~~

~~(10) The Department shall not request review and comment on an application to obtain a lease or public facility license as provided in OAR 141-082-0280(8) if the use or structure:~~

~~(a) Has already received the necessary city or county approvals;~~

~~(b) Has been subjected to public comment during a prior circulation, and~~

~~(c) Has not changed in terms of the size of the authorized area or use of that area since the time those approvals were given.~~

~~(11) Based on the evaluation of the application and the comments received, the Department shall:~~

~~(a) Approve the application and continue to process the lease or public facility license;~~

~~(b) Require that the applicant modify and resubmit the application; or~~

~~(c) Deny the application.~~

~~(12) The Authorized Area shall include all state-owned submerged and submersible lands not available for public trust uses including the area between moorage slips, boat wells and all gangways; except those uses qualifying as a registration.~~

~~(13) In the event the Department cannot readily determine the limits/boundaries of the authorized area requested from the description provided by the applicant or, if in the judgment of the Department, a dispute may arise concerning the description, the Department may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The applicant will be responsible for any costs of the survey.~~

~~(3) The department shall not require a preference right review or put the lease out for competitive bid:~~

~~(a) For applications to renew a lease, when the lessee is in good standing and the lease has been continuously authorized, notwithstanding any holdover provisions that may apply; or~~

~~(b) For applications to modify a lease, as required under OAR 141-082-0295 of these rules; or~~

~~(c) When the applicant is the preference right holder.~~

141-082-0285

~~General~~ Lease and Public Facility License General Conditions and Form

(1) The ~~Department~~department shall ~~only offer a standard~~ form of lease or public facility license that has been approved by the Department of Justice.

(2) Subject to the terms of an existing lease or public facility license or as otherwise agreed by the ~~Department~~department, the applicant shall have ~~ninety (90)~~ calendar days from the date of offer to execute a lease or public facility license with the ~~Department~~department. The ~~Department~~department may revoke the offer after ~~ninety 90~~ calendar days, at which time the applicant may re-apply for the proposed use in accordance with OAR 141-082-0275~~(3)~~. ~~Unless otherwise approved by the Director, the initial term for a lease or public facility license for state-owned submerged and submersible land shall not exceed 15 years. The length of the initial term for a lease or public facility license shall be determined by the Department and shall be based on:~~

~~(3) Unless otherwise approved by the director, the initial term for a lease issued under these rules shall be five years.~~

~~(4) The department may include in a lease the right to renew the lease for an additional term, subject to the requirements of OAR 141-082-0290. Unless otherwise approved by the director, the length of the renewal term for a lease shall not exceed 15 years and shall be determined by the department based on:~~

~~(a) Whether the applicant's financial status or past business/management practices or experience indicates that they may not be able to fully meet the terms and conditions of a lease or other form of authorization offered by the department;~~

~~(b) Requirements imposed by financial institutions as a condition of project financing and approved by the department;~~

~~(c) The general provisions contained in these rules; and~~

~~(d) Additional criteria or rationale, consistent with these rules and as determined by the director.~~

Commented [BH64]: Initial term for new leases set at 5 years; previously initial term could not exceed 15 years. Shorter terms allows the department to review leases for outstanding issues and address concerns quickly.

Commented [BH65]: Language added to allow renewal terms to exceed 5 years if certain conditions are met or under specific circumstances outlined.

~~(5) Unless otherwise approved by the director, the initial term for a public facility license issued under these rules shall not exceed 15 years and shall be determined by the department and based on:~~

Commented [BH66]: Added language to allow for the director to use additional criteria to determine the initial term of a public facility license.

(a) Whether the proposed use is reasonably expected to exist for the time period requested by the applicant;

(b) Requirements imposed by financial institutions as a condition of project financing; and approved by the department;

(c) The general provisions contained in these rules; and

~~(4)(d) Additional criteria or rationale, consistent with these rules and as determined by the director.~~

~~(6) The Departmentdepartment may include in a lease or public facility license, the right of the holder of a lease or public facility license to renew the authorization license for an additional term not to exceed 15 years, subject to the requirements of OAR 141-082-0290.~~

Commented [BH67]: Requires the same criteria to be used to determine renewal terms.

The length of the renewal term for a public facility license shall be determined by the department and shall be based on the criteria listed in section (5).

~~(7) Leases issued under these rules with a renewal term longer than five years shall be subject to a reassessment of rent based upon the rules in effect at the time of reassessment. Rent reassessment shall occur at least once every five years.~~

~~(8) The Department may require an applicant or holder of a lease to obtain a surety bond or other form of financial assurance acceptable to the Departmentdepartment to ensure that the lessee will perform in accordance with all terms and conditions of the lease. The surety bond amount shall be determined by the Departmentdepartment and shall be reasonable and within generally accepted business practices. A certificate of deposit in an amount equal to the amount required for a surety bond and that names the State of Oregon as co-owner may be substituted in lieu of a bond.~~

Commented [RAC68]: Section to be deleted because financial assurance requirements will be handled under a new rule.

~~(679) State-owned submerged and submersible land shall remain open to Public Trust Usespublic trust uses.~~

(a) Notwithstanding the provisions of OAR 141-088, a holder may close all or a portion of the authorized area to Public Trust Uses, public trust uses or restrict Public Trust Usespublic trust uses within all or a portion of the authorized area, provided the closure or restriction is:

(A) Reasonably necessary to protect persons and property from harm arising from holder's authorized use of the submerged and submersible land;

(B) Limited in duration; and

(C) Limited in scope.

(b) If the proposed closure or restriction is wholly or partially within the navigation channel of the waterway as established by the United States Coast Guard; or is located in such a way as to increase traffic in or otherwise impact use of the navigation channel, the holder shall consult with the United

States Coast Guard and the Oregon State Marine Board prior to implementing the closure or restriction. ~~Holder~~The holder shall comply with all requirements imposed by the United States Coast Guard and the Oregon State Marine Board.

(c) The holder must provide written notice to the ~~Department~~department no less than ~~fourteen (14)~~30 ~~calendar~~ days prior to the implementation of any closure or restriction. The written notice must identify the need for, the scope of, and the duration of the closure or restriction, and must certify that holder has consulted with the United States Coast Guard and the Oregon State Marine Board regarding the closure or restriction, if required under ~~OAR 141-082-0285(6)~~subsection (9)(b).

(d) The ~~Department~~department, in its sole discretion, may at any time require the holder to terminate or modify the closure or restriction. The ~~Department~~department, in its sole discretion, may at any time require the closure or restriction to be established pursuant to OAR 141-088.

~~(7810)~~ The holder may restrict public use of holder-owned property or structures authorized under a lease or public facility license.

~~(8911)~~ The ~~Department~~department or its authorized representative(s) shall have the right to enter into and upon the authorized area at any time for the purposes of inspection or management.

~~(91012)~~ The holder shall not encumber the rights held under a ~~Waterway Use Authorization~~waterway use authorization, nor mortgage or grant a security interest in the holder's interest in the ~~Waterway Use Authorization~~waterway use authorization without prior written consent of the ~~Department~~department. Written consent shall be applied for on a form provided by the ~~Department~~department.

~~(101113)~~ The holder shall pay a ~~non-refundable fee of \$375~~nonrefundable bank consent agreement application fee, in accordance with OAR 141-082-0306(6), for each request for ~~DSL's~~the department's approval of a bank consent agreement.

(124) The holder shall maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements in a good state of repair. Any structures and improvements not maintained in a good state of repair must be repaired or removed upon receiving notice from the department, unless the department elects to remove or repair them at the holder's expense.

Commented [BH69]: Sections (14) to (24) were added from existing lease conditions required by Dept. of Justice.

(135) The holder shall remove all unauthorized vessels, buildings, docks, pilings, floats, gangways, similar structures, or other improvements from the premises upon receiving notice from the department, unless the department elects to remove them at the holder's expense.

(146) The holder shall remove all abandoned and derelict vessels from the premises upon receiving notice from the department, unless the department elects to remove them at the holder's expense.

(157) Within 90 calendar days after the expiration or earlier termination of a public facility license or waterway lease, the holder shall remove all authorized vessels, buildings, docks, pilings, floats, gangways, similar structures, or other improvements from the premises, unless otherwise agreed to by the holder and the department. The holder is responsible for any damage done to state-owned submerged and submersible lands as a result of removing any structures, vessels, or other improvements.

(168) Prior to issuance of a lease to use or occupy state-owned submerged and submersible land for the uses described in OAR 141-082-0265(2) of these rules, the applicant, as a condition of their authorization and as required by ORS 274.040(3)(d), must indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation. The applicant's obligation to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation must be in writing on a form provided by the department.

(179) The holder shall dispose of all waste in a proper manner and not allow debris, garbage, or other refuse to accumulate within the premises, and if the holder allows debris, garbage, or other refuse to accumulate within the premises, allow the department to remove the debris, garbage, and other refuse at the holder's expense.

(1829) The holder must conduct all operations within the premises in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds.

(1924) In addition to any other applicable laws and regulations, the holder shall obtain any permits required by local, state, or federal authorities and shall comply with Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and wastewater disposal for vessels and floating structures.

(2022) The holder shall not use, store, or dispose of, or allow the use, storage, or disposal within the premises of any material that may pose a threat to human health or the environment, including, without limitation, hazardous substances, pesticides, herbicides, or petroleum products except in strict compliance with applicable laws, regulations, and manufacturer's instructions. The holder shall take all necessary precautions to protect human health and the environment and to prevent the release of any hazardous substances on or from the premises.

(213) The holder shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the premises as directed by the local county weed control district, the Oregon Department of Agriculture, or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests, or diseases, or as may be authorized or directed by the department or the State of Oregon.

(224) The premises shall be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all personas without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.

141-082-0290

Lease and Public Facility License Renewal

(1) Notwithstanding any provisions in the lease or public facility license to the contrary, the holder of a lease or public facility license containing a right to renew, shall exercise the right to renew as set forth below.

~~(2) The holder of a lease or public facility license shall exercise the right to renew not less than 90~~180 ~~calendar days, but not more than 1 year prior to the expiration of the then current term of the lease or public facility license. If the holder of a lease or public facility license fails to renew within the time~~

Commented [BH70]: Timeline updated for renewal to 180 days; staff experience is that renewal applications should be submitted no later than 6 months prior to expiration. Language was also added to clarify that renewal applications must be received no more than 1 year before expiration to prevent holders from requesting more than one renewal at a time.

required, the lease or public facility license ~~shall~~may terminate at the expiration of the current term at the department's discretion.

(3) To exercise the right to renew, the holder of a lease or public facility license must submit to the ~~Department~~department at least 180 calendar days prior to the expiration of the current term:

(a) A written statement, on a form provided by the ~~Department~~department:

(A) Notifying the ~~Department~~department of the holder's intent to renew;

(B) Certifying that the uses or structures that are the subject of the lease or public facility license are consistent with local, state, or federal law; and

(C) Certifying that the existing uses and structures are consistent with those authorized under the lease or public facility license.

(b) A ~~non-refundable~~nonrefundable renewal application fee of \$375, in accordance with OAR 141-082-0306(3), is payable to the Department if:

(A) No changes in use or size ~~or use~~ have been made within the leasehold area, ~~and; or~~

(B) No changes in use and a decrease in size has been requested within the leasehold area; and

(C) The application was received within not less than 90 calendar days of prior to the expiration of the lease.

~~(c) If changes in use or size have been made within the leasehold area, then a non-refundable \$750A nonrefundable new application fee is required, in accordance with OAR 141-082-0306(2), is payable if:~~

(A) There are changes in use; or

(B) An increase in size has been requested within the leasehold area; or

(C) The application was received less than 90 calendar days prior to the expiration of the lease.

(4) (4) Renewal requests involving either a change in use, an increase in the size of the premises, or both, will be processed and reviewed in the same manner as a new lease or public facility license application as specified in these rules.

(5) Upon receipt of the written statement and ~~renewal~~appropriate fee, the ~~Department~~department shall determine, in its sole discretion, whether:

(a) The right to renew was exercised not less than ~~90~~180 calendar days prior to the expiration of the then current term of the lease or public facility license;

(b) The lessee or licensee has fully complied with the terms of their authorization, the applicable statutes, or Oregon Administrative Rules; and

Commented [BH71]: Added language to clarify that a new application fee is required if (A), (B), or (C) occurs.

Commented [BH72]: Added language to clarify when renewal request will be processed in the same manner as new applications.

Commented [BH73]: Updated for consistency.

(c) The holder of the lease or public facility license has fully complied with any other authorization granted to them by the ~~Department~~department.

(6) As a condition of renewal, the department shall have the right to amend the terms and conditions of the lease or public facility license.

~~(7)(5) If the Departmentdepartment determines that the renewal complies with the requirements of OAR 141-082-0290section (4), the Departmentdepartment shall provide written notice to the holder that the lease or public facility license has been renewed for thean additional term stated in the notice. As a condition of renewal, the Department shall have the right to require amendment to the terms and conditions of the lease at the time of renewal. If the lease or public facility license contains a provision requiring that the annual compensation be re-determined on renewal. For leases, the written notice from the Department shall include the new annual compensation ratelease payment determined pursuant to the provisions in OAR 141-082-0305.~~

Commented [BH74]: Moved to the above section (6).

~~(68) If the Departmentdepartment determines that the renewal does not comply with the requirements of OAR 141-082-0290section (4), the Departmentdepartment shall provide written notice to the holder that the lease or public facility license that the lease or public facility license shall not be renewed. In that event, the lease or public facility license shall terminate at the expiration of the current term.~~

~~(79) If the lease or public facility license does not contain a right to renew, the holder of the lease or public facility license may apply for a new lease or public facility licenseslicense as provided in these rules.~~

141-082-0295

Lease and Public Facility License Modifications

(1) The department will process and review all applications for Size and Use changes of the authorized use or for an increase in the authorized area under
~~(4) Change in Use: The holder of a lease or public facility license in the same manner as a new lease or public facility license application as specified in these rules. If the department accepts the changes, it will offer an amendment of the current lease or public facility license.~~

(a) Change in Use.

(A) The holder may not change the authorized use without prior written authorizationapproval from the department.

(B) Department. The holder shall submit an application to the ~~Department~~department that includes certification indicating that the proposed change is consistent with local, state, or federal law. ~~The holder shall submit an application to the Department on a form provided by the Department together with an application fee of \$750.~~

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable new application fee in accordance with OAR 141-082-0306(2).

(b) Increase in Area.

Commented [BH75]: Reformat/reorganization; reorganized rule and added section covering changes to terms.

(A) The holder may not increase the authorized area without prior written approval from the department.

(B) The holder shall submit an application to the department that includes certification indicating that the proposed expansion is consistent with local, state, or federal law.

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable new application fee in accordance with OAR 141-082-0306(2).

(c) Decrease in Area.

(A) The holder may reduce the size of the authorized area without prior written approval from the department.

(B) The holder must provide the department written notice of the reduction in the size of the authorized area and a nonrefundable amendment application fee, in accordance with OAR 141-082-0306(4), no less than 90 calendar days after the change.

~~(C)~~ The written notice to the department must include a drawing with dimensions and photographs documenting the change.

(d) Modifications of Terms or Conditions.

(A) The holder of a lease or public facility license may request changes to the terms or conditions of the authorization document.

(B) The holder shall submit an application that includes details of the request along with a justification of the modifications.

(C) The holder shall submit an application to the department on a form provided by the department together with a nonrefundable amendment application fee, in accordance with OAR 141-082-0306(4).

(D) The department, in its sole discretion, may reject the holder's request to change the terms or conditions of the authorization document.

(2) Reconfiguration of ~~existing~~ Existing Uses and Structures:

(a) The holder of a lease or public facility license may change the internal arrangement of the uses or structures within an authorized area without prior written authorization from the Department. However, the holder must provide the Department written notice of the change no less than 90 days after the change. The written notice to the Department must include a drawing with dimensions and photographs documenting the change.

~~(3) Increase in area: (b) The holder of a lease or public facility license may not increase the authorized area without prior written authorization from the Department. The holder shall submit an application to the Department that includes certification indicating that the proposed expansion is consistent with local, state, or federal law. The holder shall submit an application to the Department on a form provided by the Department together with an application fee of \$750.~~

Commented [BH76]: Previous rules did not have an application process for modifications of terms.

~~(4) Decrease in area: The holder of a lease or public facility license may reduce the size of the authorized area without prior written authorization from the Department. However, the holder must provide the Department written notice of the reduction in the size of the authorized area, and an administrative fee of \$375, change no less than 90 calendar days after the change.~~

(c) The written notice to the Department must include a drawing with dimensions and photographs documenting the change.

~~(5) The Department will process and review all applications for changes of the authorized use or for an increase in the authorized area under a lease or public facility license in the same manner as a new lease or public facility license application as specified in these rules.~~

141-082-0300
Subleasing and Assignment of Leases and Public Facility Licenses

(1) Subleasing a Lease.

(a) The holder of a lease may not sublease any portion of the authorized area without the prior written consent of the Department, unless subleasing is specifically permitted under the lease or by these rules. The Department may terminate a lease where any portion of the authorized area has been sublet without the Department's written consent.

(b) Notwithstanding any provisions in the lease to the contrary, the holder of a lease shall comply with the process set forth below in subleasing any portion of an authorized area where Department's consent is required by the lease or by these rules. In order to sublease any portion of an authorized area where the Department's consent is required, the holder must submit an application to the Department, on a form provided by the Department, together with a copy of the proposed sublease for review and approval and a non-refundable application fee of \$750 payable to the Department. The application, proposed sublease, and application fee must be submitted to the Department no less than 60 calendar days prior to the date of the proposed subletting. Department's consent is required by the lease or by these rules.

~~(c) In order to sublease any portion of an authorized area where the department's consent is required, the holder must submit, no less than 90 calendar days prior to the date of the proposed subletting, the following:~~

~~(A) An application to the department on a form provided by the department;~~

~~(B) A copy of the proposed sublease agreement for review and approval; and~~

~~(C) A nonrefundable sublease application fee, in accordance with OAR 141-082-0306(7).~~

(d) The holder of a lease may grant a sublease to another person without prior consent of the Department when:

(A) The lease specifically authorizes subleasing without the Department's prior written consent; or

(B) The sublease authorizes use of less than the entire authorized area and the use allowed under the sublease is included in the authorized use of the lease (for example, the rental of boat slips,) for a term not to exceed 12 months. The lease holder must provide the department written notice of the sublease within 30 calendar days.

Commented [BH77]: Clarifying language; changes made to clarify that sublease agreements that are less than 12 months fall under this exception but lessee still must provide notice. This language is already in the lease agreement.

(2) Assignment of a Lease:

(a) The holder of a lease shall not assign the lease without the prior written consent of the ~~Department~~department, unless assignment without the ~~Department's~~department's consent is specifically permitted under the lease or by these rules.

~~(b) Notwithstanding any provisions in the lease to the contrary, the holder of a lease shall comply with the process set forth below in assigning the lease where the Department's consent to assignment is required by the lease or by these rules. In order to assign a lease where the Department's consent is required by the lease or by these rules, the holder of a lease must submit an application to the Department, on a form provided by the Department, together with a non-refundable application fee of \$750 payable to the Department. The application and application fee must be submitted to the Department no less than 60 calendar days prior to the date of the proposed assignment. department's consent to assignment is required by the lease or by these rules.~~

Commented [BH78]: Reformat/reorganization; reorganized Section (2)(b) for readability and clarity, creating more subsections, each dealing with one "topic".

~~(c) In order to assign a lease where the department's consent is required by the lease or by these rules, the holder of a lease must submit, no less than 90 calendar days prior to the date of the proposed assignment, the following:~~

Commented [BH79]: Was previously 60 calendar days, but this is often not enough time to complete the assignment process.

~~(A) An application to the department on a form provided by the department; and~~

~~(B) A nonrefundable assignment application fee, in accordance with OAR 141-082-0306(5).~~

(c) The ~~Department~~department may reject an application for assignment of a lease if the ~~Department~~department determines, in its sole discretion, that:

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

(B) The proposed assignee is in default on any other authorization granted to them by the ~~Department~~department.

(d) If the application for assignment is approved by the ~~Department~~department, the ~~Department~~department shall prepare an assignment form for the signature of the lessee, the proposed assignee, and the ~~Department~~department. The assignment shall be effective on the date of signature by ~~all parties~~the department.

(e) As part of the consideration for the ~~Department's~~department's consent to the assignment, the ~~Department~~department shall have the right to require amendment to the terms and conditions of the lease prior to the assignment.

(f) Lessee shall remain liable for the performance of all obligations under the lease following assignment, unless the ~~Department~~department consents, in its sole discretion and in writing, to release lessee from liability.

(g) To assign a lease to a spouse or child ~~or upon~~ the death of the holder, the spouse or child must submit an application to the ~~Department~~department on a form provided by the Department. There is no application fee associated with the assignment of a lease to the holder's spouse or child ~~or upon~~ the death of the holder.

(3) Assignment of a Public Facility License₂

(a) The holder of a public facility license shall not assign the public facility license without the prior written consent of the ~~Department~~department, unless assignment without the ~~Department's~~department's consent is specifically permitted under the public facility license or by these rules.

(b) In order to assign a public facility license where ~~Department's~~the department's consent is required by the public facility license or by these rules, the holder of a public facility license must submit an application to the ~~Department~~department on a form provided by the ~~Department~~department.

(c) There is no application fee required for an assignment of a public facility license to another public agency.

(d) If the application for assignment is approved by the ~~Department~~department, the ~~Department~~department shall prepare an assignment form for the signature of the licensee, the proposed assignee, and the ~~Department~~department. The assignment shall be effective on the date of signature by ~~all parties~~the department.

(e) As part of the consideration for the ~~Department's~~department's consent to the assignment, the ~~Department~~department shall have the right to require amendment to the terms and conditions of the license prior to the assignment.

(f) Licensee shall remain liable for the performance of all obligations under the license following assignment, unless the ~~Department~~department consents, in its sole discretion and in writing, to release licensee from liability.

141-082-0305

~~Annual Lease Compensation~~Payment Formulas, and Methods ~~and Annual Lease~~

~~Compensation Adjustments~~

~~(1) The Department has established three methods~~ department shall establish a single compensation formula to determine the compensation annual lease payment (ALP) owed for the use of state-owned submerged and submersible land. For some uses, lands requiring a lease under these rules, effective January 1, 2026. The department shall publish the established formula, as well as all fees established in these rules, on their website and update it as required in rule.

Commented [BH80]: Changes from 1 to 3 methods established and requires the department to publish the formula and fees established in these rules.

(2) The annual lease payment for any lease issued under these rules shall be determined using the following factors:

Commented [BH81]: Establishes 3 variables/factors used in calculating a lease's ALP; (1) the value of the adjacent land (or comparable), (2) the rental rate, and (3) the authorized area (in square feet).

(a) The adjacent upland property's land value (ALV), as determined by the County Assessor, and excluding the value of any structures or improvements, or another comparable upland property or properties selected by the department, in the event the adjacent upland property's land value is artificially depressed due to the presence of hazardous materials or some other extenuating circumstance as determined by the department;

(b) A rental rate (RR), expressed as a percentage, as determined by the department and within generally accepted appraisal policies and practices; and

(c) The area, in square feet, authorized for lease (AA) by the department.

(3) The department may adjust the rental rate for any individual lease based on the following considerations:

Commented [BH82]: Establishes how the department may adjust the rental rate charged for each lease.

(a) The zoning for the adjacent upland property;

(ab) Lessee's or applicant's participation in programs that benefit the health and safety of waterways, such as the Clean Marina Program at Oregon State Marine Board;

(b) The lessee or applicant provides free or low-cost public access;

(be) The type of waterway designation, or other appropriate classification, the activity occurs on, such as a state scenic waterway, essential salmonid habitat, Coastal Management Zone, or estuary classification;

(d) Whether the activity occurs within city limits or within the boundaries of any port district;

(ce) The use classifications outlined in section (12); or

(df) Other methods or information based on generally accepted appraisal practices and principles.

(4) The rental rate shall not be less than 3 percent or more than one method is available 8 percent. The department can only increase the rental rate by up to one half of one percent or reduce the rental rate by up to three quarters of one percent for any individual consideration used to determine the rental rate.

Commented [BH83]: Sets the min. and max. rental rate.

(25) The three methods are termed the:

Commented [BH84]: Establishes the new formula for calculating ALP. $ALV \times RR \times AA = ALP$.

(a) "Flat Rate Method" (which is annual lease payment shall be determined by multiplying the number of square feet of an area requested, or that has been authorized, by a specific rental rate unique to by the use).

(b) "Riparian Land Value Rate Method" (which is based on a percent of the assessed value of the upland adjacent to the area which has been requested, or that has been land and the authorized) area, as illustrated in the formula below:

$$ALV \times RR \times AA = ALP$$

(6)

~~(c) "Percent of Gross Method" (which is based on the percent of the actual annual gross income received by the lessee from using the area that has been requested, or that has been authorized).~~

Commented [BH85]: Requires leases to pay at least the minimum payment. Removes square foot minimum and establishes a new rate.

~~(3) Regardless of which method (OAR 141-082-0305(2)(a), (b) or (c)) is used, under Under no circumstances shall the compensation annual lease payment owed be less than the base minimum rate, rent payment set forth in OAR 141-082-0305(6).~~

~~(4) For many use classifications, an applicant has the option of choosing among the above three methods to determine the compensation owed for their use of state-owned submerged and submersible land. Under the circumstances identified in OAR 141-082-0305(7), the Department shall choose the method to be used to determine the compensation owed to the Department for a use of state-owned submerged and submersible land below.~~

~~(5) Once an applicant or the Department has selected a method of determining compensation, that method shall remain in effect for the entire term of the lease unless there is a change in the use.~~

~~(6) The base minimum annual compensation, rent payment for any lease issued under these rules shall be the greater of:~~

~~(a) \$1,200 effective July 1, 2026;~~

~~(b) \$1,400 effective July 1, 2031;~~

~~(c) \$1,600 effective July 1, 2036;~~

~~(d) \$1,800 effective July 1, 2041; or~~

~~(e) The minimum bid set by the department for a competitive bid, pursuant to the requirements of ORS 274.040 and in accordance with OAR 141-082-0281(3).~~

(7) Under no circumstances shall the annual lease payment due be more than the maximum rent payment rent set forth below:

Commented [BH86]: Maximum allowed rent established, no previous limit to what DSL could charge.

(a) Effective ~~January~~ July 1, 2026: \$150,000.

(b) Effective July 1, 2041: \$175,000.

(8) Excepting leases subject to the restrictions listed in ORS 90.324 or ORS 90.600 For renewals, the a renewing lease's annual lease payment shall not exceed 15 percent of ~~and 1/2 times~~ the last annual lease payment charged by the department.

Commented [BH87]: Limits the amount a lease payment can increase upon renewal.

(9) The annual lease payment for any individual lease shall be the greater of:

(a) The minimum rent payment, as determined in section (6);

(b) The compensation resulting in a competitive bid award, pursuant to the requirements of ORS 274.040 and in accordance with OAR 141-082-0281(3); or

(c) The compensation resulting from using the formula set forth in section (5).

~~(10) The (a) \$0.0085 per square foot times the lease area or four hundred and six dollars (\$406) which is rate in effect in July 2017. The base minimum annual compensation rates shall be increased by three percent each year on July 1st; or~~

Commented [BH88]: Establishes that lease payments shall increase by 5% annually. Previously, rate was established in the lease contract.

~~(b) The annual compensation resulting from a competitive the bid award annual lease payment for an individual lease issued under these rules shall be increased annually on the lease anniversary date by 35 percent. In addition, if the lease term exceeds 5 years, the annual lease payment shall be subject to reassessment based on administrative rules in effect at time of reassessment.~~

~~(11) The annual lease payment for individual noncommercial~~

~~(7) In the event the lessee and the Department cannot agree on the method of calculating the annual compensation or any aspect of the method to be used, the annual compensation owed by the lessee shall be determined by the Department using the flat rate method which shall remain in effect until such time as the a new rate is implemented at the next lease anniversary date. If, during the term of the lease, the lessee and the Department reach agreement on the method of compensation, the new lease rate shall be implemented on the next lease anniversary date.~~

~~(8) The annual compensation for individual non-commercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages shall be calculated based on the area encompassed by the perimeter of the structures, excluding gangways, protective booms, pilings, and dolphins. This provision does not apply to uses that, regardless of size, are ineligible for registration.~~

~~(9) The following eight use classifications and related lease compensation formulas described in OAR 141-082-0305(9)(a) through (h) shall be used to establish annual lease compensation payments or minimum bid, whichever is applicable, subject to the base minimum annual lease compensation payment established in OAR 141-082-0305(6). For the riparian land value method described below, utility, railroad or publicly owned land shall not be used for establishing the assessed or appraised value [AV] unless the assessed value is readily available and reflective of comparable similarly situated tax lots. If not, the assessed or appraised value [AV] of privately owned comparable tax lots shall be substituted. In cases where the adjacent riparian tax lot is less than 100 feet deep, the Department shall assume the adjacent riparian tax lot has a depth of 100 feet and calculate the assessed or appraised value [AV] based on this derived area.~~

Formula Factors:

AV = Assessed value or appraised value (as defined in OAR 141-082-0255(8) and (10) of these rules) whichever is less except as stated in OAR 141-082-0305(14) and (15).

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

AC = Annual compensatory payment

Uses and Compensation Determination Methodologies:

~~(a) Commercial marinas and docks, and commercial floating home moorages. The annual lease compensation payment calculation is the lesser of the (12) Leases issued by the department under these rules shall be classified by the department using the following use classifications:~~

~~(a) Noncommercial use;~~

~~(b) Personal recreational use;~~

~~(c) Commercial use;~~

~~(d) Aquaculture facilities;~~

~~(e) Historic vessel or structure;~~

~~±~~

~~(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Three percent of actual annual gross income; or~~

~~(C) Riparian land value method of AV x LA x five percent = AC.~~

~~(b) Non-commercial marinas and docks. The annual lease compensation payment calculation is the lesser of the:~~

~~(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(c) Non-commercial floating home moorages including those operated by ownership-oriented organizations. The annual lease compensation calculation is the lesser of the:~~

~~(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(d) Individual floating homes and similar structures and uses. The annual lease compensation calculation is the lesser of the:~~

~~(A) Flat rate method of \$0.0298 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(e) Historical vessels or structures not eligible for registration. The annual lease compensation is \$348 (which shall increase each year on July 1st by three percent) per structure or combination of structures at a single location or facility.~~

~~(f) Log boom areas, log raft and log storage areas. The annual lease compensation calculation is the lesser of the;~~

~~(A) Flat rate method of \$0.0148 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(g) Marinas;~~

~~(h) Marine industrial and marine service commercial uses/structures. The annual compensation payment calculation is the lesser of the; use;~~

~~(A) Flat rate method of \$0.5109 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(i)~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(h) Non-Marine Uses; services use;~~

~~(j) Nonmarine use; and~~

~~(k) Other use classifications as determined by the director.~~

~~(13) The annual compensation lease payment calculation is the lesser of the:~~

~~(A) Flat rate method of \$0.5967 per square foot (which shall increase each year on July 1st by three percent) x LA; or~~

~~(B) Riparian land value method of AV x LA x five percent = AC.~~

~~(10) The above described flat rate method factors (OAR 141-082-0305(9)(a) through (h)) are those in effect in July 2017. Each flat rate method factor shall be increased by three percent every year on July 1st. Annual lease compensation shall be billed on the basis of the adjustments described in OAR 141-082-0305(9). For any newly executed lease, the applicable flat rate that shall be applied is that which is in effect at the time of the execution of the lease. The annual compensatory payment for executed leases shall also be adjusted/redetermined annually on each lease anniversary date by increasing the annual lease compensation payment by three percent. This annual compensatory payment adjustment/redetermination for executed leases shall not apply to those calculated based on actual annual gross income.~~

~~(11) Compensation rates for each use within each authorized area shall be calculated by the Department department on a square foot basis of state-owned submerged and submersible land lands as applicable for each use classification (for example, non-commercial marina noncommercial use), and~~

based on the ~~lessee's choice of rate calculation methods except as noted~~ method published by the department in ~~OAR 141-082-0305(7) above.~~ accordance with section (1).

~~(a) More than one use (known as a "mixed use") may be permitted by the Department.~~ department within an authorized area. ~~Compensation rates.~~ For mixed use leases, the rent for each individual use shall be calculated for each use area based on the most applicable use classification, as specified in OAR 141-082-0305(9)(a) through (h), and square footage of that use. Each use's rent shall be added together to derive the total annual compensation ~~lease~~ payment or minimum bid for the entire leasehold. Compensation for each use classification is subject to the base annual minimum compensation as specified in OAR 141-082-0305(6). ~~waterway lease.~~

~~(12) Documentation supporting the annual reporting statement submitted to the Department by a lessee must be available upon request by the Department if the lessee reports annual compensation based on three percent of actual annual gross income.~~

~~(13) The Department.~~ (b) The annual lease payment for each individual use is subject to the minimum rent payment as specified in section (6).

~~(14) The department shall notify lessees in writing of the new~~ their annual compensatory ~~lease~~ payment due not less than 60 calendar days in advance of the ~~lessee's lease~~ lease's anniversary date.

OAR 141-082-0306

Application and Other Fees

(1) Persons submitting applications for new, proposed, or existing uses of state-owned submerged and submersible land, renewals of existing waterway use authorizations, requests for assignments, subleases, amendments, or bank consent agreements must pay a fee set by the department. The department shall publish all fees and make any fee schedule maintained available to the public.

(2) A new application fee for applications for a new public facility license or waterway lease, whether for a new, proposed, or existing use shall be \$1,000 effective July 1, 2026.

(3) A renewal application fee for applications for renewal of an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.

(4) An amendment application fee for applications to amend an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.

(5) An assignment application fee for applications to assign an existing public facility license or waterway lease shall be \$1,000 effective July 1, 2026.

(6) A bank consent agreement application fee for applications for a bank consent agreement for an existing public facility license or waterway lease shall be \$500 effective July 1, 2026.

(7) A sublease application fee for applications to sublease an existing waterway lease shall be \$1,000 effective July 1, 2026.

Commented [BH89]: Reformatting/reorganization; created new section for application/other fees so that fees (outside of registration fee) are located in one rule and not scattered across multiple rules. Fees were increased to track with inflation (\$750 fees increased to \$1,000 and \$375 fees increased to \$500) and scheduled to increase by 5% annually (5% upon recommendation of DAS/DOJ, as 3% is not seen as keeping up with inflation).

~~(8) (14) In calculating the initial annual compensatory payment using the riparian land value method, a lessee or lease applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the Department, a comparable tax lot. The Department reserves the right to evaluate, review, and challenge the appraisal. If required, the appraisal shall be conducted at the lessee or lease applicant's expense and prepared by a state-certified appraiser. The Department shall provide instructions to the appraiser prior to conducting the appraisal. In the event of a dispute between the Department and the lessee or lease applicant, the value shall be determined through the three appraiser method specified in ORS 274.929(3).~~

Commented [BH90]: Proposal to allow the department to charge additional fee in certain specific circumstances.

~~(15) If in the process of using the riparian land value method for calculating the initial annual compensation payment, the AV is found to be artificially depressed due to the presence of hazardous materials or some other extenuating circumstance(s) as determined by the Department, another comparable upland tax lot shall be selected by the Department as the basis for calculating the initial annual lease compensatory payment. In addition to the fees listed in sections (2) through (7) and effective July 1, 2026, the department may charge an additional \$500 fee when:~~

~~(a) A waterway lease expires, and, if applicable, any holdover provision becomes effective;~~

~~(b) A change to the waterway use authorization document requires Department of Justice consultation or a waterway lease requires legal sufficiency review, pursuant to OAR 137-045 et. seq., before execution;~~

~~(c) A renewal application is received less than 30 calendar days before the lease expiration date;~~

~~(d) An applicant for a renewal has not responded to a request for additional information from the department for more than 120 calendar days;~~

~~(e) A rejected renewal application is not resubmitted within 120 calendar days from the date the department notified the applicant that the application was incomplete; or~~

~~(f) A waterway lease or public facility license is not signed and returned within three months of receiving a draft waterway use authorization document from the department.~~

~~(9) Effective July 1, 2026, all waterway leases issued under these rules are subject to an annual submerged lands enhancement fee of \$100 to be deposited into the Submerged Lands Enhancement Fund described in OAR 141-082-0311 below.~~

Commented [BH91]: New fee proposed to provide sustainable funding to the SLEF.

~~(10) Except for the fee described in Section (9), all fees shall increase annually by 5 percent.~~

~~(16) The Director reserves the right to establish a rate of compensation due to the Department for all other structures and uses that do not fit into any of the above categories, or which are unique. However, the rate of compensation shall not be less than the base minimum annual compensatory payment as defined by OAR 141-082-0305(6).~~

141-082-0310
Removal of Unauthorized Structures

(1) The ~~Department~~department is authorized to seize a structure on, under, or over state-owned submerged or submersible lands, if;

(a) The ~~Department~~department determines, after providing notice and opportunity for a hearing, that the structure is an abandoned structure or a derelict structure; and

(b) The owner of the structure has failed to correct the problems identified in the notice within 20 ~~calendar~~ days or a longer reasonable time as specified in the notice or within any additional time that may be granted by the ~~department~~Department.

~~(2)(a)~~ The notice required under ~~subsection (1) of this section (1)~~ must be:

~~(a)~~ Be delivered by certified mail, return receipt requested, to any person with an interest in the structure or the land upon which the structure is located, as determined by the ~~Department~~department after diligent investigation. "Diligent investigation" shall include the following:

(A) A search of the county real property records to identify the record owner of the submerged or submersible lands where the structure is located; and the record owner of the adjacent upland.

(B) Additional investigation warranted by the circumstances.

~~(b)~~ The notice required under ~~subsection (1) of this section~~ must:

~~(A)~~~~(b)~~ Be delivered to the record owner of the submerged or submersible lands where the structure is located, if the record owner is not the State of Oregon.

~~(B)~~~~(c)~~ Be delivered to the record owner of the adjacent upland.

~~(C)~~~~(d)~~ Identify, with specificity, the ~~Department's~~department's proprietary interest in and jurisdiction over the state-owned submerged or submersible lands where the structure is located. If the record owner of the submerged or submersible lands is not the State of Oregon, identify the ~~Department's~~department's basis for asserting ~~State~~state ownership of the submerged or submersible lands, and state that the recipient has the right to contest the ~~State's~~state's claim of ownership.

(3) The ~~Department~~department shall contact the property owner(s) who own riparian land that is adjacent to where the abandoned or derelict structure is located.

(4) Any person with an interest in the structure must, within ~~20~~10 ~~calendar~~ days of service of the notice, either:

(a) Provide written notice to the ~~Department~~department of their intent to authorize or remove the structure; or

(b) Request a hearing. The ~~notice~~request must be ~~on a form provided by~~ submitted to the ~~Department~~department in writing.

Commented [BH92]: Removed as this subsection was confusing since section (2) already states the same thing.

(5) If a person with an interest in the structure wants to obtain an authorization from the ~~Department~~department, the owner of the structure must submit a complete application within 30-calendar days of service of the notice.

(a) Submission of an application under this section does not ensure that an authorization would be issued.

(b) If an application is submitted, the ~~Department~~department may not seize the structure while the application is under review.

(6) If a person with an interest wishes to remove the structure, that person must do so within 90 calendar days of notice, or as otherwise agreed to by the ~~Department~~department.

Commented [BH93]: Example of clarifying language added to address the use of calendar vs. business days.

(7) If a person with an interest in the structure wants to challenge the actions proposed in the notice, the person may request a hearing.

(a) The hearing request must be received by the ~~Department~~department within ~~20~~10 calendar days of service of the notice.

Commented [BH94]: Required timeline from a hearing request is 10, not 20 days.

(b) The request must indicate if the person contends that the structure is not abandoned or derelict, or indicate such other specific grounds on which seizure is challenged.

(c) Upon receipt of a request for a hearing, the ~~Department~~department shall suspend further action to seize the structure until the ~~Director~~director issues the ~~Department's Final Order~~department's final order.

(8) Upon receipt of a request for a hearing, the ~~Department~~department shall process the hearing request as follows:

(a) The ~~Department~~department shall refer the matter to the Office of Administrative Hearings for a contested case hearing.

(b) The Administrative Law Judge shall issue a proposed order, making a recommendation for the ~~Department's Final Order~~department's final order.

(9) After the hearing:

(a) The ~~Director~~director shall issue a ~~Final Order~~final order, which is an order in a contested case and is subject to review under ORS 183.482.

(b) If the ~~Department~~department determines after a hearing that seizure of the structure is not warranted under the law, the ~~Department~~department shall immediately release custody of the structure to the owner who requested the hearing and may not charge the owner any costs incurred by the ~~Department~~department in removal, salvage, storage, or disposal of the structure.

(c) If the ~~Department~~department determines after a hearing that seizure of the structure is warranted, the ~~Department~~department may seize the structure and remove, salvage, store, or dispose of it, as the ~~Department~~department deems appropriate.

(d) The ~~Department~~department shall mail a written statement of the ~~Department's Final Order~~department's final order to all persons who requested a hearing under this section.

(10) If the owner fails to either: (a) submit an application for ~~an~~the appropriate waterway use authorization, (b) remove the structure, or (c) request a hearing within the time allowed in the notice, the ~~Department's Notice~~department's notice shall become a ~~Final Order~~final order by ~~Default~~default and the ~~Department~~department may immediately seize the abandoned or derelict structure. The ~~Department~~department may remove, salvage, store, or dispose of any structure seized under this section.

(11) Nothing in these rules affects the ability of the Department to:

(a) Investigate and prosecute trespasses on and damage to state lands under ORS 273.185; or

(b) Immediately seize without notice, a structure that presents a hazard to navigation or an imminent threat to public health or safety.

(12) If the ~~Department~~department seizes a structure without notice under this subsection and the ~~Department~~department decides to salvage, store, or dispose of the structure, the ~~Department~~department shall provide notice as provided for in ~~GAR 141-082-0310~~section (2).

(13) The owner of an abandoned or derelict structure is liable to the ~~Department~~department for all costs arising out of removal, salvage, storage, and disposal of a structure seized under this rule. However, an owner of a structure whose only interest in the structure is a security interest is not liable for costs arising out of the removal, salvage, storage, or disposal of a structure under these rules. Any order imposing liability for the costs is an order other than a contested case and is subject to review under ORS 183.484.

(14) If the ~~Department~~department sells a structure seized under this rule, the liability imposed upon the owner shall be reduced by the net proceeds of the sale.

(15) For removal or seizure of abandoned and derelict vessels, the ~~Department~~department shall follow the process outlined in ORS 830.908 through 830.944.

141-082-0311

Submerged Lands Enhancement Fund

(1) The ~~legislature established the~~ Submerged Lands Enhancement Fund (fund) ~~is a fund established in the State Treasury separate from the General Fund. Interest earned by the Submerged Lands Enhancement Fund shall be~~is credited to the fund. Moneys out of the fund are intended to be used to enhance, improve or protect state-owned submerged and submersible lands.

(2) The fund shall consist of:

(a) Moneys recovered by the ~~Department~~department for payments made from the fund from the owner of an abandoned or derelict structure.

Commented [BH95]: Clarifying language; added to clarify that the SLEF was created through legislation and not department action.

(b) Up to 20 percent of the revenue collected by the ~~Department~~department per biennium pursuant to the ~~Department's~~department's granting of leases, easements, registrations, and other permissions to use or occupy state-owned submerged or submersible lands.

(3) Moneys in the Submerged Lands Enhancement Fund may be used to pay the expenses of the ~~Department~~department associated with management and enhancement activities on state-owned submerged and submersible lands, including but not limited to:

(a) Removal, salvage, storage, and disposal of abandoned or derelict structures;

(b) Removal and disposal of marine debris;

(c) Assistance with the salvage, towing, storage, and disposal of abandoned or derelict vessels pursuant to ORS 830.908 to 830.944.

(d) Engagement in activities to improve water quality, watershed enhancement, and fish and wildlife habitat on submerged and submersible lands.

(4) The ~~Department~~department shall select and prioritize projects for funding using an application review team consistent with requirements specified in this rule.

141-082-0312

Submerged Lands Enhancement Fund Grant Eligibility

Eligibility Requirements: ~~(1)~~ Federal agencies are not eligible to request moneys from the Submerged Lands Enhancement Fund.

~~(2)~~ The ~~Department~~department may use moneys in the ~~fund~~Submerged Lands Enhancement Fund to provide funding to the following entities to assist the ~~Department~~department in completing any of the management or enhancement activities on state-owned submerged or submersible land provided for in subsection ~~OAR 141-082-0311(3) above~~;

~~(1a)~~ State ~~agency~~agencies,

~~(2)~~ County,

~~(3b)~~ City or county governments,

~~(4c)~~ Water improvement ~~district~~districts,

~~(5d)~~ Watershed ~~council~~councils,

~~(6e)~~ Park and recreation ~~district~~districts,

~~(7f)~~ Port ~~district~~districts,

~~(8)~~ Federal~~ly~~ Federally recognized Indian ~~tribe~~Tribes, or

Commented [BH96]: Clarifying language; added to clarify that federal agencies are not eligible to submit application for SLEF grants.

Commented [BH97]: Reorganized/reformatted; renumbered because previous format was confusing.

- ~~(g) Non-profit organization.~~
- ~~(h) Nonprofit organizations.~~

141-082-0313

Submerged Lands Enhancement Fund Application Process

Application Requirements:

(1) Depending on availability of funds, the ~~Department~~department shall periodically solicit applications for requesting moneys from the Submerged Lands Enhancement ~~fund~~Fund for eligible activities.

~~(2) Entities are limited to those identified in OAR 141-082-0312.~~ Applications must be submitted to the ~~Department~~the department consistent with these rules and by the deadline established by the ~~Department~~department.

Commented [BH98]: Removed eligibility reference, as this subject is addressed in rule 0312 above.

(3) Applications for funding shall be submitted using forms provided by the ~~Department~~department and provide the following information:

- (a) Applicant name and contact information.
- (b) Participating partners, if any.
- (c) Project name.
- (d) Detailed description of purpose and need for project.
- (e) Relevancy to protect ~~Public Trust Values~~public trust values (recreation, commerce, fisheries and navigation).
- (f) Project location.
- (g) Local jurisdiction approval.
- (h) Project schedule including times of project beginning and completion.
- (i) Amount of funding requested.
- (j) Itemized budget.
- (k) Confirmation of contributing match.

141-082-0314

Submerged Lands Enhancement Fund Application Review and Project Evaluation

(1) The ~~Department~~department shall use an application review team to assist in the review and evaluation of eligible projects, prioritize funding requests and recommend funding allocation. Members of the review team may include, but are not limited to:

Commented [BH99]: Added SLEF to name of rule to clarify that this section refers only to the review of SELF grant applications.

- (a) Oregon Department of Fish and Wildlife,
- (b) Oregon Department of Environmental Quality
- (c) Oregon Marine Board

(d) ~~Non-Profit~~Nonprofit Organization

(2) The application review team shall make funding recommendations to the ~~Director~~director based on the following criteria:

- (a) Significance of benefit to state owned land.
- (b) Protection or enhancement of ~~Public Trust Values~~public trust values.
- (c) Capacity of applicant to perform the work.
- (d) Likelihood of project success.
- (e) Ability to meet match obligation.

(3) Limitations of ~~Use~~use of Submerged Lands Enhancement Funds:

- (a) Activities associated with compensatory mitigation requirements shall not be funded.
- (b) A 25% percent match is required for projects not initiated by the ~~Department~~department (may be in-kind or cash).
- (c) Activities must be associated with management or enhancement of state-owned submerged or submersible lands consistent with these rules.

141-082-0315
Civil Penalties

(1) The unauthorized use of state-owned land managed by the ~~Department~~department constitutes a trespass.

(2) In addition to any other penalty or sanction provided by law, the ~~Director~~director may assess a civil penalty ~~of not less than~~between \$50 per day, and ~~not more than~~\$1,000 per day of violation of any provision of these rules or ORS 274 that occurs on state-owned submerged and submersible lands pursuant to ORS 274.992.

Commented [BH100]: Example of simplified language.

(3) The ~~Director~~director shall give written notice of a civil penalty incurred under ~~OAR 141-082-0315~~section (2) by registered or certified mail to the person incurring the penalty. The notice shall include, but not be limited to the following:

- (a) The particular section of the statute, rule, or written authorization involved;

(b) A short and clear statement of the matter asserted or charged;

(c) A statement of the party's right to request a hearing within 2010 calendar days of the date of service of the notice;

(d) The time allowed to correct a violation; and

(e) A statement of the amount of civil penalty which may be assessed and terms and conditions of payment if the violation is not corrected within the time period stated.

(4) The person incurring the penalty may request a hearing within 2010 calendar days of the date of service of the notice provided in ~~OAR 141-082-0315~~section (3). Such a request must be in writing. If no written request for a hearing is made within the time allowed, or if the party requesting a hearing fails to appear, the ~~Director~~director may make a final order imposing the penalty.

~~(5) The amount of a civil penalty shall not be less than \$50 per day, or more than \$1,000 per day for violation of an authorization issued under ORS 274.992 or violation of any administrative rule adopted under ORS 274.~~

Commented [BH101]: Removed because this statement is redundant (already stated in section (2) above).

~~(6)~~(5) In imposing a penalty under OAR 141-082-0315 ~~of these rules~~, the ~~Director~~director shall consider the following factors as specified in ORS 274.994:

(a) The past history of the person incurring a penalty with regard to other trespasses on state-owned land managed by the ~~Department~~department and the willingness of the person to take all feasible steps or procedures necessary or appropriate to correct any violation;

(b) Any prior violations of statutes, rules, orders, and authorizations pertaining to submerged and submersible lands;

(c) The impact of the violation on public trust uses of commerce, navigation, fishing, and recreation; and

(d) Any other factors determined by the ~~Director~~director to be relevant and consistent with the policy of these rules.

~~(7)~~(6) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-082-0315 shall become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.

~~(8)~~(7) If a civil penalty is not paid as required by ~~OAR 141-082-0315~~(7)section (6), interest shall accrue at the maximum rate allowed by law. In addition, the department may record the order imposing the civil penalty with the county clerk in any county of this state. The department will request that the clerk record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record to be a lien upon the person's real property in that county.

Commented [BH102]: Added to clarify the department's authority to impose a civil penalty and record any liens associated with the civil penalty. Does not create a new penalty but describes a legal option currently available to the department.

141-082-0320

Registration of Structures and Uses

(1) Structures and uses subject to registration under this section are set forth in OAR 141-082-0265(3).

(2) The ~~Director~~director may determine that other structures and uses similar to those specified in OAR 141-082-0265(3) are also subject to registration and the rules governing registrable structures and uses. If the ~~Director~~director determines that a structure or use is registrable, ~~s/he shall assign~~ an appropriate fee ~~shall be assigned~~.

Commented [BH103]: Removed gendered language and phrase moved to end of sentence for readability.

(3) A person who fails to apply for and obtain a registration, or who fails to renew an expired registration, for a structure or use subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

141-082-0325

Registration Requirements and Provisions

(1) All persons:

(a) Owning or placing structures on, or using state-owned submerged and submersible land in a way that is subject to registration under these rules, must register the structure or use with the ~~Department~~department.

(b) Changing the location of a registered structure or use, must notify the ~~Department~~department in writing 90 calendar days prior to such placement, or change in location.

(c) Making any modifications, including a change in size of the registered structure or a change in the registered use, must notify the ~~Department~~department 90 calendar days prior to making such a modification.

(2) Except as provided in ~~OAR 141-082-0325~~section (3), an applicant for a registration must use a form provided by the ~~Department~~department and submit a registration form for all registrable structures or uses.

Commented [BH104]: Example of a proposed change to fix an incorrect citation.

(3) A single registration form may be used to apply for a registration for all dikes, rip-rap, tide gates, erosion control barriers, and other structures that occupy state-owned submerged and submersible land if they are located within:

(a) The jurisdiction of, and actively maintained by, a diking or drainage district; or

(b) Contiguous parcels owned by the same person and maintained by that person.

(4) Except as provided in OAR 141-082-0335(2), each registration must be accompanied by a fee payment in the amount indicated in OAR 141-082-0335 of these rules.

(5) The ~~Department~~department shall not issue a registration where the ~~Department~~department determines that the use or structure:

(a) Will unreasonably interfere with the public's right to use the waterway and state-owned submerged and submersible land for fishing, navigation, commerce, and recreation;

(b) Will not comply with all applicable local, state, and federal laws including the local comprehensive plan and zoning requirements.

(6) Prior to issuance of a registration to use or occupy state-owned submerged and submersible land for the uses described in OAR 141-082-0265(3) ~~(fe), (ff), (hg) and (ih)~~ of these rules, the applicant, as a condition of their authorization and as required by ORS 274.043 ~~(6040)(3)(d)~~, must indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation. The applicant's obligation to indemnify and hold harmless the State of Oregon from all liability and claims arising from or attributable to the use or occupation must be in writing on a form provided by the ~~Department~~department.

Commented [BH105]: Updated numbering.

Commented [BH106]: Incorrect statute cited.

141-082-0330
Registration Terms and Conditions

(1) A registration issued by the ~~Department~~department shall be for a term of five years for all structures and uses.

~~(2)(2) The department may require the owner of a structure or use subject to a registration to obtain a surety bond or other form of financial assurance acceptable to the department to ensure that the owner will comply with these rules. A certificate of deposit in the amount equal to the amount required for a surety bond and that names the State of Oregon as co-owner may be substituted in lieu of a bond.~~

Commented [BH107]: Financial assurance requirements added; these are needed as the holder is required to indemnify the state from all "liability and claims" arising from their use of S&S lands. Financial assurance is what shows DSL that the holder is complying with the RGs indemnification requirements in 0325(6).

Commented [RAC108R107]: To be removed, financial assurance requirements will be dealt with in a new rule.

~~(23)~~ Unless otherwise prohibited by law, any registered structure or use in compliance with these rules may be repaired or replaced in a manner consistent with the requirements of OAR 141-082-0325, and remain authorized under the original registration issued by the ~~Department~~department. However, any person making such repairs to a structure that changes its use or the area it occupies, or who replaces a structure entirely, must notify the ~~Department~~department in writing within 90 calendar days of making such repairs or replacement as a condition of the registration.

~~(334)~~ The ~~Department~~department must be notified in writing of any:

(a) Change in the location or size of a registered structure or use 90 calendar days prior to such change;

(b) Change in ownership of a registered structure or use as a result of a sale or conveyance within 90 calendar days of the transfer of ownership.

(c) Change in ownership by operation of law resulting from a bankruptcy, foreclosure, estate settlement, or the like within 30 calendar days of the final settlement or decision. ~~Failure to notify the Department of a change in the location, size, or the ownership of a registered structure or use within the time provided shall result in the automatic termination of the registration.~~

~~(4)(45)~~ ~~Failure to notify the department of any changes outlined in section (4) within the time provided may result in the termination of the registration.~~

Commented [BH109]: Reorganized/reformatting; this was moved (and slightly reworded) from the above (c) as a stand alone rule, as it applies to any changes listed in rule (4) above.

~~(56)~~ Registrations for privately-owned structures and uses subject to registration must be renewed every five years. An owner who fails to renew an expired registration for a structure or use subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0315.

(567) The Department~~department~~ may condition a registration to ensure compliance with law or these rules. The Department~~department~~ may modify the conditions of a registration, or terminate a registration, if during the term of the registration the Department~~department~~ determined that the structures or uses do not comply with law or these rules.

(678) The Department~~department~~ shall provide a copy of the registration to the appropriate county official in the county where the registered structure is located.

141-082-0335

Registration Fees

(1) Except as provided in ~~OAR 141-082-0335~~section (2) and (3), the fee for a registration is as follows:

(a) ~~\$250~~400 on and after ~~January~~January~~July 1, 2017~~July 1, 2026, for a dock/float or boat house 1,000 square feet or less in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms); and any boat ramp not associated with another authorized waterway structure.

(b) ~~\$500~~700 on and after ~~January~~January~~July 1, 2017~~July 1, 2026, for a dock/float or boat house from 1,001 square feet to 2,000 square feet in size (measurement excludes calculation of associated gangways, dolphins, pilings, and protective booms).

(c) ~~\$600~~800 on and after ~~January~~January~~July 1, 2017~~July 1, 2026, for a dock/float or boat house from 2,001 square feet to 2,500 square feet in size. ~~Measurement (measurement~~ excludes calculation of associated gangways, dolphins, pilings, and protective booms~~).~~

(d) ~~\$700~~1,000 on and after ~~January~~January~~July 1, 2017~~July 1, 2026, for a floating recreational cabin. ~~Measurement less than 1,500 square feet (measurement~~ excludes calculation of pilings, dolphins, mooring buoys, and protective booms~~).~~

(e) ~~\$250~~400 on and after ~~January~~January~~July 1, 2017~~July 1, 2026, for a water sport structure, pilings, or a boat ramp not associated with another authorized waterway structure.

(2) No fee or other compensation is required for registering or renewing a registration for the following uses or structures:

(a) Erosion control structures, ~~Rip~~rip-rap, and tide gates.

(b) Structures maintained by a diking or drainage district.

(c) Rights of way established prior to November 1, 1981, for any county road or city street.

(d) Voluntary habitat restoration work.

(3) The fee for structures or uses not listed above that are subject to registration under these rules as determined by the ~~Director~~director under OAR 141-082-0265(3)(i) shall be determined on a case-by-case basis ~~and be not less than \$250.~~

141-082-0336

Financial Assurance Requirements

(1) The department may require an applicant or holder of a lease or registration to obtain a form of financial assurance acceptable to the department to ensure that the lessee will perform in accordance with all terms and conditions of the lease.

(2) The amount and type of financial assurance shall be determined by the department in consultation with the Department of Administrative Services Risk Management and shall be reasonable and within generally accepted business practices.

(3) All insurance providers are subject to the department's acceptance.

(4) The holder of a lease or registration must provide to the department proof of all coverages required prior to any activities occurring and prior to the department executing the lease or registration.

(5) If requested by the department, the applicant or holder shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to the department for verification of meeting the financial assurance requirements.

(6) With director approval, the department may require a surety bond when the applicant or holder of a lease or registration:

(a) is in default with any authorization or permit granted to them by the department;

(b) was previously sent a notice of deficiency or default by the department;

(c) cannot obtain another form of financial assurance due to market conditions;

(d) has current or past business, financial, or management practices that indicate they may not be able to fully meet the terms and conditions of a lease or registration offered by the department; or

(e) has active construction related to the authorized or proposed use occurring in, upon, under, or affecting the lease premises.

(7) A certificate of deposit equal to the amount required for financial assurance and that names the State of Oregon as co-owner may be substituted in lieu of the required financial assurance.

141-082-0340

Appeals

(1) An applicant for an authorization, or any other person adversely affected by a decision by the ~~Department~~department concerning an authorization, closure of, or restriction to the use of state-owned submerged and submersible land may appeal the decision to the ~~Director~~director.

(a) Such an appeal must be received by the ~~Director~~director no later than 30 calendar days after the delivery of the decision.

(b) The ~~Director~~director shall decide the appeal within 60 calendar days after the date of delivery of the appeal.

Commented [BH110]: Rules added to define adversely affected and explain how the department will provide notice.

(c) The ~~Director~~director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

~~(d)~~ A person qualifies as being adversely affected by a decision by the department concerning an authorization, closure of, or restriction to the use of state-owned submerged and submersible land if:

(A) They are the owner(s) of, or otherwise have a property interest in, the upland property adjacent to, on, or overlapping with the premises of the authorized use, closure, or restriction;

(B) They are the holder of an authorization issued under these or other rules administered by the department that is adjacent to, on, or overlapping with or the premises of the authorized use, closure, or restriction;

(C) They are materially affected by the decision; or

(D) The decision unreasonably interferes with their public trust rights.

(2) The department shall publish on their website a notice of decision concerning an authorization, closure of, or restriction to the use of state-owned submerged and submersible land.

(3) In addition to the notice of described in section 2, the following notice shall be provided:

(a) Applicants shall receive by personal service or certified mail a notice describing the department's decision and their rights to appeal, and, if applicable, a copy of the waterway use authorization;

(b) Adjacent owner(s) or persons with a property interest in the adjacent upland property shall receive by certified and regular mail a notice of describing the department's decision and their rights to appeal;

(4) Persons claiming qualification under Section 2(c) or (d) must describe in their appeal how the decision materially affects them or unreasonably interferes with their public trust rights. The director shall determine if the person meets the criteria of Section 2(c) or (d).

(5) When an applicant for an authorization to use state-owned submerged and submersible land or any other person adversely affected by a decision of the ~~Department~~department concerning an authorization has exhausted the appeal process before the ~~Director, s/he~~director, they may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470.