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CHAPTER 141

DEPARTMENT OF STATE LANDS

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RULES:

141-126-0100, 141-126-0110, 141-126-0120, 141-126-0130, 141-126-0140, 141-126-0150, 141-126-0160, 141-126-0170, 141-126-0180, 141-126-0190, 141-126-0200, 141-126-0210, 141-126-0220, 141-126-0230, 141-126-0240

ADOPT: 141-126-0100

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the purpose of the Division 126 rules to govern the granting of leases for communication site facilities and similar uses on state-owned lands managed by the Department of State Lands

CHANGES TO RULE:

141-126-0100

Purpose and Applicability

(1) These rules:

(a) Govern the granting and renewal of leases for communication site facilities on state-owned land.

(b) Apply to the management of state-owned Constitutional Common School Fund Lands (school lands) and Statutory Common School Fund Lands (statutory lands) for communication site facilities.

(c) Establish a process for authorizing such uses through the granting of leases.

(d) Do not apply to the granting of proprietary authorizations for uses specifically governed by other department administrative rules.

(2) The director may determine other uses and developments similar to those specified in OAR 141-126-0120(8) that are also subject to a communication site facility lease and these rules.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

RULE SUMMARY: Establishes the authority and limits for which the Department will govern the granting of leases for communication site facilities on state-owned land.

CHANGES TO RULE:

141-126-0110

Policies

- (1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the department, has a constitutional responsibility to manage all land (school lands and statutory 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."
- (2) All school lands will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.
- (3) The department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a communication site facility lease on state-owned land.
- (4) The use of state-owned land for the placement of communication site facilities is recognized by the department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.
- (5) Each development placed in, on, or over state-owned land for the purposes of a communication site facility lease is subject to authorization and payment of compensation as required by these or other applicable department rules, or as determined by the director.
- (6) Uses of, and developments placed in, on, or over state-owned land pursuant to a communication site facility lease will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.
- (7) The department will not grant a communication site facility lease if it determines that the proposed use or development would unreasonably impact current uses or developments proposed or already in place within the requested area. Such a determination will be made by the department after consulting with lessees and holders of licenses, permits, and easements granted by the department in the requested area, and other interested persons.
- (8) All uses subject to these rules must be authorized by either a communication site facility lease issued by the department or a sublease granted by the lessee under a base lease to a co-locator and approved by the department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.
- (9) The department may:
  - (a) Conduct field inspections to determine if uses of, and developments in, on, or over state-owned land are authorized by, or conform with the terms and conditions of a communication site facility lease; and, if not,
  - (b) Pursue whatever remedies are available under law or in equity to ensure that the unauthorized uses subject to a communication site facility lease are either brought into compliance with the requirements of these rules or are removed.
- (10) The department will honor the terms and conditions of any existing valid lease for a communication site facility granted by the department, including any that entitle the lessee to renewal if the lessee has complied with all terms and conditions of the lease and applies to the department for a renewal as prescribed in these rules. Renewal applications will be processed in accordance with the rules that are in place at the time of renewal.
- (11) The department may, at its discretion, deny a communication site facility lease if the applicant's financial status or past business practices, or both, indicate that the applicant may not:
  - (a) Be able to fully meet the terms and conditions of a communication site facility lease offered by the department;
  - (b) Use the land applied for in a way that meets the provisions of OAR 141-126-0110.
- (12) Notwithstanding the provisions of these rules, the department may:
  - (a) Initiate projects involving communication site facilities developments in, on, or over the land it manages by itself or in conjunction with other entities;
  - (b) Request proposals for communication site facilities developments on land it manages, and may select and award a communication site facility lease through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-126-0110; and
  - (c) Negotiate and accept compensation in the form of services in lieu of monetary payments as provided for in

these rules.<sup>¶</sup>

(13) These rules become effective on January 1, 2025.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

RULE SUMMARY: Establishes the meanings of specific terminology utilized by the Department for the purposes of these rules.

CHANGES TO RULE:

141-126-0120

Definitions

- (1) "Additional Rent" means any amounts in excess of base rent that a lessee is required to pay the department or third parties pursuant to these Division 126 rules.¶
- (2) "Applicant" is any person applying for a communication site facility lease.¶
- (3) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short- and long-term management by the Department of State Lands of the Common School Fund's real estate assets.¶
- (4) "Base Lease" means a communication site facility lease issued to the owner of the communication site facility who has entered into a sublease with a co-locator.¶
- (5) "Base Rent" means the annual rent to establish, occupy and use a communication site facility on the leased premises that a lessee is required to pay the department pursuant to these Division 126 rules.¶
- (6) "Cellular Communications" means transmission and receiving of signals for mobile telecommunications over a cellular network operated by business entities that sell wireless cellular communications services. Cellular communications include "Macro Cellular Facility" and "Small Wireless Facility" sites.¶
- (7) "Co-location" means more than one person sharing the same communication site facility under a sublease.¶
- (8) "Co-locator" means a person sharing a communication site facility under a sublease.¶
- (9) "Commercial" means a communication site use that results in, strives to achieve, or is associated with, a financial profit, monetary consideration, or gain as a direct result of use of the site.¶
- (10) "Communication Site" means a portion of state-owned land being occupied by developments for the purposes of a communication site facilities lease. A communication site may be wholly, or partially open for public uses, or wholly or partially closed to public uses. A communication site may include multiple developments and may have uses other than communication site facilities leases.¶
- (11) "Communication Site Facility" consists of the towers, antennas, dishes, buildings, generators, propane tanks, solar panels, fences, and other associated structures, equipment, or developments used by a lessee, or by a lessee and one or more co-locators, to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical and other cables that cross state-owned land to serve a communications facility, however, may be governed by the administrative rules for granting easements on state-owned land (OAR 141-122 and OAR 141-123).¶
- (12) "Communication Site Facility Lease" or "Lease" means a written authorization granted by the department to a lessee to use a specific portion of a communication site for an authorized purpose in accordance with terms and conditions in the lease.¶
- (13) "Compensation" is the amount of money paid or services provided by a lessee to the department under a communication site facility lease.¶
- (14) "Constitutional Common School Fund Lands" or "School Lands" is land granted to the state upon its admission into the Union, obtained by the state as a result of an exchange of school lands, obtained in-lieu of originally granted school lands, purchased with Constitutional Common School Fund moneys, or obtained through foreclosure of loans using Constitutional Common School Fund moneys.¶
- (15) "Decommissioning Plan" means a plan to retire and remove the physical facilities, structures, or developments authorized in a communication site facility lease including, but not limited to, dismantlement, site rehabilitation, costs, and timelines for decommissioning.¶
- (16) "Department" means the Oregon Department of State Lands.¶
- (17) "Development" is any structure or series of related structures authorized by the department in, on, or over state-owned land.¶
- (18) "Director" means the Director of the Oregon Department of State Lands or their designee.¶
- (19) "Emergency Services" means the primary use of the communication site facility is for local 911/Emergency Medical Services (EMS), wildfire radio communications facilities, wildfire detection cameras, law enforcement services, and emergency alert systems, and does not include commercial wireless cellular facilities.¶
- (20) "Facility Manager" means a person employed by a lessee to manage a communication site facility on their behalf for the purposes of site maintenance, management, or administration.¶
- (21) "Large Commercial" means a communication site facility lease that is for a commercial purpose and is in a

county that has a population of 150,000 or more people.

(22) "Leased Premises" means that portion of a communication site that the Department grants a lessee a leasehold interest in to establish, occupy, and use a communication site facility pursuant to these Division 126 rules.

(23) "Lessee" refers to any person having a communication site facility lease granted by the department authorizing a communication site facility on state-owned land.

(24) "Macro Cellular Facility" refers to any cellular communications facility that is not a small wireless facility. Macro cellular facilities are traditional cell towers and including but not limited to affiliated equipment such as buildings, towers, antennas, panels, and generators.

(25) "Market Value" means the most probable price, as of a specified date, in cash or in terms equivalent to cash for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller acting prudently, knowledgeably, and assuming neither is under undue duress.

(26) "Medium Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of 50,000 to 150,000 people.

(27) "Non-Commercial" means use by a local, county, state, federal or Tribal government, fire protection association, quasi-government entity, publicly owned and operated utility, a Person that qualifies as a state designated not-for-profit (non-profit), personal use, research and scientific use, or any other government or non-profit entity as determined by the director.

(28) "Person" includes individuals, corporations, associations, firms, partnerships, limited liability companies and joint stock companies as defined in ORS 174.100(6). For the purposes of these rules "Person" also includes any state or other governmental or political subdivision or agency, public corporation, public authority, or federally recognized Tribes in Oregon.

(29) "Personal Use" means the use of a communication site facility for amateur radio communications with no monetary gain to the lessee.

(30) "Research and Scientific Use" refers to using a communication site facility for scientific research communication with no monetary gain to the lessee.

(31) "Small Commercial" means a communication site facility lease that is for a commercial purpose and is located in a county that has a population of less than 50,000 people.

(32) "Small Wireless Facility" or "SWF" means a facility that meets each of the following conditions:

(a) The facilities:

(A) Are mounted on structures 50 feet or less in height including the antennas, or

(B) Are mounted on structures no more than 10 percent taller than other adjacent structures, or

(C) Do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater.

(b) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume.

(c) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume.

(d) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in the Federal Communications Commission's (FCC) Rules and Regulations 47 C.F.R. 1.1307(b).

(33) "State-Owned Land" is land owned or managed by the department or its agents and includes school lands and statutory lands.

(34) "Statutory Common School Fund Lands" or "Statutory Lands" is land owned or managed by the department other than Constitutional Common School Fund Lands, but are not limited to state-owned Swamp Land Act lands and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.

(35) "Sublease" means a lease for co-location between a lessee and a co-locator.

(36) "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.

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

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0130

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes and identifies the process and fees by which the Department will accept lease and renewal applications for communication site facilities.

CHANGES TO RULE:

141-126-0130

Application Requirements for a Lease or Lease Renewal

(1) Any person wanting to use state-owned land for a communication site facility lease:¶

(a) Must contact the department to schedule and complete a pre-application meeting:¶

(b) Submit a complete application in the format provided by the department; and¶

(c) Pay a non-refundable application processing fee to the department.¶

(2) The application processing fee for a new communication site facility lease or renewal lease with changes per OAR 141-126-0140(11)(a) is:¶

(a) Non-commercial uses:¶

(A) Personal or research and scientific use: \$375¶

(B) All other non-commercial uses: \$750¶

(b) Commercial use: \$1,000¶

(c) Cellular communications:¶

(A) Macro cellular facility: \$1,500¶

(B) Small wireless facility:¶

(i) \$500 for up to five SWFs in the same application.¶

(ii) \$100 per additional SWF beyond five in the same application.¶

(iii) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.¶

(3) The application processing fee for a lease renewal with no changes as described in OAR 141-126-0140(11)(b) and (c) is:¶

(a) All non-commercial uses: \$375¶

(b) Commercial use: \$500¶

(c) Cellular communications macro cellular facility: \$750¶

(d) Cellular communications small wireless facility:¶

(A) \$500 for up to five SWFs in the same application.¶

(B) \$100 per additional SWF beyond five in the same application.¶

(C) \$1,000 for a new pole (not a co-location) intended to support one or more SWF.¶

(4) Unless otherwise allowed by the director, a fully completed application for a lease for non-commercial or commercial uses must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶

(5) Unless otherwise allowed by the director, a fully completed application for a lease for a macro cellular facility must be submitted to the department at least 150 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a macro cellular facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 150 calendar days prior, but not more than one year prior to the expiration of the existing lease.¶

(6) Unless otherwise allowed by the director, a fully completed application for a lease for a small wireless facility must be submitted to the department at least 90 calendar days prior to the proposed use or placement of a development subject to these rules in, on, or over state-owned land. For a lease renewal for a small wireless facility, unless otherwise allowed by the director, a fully completed application must be submitted to the department at least 90 calendar days prior, but not more than one year prior to the expiration of the existing lease.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

RULE SUMMARY: Establishes and identifies the process that the Department will adhere to for evaluating and approving lease and lease renewal applications.

CHANGES TO RULE:

141-126-0140

Lease Application Review and Approval Process

(1) Upon receipt of an application for a lease, the department will determine:¶

(a) If the application is complete and accurate including all required documentation;¶

(b) If the requested area is available for the requested use;¶

(c) The primary type of use (non-commercial, commercial, or cellular communications) being requested through the application. These use categories will be used to determine the amount of compensation payable to the department pursuant to OAR 141-126-0150 and OAR 141-126-0210;¶

(d) If a lease under these rules is the required form of authorization;¶

(e) If another authorization under separate department rules may also be required along with a communication site facility lease; and¶

(f) If additional information is required concerning the:¶

(A) Proposed use of the state-owned land;¶

(B) Applicant's financial status or past business or management practices; and¶

(C) If the equipment and structures described in the application will be the property of the applicant or another person.¶

(2) The department will advise the applicant of its determination concerning each of the factors in OAR 141-126-0140(1) within 30 calendar days of receipt of the application. Applications determined by the department to be incomplete, or for an area in which the use would be incompatible, will be returned to the applicant with a written explanation of the reason(s) for rejection.¶

(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the department returned it to the applicant (as determined by the date of postmark or email) with all deficiencies noted by the department corrected, no additional application fee will be assessed.¶

(4) If more than one application for a specific area is received by the department for the same or conflicting uses subject to authorization by a lease, the department may:¶

(a) Determine which proposed application best fulfills the policies specified in OAR 141-126-0110 and accept and proceed with that application and deny the others; or¶

(b) If neither use is determined by the department to be demonstrably better, make the requested area available to the public by competitive bid pursuant to OAR 141-126-0210.¶

(5) Upon acceptance by the department, the application for a new lease will be circulated to applicable local, state, federal agencies, Tribal governments, and other interested persons, including but not limited to adjacent property owners, lessees, or persons granted other authorizations from the department, for review and comment. As a part of this review, the department will specifically request comments concerning:¶

(a) The presence of state or federally listed threatened and endangered species (including candidate species) and if a survey is required;¶

(b) Archaeological and historic resources within the requested area that may be disturbed by the proposed use and if an archaeological survey is required;¶

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

(d) Conformance of the proposed use with the local comprehensive land use planning and zoning ordinances;¶

(e) Conformance with the policies described in OAR 141-126-0110 of these rules; and¶

(f) Potential conflicts of the proposed use with existing or proposed uses of the requested area.¶

(6) The department may request comments from the Federal Communications Commission, Oregon Public Utility Commission, Federal Aviation Administration, U.S. Department of Defense, any other person owning or leasing communication site facilities at the communication site, and any other person or applicable entities or interested parties who advise the department that they want to receive notification of such applications.¶

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

(8) After receipt of comments concerning the proposed use, the department will advise the applicant in writing within 30 calendar days from the date the comment period closes of:¶

(a) If changes in the use or the requested area are necessary to respond to the comments received;¶  
(b) If the proposed use will cause interference with existing uses at the communication site. The applicant must remedy any frequency interference identified, as existing authorized frequencies are senior in right to new requests; the applicant may be required to provide documentation from the Federal Communications Commission verifying the proposed use has been approved by the FCC.¶  
(c) If additional information is required from the applicant, including but not limited to a survey, completed at the applicant's expense, of:¶  
(A) State or federally listed threatened and endangered species (including candidate species) within the requested area; or¶  
(B) Archaeological and historic resources within the requested area;¶  
(d) If the area requested for the lease will be authorized for use by the applicant through a lease; or¶  
(e) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-126-0210.¶  
(9) Upon receipt of updated application information as required by OAR 141-126-0140(8)(a) through (c), an additional comment period may be initiated by the department.¶  
(10) If the department approves the application, no changes are required as a result of the comment period(s), and no public auction is required, the department will notify the applicant in writing within 30 calendar days of the end of the most recent comment period of:¶  
(a) The amount of compensation pursuant to OAR 141-126-0150;¶  
(b) Any insurance or surety bond or other financial instrument required by the department pursuant to the requirements of OAR 141-126-0200; and¶  
(c) A draft copy of the lease.¶  
(11) Upon acceptance by the department of a lease renewal application the department will determine if there is a change in use, size of the leased premises, or frequency.¶  
(a) If the department determines there is a change in use, size of the leased premises, or frequency, the application will be processed as described in OAR 141-126-0140(1) through (10);¶  
(b) If the department determines there is no change in the use, size of the leased premises, or frequency, and the lessee has fully complied with the terms of the lease, applicable statutes, administrative rules, and any other authorization granted to them by the department, the lessee may be eligible for a lease renewal term as conditioned in the lease;¶  
(c) If the department determines the renewal complies with the requirements of OAR 141-126-0140(11)(b), the department shall provide written notice to the lessee that the lease has been renewed for the additional term as stated in the notice. As a condition of renewal, the department shall have the right to require amendment to the terms and conditions of the lease at the time of renewal. If the lease contains a provision requiring that the annual compensation be redetermined upon renewal, the written notice from the department shall include the new annual compensation rate.¶  
(12) A communication site facility lease, even if signed by the department, will not be effective unless and until the applicant has:¶  
(a) Paid all fees and compensation specified in the lease;¶  
(b) Provided evidence of any required insurance, surety bond, or other financial instrument; and¶  
(c) Met all terms and conditions of these rules.¶  
(13) In addition to the provisions of OAR 141-126-0140(10) and (12), a communication site facilities lease issued by the department may not be valid until the lessee has received all other approvals required by the department (such as a removal-fill permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the communication site in the manner requested, unless otherwise determined by the director.¶  
(14) The director may refer any application to the State Land Board for review and approval.  
Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245  
Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5



ADOPT: 141-126-0150

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the minimum compensation rates due to the Department for specific types of communication site facilities.

CHANGES TO RULE:

141-126-0150

Compensation

(1) A lessee must remit to the department on a basis provided in the lease annual base rent as determined by the department for the type of use described in OAR 141-126-0150(2) and (3).

(2) Minimum annual base rent for communication site facility leases will be:

(a) Non-commercial uses:

(A) Personal or research and scientific: \$750 per year or a one-time, lump sum amount as agreed upon by the department for the term of the lease.

(B) Local or county government and emergency services: \$3,000 per year.

(C) State, Tribal, or federal government and emergency services: \$4,500 per year.

(D) Non-profit/Non-commercial: \$3,000 per year.

(b) Commercial uses:

(A) Small commercial: \$4,000 per year.

(B) Medium commercial: \$6,000 per year.

(C) Large commercial: \$8,000 per year.

(c) Cellular Communications:

(A) Macro cellular facility: \$10,000 per year.

(B) Small wireless facility: \$270 per facility per year.

(3) Notwithstanding anything in OAR 141-126-0150(2), in the following circumstances, the department reserves the right to establish the annual base rent in amounts that may be greater than the minimum annual base rent:

(a) The minimum bid when the lease is awarded through public auction.

(b) At the department's discretion, an appraisal may be required to determine the market value for the area to be occupied by the communication site facility.

(c) This section does not apply to small wireless facilities.

(4) The amount of annual base rent paid to the department will increase annually by three percent for every year after the date these Division 126 rules are effective.

(5) Upon renewal of a lease, the base rent for first year of the renewal lease will equal the amount of the base rent for the final year of the previous lease plus three percent, unless the department has completed a market value study or an appraisal.

(6) To the extent allowed by ORS 758.010, communication site facilities may be exempt from the mandatory compensation payments specified in OAR 141-126-0150. However, the owners of such facilities must apply for and obtain an authorization from the department.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

RULE SUMMARY: Establishes the general terms and conditions to be included in a lease and identifies the rights and responsibilities of the Department and the lease holder.

CHANGES TO RULE:

141-126-0160

General Terms and Conditions

- (1) The initial term of a lease may be up to, but not exceed 10 years, unless otherwise approved by the director. The department will determine the length of a lease and any renewal provisions based on the nature of the use for the requested area. The initial lease term and renewal term(s) combined will not exceed 30 years from the effective date of the lease.¶
- (2) Leases will be offered by the department for the minimum area determined by the department to be required for the requested use.¶
- (3) A communication site facility lease issued by the department will be on a form supplied by the department that has been reviewed by the Oregon Department of Justice.¶
- (4) The department may choose at its discretion to close one or more leased premises or an entire communication site to public entry or restrict recreational use by the public to protect persons, property, or developments from harm.¶
- (5) The department or its authorized representative(s) will have the right to enter into and upon the leased premises at any time.¶
- (6) Unless otherwise agreed to in writing as a provision of the lease, a lessee may not interfere with lawful public use of a leased premises, state-owned land adjacent to a leased premises, or obstruct free transit across state-owned land. At no time may the lessee or their representatives intimidate or otherwise threaten or harm public users of state land.¶
- (7) A lessee must dispose of all waste in a proper manner and must not permit debris, garbage, or other refuse to either accumulate within the leased premises or to be discharged onto state-owned land or waterways adjacent to the leased premises.¶
- (8) A lessee must cooperate and comply with:¶
  - (a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention, and control of noxious plants. The department will rely on the Oregon Department of Agriculture for information concerning which noxious plants present on a leased premises require corrective action by the lessee or the Oregon Department of Agriculture or its agents.¶
  - (b) The Oregon Department of Agriculture and the department in the management of plant pests and diseases; and¶
  - (c) The department and other agencies in the detection, prevention, and control of wildfires on state-owned land containing a communication site.¶
- (9) A lessee must conduct all operations within the leased premises in a manner that conserves fish and wildlife habitat, protects water quality, and does not contribute to insect or animal infestation, soil erosion, or the growth of noxious plants.¶
- (10) Unless otherwise agreed to in writing, the lessee must remove all developments as directed by the department within 180 calendar days of the date of the expiration or termination of the communication site facility lease. If the lessee refuses to remove the subject developments, the department may remove them and charge the lessee for doing so.¶
- (11) The lessee will not allow any other use to be made of or occur on the leased premises that is not specifically authorized:¶
  - (a) By that communication site facility lease; or¶
  - (b) By the department in writing prior to the use, including allowing co-location of all or a portion of the leased premises or structures therein.¶
- (12) A lessee must be the person which owns the equipment and structures installed on the leased premises.¶
- (13) A lessee employing contractors or facility managers for the purposes of site management as the lessee's representative is required to provide:¶
  - (a) Written verification providing permission and designating a facility manager, site manager, contractor, or sub-contractor employed by the lessee to communicate with the department regarding management of the communication site facility lease; and¶
  - (b) A single point of contact for all communication between the department and the lessee's facility manager concerning the lease administration.¶

(14) The lessee must maintain all buildings, equipment and similar structures or improvements located within the leased premises in a good state of repair as determined by the department.¶

(15) The lessee must label all buildings, structures, towers, and equipment (such as generators) within the leased premises. The label must include, at a minimum, the lessee's lease number.¶

(16) The lessee must notify the department of any equipment modifications resulting in a change of frequency. The department will notify other lessees of the communication site of the equipment modifications for review to identify any potential frequency conflicts. If a frequency conflict is identified, the lessee proposing the frequency change will work to resolve the frequency issue so as not to interfere with other authorized users. A lessee proposing a frequency change may be required to provide documentation from the Federal Communications Commission that the proposed frequency change has been approved by the FCC. The Federal Communications Act comprehensively regulates frequency interference.¶

(17) If requested by the department, a lessee must present evidence to the department prior to the use that it has obtained:¶

(a) All permits or approvals required by local, state and federal governing bodies to undertake the proposed use;¶

(b) Any permit or approval that may be required to obtain access or to cross land belonging to a person other than the department to undertake the use; and¶

(c) A surety bond, certificate of deposit, or other financial instrument and insurance as required by the department pursuant to OAR 141-126-0200.¶

(18) The communication site facility lease allows the lessee to access their communication site facility through state-owned lands adjacent to the leased premises.¶

(19) A lessee will indemnify the State of Oregon and the Department of State Lands in a manner that the department has determined will adequately protect the state from harm caused by the lessee's occupation or use of the leased premises.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0170

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the procedures for a lessee to notify the Department about a sublease to co-locate at a communication site facility, as well as the fees for submitting a new or renewal for a co-location sublease.

CHANGES TO RULE:

141-126-0170

Co-location of Communication Site Facilities

(1) A lessee wanting to co-locate with a separate person on a portion of an existing communication site facility is required to notify the department in writing at least 90 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(2) A lessee wanting to co-locate a small wireless facility with a separate person on an existing structure is required to notify the department in writing at least 60 calendar days prior to the date they propose allowing the co-locator to access the communication site or place or install equipment on the communication site facility. The lessee shall provide the department with a copy of the sublease between the lessee and the co-locator for which the lessee seeks the department's approval.

(3) Lessees submitting a new or renewal co-location sublease to the department for review must submit a non-refundable application processing fee of:

(a) Non-commercial uses: \$375.

(b) Commercial uses: \$500.

(c) Cellular communication macro cellular facility: \$750.

(d) Cellular communication small wireless facility: \$100.

(4) All sublease terms must be approved by the department, and the department may condition approval of a sublease on the lessee revising the sublease in the manner prescribed by the department.

(5) For each approved sublease, the lessee shall pay the department on the basis provided in the communication site facility lease the following amounts as additional rent:

(a) Non-commercial uses:

(A) Personal or research and scientific: \$500 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Local or county government and emergency services: \$750 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) State, Tribal, or federal government and emergency services: \$1,125 one-time payment or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(D) Non-profit/non-commercial: \$750 one-time payment or 25 percent of fee charged by lessee to a co-locator per year, whichever is greater.

(b) Commercial uses:

(A) Small commercial: \$1,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(B) Medium commercial: \$1,500 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(C) Large commercial: \$2,000 per year or 25 percent of fee charged by the lessee to a co-locator per year, whichever is greater.

(c) Cellular communications:

(A) Macro cellular facility: 25 percent of the fee charged by the lessee to each co-locator per year.

(B) Small wireless facility: \$100 per year.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0180

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the procedure for administering lease modification applications and modification application fees.

CHANGES TO RULE:

141-126-0180

Lease Modifications

(1) Any current existing lessee in good standing must apply for a lease modification for the purposes of:

(a) Equipment upgrade or replacement that results in a change of frequency; or

(b) Any proposed ground disturbing activity; or

(c) Any change to existing communication site facilities structures, including but not limited to replacing an existing structure such as a building or tower, which results in an increase in the height of a tower, or any change in the footprint of a leased premises.

(2) A lessee must apply to the department in writing on a form provided by the department at least 90 calendar days prior to the proposed work being started. The application processing fee for a modification is:

(a) Non-commercial use: \$250.

(b) Commercial use: \$500.

(c) Cellular communications macro cellular facility:

(A) Equipment upgrade or replacement that results in a change of frequency: \$500.

(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$750.

(d) Cellular communications small wireless facility:

(A) Equipment upgrade or replacement that results in a change of frequency: \$250.

(B) Modifications per OAR 141-126-0180(1)(b) and (c): \$500.

(3) Lease modification applications are subject to a review process including, at a minimum, other authorized lessees located at the same communications site. Lease modification applications including changes identified in OAR 141-126-0180(1)(b) and (c) will require concurrence with comprehensive land use planning and zoning from the local planning jurisdiction.

(4) If the department approves a lease modification, in order for such modification to be effective, it must be documented through a written amendment to the lease signed by the department and the lessee.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0190

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the procedure for administering lease assignments.

CHANGES TO RULE:

141-126-0190

Assignment of a Communication Site Facility Lease

(1) A lease in good standing is assignable.¶

(2) To request the assignment of a lease, the lessee must submit a:¶

(a) Notice of proposed assignment on a form provided by the department at least 60 calendar days prior to the date that the assignment is requested to occur; and¶

(b) Non-refundable assignment processing fee payable to the department of:¶

(A) Non-commercial use: \$250.¶

(B) Commercial use: \$500.¶

(C) Cellular communications macro cellular facility: \$750.¶

(D) Cellular communications small wireless facility: \$250.¶

(3) The department may request additional information concerning the proposed assignment.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0200

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Addresses the Department's insurance and bond requirements and reserves the Department's right to require decommissioning plans for removal of a communication site facility.

CHANGES TO RULE:

141-126-0200

Insurance and Security; Decommissioning

(1) The department will require a lessee to obtain and maintain insurance requirements as determined by the department.¶

(2) The department reserves the right to require the applicant for a communication site facility lease or a lessee to provide information concerning the intended or actual use of the leased premises to the department, which may assist the department in determining the appropriate amounts and types of insurance.¶

(3) The department reserves the right to require a lessee to obtain a surety bond, a letter of credit, or other instrument of guarantee acceptable to the department in an amount specified by the department and which names the State of Oregon as co-owner, to ensure that the lessee will perform in accordance with all terms and conditions of a communication site facility lease or decommissioning plan.¶

(4) The lessee will ensure the Department of State Lands and the applicable authorization number(s) are listed as an additional insured under any and all insurance policies required for the communication site facility lease.¶

(5) The department may require a decommissioning plan for certain communication site facilities as a condition of the lease.¶

(a) In the event a decommissioning plan is required, the lessee has 180 calendar days from the date of lease commencement to submit a decommissioning plan to the department for approval. The decommissioning plan will also include a cost estimate of the decommissioning work. The cost estimate must be prepared by a person qualified by experience and knowledge to prepare such cost estimates. Failure to provide a decommissioning plan when required may result in lease default.¶

(b) The lessee may be required to obtain a surety bond or other financial instrument as described in OAR 141-126-0200(3) for the full amount of the decommissioning costs as determined by the risk assessment.¶

(c) The lessee is required to provide notice to the department in writing 60 calendar days in advance of implementing the decommissioning plan.¶

(d) The lessee must demonstrate to the department that the decommissioning work has been completed within 180 calendar days of termination of the lease to allow the department to release the surety bond or other financial instrument.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0210

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the process the Department will adhere to in the event competitive bidding for a lease is required.

CHANGES TO RULE:

141-126-0210

Competitive Bidding Process

(1) Except as provided in OAR 141-126-0110(10) and 141-126-0140(11), the department will determine on a case-by-case basis if a communication site or portion of a communication site requested for a lease will be offered to the public through competitive bidding. This decision will be made after considering:¶

(a) Whether the requested area is for a use located on school lands or statutory lands;¶

(b) The nature of the use and length of authorization requested; and¶

(c) Whether other applications received by the department to use the same requested area for the same or competing uses.¶

(2) The department will give a Notice of Lease Availability and provide an opportunity for applications to be submitted if it determines that the greatest public benefit and trust obligations of the department would be best served by offering the requested area through competitive bidding.¶

(3) The Notice of Lease Availability will state:¶

(a) The location and size of the requested area;¶

(b) The use approved by the department for the requested area;¶

(c) The minimum acceptable bid amount; and¶

(d) The deadline for submitting a completed application to the department.¶

(4) The Notice of Lease Availability will be:¶

(a) Published not less than once each week for two successive weeks in a newspaper of general circulation in the county or counties in which the requested area is located;¶

(b) Posted on the department's website;¶

(c) Sent to adjacent landowners bordering the requested area; and¶

(d) Sent to persons indicating an interest in the requested area.¶

(5) The department will evaluate all applications received for the requested area as advertised in the Notice of Lease Availability and will determine, at its discretion, the highest qualified applicant. The highest qualified applicant will be offered the lease subject to satisfaction of the requirements of OAR 141-126-0140 and 141-126-0160(3) of these rules. However, the department will have the right to reject any and all bids submitted.¶

(6) In the event no application is received upon the deadline established in the Notice of Lease Availability, the department may choose to offer the lease to the initial applicant per OAR 141-126-0210(1) if applicable or issue another Notice of Lease Availability to solicit competitive bid applications.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5



ADOPT: 141-126-0220

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the process the Department will adhere to in the event of default of a lease.

CHANGES TO RULE:

141-126-0220

Termination of a Communication Site Facility Lease for Default

(1) If the lessee fails to comply with these rules or the terms and conditions of the lease, or otherwise violates laws governing their use of the leased premises, the department will notify the lessee in writing of the default and may provide an opportunity for correction within a specified time frame.¶

(2) If the lessee fails to correct the default within the time frame specified, the department may modify or terminate the lease and take appropriate legal action.¶

(3) If a lessee fails to remove structures, buildings, or equipment upon termination of the lease, those structures, buildings, and equipment may become property of the department at the discretion of the department. The lessee is responsible for all costs to restore the leased premises to the pre-lease condition and all costs for the removal and disposal of structures, buildings, and equipment left on the leased premises

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5

ADOPT: 141-126-0230

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the process for investigating complaints of alleged unauthorized use of a communication site and remedies for correction of unauthorized uses.

CHANGES TO RULE:

141-126-0230

Enforcement Actions; Civil Penalties and Other Remedies

(1) Upon the director's own initiative, or in response to a complaint, the director may investigate a suspected violation of a communication site facility lease or the alleged unauthorized use of state-owned land to determine if use of the state-owned land conforms with the terms and conditions of a communication site facility lease or other department issued authorization or to determine if the use is not authorized.¶

(2) In conducting the investigation relative to suspected or alleged violations of a communication site facility lease issued by the director, the director or the director's agent may enter into buildings or structures owned by the lessee in order to determine if a violation has occurred. The department will provide the lessee advance notice prior to entering buildings or structures owned by the lessee during an investigation.¶

(3) Upon a determination that a violation of the communication site facility lease has occurred or that an unauthorized use of state-owned land has occurred, the director may exercise any available remedy or combination of remedies to bring the violation into compliance with the lease, including, but not limited to, the remedies set forth in the lease, imposition of civil penalties consistent with OAR 141-126-0230(4), or any other available remedies. The department will provide the lessee 60 calendar days in which to correct any violation prior to enforcement action being taken by the department. Failure of the lessee to comply with any obligation of the lease within 60 calendar days after notice by the department specifying the nature of the deficiency, or in the event of an emergency, within the time specified by the department to resolve the emergency, is considered a default of the lease and a trespass.¶

(4) The unauthorized use of state-owned land or the violation of an authorization granted under these rules constitutes a trespass. In addition to any other penalty or sanction provided by law, the director may assess a civil penalty per ORS 183.745 and 273.992 of not more than \$1,000 per day of violation for the following:¶

(a) Violations of any provision of OAR 141-126 or ORS Chapter 273 or 274; or¶

(b) Violations of any term or condition of a written authorization granted by the department under ORS Chapter 273 or 274.¶

(5) The director will give written notice of a civil penalty incurred under OAR 141-126-0230(4) by registered or certified mail to the person incurring the penalty. The notice will 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 person's right to request a hearing within 20 calendar days 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.¶

(6) The person incurring the penalty may request a hearing within 20 calendar days of the date of service of the notice provided in OAR 141-126-0230(5). Such request must be in writing. If no written request for a hearing is made within the time allowed, or if the person requesting a hearing fails to appear, the director may make a final order imposing the penalty.¶

(7) In imposing a penalty under OAR 141-126-0230 of these rules, the director will consider the following factors as specified in ORS 273.994:¶

(a) The history of the person incurring a penalty 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 the use of state-owned land;¶

(c) The impact of the violation on school lands or statutory lands.¶

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

(8) Pursuant to ORS 183.745(2), a civil penalty imposed under OAR 141-126-0230 will become due and payable 10 calendar days after the order imposing the civil penalty becomes final by operation of law or on appeal.¶

(9) If a civil penalty is not paid as required by OAR 141-126-0230, interest will accrue at the maximum rate allowed by law from the date first due.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5



ADOPT: 141-126-0240

NOTICE FILED DATE: 07/30/2024

RULE SUMMARY: Establishes the process the Department will adhere to in the event an applicant challenges a decision made by the Department.

CHANGES TO RULE:

141-126-0240

Reconsideration of Decision

(1) An applicant for a communication site facility lease, or any other person adversely affected by the issuance or denial of communication site facility lease on state-owned land, may request that the director or the State Land Board, depending upon which made the decision, reconsider the decision.¶

(a) Such a request must be received in writing by the director no later than 30 calendar days after the date of the decision.¶

(b) The director will review the request and reach a decision within 60 calendar days after the date that the director received the request.¶

(c) If the director made the underlying decision, the director may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration.¶

(d) If the State Land Board made the underlying decision, the State Land Board may affirm the decision, issue a new or modified decision, or request the applicant to submit additional information to support the request for reconsideration. The director may make a recommendation to the State Land Board.¶

(2) Upon exhausting the reconsideration process in subsection (1), the applicant or adversely affected person may submit an appeal for a contested case hearing pursuant to ORS 183.413 through 183.470. Hearing requests must be submitted within 20 calendar days of the decision after reconsideration.

Statutory/Other Authority: ORS 273.045, ORS 273.051(2)(b), ORS 273.245

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2 & 5