

## DEPARTMENT OF STATE LANDS

### DIVISION 82

#### RULES GOVERNING THE MANAGEMENT OF, AND ISSUING OF LEASES, LICENSES, SHORT-TERM ACCESS AUTHORIZATIONS [, TEMPORARY USE PERMITS] AND REGISTRATIONS FOR STRUCTURES ON, AND USES OF STATE-OWNED SUBMERGED AND SUBMERSIBLE LAND

##### 141-082-0000 Purpose and Applicability

(1) These rules:

- [(1)] (a) Govern the granting and renewal of leases, public facility licenses, short term access authorizations and registrations (hereafter collectively referred to as waterway use authorizations) [*management of state-owned submerged and/or submersible land*] for a wide variety of commercial, [*and*] non-commercial, and public uses [*and structures such as but not limited to*] in, on, under or over state-owned submerged and submersible land.
- (b) Do not apply to the granting of:
- (A) Easements on state-owned submerged and/or submersible land;
  - (B) Authorizations for hydroelectric projects on state-owned Trust and Non-Trust Land;
  - (C) Authorizations for the removal or use of rock, sand, gravel and silt from state-owned submerged and/or submersible land;
  - (D) Authorizations for special uses of state-owned submerged and/or submersible land (such as removal of sunken logs); and
  - (E) Authorizations for ocean energy conversion devices and fiber optic and other cables in, on or over the Territorial Sea.
- (c) Require that unless otherwise exempt under the provisions of these rules or law, all uses described under OAR 141-082-0030 be authorized by the Department of State Lands (Department).
- [(a)] [*Aquaculture facilities;*]
  - [(b)] [*Marine industrial facilities;*]
  - [(c)] [*Marine service facilities;*]
  - [(d)] [*Floating homes and floating home moorages;*]
  - [(e)] [*Fish processing facilities;*]
  - [(f)] [*Log raft and log storage booming areas;*]

- [(g)] [Log salvage];
  - [(h)] [Wharves;]
  - [(i)] [Navigation aids;]
  - [(j)] [Combination structures;]
  - [(k)] [Marinas, including owner-oriented facilities; boat ramps; docks; floats; boat houses; and]
  - [(l)] [Non-marine uses (for example, restaurants, warehouses, offices, motels, and dwellings).]
- (2) **The Director may determine other uses and developments similar to those specified in OAR 141-082-0030 and OAR 141-082-0175 that are also subject to a waterway use authorization and these rules.**  
*[Establish procedures for authorizing structures on, and uses of state-owned submerged and/or submersible land by lease, registration, temporary use permit or public facility license.]*
- [(3)] *[Do not pertain to the management of state-owned submerged and/or submersible land for the removal of sand and gravel, mineral exploration, granting of easements, or leasing of upland created from state-owned submerged and/or submersible land. These uses/activities are covered under separate Division rules.]*

**141-082-0004 Definitions** (renumbered was 141-082-0020)

- (1) “**Actual Annual Gross Income [Slip]**” [or “**Boat Rental Income**”] means the gross revenue received by a lessee during the prior lease year from the **authorized use(s) of state-owned submerged and/or submersible land, including but not limited to the** rental [or subleasing] of boat slips, boat rental, launch fees or similar activities within the authorized area.
- (2) “**Adjacent Riparian Owner**” or “**Riparian Owner**” means a person holding recorded title to property that fronts or abuts state-owned submerged and/or submersible land.
- (3) “**Adjacent Riparian Tax Lot**” means the **non-state-owned** [non-Division-owned] portion of a tax lot that fronts or abuts state-owned submerged and/or submersible land.
- (4) “**Annual Lease Compensation [Rental Payment]**” means the amount of **compensation** [money] a lessee pays [each year] to the **Department** [Division of State Lands] for the use of **an authorized area** [a specific area of state-owned submerged and/or submersible land for an authorized use under specific terms and conditions].
- (5) “**Applicant**” is any person applying for **a waterway use** authorization [to use state-owned submerged and/or submersible land].
- (6) “**Appraised Value**” means an estimate of current fair market value of **a parcel** [property] (expressed in dollars per square foot) derived by **a state certified appraiser** [disinterested persons of suitable qualifications, for example, a licensed independent appraiser].
- (7) “**Aquaculture**” means the culture, [and/or] farming, **or harvesting** of food fish, shellfish, and other [aquatic] plants 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[*or*] harvesting of planted or natural **species** [*crops*] so as to maintain an optimum yield, and the processing of [*aquatic*] plants or animals.
- (8) **“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.
- (9) **“Assignment” or “Assign”** means a transfer by the lessee **with the Department’s approval** of the rights of use and occupancy of the leasehold to another **person** [*legal entity, including for benefit of creditors (for example, mortgages)*].
- (10) **“Authorization” or “Waterway Use Authorization”** means a lease, registration, **short term access authorization** [*temporary use permit,*] or public facility license **granted by the Department** [*issued*] to an applicant [*by the Division*] conveying a right to limited use of state-owned submerged and/or submersible land for a specific and defined purpose for a fixed period of time. [*All uses of state-owned land other than transient uses must be authorized by the Division through a written authorization.*]
- (11) **“Authorized Area”** is the area of state-owned submerged and/or submersible land **defined in the waterway use authorization for which a use is authorized** [*which the Division allows a structure to occupy or person to use through a lease, registration, temporary permit or public use facility license. The authorized area shall encompass, at a minimum, all structures and of the water surface area*].
- (12) **“Boat House”** means a covered or enclosed structure used exclusively to store, shelter, or protect a boat or boats and boating equipment. A structure [*used in part, or only occasionally for any purpose other than to shelter or protect a boat or boats and boating equipment shall be considered a combination structure*] **containing living quarters, a party room, bathroom or a kitchen does not qualify as a boat house. A structure does not lose its designation as a boathouse if it has 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.**
- (13) **“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.**
- (14) **“Boat Ramp” 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.**

- (15)[(13)] **“Combination Structure” or “Combo”** means a structure that [which] is used for more than one [(1) exclusive] use, for example, the combination of a boat house with a floating home, shelter, dwelling [,] or recreation room [, or any other structure or use].
- (16)[(14)] **“Commercial Marina”** is a marina, the operation of which results in, or is associated with any monetary consideration or gain.
- (17)[(14)] **“Commercial Use”** means an activity conducted on, within, or over state-owned submerged and/or submersible land [for] that results in, or is associated with any monetary consideration or gain [business purposes], including but not limited to: offices, stores, hotels, banks, marinas, restaurants, or retail service outlets.
- [(15)] **“Comparable Annual Slip Rental”** [means the estimated annual slip rental income from a non-commercial marina or moorage based upon the market value of the slips and taking into account location and condition of the facility and the actual or estimated occupancy.]
- (18) **“Compensation” or “Compensatory Payment”** is the amount of money paid by an applicant for, or holder of an authorization to the Department for the use of Department-managed land.
- (19) **“Department”** means the Department of State Lands.
- (20)[(16)] **“Director”** means the Director of the Department [Division] of State Lands or designee.
- [(17)] **“Division”** [means the Division of State Lands.]
- (21)[(18)] **“Dock/Float”** means an individual, uncovered and unenclosed, secured and stationary or floating structure, [(other than a mooring buoy)] used exclusively for mooring boats and for similar recreational uses such as sunbathing or as a swimming platform.
- (22)[(19)] **“Dolphin”** is a cluster of piles or piling which is bound together.
- (23)[(20)] **“Dwelling”** means a structure designed or occupied as the permanent or temporary living quarters [of one or more households] which is [usually] equipped with any or a combination of sleeping cooking, bathing, toilet and heating facilities.
- [(21)] **“Fish Processing Facility”** [means a stationary structure where the cleaning, freezing, canning preserving and/or storing of aquatic life are conducted.]
- (24)[(22)] **“Flat Rate Method”** means a manner of calculating annual compensation [lease rental payment] based on a fixed dollar amount per square foot of leasehold area that varies by use classification.
- (25)[(23)] **“Floating Home”** means a moored floating structure that is [secured and stationary and is] used [primarily] as a dwelling [and not as a boat or floating recreational cabin].
- (26)[(24)] **“Floating Recreational Cabin”** is a moored floating structure, only accessible [only] by boat, used wholly or in part as a dwelling, not physically connected to any upland utility services (for example, water, sewer, or electricity), and used only periodically or seasonally.
- (27)[(25)] **“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 subject to an authorization by the Department such as a dock/float, marina, floating home, or boat house[, or other structure].**
- (28)[(26)] **“Goods or [and] Merchandise”** means products and raw materials transported in pursuit of trade, business, and/or economic gain. Goods and merchandise does not include materials used by a vessel for its maintenance, alteration, or operation, **or passengers.**
- (29)[(27)] **“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. *[Examples of ships, boats or vessels exclusively engaged in the performance of a government function on Oregon's waterways are those of the United States Navy, United States Coast Guard, United States Army Corps of Engineers, and various fire, police and sheriffs departments.]*
- (30) **“Highest Qualified Bidder” is a person who provides the highest bid at an auction and who submits a complete application and meets all the requirements of the Department for an authorization as provided in OAR 141-082-0044(1) and (2).**
- (31)[(28)] **“Historical Vessel” or “Historical Structure”** mean[s] a vessel **or structure** listed or eligible for listing on the National Register of Historic Places **that is used for a non-commercial/not for profit purpose.**
- (32) **“Incidental Services” may include, but are not limited to restrooms, showers, minor boat and motor repair facilities; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; small office 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.**
- (33)[(29)] **“Industrial Use”** means an activity conducted on, **under**, within, or over state-owned submerged and/or 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** [*renders*] services such as, but not limited to: storage, warehouses, factories, or shipyards.
- (34) **“In the Same Area” as applied to a transient use, means within a radius of one mile of any location where the same use occurred, or same vessel previously moored or anchored on state-owned submerged and/or submersible land.**
- (35)[(30)] **“Lease”** for the purposes of these rules, is a valid, enforceable contract executed by the **Department** [*Division*] and signed by the lessee allowing the use of a specific area of state-owned submerged and/or submersible land for a specific use under the terms and conditions of the lease and these rules.

- (36)[(31)] “**Lease Anniversary Date**” means the [*month and*] date the lease was initially entered into and on which, in subsequent years, the annual lease **compensation** [*rental payment*] is due.
- [(32)] [**“Leasehold”**] [*means the same as “Authorized Area.”*]
- [(33)] [**“Line of Ordinary High Water”**] [*means the line on the bank or shore to which the high water ordinarily rises annually in season.*]
- (37)[(34)] “**Limited Service Restaurant**” means a **business** [*restaurant*] serving only pre-wrapped [*sandwiches,*] or **pre-prepared** [*a single dish or*] food products, and nonperishable beverages as defined in ORS 624.010(4).
- (38) “**Line of Ordinary High Water**” **means the line on the bank or shore to which the high water ordinarily rises annually in season.**
- (39)[(35)] “**Line of Ordinary Low Water**” means the line on the bank or shore to which the low water ordinarily recedes annually in season.
- (40)[(36)] “**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.
- (41)[(37)] “**Log Raft**” means a group of loose or bundled logs which can be stored or moved on water.
- (42)[(38)] “**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.
- (43)[(39)] “**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[, or *tour*] boats. [*Incidental services include, but are not limited to the following: restrooms, showers, minor boat and motor repair; mooring buoys; refueling facilities; boat hoists/lifts; boat launch ramp; small office 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.*]
- (44)[(40)] “**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 because the use requires water access. Such uses include, but are not limited to: ship, tugboat, barge and workboat moorage and storage; vessel repair facilities; aquaculture facilities; **tour boat moorage; sea water desalination and mineral extraction facilities;** and [*fish*] processing facilities.
- (45)[(41)] “**Mooring Buoy**” means a floating device anchored to the bed of a waterway to which a boat is fastened through the use of lines or ropes for the purpose of **mooring** [*maintaining*] the boat in a stationary position in the water.
- (46)[(42)] “**Multi-Family Dock**” means a non-commercial dock, maintained and owned in common by several families, and situated nearby their

- residences, and where no dues or fees are required to be paid for [to] use of the dock. A multi-family dock is not an ownership-oriented facility.
- (47)[(43)] **“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 or 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.
- (48)[(44)] **“Non-Marine Uses”** means structures or uses, typically commercial or residential, which do not need to be located in or adjacent to water areas. Such structures and uses include, but are not limited to: apartments, hotels, motels, residences, restaurants, offices, retail stores, manufacturing plants, and warehouses.
- (49)[(45)] **“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."
- (50) **“Non-Commercial Marina” is one that is neither operated for, nor is associated with any monetary consideration or gain.**
- (51) **“Not for 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)(3) of the Internal Revenue Code. In addition, organizations such as soil and water conservations districts and watershed councils may, at the discretion of the Department, also qualify as a non-profit organization for the purposes of these rules.**
- (52)[(46)] **“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.
- (53)[(47)] **“Person” includes 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, or Indian Tribe** [*is an individual at least eighteen (18) years old, a political subdivision or public agency, or any corporation, association, firm, partnership, joint stock company, or quasi-public corporation registered to do business in the State of Oregon*].
- (54)[(48)] **“Pile” or “Piling”** is a wood, steel, or concrete beam driven or jettied into the bed or bank of a waterway to secure a floating structure, log raft, or boat.
- (55)[(49)] **“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/or submersible land that fronts and abuts the riparian owner's property. The **Department** [*Division*] will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to

- submerged and/or submersible land under a conveyance recorded before January 1, 1981, **has** [*shall have*] a preference right to the requested lease area.
- (56)**[(50)] **“Preference Right Holder”** means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).
- (57)** **“Processing Facility” means a structure or vessel where the cleaning, freezing, canning, preserving and storing of fish, crustaceans, and other forms of aquatic life are conducted.**
- (58)**[(51)] **“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.
- (59)**[(52)] **“Public Agency”** or **“Government Agency”** means an agency of the Federal Government, the State of Oregon, and every political subdivision thereof.
- (60)**[(53)] **“Public Facility License”** is a form of authorization issued by the **Department** [*Division to*] **for structures and uses** [*public agency*] owned, operated, and maintained **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.
- (61)**[(54)] **“Public Trust Use(s)”** means activities that support, protect, and enhance public trust values (commerce, navigation, fishing and recreation) including but not limited to short term moorage, camping, bank fishing, picnicking, and boating.
- (62)**[(55)] **“Redetermination”** or **“Redetermine”** means, for the purposes of [*this rule*] **these rules**, a revision, conducted in accordance with the administrative rulemaking process (ORS 183), of lease **compensation** [*rental*] **using the** methods, formulas, classifications or other factors as specified in OAR 141-082-0100.
- (63)**[(56)] **“Registration”** is a form of authorization issued by the **Department** [*Division*] allowing a qualifying structure or use to occupy state-owned submerged and/or submersible land.
- (64)**[(57)] **“Residential Use”** means an activity conducted on, **in** [*within*], or over state-owned submerged and/or submersible land devoted to, or available for single or multiple dwelling units, single-family homes, floating homes, apartments or condominiums.
- (65)**[(58)] **“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 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(5).
- [(59)] [**“Riparian Land Owner”** or **“Riparian Owner”**] [*is a person who owns riparian property.*]

- (66)[(60)] **“Riparian Land Value Method”** means a manner of calculating the annual lease rental payment by multiplying the assessed value times five [(5)] percent times the area of the leasehold for each use classification.
- [(61)] [**“Riparian Property”**][*means a parcel of land that fronts or abuts on state-owned submerged and/or submersible land.*]
- (67) **“Short Term Access Authorization” is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-082-0030(5).**
- (68)[(62)] **“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** [*Division of State Lands (Division)*] is the administrative arm of [to] the State Land Board.
- (69)[(63)] **“Structure”** means anything placed, constructed, or erected **on, in, under or** over state-owned submerged and/or submersible land that is associated with a use that requires a **waterway use authorization** [*lease, registration, temporary use permit, or public facility license*].
- (70)[(64)] **“Sublease”** means a subordinate lease between the lessee and a third party of all or part of **the authorized area** [*the leasehold*], where the lessee remains contractually and primarily liable under the lease with the **Department** [*Division*]. A subordinate lease of part of the entire premises for a term less than one [(1)] year for the use authorized under the lease [shall] **does** not require prior approval of the **Department** [*Division*].
- (71)[(65)] **“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.
- (72)[(66)] **“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.
- [(67)] [**“Temporary Use Permit”**][*is an authorization issued by the Division to a person allowing the short term use, usually less than one (1) year, of a specific area of state-owned submerged and/or submersible land for a specific use under specific terms and conditions.*]
- (73)[(67)] **“Temporary Restaurant”** means the same as ORS 624.010(6)\_, [that is, any establishment operating temporarily in connection with any fair, carnival, circus or similar public gathering or entertainment, food product promotion or any other event where food is prepared or served for consumption by the public. A temporary restaurant does not include:]
- [(a)] [An establishment where food is prepared and served by a fraternal, social or religious organization only to its own members and guests.]
- [(b)] [An approved school lunchroom where food is prepared and served for school and community activities, where the preparation and

*services are under the direction of the school lunchroom supervisor.]*

*[(c)] [A food product promotion where only samples of a food or foods are offered to demonstrate the characteristics of the food product. For the purposes of this paragraph, a sample shall not include a meal, an individual hot dish or a whole sandwich.]*

*[(d)] [A private residence, or part thereof, including the grounds, areas and facilities held out for the use of the occupants generally, for which a special retail beer or special retail wine license is issued under ORS 471.311 for a period not exceeding one day.]*

**(74)**[(69)] **“Transient Use”** means any public trust use of state-owned submerged and/or submersible land **by any person** which is of a short or intermittent duration, and not **in a specific location or in the same area** for more than **30** [fourteen (14)] consecutive days [in any one (1) location or area].

**(75)**[(70)] **“Use”** means an activity with or without associated structures on state-owned submerged and/or submersible land that requires a lease, [temporary use permit, public facility] license, **short term access authorization** or registration under these rules.

**(76)**[(71)] **“Use Classification”** means the specific category of similar uses and structures subject to authorization described in OAR 141-082-0100.

**(77)**[(72)] **“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.

**(78)** **“Waterway Use Authorization” means the same as “Authorization”.**

**(79)**[(73)] **“Wharf” or “Wharves”** as used in ORS 780.040 and these rules mean a structure placed on state-owned submerged and/or submersible land that is actively and exclusively used to accommodate ships, boats, or vessels engaged exclusively in the receipt and discharge of goods or merchandise, or in the performance of active government functions on the waterway. **A structure is not a wharf if it is used by passenger vessels or water ferries for the loading or unloading of passengers.**

**141-082-0014**      **General Provisions [Policies]** (renumbered, was 141-082-0010)

- (1) Pursuant to Oregon law as defined in ORS 274, all tidally influenced and title navigable waterways (referred to as state-owned submerged and/or submersible land) have been placed by the **Oregon State** Legislature under the jurisdiction of the State Land Board and the **Department [Division]**, as the administrative arm of the State Land Board.
- (2) The State Land Board, through the **Department [Division]**, 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/or 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 [*shall*] **is allowed to** place a structure on, or make use of state-owned submerged and/or submersible land without the required authorization described in these rules unless the structure or use is exempt from such authorization by law or these rules. Ownership of state-owned submerged and/or submersible land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.
- (5) All uses of state-owned submerged and/or submersible land **must** [*shall*] conform to local (including local comprehensive land use planning and zoning ordinance requirements), state or federal laws.
- [(6)] [*An applicant shall be ineligible for an authorization under the provisions of these rules if the proposed use:*]
- [(a)] [*Is inconsistent with local, state, or federal laws;*]
- [(b)] [*Is not in compliance with these rules;*]
- [(c)] [*Would result in an unreasonable interference with the public trust values of commerce, navigation, fishing and recreation;*]
- [(d)] [*Would have unacceptable impacts on public health, safety or welfare, or natural resource values; and*]
- [(e)] [*Is prohibited by a State Land Board or Division adopted area closure, use restriction, or waterway management plan.*]
- [(f)] [*Is inconsistent with any endangered species management plan adopted by the Division under the Oregon Endangered Species Act (ORS 496.171 - 496.192).*]
- [(7)] [*The Division shall administer these rules to ensure to the extent possible that:*]
- [(a)] [*The people of Oregon receive fair compensation for the use of state-owned submerged and/or submersible land reflective of local market conditions;*]
- [(b)] [*Persons applying for, and holding an authorization to use state-owned submerged and/or submersible land receive consistent, predictable, and fair treatment; and*]
- [(c)] [*Public trust values (commerce, navigation, fishing, and recreation) are supported, protected, and enhanced.*]
- [(8)] [*The Division may, at its discretion, deny a lease application or lease renewal to use state-owned submerged and/or submersible land if the applicant's financial status and/or past business/management practices indicate that s/he may not:*]
- [(a)] [*Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the Division; or*]

[(b)] [Use the land applied for in a way that meets the provisions of OAR 141-082-0010(2) and (3).]

- (6)[(9)] No person, **applicant, permittee, licensee** or lessee **or holder of a short term access authorization subject to these rules is allowed to** [shall] request from any government agency a change in the zoning **for**, or approved uses of a parcel of state-owned submerged and/or submersible land without first applying to, and receiving written approval from the **Department** [Division] to request such a change.

### 141-082-0030      **Types of Uses and Required Authorizations**

- (1) All uses of, and structures occupying state-owned submerged and/or submersible land require prior written approval of the **Department** [Division] by a lease, [temporary use permit, public facility] license, **short-term access authorization**, or registration pursuant to these rules.
- (2) Uses and structures requiring leases [or temporary use permits] include, but are not limited to:
- (a) Aquaculture facilities;
  - (b) Marine industrial/marine service uses;
  - (c) Floating homes and floating home moorages;
  - (d) Fish **or other** processing facilities, **sea water desalination and mineral extraction facilities**;
  - (e) Log raft, log storage or log booming areas;
  - (f) Historical vessel moorages;
  - (g) Combination structures;
  - (h) Commercial and non-commercial marinas [including owner-oriented facilities];
  - (i) Multi-family docks not qualifying for registration;
  - (j) Non-marine uses (for example, restaurants, warehouses, offices, motels, etc.);
  - (k) Individual non-commercial docks/floats, boathouses, and floating recreational cabins not qualifying for registration or public [use] facility license;
  - (l) **Wharves** [Wharfs (when):
    - (A) **Outside of cities or port districts[]** ,**or**
    - (B) **Used by ships, boats or vessels dedicated to performing a government function, but which are not in a condition to be able to be quickly activated to perform that function because they require major rehabilitation or refurbishing**;
  - [(m)] [Log salvage;]
  - (m)[(n)] Commercial, industrial or residential uses;
  - (n) **Water taxi, cruise ship and tour boat moorages**;
  - (o) **Ownership-oriented facilities; and.**

- (p)(o) Other similar non-transient uses and structures not exempted by statute or these administrative rules, and determined by the Director to be subject to lease [or temporary use permit].
- (3)(2) Uses and structures that are eligible for registration are:
- (a) Non-commercial structures including docks/floats, multi-family docks, **boat lifts**, and/or boat houses of [two-thousand five hundred ( ) 2,500 ( )] square feet or less excluding associated gangways, pilings, dolphins, mooring buoys and protective **and shear** booms;
  - (b) Floating recreational cabins of [one-thousand five hundred ( ) 1,500 ( )] square feet or less excluding associated, pilings, dolphins, **recreational use** mooring buoys, and protective booms;
  - (c) Water sport structures [(pursuant to OAR 141-082-0140 through 141-082-0200)] **unless authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application for Special Use Device Permits);**
  - (d) **Wharves** [Wharfs] used to accommodate 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 waterway (pursuant to the exemption provided in ORS 780.040). **A ship, boat or vessel is said to be performing a government function if it is:**
    - (A) **Exclusively and actively 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**
    - (B) **Dedicated to performing a government function and, even if it is not actively doing so at the time, able to be quickly activated to perform the function for which it was designed (such as a United States Maritime Administration Ready Reserve Force ship).**
  - (e) **Rip rap and similar retaining structures, and erosion control structures;** and
  - (f)(e) Other similar structures determined by the Director to be eligible for registration.
- (4)(3) Uses and structures that are eligible for a public facility **license** [licenses] are **publicly-owned, operated and maintained:**
- (a) Boat ramps/landings;
  - (b) Viewing structures;
  - (c) Fishing piers;
  - (d) Recreational boating, **transient** ["short-term stay"] 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

- (f) Navigation aids placed by public agencies including approach and landing lights, and radio navigation and landing aids for aviation.
- (5) **Uses requiring a short-term access authorization are:**
- (a) **To conduct an academic research or educational project;**
  - (b) **To conduct a scientific experiment that requires the exclusive use of a parcel of land;**
  - (c) **To collect geologic, aquatic or vegetative samples;**
  - (d) **To permit access to stream and watershed restoration or enhancement projects; and**
  - (e) **For other similar uses or developments determined by the Director based on their impacts on state-owned land.**
- (6)[(4)] Uses and structures that are exempt from lease are:
- (a) Wharves (except as noted in OAR 141-082-0030(2) and (3)); **and**
  - (b) Transient uses **as defined in OAR 141-082-0004(74).**
  - [(c)] [*Uses/structures eligible for registration or public facility license.*]

**141-082-0040      Application Requirements for a Lease[,] or Public Facility License [or Temporary Use Permit Application Requirements]**

- (1) **Any person wanting to use state-owned submerged and/or submersible land in a proprietary manner must, using a form provided by the Department, apply for and obtain a lease or public facility license prior to using the submerged and/or submersible land.** [*If a use of, or structure upon state-owned submerged and/or submersible land requires a lease, public facility license, no person may begin to use such land, or erect such structure(s) without first having applied for, and been granted either a lease, public facility license, or temporary use permit pursuant to these rules.*]
- (2) **All applications for a lease or public facility license must be fully completed and accompanied by a non-refundable fee payable to the Department in the amount of \$750.** [*Persons needing to obtain a lease, public facility license, or temporary use permit for a structure on, or use of state-owned submerged and/or submersible land must apply to the Division on a form provided by the Division.*]
- [(3)] [*All applications for a lease or public facility license must be fully completed and accompanied by a non-refundable fee payable to the Division in the amount of seven hundred and fifty dollars (\$750) for a lease, and two hundred and fifty dollars (\$250) for a public facility license. There is no application fee for a temporary use permit. The Division shall review applications in a timely manner.*]
- [(4)] [*To be accepted by the Division for consideration, an application for a lease, public facility license, or temporary use permit shall be:*]
- [(a)] [*Fully completed; and*]
  - [(b)] [*For an area initially determined by the Division to be available for use. Applications which fail to meet these requirements shall be*

*returned to the applicant with an explanation of the reason(s) for rejection.]*

- [(5)] *[If a rejected application is resubmitted within one hundred and twenty (120) calendar days from the date the Division returned the application, no additional application fee will be assessed.]*

**141-082-0044**      **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/or submersible land, the Department will review it. The Department will reject an application if the proposed use:**
- (a) **Is inconsistent with local, state, or federal laws;**
  - (b) **Is not in compliance with these rules;**
  - (c) **Would result in an unreasonable interference with the public trust rights of commerce, navigation, fishing and recreation;**
  - (d) **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) **Is prohibited by a State Land Board or 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) **Is inconsistent with any endangered species management plan adopted by the Department under the Oregon Endangered Species Act (ORS 496.171 to 496.192); or**
  - (g) **Unless authorized by the Director, extends from the bank of a waterway for a distance that exceeds 25 percent of the width of the waterway.**
- (2) **The Department may, at its discretion, reject an application for a lease or public facility license if:**
- (a) **The applicant's financial status or past business/management practices, or both, indicate 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; or**
    - (B) **Use the land applied for in a way that meets the provisions of OAR 141-082-0014(2) and (3); or**
  - (b) **The applicant is in default on any other authorization granted to them by the Department.**
- (3) **If an application for a lease or public facility license is determined by the Department to be incomplete, the Department will notify the applicant of the additional information required.**

- (4) If a rejected application is resubmitted within 120 calendar days from the date the Department returned the application, no additional application fee will be assessed.
- (5) Except as provided in OAR 141-082-0044(6) and 0080(3), if the Department accepts an application for a lease or public facility license, it will notify the appropriate city or county planning department, pertinent state and federal agencies, ports and all lessees and adjacent riparian property owners (as available from the local county assessor's office records) for review and comment.
- (6) The Department will not circulate an application to obtain a lease or public facility license as provided in OAR 141-082-0044(5) if the use or structure has already received the necessary city or county approvals and been subjected to public comment during a prior circulation, and has not changed in terms of the size of the authorized area or use of that area since the time those approvals were given.
- (7) Based on the evaluation of the application and the comments received, the Department will:
- (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.
- (8) In the event the Department cannot readily determine the authorized area description from the applicant's information 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 Department will provide survey instructions as well as specify the information required in the survey and accompanying notes. The applicant will be responsible for any costs of the survey.
- (9) If more than one application for a specific area is received by the Department, the Department will determine which proposed use best fulfills the general provisions specified in OAR 141-082-0014, and accept and proceed with that application and deny the others.
- (10) Process of Offering a Preference Right for a Lease
- (a) If the application is for a lease, and the applicant is not the owner of the adjacent riparian tax lot, the Department will offer a preference right to lease for the use applied for to the eligible party as defined in OAR 141-082-0004(55) and (56), hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right:
    - (A) If the proposed or existing lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller

- parcels by extending lines from the boundaries of, or within the boundaries of the adjacent riparian tax lot(s), beginning at the point on which the boundaries intersect with the line of ordinary high water perpendicular to the thread of the stream so that there is a separate lease parcel for each parcel of fronting and abutting property.
- (B) If the proposed or existing lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or combined group of single-ownership parcels beginning at the point on which the boundaries intersect with the line of ordinary high water, perpendicular to the thread of the stream creating a single parcel that fronts and abuts the adjacent riparian tax lot ownership.
- (C) In accordance with the proposed use(s), calculate in a manner consistent with OAR 141-082-0100 a minimum annual lease compensation payment for each lease parcel.
- (D) The Department will notify each preference right holder in writing that a lease application has been accepted by the Department, and provide 30 calendar days from the date of the letter for the preference right holder to exercise the preference right to take the lease.
- (E) If the preference right holder accepts the offer of a preference right to lease, they must submit a new application for a lease for the offered use to the Department within 30 calendar days of the date of acceptance of the offer.
- (F) For applications to use state-owned submerged and submersible land within a cove or lake, the Department will apply generally accepted surveying principles to determine the amount of land within the preference right of an upland owner.
- (b) If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to the requirements of ORS 274.040. The highest qualified bidder will be awarded the lease for the use applied for in the application initiating the offering of a preference right. The minimum bid amount will be set by the Department.

**[141-082-0046]      [Lease Application]**

- [(1)] *[Any person engaged in an other than transient use of state-owned submerged and/or submersible land subject to these rules must obtain a lease, public facility license, temporary use permit, or registration from the Division.]*
- [(2)] *[Each complete application for lease shall be submitted on a form provided by the Division, and contain the following information:]*
- [(a)] *[Name, address, and telephone number of the applicant, each fronting and abutting landowner, and any and all persons having a legal interest in the lease;]*
- [(b)] *[Name of waterway;]*
- [(c)] *[County and city;]*
- [(d)] *[Township, Range, Section, and Tax Lot number(s) of lease area and adjacent uplands; and]*
- [(e)] *[A description of the purpose for which the lease area will be used.]*
- [(3)] *[Each complete application shall include:]*
- [(a)] *[A location map showing the proposed lease area relative to its surroundings.]*

**[Note:** *Aerial photographs, U.S.G.S. Quadrangle maps, and Coast Survey Charts are all suitable for this purpose.]*

- [(b)] *[A map from the County Assessor that shows the location of the proposed lease area.]*
- [(c)] *[A description of the area to be leased sufficient to permit the Division to identify its boundaries, corners, and acreage with reasonable accuracy and to preclude the granting of conflicting leases.]*
- [(d)] *[A plot plan (suggested scale 1" = 100') showing the lease area, proposed or existing facilities, the adjacent lands and property boundaries, the location of the Ordinary High and Ordinary Low Water lines, and the direction of water flow.]*
- [(e)] *[A non-refundable seven hundred and fifty dollar (\$750) application fee payable by check to the Division of State Lands.]*
- [(f)] *[Evidence satisfactory to the Division that the proposed use is in conformance with the local comprehensive land use plan and zoning ordinance.]*
- [(4)] *[The Division may request additional information regarding the applicant's financial status and business/management practices prior to authorizing a lease].*

**[141-082-0049] [Lease, Public Facility License and Temporary Use Permit Application Review Process]**

- [(1)] *[The appropriate city or county planning department, pertinent state and federal agencies, and all lessees and riparian property owners (as available from the local county assessor's office records) within two hundred (200) feet of the proposed or existing use shall be notified by the Division of the opportunity to review and comment on the accepted application].*
- [(2)] *[Based on the evaluation of the application and the comments received, the Division shall:]*
- [(a)] *[Approve the application and continue to process the lease, public facility license, or temporary use permit;]*
- [(b)] *[Require that the applicant modify and resubmit the application; or]*
- [(c)] *[Deny the application.]*
- [(3)] *[If the Division determines that the proposed or existing use meets the policies set forth in these rules in OAR 141-082-0010, the Division shall determine the area needed to fully encompass the perimeter of the use as well as any additional water surface area needed to support the use. The Division shall also determine the method to describe the boundary of the authorized area].*
- [(4)] *[In the event the Division cannot readily determine the authorized area description from the applicant's information or, if in the judgment of the Division, a dispute may arise concerning the description, the Division may require the applicant to have a survey of the requested area conducted by a licensed professional engineer or surveyor. The Division shall provide survey instructions as well as specify the information required in the survey and accompanying notes. Generally the applicant will be responsible for any costs of the survey.]*
- [(5)] *[If more than one (1) application for a specific area is received by the Division, the Division shall determine which proposed use best fulfills the policies specified in OAR 141-082-0010 and accept and proceed with that application and deny the others.]*
- [(6)] *[The Division shall offer a preference right to lease to the eligible party as defined in OAR 141-082-0020(49) and (50), hereafter referred to as the preference right holder. When a lease application has been approved, the Division shall:]*
- [(a)] *[If the proposed lease area consists of parcels having different owners, subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease are.]*
- [(b)] *[If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Division will extend the boundaries of the single parcel or combined group of*

*single-ownership parcels perpendicular to the thread of the stream as in OAR 141-082-0049(6)(a) above.]*

- [(c)] *[In accordance with the proposed use(s), calculate in a manner consistent with OAR 141-082-0100 a minimum annual lease rental payment for each lease parcel; and].*
- [(d)] *[Notify each preference right holder in writing that a lease application has been approved by the Division, and provide thirty (30) calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual lease rental payment.]*
- [(7)] *[The Division shall consider that] the preference right holder has accepted the offer of a preference right to lease and has executed [by executing] the lease form and all other documents and remitting the required minimum annual lease compensatory [rental] payment within the required thirty (30) calendar day period.]*
- [(8)] *[If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Division shall prepare and publish an advertisement for bids pursuant to the requirements of ORS 274.040. The highest qualified bidder shall be awarded the lease. The minimum bid amount [shall] be set by the Division.]*
- [(9)] *[The fee for structures and uses authorized under a temporary use permit shall be determined by the Director, utilizing these rules as guidance, on a case-by-case basis, and shall not be less than one hundred dollars (\$100).]*

**141-082-0060      General Lease and Public Facility License Conditions and Form**

- (1) The **Department will only offer a standard [lease] form of lease or public facility license that has been** *[contained in Exhibit A shall be the principal lease form used by the Division to authorize the use of state-owned submerged and/or submersible land. However, the Division in its good faith discretion may determine that the size and/or nature of a proposed use, or the risks associated therewith, make it advisable to require a lease with terms other than those contained in Exhibit A. In such event, the Division may condition acceptance of the proposed use upon acceptance of a lease form proposed by the Division and, if requested by the Division or otherwise required by law,] approved by the Department of Justice.*
- (2) **Unless otherwise approved by the Director the maximum initial term for a lease or public facility license [term] for state-owned submerged and/or submersible land is up to** *[shall be fifteen (15)]* years. *[Renewal provisions shall allow for additional periods of up to the maximum of fifteen (15) years after the original and each renewal lease term as specified in OAR 141-082-0070.]* The length of a lease **or public facility license** offered by the **Department** *[Division shall] will* depend on:

- (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
  - (c) The **general provisions** [*policies*] contained in these rules.
- (3) **The Department may require an applicant for or holder of a lease to obtain a surety bond or other 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. The surety bond amount will be determined by the Department and will be reasonable and within generally accepted business practices. A cash 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.** [*State-owned submerged and/or submersible land, regardless of whether or not it is included in authorized areas, shall remain available and open to the public for commerce, navigation, fishing, and recreation unless restricted or closed to public entry by the State Land Board or Division. The lessee may request the Division to close the authorized area to public entry or restrict recreational use by the public on all or portions of the authorized area to protect persons or property from harm arising from, or in connection with the authorized use or activity, or for any other purpose consistent with the policies of OAR 141-082-0010.*]
- [(4)] [*The lessee may restrict public use of lessee-owned property or structures authorized under the lease.*]
- [(5)] [*The Division 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.*]
- [(6)] [*The lessee shall dispose of all waste in a proper manner and shall not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into the waterway. A lessee's failure to comply with this provision shall be considered a material default since a violation of this obligation may harm the public trust values in the waterway. As such, the Division shall have both the right to terminate the lease upon a substantial or repeated violation of this obligation, as well as the right to remove the debris and collect the cost of such removal from the lessee.*]
- [(7)] [*The lessee shall not cut, destroy or remove, or permit to be cut, destroyed or removed any vegetation (except for noxious weeds) that may be upon the authorized area except with the written permission of the Division. The lessee shall promptly report to the Division the cutting or removal of vegetation by other persons.*]
- [(8)] [*The lessee shall conduct all operations within the authorized area in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or growth of noxious weeds.*]

- [(9)] *[The lessee shall maintain all buildings, docks, pilings, floats, gangways, similar structures, and other improvements located within the authorized area in a good state of repair as determined by the Division in consultation with other government agencies such as the local building inspection authority or fire service agency.]*
- [(10)] *[The Division may require the lessee to obtain a surety bond 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 Division and shall be reasonable and within generally accepted business practices. A cash deposit or certificate of deposit in an amount equal to the amount required for a surety bond and which names the State of Oregon as co-owner may be substituted in lieu of a bond.]*

**141-082-0070      Lease and Public Facility License Renewal**

- (1) **The Department may, as a condition of the lease or public facility license, allow the holder upon application to the Department to apply for the renewal of the authorization for an additional period of up to 15 years.**
- (2)[(1)] **Unless otherwise approved by the Director in writing, the holder of a lease or public facility license** *[A lessee shall have an option to renew a lease entered into after the effective date of this rule for additional terms but not more than fifteen (15) years, provided that the lessee has submitted]* **must submit** a completed lease **or public facility license** *[renewal]* application form to the **Department** *[Division]* not less than *[one hundred eighty (180)]* calendar days prior to the *[lease]* expiration date **of the authorization. Failure of the holder of a lease or public facility license to apply within the above 180 calendar day period will result in termination of the authorization and continued occupancy of the premises will result in a trespass subject to the imposition of civil penalties as proscribed by these rules.**
- (3) Upon receipt of such application, **a new** *[the]* lease **or public facility license** *[shall]* **will** be **prepared and offered to the applicant** *[renewed]* by the **Department** *[Division]* unless:
- (a) The **Department** *[Division]* determines, in its sole discretion, that the lessee **or licensee** has not complied with the terms of **their authorization** *[this lease]*, the applicable statutes, or Oregon Administrative Rules; *[or]*
- (b) The lessee is no longer the preference right holder;*[or]*
- (c) The **Department** *[Division]* determines that the renewal of *[this lease]* **the authorization** for all or portions of the authorized area would be contrary to local, state, or federal law, or would be inconsistent with the **general provisions** *[policies]* set forth in OAR 141-082-~~0010~~**0014**; **or**
- (d) **The lessee or licensee is in default on any other authorization granted to them by the Department.** *[In the event that the*

*Division determines that the lessee is not entitled to renew the lease pursuant to the standards described above, the Division shall give the lessee two (2) years written notice that the lease will be allowed to expire. If less than two (2) years remain in the lease term at the time the written notice is given, the Division shall allow the lessee time beyond the lease expiration date to complete the two (2) year notice period to allow the lessee sufficient time to vacate the authorized area and relocate any sublessees in an orderly fashion. Temporary use permits may also be issued in the event that a final decision with regard to a lease renewal has not occurred by the expiration of the lease term. The Division shall report to the State Land Board for review all leases that the Division proposes not to renew pursuant to this subsection (OAR 141-082-0070(1)).]*

- [ (2) *[All lease renewal applications shall be on a form provided by the Division. Completed applications must be received by the Division not less than one hundred eighty (180) calendar days prior to the expiration of the lease term.]*
- [ (3) *[If an application to renew a lease is not timely received by the Division, the Division at its option may elect to either let the lease expire without renewal, or assess a late fee of two hundred and fifty dollars (\$250) payable to the Division.]*
- (4) An application for renewal **must** [shall] be accompanied by a non-refundable **application** fee in the amount of [seven hundred and fifty dollars (] \$750 [)] **for a lease or public facility license** payable to the **Department** [Division]. [Any late fees, as required under OAR 141-082-0070(3) shall also be included with the application fee for lease renewal.]

**141-082-0080      Lease and Public Facility License Modifications for Size and Use**

- (1) **Holders of a lease or public facility license** [Lessees] **must** [shall] notify the **Department** [Division] in writing using [a] **an application** form provided by the **Department** [Division] prior to **changing** [expanding or reducing] the size **and/or** [internal arrangement of] use(s) within their authorized area. No such changes or modifications **will** [shall] be **allowed** [made] without prior written authorization from the **Department** [Division].
- (2) **The holder of a lease or public facility license may change the internal arrangement of the uses or structures already authorized by the Department within an authorized area without application to, or receipt of prior written authorization from the Department. However, the holder of a lease or public facility license must notify, and provide photographs to the Department documenting the change in the internal arrangement of the uses or structures within 90 calendar days following the change.** [The Division may amend a lease to reduce the authorized area as requested if the portion of the lease area is not in use, and does not contain any leasable structures.]

- (3) **All requests to change an authorized use, or to expand an authorized area must be submitted to the Department in writing on the Department form and accompanied by an application fee of \$750. No application fee is required for requests to reduce the size of an authorized area.** [*Requests to change an authorized use, or increase an authorized area shall be processed and reviewed in the same manner as a new lease application as specified in OAR 141-082-0040 and 141-082-0049 of these rules.*]
- (4) **The Department will process and review all applications received to increase the size of the authorized area, or to change the authorized use, or modify a term or condition 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. Applications to reduce the size of an area will not be circulated to other agencies or interested persons for comment or review as provided in OAR 141-082-0044(5).**

**141-082-0090      Subleasing and Assignment of Leases and Public Facility Licenses**

- (1) **Subleasing**
- (a) Any lessee desiring to sublease in a manner not permitted outright by the lease or these rules[, or assign a lease shall] **must** [(a)] apply to the **Department** [*Division*] on a form provided by the **Department** [*Division*]; and **submit to the Department a:**
- (A) **Copy of the proposed sublease for review and approval;**  
**and**
- (B) [(b)] [*Submit a*] **Non-refundable application fee of [seven hundred and fifty dollars (] \$750 [)] payable to the Department** [*Division*].
- [(2)] [*The Division shall make a good faith effort to complete its review of such applications within thirty (30) calendar days of receipt. If the application is incomplete, or if the Division requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications shall be extended.*]
- (b)[(3)] Except as authorized in the lease or these rules, [*in no event shall the*] **a lessee is not allowed to** [*assign or*] sublease any portion of the authorized area prior to receipt of written approval from the **Department** [*Division*]. Violation of this provision may be grounds for termination of the lease.
- [(4)] [*Sublessees and assignees shall meet all applicable requirements set forth in these rules and the lease.*]
- (c)[(5)] **The holder of a lease may offer a sublease[s permitted outright, that is,]** without prior approval of the **Department** [*Division*] **when** [*, include only the following*]:
- [(a)] subleases of less than the entire leasehold area **are** entered into **by the lessee with other persons as a normal part of**

**business authorized by the lease** (for example, **the** rental of boat slips). [*in the ordinary course of business as authorized by the lease; or*]

[(b)] [*Sublease of the entire leasehold area for a term that is less than one (1) year and for a use authorized in the lease.*]

(2)[(6)] [*Upon the sale of the lessee's interest in the lease, the lessee (seller) shall submit an application to the Division requesting an assignment of the lease to the purchaser.*]

**Assignment of a Lease**

- (a) **Unless otherwise approved by the Director, any lessee wanting to assign a lease must notify the Department no less than 60 calendar days prior to the transfer of the lease.**
- (b) **Upon receipt of the notification, the Department will send forms to be fully completed and returned by the lessee no later than 30 calendar days prior to the transfer of the lease.**
- (c) **The application form must be accompanied by a check payable to the Department in the amount of \$750.**
- (d) **Upon receipt of the completed application form and payment, the Department will consider and process the request for assignment in the same manner as it would a request for a new lease and as provided in OAR 141-082-0044.**
- (e) **If the request for assignment is approved by the Department, the Department:**
  - (A) **Will require that the person to whom the lease is to be assigned complete and submit a new application for a lease to the Department. Upon receipt of this application, the Department will process it pursuant to the provisions of**
  - (B) **Prepare a new lease using the form current at the time of the request that has a term equal to that remaining for the lease for which an assignment has been requested; and**
  - (C) **Send the new lease to the applicant for signature and return to the Department.**

(3) **Assignment of a Public Facility License**

- (a) **A public facility license may be assigned only to another public agency for the same use authorized by the license, and only upon application to, and approval by the Department.**
- (b) **An application to assign a public facility license must be on a form provided by the Department.**
- (c) **There is no application fee required for an assignment of a public facility license to another public agency.**
- (d) **If the request for assignment is approved by the Department, the Department will require that the public agency to whom the license is to be assigned complete and submit a new**

**application for a license to the Department. Upon receipt of this application, the Department will:**

- (A) Prepare a new public facility license using the form current at the time of the request that has a term equal to that remaining for the license for which an assignment has been requested; and**
- (B) Send the new licensee to the applicant for signature and return to the Department.**

- [(7)] *[The transfer of ownership of the lease caused by the death of the lessee shall be considered an assignment requiring the Division] approval. A transfer of ownership to a spouse or immediate family member is an assignment that does not require the Division's prior approval.]*
- [(8)] *[The lessee shall not grant a mortgage or security interest in the lease without prior written consent of the Division which shall not be unreasonably withheld. Any subsequent assignment by the creditor shall require the prior written approval of the Division.]*
- [(9)] *[The Division may request additional information on the assignee's financial status and/or past business/management practices. The Division may, at its discretion, deny the assignment request if the assignee's financial status and/or past business/management practices indicate that s/he may not:*
- (a) Be able to fully meet the terms and conditions of a lease or other form of authorization offered by the Division; or*
  - (b) Use the land applied for in a way that meets the provisions of OAR 141-082-0010(2) and (3).]*
- [(10)] *[The Division shall require that the assignee, if approved by the Division, complete and submit to the Division a new lease application at the time of the assignment.]*

**141-082-0100      Lease Compensation [Rental] Formulas, Methods and Annual Lease Compensation [Rental Payment] Adjustments**

- (1) The Department has established three methods to determine the compensation owed for the use of state-owned submerged and/or submersible land. For some uses, more than one method is available.**
- (2) The three methods are termed the:**
  - (a) "Flat Rate Method" (which is determined by multiplying the number of square feet of an area requested, or that has been authorized, by a specific rate unique to 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 authorized).**

- (c) **“Percent of Gross Method” (which is based on the percent of the gross income received by the lessee from using the area that has been requested, or that has been authorized).**
- (3) **Regardless of which method (OAR 141-082-0100(2)(a), (b) or (c)) is used, under no circumstances will the compensation owed be less than the base minimum rate, discussed in OAR 141-082-0100(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/or submersible land. Under the circumstances identified in OAR 141-082-0100(7), the Department will choose the method to be used to determine the compensation owed to the Department for a use of state-owned submerged and/or submersible land.**
- (5) **Once an applicant or the Department has selected a method of determining compensation, that method will remain in effect for the entire term of the lease unless there is a change in the use.**
- (6)[(1)] The base minimum annual **compensation** [lease rental payment] for any lease **will** [shall] be the greater of:
- (a) **\$0.0069** [\$0.0056] per square foot times the lease area or **\$338** [two hundred and seventy five dollars (\$275) **which is rate in effect at the time of adoption of these rules (December 2009) and will be increased by three percent each year on June 1<sup>st</sup>,**  
**or**
- (b) [Subject to the base minimum annual lease rental payment established in OAR 141-082-0100(1), lease applicants (including lease renewal applicants) may select the method of annual lease rental payment calculation for their authorized use classification as described in OAR 141-082-0100(4)(a) through (h) below that results in the lowest annual lease rental payment, except for leases awarded through competitive bidding for which the] **The annual [lease] compensation [rental payment] resulting from a competitive [shall be based on the] bid award. [The lessee or lease applicant shall provide all pertinent information to the Division to assist in calculating the annual lease rental payment. The method of annual lease rental payment calculation shall remain in effect for the term of the lease, unless changed pursuant to a redetermination made through the administrative rulemaking process (ORS 183) and approved by the State Land Board.]**
- (7)[(2)] In the event the lessee and the **Department** [Division] cannot agree on the method of calculating the annual **compensation** [lease rental payment] or any aspect of the method **to be used**, the annual **compensation** [lease rental payment] **owed by the lessee will** [shall] be determined by the **Department** [Division] using the flat rate method **which will remain in effect** until such time as the dispute is resolved and **a new rate is** implemented at the next lease anniversary date.

- (8)**[(3)] The annual **compensation** [*lease rental payment*] for individual non-commercial docks, boat houses, and floating recreational cabins not eligible for registration and that are not contained within marinas or moorages **will** [*shall*] be calculated based on the area encompassed by the perimeter of the structures, and **will** [*shall*] exclude gangways, protective booms, pilings, and dolphins from the annual **compensation** [*lease rent payment*] calculation.
- (9)**[(4)] The following eight [(8)] use classifications and related lease [*rental*] **compensation** formulas **described in** [(OAR 141-082-0100(9)(a) through (h))] **will** [*shall*] be used to establish annual lease [*rental*] **compensation** payments or minimum bid, whichever is applicable, subject to the base minimum annual lease **compensation** [*rental*] payment established in OAR 141-082-0100(6). For the riparian land value method described below, utility, railroad or publicly-owned land **will** [*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 **will** [*shall*] be substituted. In cases where the adjacent riparian tax lot is less than [*one hundred* (] 100 [)] feet deep, the **Department** [*Division*] will assume the adjacent riparian tax lot has a depth of [*one hundred* (] 100 [)] feet and **calculate** [*apportion*] the **assessed or appraised value** [AV] based on this derived area.

**Formula Factors:**

**AV = Assessed value or appraised value** (as defined in OAR 141-082-0004(6) and (8) of these rules) whichever is less except as stated in OAR 141-082-0100(16) and (17).

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

**AC[AR] = Annual compensatory [*lease rental*] payment**

**Uses and Compensation Determination Methodologies: [for:]**

- (a) **Commercial marinas and docks, and commercial floating home moorages.** The annual lease **compensation** [*rental*] payment calculation is the lesser of the:
- (A) Flat rate method of **\$0.0235** [*\$0.0191*] per square foot (which **will** [*shall*] be increased each year on June 1st by three [3] percent) x LA; or
- (B) **Three** [3] percent of actual annual **gross** [*slip or boat rental*] income; or

- (C) Riparian land value method of AV x LA x five percent = AC[AR].
- (b) **Non-commercial marinas and docks**, including all types of ownership oriented marinas and docks and excluding those structures qualified for registration and exempt from lease (e.g., docks and boat houses less than 2,500 square feet). The annual lease **compensation** [rental] payment calculation is the lesser of the:
- (A) Flat rate method of \$0.0235 [\$0.0191] per square foot (which **will** [shall] be increased each year on June 1st by three [3] percent) x LA; or
- (B) Three [3] percent of the [comparable] **actual annual gross income** [annual slip rentals]; or
- (C) Riparian land value method of AV x LA x five [5] percent = AC[AR].
- (c) **Non-commercial floating home moorages** including those operated by ownership-oriented organizations. The annual lease **compensation** [rental payment] calculation is the lesser of the:
- (A) Flat rate method of \$0.0235 [\$0.0191] per square foot (which **will** [shall] be increased each year on June 1st by three [3] percent) x LA; or
- (B) Three [3] percent of [comparable] **actual annual gross income** [annual slip rentals]; or
- (C) Riparian land value method of AV x LA x five [5] percent = AC[AR].
- (d) **Individual floating homes and similar structures and uses** such as, but not limited to, a combination structure/floating home or any structures connected to utilities and associated with residential use not eligible for registration. The annual lease **compensation** [rental payment] calculation is the lesser of the:
- (A) Flat rate method of \$0.0235 [\$0.0191] per square foot (which **will** [shall] be increased each year on June 1st by three [3] percent) x LA; or
- (B) Riparian land value method of AV x LA x five [5] percent = AC[AR].
- (e) **Historical vessels or structures not eligible for registration and owned by non-profit organizations** (limited to youth-oriented, historical, educational, or scientific organizations). The annual lease **compensation** [rental payment] is \$338 [two hundred and seventy five dollars (\$275)] per year per structure or combination of structures at a single location or facility [(e.g., youth camp). OAR 141-082-0100 (5) and (9) shall not apply.]

- (f) **Log boom areas, log raft storage areas.** The annual lease **compensation** [*rental payment*] calculation is the lesser of the:
- (A) Flat rate method of **\$0.0118** per square foot (which **will** [*shall*] be increased each year on June 1st by three [3] percent) x LA; or
  - (B) Riparian land value method of AV x LA x **five** [5] percent = **AC**[AR].
- (g) **Marine industrial and marine service commercial uses/structures** [*including fish processing facilities*]. The annual **compensation** [*lease rental*] payment calculation is the lesser of the:
- (A) Flat rate method of **\$0.4034** [*\$0.328*] per square foot (which **will** [*shall*] be increased each year on June 1st by three [3] percent) x LA; or
  - (B) Riparian land value method of AV x LA x **five** [5] percent = **AC**[AR].
- (h) **Non-Marine Uses** [(*except as identified in these rules, for example, floating homes*)]. The annual **compensation** [*lease rental*] payment calculation is the lesser of the:
- (A) Flat rate method of **\$0.4710** [*\$0.383*] per square foot (which **will** [*shall*] be increased each year on June 1st by three [3] percent) x LA; or
  - (B) Riparian land value method of AV x LA x [5] **five** percent = **AC**[AR].

**(10)**[(5)] The above described flat rate method factors (OAR 141-082-0100**(9)**(a) through (h)) **are those in effect at the time of the adoption of these rules (December 2009), and will** [*shall*] be increased by three [3] percent every year on June 1st. [*The AV factor for the above-described riparian land value method shall have the meaning defined in OAR 141-082-0020(8).*] Annual lease **compensation** [*rental payments*] **will** [*shall*] be billed on the basis of the adjustments described in OAR 141-082-0100**(9)**. **For any newly executed lease, the applicable flat rate that will be applied is that which is in effect at the time of the execution of the lease. The annual compensatory payment for executed leases will also be adjusted/redetermined annually on each lease anniversary date by increasing the annual lease compensation payment by three percent rounded to the nearest dollar. This annual compensatory payment adjustment/redetermination for executed leases shall not apply to those calculated based on actual annual gross income.**

**(11)**[(6)] **Compensation** rates for uses within each authorized area **will** [*shall*] be calculated by the **Department** [*Division*] on a square foot basis of state-owned submerged and/or submersible land as applicable for each use classification (for example, non-commercial marina), and based on the lessee's choice of rate calculation methods except as noted in OAR 141-082-0100**(7)** above. More than one use (known as a mixed use) may

be permitted by the **Department** [*Division*] within an authorized [*lease*] area. **Compensation** rates will be calculated for each use area based on the most applicable use classification, as specified in OAR 141-082-0100(9)(a) through (h), and summed to derive the total annual **compensation** [*lease rental*] payment or minimum bid for the entire leasehold.

**(12)**[(7)] **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** [*lease rental payments*] based on [*three*] 3 percent of actual [*or comparable*] annual **gross income** [*slip or boat rental shall be supported by documentation provided by the lessee or lease applicant*]. [*The Division, based on consultation with the lessee, shall establish and identify in the lease the reporting schedule and the form of documentation required for the Division and lessee to perform the due diligence necessary to verify the actual or comparable income. Lessees using this method shall make their records available for periodic audit by the Division.*]

**(13)**[(8)] Wharf areas or areas occupied by uses or structures exempt from authorization by law or these rules from payment of annual [*lease rental*] **compensation** may be included within the authorized area, but are not included in the calculation of the annual lease **compensation** [*rent*] payment.

[(9)] [*The annual lease rental payment for executed leases shall be adjusted annually on each lease anniversary date by increasing the annual lease rental payment by three (3) percent rounded to the nearest dollar. This annual lease rental payment adjustment for executed leases shall not apply to those calculated based on actual or comparable annual slip or boat rental income.*]

**(14)**[(10)] The **Department** [*Division*] **will** [*shall*] notify lessees in writing of the new annual **compensatory** [*lease rental*] payment not less than [*sixty (60)*] calendar days in advance of the lessee's lease anniversary date.

**(15)**[(11)] In calculating the initial annual **compensatory** [*lease rental*] payment using the riparian land value method, lessees or lease applicants may substitute an appraised value of the adjacent riparian tax lot or as determined by the **Department** [*Division*], a comparable tax lot in place of the assessed value. The **Department** [*Division*] reserves the right to evaluate, review, and challenge the appraisal. **If required, the appraisal will** [*shall*] be conducted at the lessee or lease applicant's expense **and prepared by a certified appraiser. The Department will provide instructions to the appraiser prior to conducting the appraisal.** [*If the appraisal is used by the Division to calculate the initial annual lease rental payment, the Division will credit one-half of the cost of the appraisal to the lessee's annual lease rental payment.*] In the event of a dispute between the **Department** [*Division*] and the lessee or lease applicant, the value **will**

[shall] be determined through the three-appraiser method specified in ORS 274.929(3).

**(16)**[(12)] If in the process of using the riparian land value method for calculating the initial annual **compensation** [lease rental] 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** [Division], another comparable upland tax lot **will** [shall] be selected by the **Department** [Division] as the basis for calculating the initial annual lease [rental] **compensatory** payment. [The lease applicant may suggest a comparable tax lot or may appeal the Division's selection as allowed in OAR 141-082-0200.]

**(17)**[(13)] **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 will not be** [not listed in OAR 141-082-0100(4)(a) through (h) and determined by the Director pursuant to OAR 141-082-0030(1) to be eligible for lease, the annual lease rental payments shall be determined on a case-by-case basis and be not] less than the base minimum annual [lease] **compensatory** [rental] payment as defined by OAR 141-082-0100**(6)**.

[(14)] [The State Land Board shall periodically review and decide whether to maintain or redetermine the lease rental formulas, methods, annual lease rental payment adjustments, classifications or other factors as specified in these rules. Any redetermination, change or amendment to OAR 141-082-0100 must be done according to the administrative rulemaking process (ORS 183).]

**[141-082-0101] [Suspended Use Lease Rental Rate]**

[(1)] [A lessee may request that the Director grant a suspended use lease rental rate of not less than the base minimum annual lease rental payment if all or a portion of the lease premises are severely damaged or destroyed by natural disaster or other means such that the use(s) authorized by the lease must cease or be significantly interrupted.]

[(2)] [The lessee shall make a request for a suspended use lease rental rate to the Director in writing stating the reasons for the request and including sufficient documentation to demonstrate that the request meets the requirements of OAR 141-082-0101(1). No application fee will be required.]

[(3)] [The Director, within thirty (30) calendar days of receiving a completed request, shall either deny the request; ask for additional information; or approve the request and initiate a lease amendment. The Director shall have sole discretion as to the terms and conditions of the lease amendment under this section (OAR 141-082-0101) subject to the appeal provisions of OAR 141-082-0200.]

- [(4)] *[Any suspended use lease rental rate granted by the Director shall not exceed one (1) year and shall not be in effect until a lease amendment has been executed by the Division and the lessee, or otherwise authorized in writing by the Director. The suspended use lease rental rate shall supersede the annual lease rental payment identified in the lease contract agreement for the period the reduced rental rate is in effect.]*
- [(5)] *[A suspended use lease rental rate is renewable annually for up to three [(3)] consecutive years based on the lessee's resubmittal of a request; verification by the Division of the circumstances; and Director's approval. Renewal requests must be submitted in writing not less than sixty (60) calendar days prior to the expiration of suspended use lease rental rate.]*
- [(6)] *[The lessee shall immediately notify the Division upon any resumption of any of the uses authorized in the lease that are subject to the suspended use lease rental rate lease amendment. The lessee shall fully comply with any notification requirements and conditions of use resumption as stipulated in the Director's authorization and lease amendment.]*
- [(7)] *[Failure to notify the Director of resumption of any use authorized in the lease may result in immediate cancellation of the suspended use lease rental rate and reinstatement of the original rate effective on the date the allowed use resumed.]*
- [(8)] *[Changes in the leasehold area and/or authorized uses shall be processed in accordance with OAR 141-082-0080.]*

**[141-082-0105]      [Public Facility Licenses]**

- [(1)] *[Public agencies shall apply for on a form provided by the Division and renew a public facility license for all eligible facilities in the same manner as described in OAR 141-082-0040 and 141-082-0070(1) to (5).]*
- [(2)] *[All applications for a public facility license shall be accompanied by a non-refundable fee in the amount of two hundred and fifty dollars (\$250) payable to the Division.]*
- [(3)] *[The maximum term for a public facility license shall be fifteen (15) years and shall be renewable for additional terms of fifteen (15) years upon application.]*
- [(4)] *[Existing public facility licenses shall remain in effect until expiration, at which time they shall be reviewed for renewal in accord with these rules.]*
- [(5)] *[Modifications for size and use of a public facility license shall be processed and reviewed in the same manner as a new application as specified in OAR 141-082-0040 and 141-082-0049 of these rules.]*

**141-082-0110      Removal of Unauthorized Structures**

- (1) The **Department** [Division] may require the owner of an unauthorized structure on state-owned submerged and/or submersible land to remove it at **their** [his/her] own expense.

- (2) If the owner refuses to remove the unauthorized structure, or if no owner can be located, the **Department** [Division] may, at its own expense, remove the structure from state-owned submerged and/or submersible land.
- (3) **In the event that the Department does remove an unauthorized structure, it** [the] [Division shall] **will** pursue whatever legal options are available to recover such removal costs from the owner, including placing a lien on the assets of that owner.
- (4) If the owner does not pay the costs incurred in the removal of the unauthorized structure by the **Department** [Division], the **Department** [Division] may impose a civil penalty pursuant to OAR 141-082-0130.

**[141-082-0120]      [Submerged and Submersible Land Closures and Use Restrictions]**

- [(1)] *[The Land Board may, based upon a request from any person, including a public agency, declare that certain state-owned submerged and/or submersible lands shall not be available for lease, registration, temporary use permit, public facility license, or that any such lease, registration, temporary use permit, or public facility license shall be limited to certain designated uses, or that any such authorizations must meet certain specific conditions designed to protect public trust values in a specific area.]*
- [(2)] *[The Land Board may approve all or a portion of such a request upon a finding that the requested limitation is necessary to prevent unreasonable interference with the public's right to use the waterway for commerce, navigation, fishing and recreation or to carry out the policies set out in these rules at OAR 141-082-0010.]*
- [(3)] *[Any such limitation of use shall be adopted by administrative rule by the State Land Board in accordance with ORS 183. There shall be at least one (1) public hearing in the subject area. Prior notice of public hearings shall be given to riparian property owners within the immediately affected area as provided by the local county tax assessor's office, other affected public agencies (for example, Oregon State Marine Board, U.S. Coast Guard, U.S. Army Corps of Engineers, and local government), and other public interests.]*

**141-082-0130      Civil Penalties**

- (1) **The unauthorized use of state-owned land managed by the Department constitutes a trespass.**
- (2)[(1)] In addition to any other penalty or sanction provided by law, the Director may assess a civil penalty of **not less than \$50 per day, and** not more than [one thousand dollars (] \$1,000 [)] per day of violation **of any provision of these rules or ORS 274 that occurs on state-owned**

**submerged and/or submersible lands pursuant to ORS 274.992.** [for the following:]

- [(a)] [*Violations of any administrative rule adopted under ORS 274.040; or*]
- [(b)] [*Violations of any term or condition of a written authorization granted by the Division under ORS 274.040.*]

- (3)**[(2)] The Director **will** give written notice of a civil penalty **incurred under OAR 141-082-0130(2)** by registered or certified mail to the person incurring the penalty. The notice **will** [*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 [*twenty* (] 20 [)] 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)**[(3)] The person incurring the penalty may request a hearing within [*twenty* (] 20 [)] calendar days of the date of service of the notice provided in OAR 141-082-0130**(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 may make a final order imposing the penalty.
- (5)**[(4)] The amount of a civil penalty **will** [*shall*] be not less than [*fifty dollars* (] \$50 [)] per day, or more than [*one thousand dollars* (] \$1,000 [)] per day for violation of an authorization issued under ORS 274.040 or violation of any administrative rule adopted under ORS 274.040.
- (6)**[(5)] In imposing a penalty under OAR 141-082-0130 of these rules, the Director **will** [*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 and the willingness of the person to take** [*in taking*] 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/or 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 to be relevant and consistent with the policy of these rules.
- (7)**[(6)] Pursuant to ORS 183.090(2), a civil penalty imposed under OAR 141-082-0130 **will** [*shall*] become due and payable [*ten* (] 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 141-082-0130, interest **will** [shall] accrue at the maximum rate allowed by law.

#### 141-082-0140 Registration Of Structures

- (1) [Qualifying] **Structures** subject to registration under this section **are indicated in OAR 141-082-0030(3)**. [include non-commercial:]
- [(a)] [Docks/floats and/or boat houses and associated or individual pilings, dolphins, mooring buoys, and protective booms;]
- [(b)] [*Floating recreational cabins; and*]
- [(c)] [*Water sport structures unless authorized by the Oregon State Marine Board in compliance with OAR 250-010-0097 (Application For Special Use Device Permits).*]
- (2) The Director may determine that other structures similar to those specified in OAR 141-082-**0030(3)**[0140(1)] are also subject to registration and the rules governing registrable structures. If the Director determines that a structure is registrable, s/he **will** [shall] assign an appropriate fee.
- (3) **A person who does not or refuses to apply for and obtain a registration for a structure subject to a registration under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0130.** [*Public non-commercial docks/floats, boathouses, and similar structures are not subject to registration. A public facility license or other form of authorization is required.*]

#### 141-082-0150 Registration Requirements and Provisions

- (1) All persons:
- (a) Owning structures subject to registration which were in existence on April 14, 1998 **must** [shall] register the structure with the **Department** [Division].
- (b) Owning a wharf subject to the exemption from lease provided by ORS 780.040 **must** [shall] register the structure with the **Department** [Division].
- (c) Placing a new structure subject to these rules, or changing the location of a registered structure after the effective date of these rules **must** [shall] notify the **Department** [Division] in writing [*ninety (] 90 [)]*] calendar days prior to such placement, or change in location.
- (d) Making **any** modifications, **including a change in size,** to a registered structure which changes the fee category or eligibility of the structure for registration **must** [shall] notify the **Department** [Division *ninety (] 90 [)]*] calendar days prior to making such a modification.

- (2) **An applicant for a registration must use** *[shall be made on]* a form provided by the **Department and submit** *[Division]* **a separate registration form for each individual registrable structure.**
- (3) *[A separate registration form and accompanying payment shall be submitted for each individual dock/float, boat house, or other registrable structure.]*
- [(4)] Each registration *[, except for those for wharfs and government function facilities, shall]* **must** be accompanied by a fee payment in the amount indicated in OAR 141-082-0170 of these rules. *[All registrations, including those for a wharf, shall also be accompanied by:]*
- [(a)] *[A location map showing the location of the registrable structure relative to its surroundings.]*
- [Note:** *Aerial photographs, U.S.G.S. Quadrangle maps, and Coast Survey Charts are all suitable for this purpose.]*
- [(b)] *[A map from the County Assessor that shows the location of the requested registrable structure.]*
- [(c)] *[A plot plan (suggested scale 1" = 100') showing the location of the registrable structure, proposed or existing facilities, the adjacent lands and property boundaries, the location of the Ordinary High and Ordinary Low Water lines, and the direction of water flow.]*
- (4)**[(5)] For structures constructed, placed, or modified (pursuant to OAR 141-082-0150(1)(d) after April 14, 1998, the applicant **must** *[shall]*:
- (a) **Provide on the registration form the name(s), address(es), and telephone number(s) of the owner(s) of any adjacent riparian upland within** *[two hundred (] 200 [)]* feet of the structure for which registration is requested; **and**
- (b) **Contact the owner of each adjacent riparian tax lot indicated on the registration form to determine if there are any concerns associated with the placement or modification of the structure, or if it would unreasonably interfere with the rights of the public to use the waterway for fishing, navigation, commerce, and recreation.**
- (5) **The Department will consider any information provided by the owner(s) of each adjacent riparian tax lot(s) when deciding whether to register or condition the registration of the structure.**
- [(6)] *[The applicant shall contact each adjacent upland riparian owner indicated on the registration form to determine if there are any concerns associated with the placement or modification of the structure, or if it would unreasonably interfere with the rights of the public to use the waterway for fishing, navigation, commerce, and recreation. The Division shall consider any information provided by the adjacent riparian upland owner(s) in deciding whether to register or condition the registration of the structure.]*

- (6) **In the event an applicant's proposed structure will not be situated adjacent to riparian property owned by the applicant, that riparian property owner will have an option to register a structure at the same site.**
- (7) *[In the event an applicant's proposed structure will not be situated adjacent to riparian property owned by the applicant, that riparian property owner shall have an option to register a structure at the same site.]* The **Department** *[Division shall]* **will** send a copy of the application to the riparian property owner identified in the application. The riparian property owner **will** *[shall]* have *[thirty ( ) 30 ( )]* calendar days from the date **on** the application *[is postmarked]* to object to the issuance of the registration or to submit a registration application for a structure at the same site as the original application. Any such registration application **must** *[shall]* be submitted by the riparian property owner and processed by the **Department** *[Division]* in a manner consistent with these rules. The written objection must state the reasons why the original application does not meet the qualifications for registration as stated in OAR 141-082-0150(8). If no riparian property owner registration application or written objection is received by the **Department** *[Division]* within the required *[thirty ( ) 30 ( )]* calendar day period, the **Department** *[Division]* may issue the registration to the original applicant. The original applicant as well as the involved riparian property owner **will** *[shall]* have all rights of appeal as stated in OAR 141-082-0200.
- (8) To qualify for registration, each structure **must** *[shall]*:
- (a) Not 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) Comply with all applicable local, state, and federal laws including the local comprehensive plan and zoning requirements; and
  - (c) Comply with the size limitations specified in OAR 141-082-0030**(3)**.

#### **141-082-0160 Registration Terms and Conditions**

- (1) A registration issued by the **Department** *[Division shall]* **will** be valid for a term of five *[(5)]* **calendar** years for all structures except government function facilities which **will have a term of** *[shall be ten ( ) 10 ( )]* years.
- [(2)]* *[A structure, when properly registered with the is not subject to lease as long as it continues to fully meet all the requirements to be registrable as provided in these rules.]*
- (2)***[(3)]* Unless otherwise prohibited by law, any registered structure in compliance with these rules may be repaired or replaced in a manner consistent with the requirements of OAR 141-082-0150, and remain authorized under the original registration issued by the **Department** *[Division]*. **However, any person making such repairs to, or replacing a structure must send the Department a photograph of the structure**

**after the completion of the repairs or replacement as a condition of the registration.**

- (3)[(4)] The **Department** [Division shall] **must** be notified in writing of any:
- (a) Change in the location of a registered structure [ninety ( ) 90 ( )] calendar days prior to such change;
  - (b) Change in ownership of a registered structure within [ninety ( ) 90 ( )] calendar days of the transfer of ownership. If the transfer is part of a legal transaction but not a sale (for example, bankruptcy, foreclosure, estate settlement), the **Department** [Division shall] **must** be notified within [thirty ( ) 30 ( )] calendar days of the final settlement or decision. **Failure to notify the Department of a change in, or transfer of ownership within the time provided will result in the automatic termination of the registration.**
- (4)[(5)] Registrations **for privately-owned structures and uses subject to registration** must be renewed every five [(5)] years; **those for publicly-owned structures and uses subject to registration must be renewed every 10 years.** The **Department** [Division shall] **must** notify all registrants by mail, and provide a form to renew their registration [ninety (90)] **60** calendar days prior to the expiration date of each registration(s).
- (5)[(6)] The **Department** [Division] may place conditions on a registration to [address concerns of adjacent riparian upland owners and/or] ensure that the continuance or placement of the use does not unreasonably interfere with the rights of the public to use the waterway for fishing, navigation, commerce, and recreation **or for any other reason determined to be necessary by the Director.**
- (6)[(7)] The **Department** [Division shall] **will** provide a copy of the registration to the appropriate county official (for example, county recorder) in the county where the registered structure is located.
- (7)[(8)] The **Department** [Division] may reject a registration application, modify the conditions of a registration, or cancel a registration if the subject structure does not conform with applicable local, state, and federal laws or these rules.

**141-082-0170 Fees**

Except for **wharves** [wharfs] and government function facilities (which are exempt from payment of a registration fee), the [five (5) year] fee for each registration or renewal [for] **will** [shall] be as follows:

- (1) **\$250** [One hundred and twenty five dollars (\$125)] for a dock/float or boat house [one thousand ( ) 1,000 ( )] square feet or less in size (excluding associated gangways, dolphins, pilings and protective booms).
- (2) **\$500** [Two hundred and fifty dollars (\$250)] for a dock/float or boat house from [one thousand and one ( ) 1,001 ( )] square feet to [two thousand ( ) 2,000 ( )] square feet in size (excluding associated gangways, dolphins, pilings and protective booms).

- (3) **\$600** [*Three hundred dollars (\$300)*] for a dock/float or boat house from [*two thousand and one (1 2,001 [ ]) square feet to [two thousand five hundred (1 2,500 [ ]) square feet in size.*
- (4) **\$700** [*Three hundred and fifty dollars (\$350)*] for a floating recreational cabin.
- (5) **\$250** [*One hundred and twenty-five dollars (\$125)*] for a water sport structure.
- (6) The fee for **other** structures **not listed above that are** determined to be registrable by the Director pursuant to OAR 141-082-0030(3) **will** [*shall*] be determined on a case by case basis and be not less than **\$250** [*one hundred twenty-five dollars (\$125)*].

**141-125-0175**      **Short Term Access Authorization Application Requirements, Review and Approval Process**

- (1) **A short term access authorization is required for any use of state-owned submerged and/or submersible land that is not specifically governed by other Department administrative rules.**
- (2) **A short term access authorization is granted by the Department for a specific length of time to be determined by the Director that allows a person to enter a specific parcel of state-owned submerged and submersible land for a particular purpose.**
- (3) **Any person wanting a short term access authorization must:**
  - (a) **Apply in writing to the Department using a form provided by the Department; and**
  - (b) **Submit a fully completed application to the Department at least 30 calendar days (unless otherwise allowed by the Director) prior to the proposed use; and**
- (4) **Upon receipt of an application the Department will determine:**
  - (a) **If the application is complete;**
  - (b) **If the subject area is available for the requested use; and**
  - (c) **If additional information is required concerning the proposed use of the state land, or the applicant's financial status, or past business and management practices.**
- (5) **Upon acceptance by the Department, the Department will review the application to determine, among other considerations:**
  - (a) **The impacts of the proposed use on the environment, habitat, and other uses of the requested area, and the magnitude of these impacts;**
  - (b) **The need for the proposed use within the requested area;**
  - (c) **Conformance of the proposed use with the general provisions provided in OAR 141-082-0014; and**
  - (d) **If any compensation is owed to the Department for the use of the subject area of state-owned submerged and submersible land.**

- (6) The compensation owed to the Department, if any, for structures and uses authorized under a short term access authorization will be determined by the Director, utilizing these rules as guidance, on a case-by-case basis, and will, when imposed by the Director, not be less than \$100.
- (7) The Department reserves the right to:
- (a) Require that the applicant obtain written approvals from local, state and federal government agencies indicating that the proposed use conforms with local, state and federal laws and rules as well as the local comprehensive land use plan and zoning ordinances; and
- (b) Circulate the application for review and comment pursuant to the provisions of OAR 141-082-0044 to obtain additional information to use in making its decision whether to grant the requested short term access authorization.
- (8) The Department will then advise the applicant of its determination concerning each of the four factors in OAR 141-1082-0175(5). Applications determined by the Department to be incomplete will be returned to the applicant with a written explanation of the reason(s) for rejection.
- (9) If an application rejected for incompleteness is resubmitted by the applicant within 30 calendar days from the date the Department returned it to the applicant (as determined by the date of letter of written explanation) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.
- (10) A person who does not or refuses to apply for and obtain a short term access authorization for a use subject to a short term access authorization under these rules is in trespass and subject to the civil penalties provided in OAR 141-082-0130.

[141-082-0190] [Penalties]

*[In addition to any other penalties provided by law, the placement or use of any structure subject to authorization on state-owned submerged and/or submersible land without authorization or otherwise not in compliance with these rules shall constitute a trespass].*

#### **141-082-0200 Appeals**

- (1) An applicant for an authorization, or any other person adversely affected by a decision by the **Department** [Division] concerning an authorization, closure **of**, or restriction to the use of state-owned submerged and/or submersible land may appeal the decision to the Director.
- (a) Such an appeal **must** [shall] be received by the Director no later than [thirty (] 30 [])] calendar days after the delivery of the decision.

- (b) The Director **will** [*shall*] decide the appeal within [*sixty* ( ) 60 ( )] calendar days after the date of delivery of the appeal.
- (c) The Director may affirm the decision, issue a new or modified decision, or request the appellant to submit additional information to support the appeal.

[(2)] [*If following the completion of the Director's review in OAR 141-082-0200(1) above an applicant wants to informally continue an appeal, s/he may request that the Director enter into an alternative dispute resolution process. The Director and the appellant shall select a trained facilitator/mediator from a list of pre-qualified individuals. The Division shall pay the costs of the facilitator/mediator. The appellant shall retain the right of formal appeal as described in OAR 141-082-0200(3).*]

**(2)**[(3)] When an applicant for an authorization to use state-owned submerged and/or submersible land or any other person adversely affected by a decision of the **Department** [*Division*] concerning an authorization has exhausted the [*informal*] appeal process before the Director, s/he may submit an appeal **for** [*to*] a contested case hearing **pursuant to ORS 183.413 through 183.470**. [*If the person is legally entitled to a contested case hearing, the Land Board shall select a hearing officer and proceed pursuant to ORS 183.413 through 183.470. Otherwise, the appeal before the Land Board shall proceed informally.*]

[**141-082-0210**] [**Waterway Management Program, Redetermination and Rule Review**]

[*The Division shall provide an annual report to the Land Board discussing the status of the waterway management program and the implementation of these rules.*]