Waterway Leases, Licenses and Registrations (Division 82) RAC Meeting # 3 Summary

January 22, 2025; 9:00 a.m.

Overview

The Waterway Leases, Licenses and Registrations (Division 82) Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on January 22, 2025 via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules governing waterway authorizations.

RAC Members and Attendance

Name	Affiliation	Present?
RAC Members		
Alan Hanson	Oregon State Marine Board (OSMB)	x
Dylan Paul	City of Portland, Real Estate Services	x
Elizabeth Bowden	Columbia Crossings (Alternate)	x
Glenn Dolphin	Oregon State Marine Board (OSMB) (Alternate)	x
Garrett Phillips	Columbia River Estuary Study Taskforce (CREST)	x
Jim Ryan	Waterfront Organizations of Oregon (WOOO)	x
Jim Zimmer	Salmon Harbor Marina	x
Jon Hie	Hyak Maritime, LLC / Hyak Tongue Point, LLC	x
Justin Teutsch	Columbia Crossings	x
Laurel Hillman	Oregon Parks and Recreation Department (OPRD)	x
Lindsey Hutchinson	Willamette Riverkeeper	x
Mike Dunning	Oregon Public Ports Association (OPPA)	x
Staff/Advisors		
Danielle Boudreaux	Department of State Lands	x
Blake Helm	Department of State Lands	x
Justin Russell	Department of State Lands	x
Sylvia Ciborowski (facilitator)	Mosaic Resolutions	x
Interested Parties		
Angel	Department of State Lands	x
B Brupbacher		x
irdod		x
David Grant		x
Dario Frisone	Department of State Lands	
Denise Olson		x
Gary Scholder	Columbia Ridge Marina	x

Name	Affiliation	Present?
Ivy		x
Jacklyn Zatta		x
Jeff Ingegrigtsen	Paradise Moorage	x
Jennifer Miller	Department of State Lands	x
Kelly Holtz		x
Len Peterson		x
Lenny		x
Tammy Scholder		x

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants. She introduced herself as facilitator and highlighted the purpose of the meeting as an opportunity to continue discussion on proposed lease rates, application fees, and financial assurances; and to hear background information on and begin to discuss the application review process for new & renewal applications.

Department of State Lands (DSL) staff and RAC members introduced themselves.

Agenda Review; Zoom Protocols

Sylvia Ciborowski reviewed the meeting agenda and noted materials in the packet, which are available on the rulemaking website: https://www.oregon.gov/dsl/pages/rulemaking.aspx

Discussion – Draft Rules on Lease Rates and Application Fees (0305, 0306)

Blake Helm, DSL Proprietary Specialist, provided a reminder about what DSL is seeking to accomplish in updating the lease calculation method. DSL's objectives are to:

- Create a single method for calculating rent.
- Charge a reasonable, market-based rate for use of public lands.
- Discontinue the use of gross revenue to determine rent.
- Allow fees and rent to increase over time, accounting for inflation and other market increases.
- Mitigate negative impacts to lessees, as DSL transitions to new method.

Sylvia invited RAC members to provide input on the lease calculation method, and to focus on any suggested changes to the method.

RAC Comments on Use of Adjacent Land Value as Basis for Rent

Blake explained that DSL is proposing to use adjacent land value (ALV) as a basis for the rent, which would be modified at a 3-8% rental rate. Members had the following comments on use of ALV:

- Jon Hie noted it is important to have a valuation method that makes calculation predictable and forecastable. ALV may not be the appropriate tool in all cases, for example, in industrial areas that are bordered by high-value residential land that inflates in value very quickly. Blake Helm recognized the concern and noted that under the proposed formula, a leaseholder can forecast their rent over time.
  - Alan Hanson noted that all businesses in popular areas contend with rent increases. Jon Hie noted that marine businesses are in a different situation because there are limitations to what kind of commercial activity you can do on submerged lands, and land-based businesses do not have those restrictions.
- Garrett Phillips agreed that ALV is an imperfect value but is a good tool because it provides for a uniform valuation method that captures geographic value difference throughout the state.
- Justin Teutsch commented that the value of unimproved submerged land is only a fraction of the value of improved and zoned land. He suggested that the lease calculation formula consider the market rate of comparable unimproved unentitled submerged land; or instead, create a flat rate system instead with two tiers for premium and non-premium locations along with some escalators. Staff reminded members that the lease calculation method only takes 3-8% of the ALV and applies that to the lease, but there could be consideration for a lower rental rate. For example, ground leases often have a rental rate of 3% of the ground value.
- Jim Ryan noted that the formula itself is flawed because it leads to outrageous rents for many leases, which forces capped rates that are inequitable. There is a need for a reasonable calculation method; a 50% increase every five years on top of a 5% increase every year is not reasonable. He supported Justin's proposal for a flat rate system with tiers based on location, which also seems more administratively efficient than using ALV and regular increases.
- Dylan Paul suggested that DSL look to existing state guidance on appraisal methods. The draft rules could be updated to allow DSL to use the Oregon Department of Revenue appraisal method as an alternative to using ALV of comparable lots.
- Dylan noted that State Measures 5 and 50 protect housing stock and cap the amount that rents can be increased for residential leases. Any submerged leases for housing should meet those laws. He suggested treating residential and commercial leases differently.
- Staff clarified that the ALV looks at real market value of adjacent land, not the assessed values. Mike Dunning suggested using county-assessed values of land rather than true market values. Dylan noted that using real market value seems appropriate, and that assessed value would not be applicable for leasing purposes. Another member wondered if using county assessor values is considered deferring authority to another agency, which may be a problem.
- Mike Dunning asked staff to clarify the outcome that DSL is seeking to achieve through rate changes. Blake reiterated that the objective is to create reasonable lease rates that are based

on the market value and account for the activity and the location. DSL has no revenue target. The flat rate method substantially undervalues the use of the land; it does not compensate the public correctly for the use of state-owned lands, which is not equitable for the public.

- Dylan commented that flat rates are not a good tool for leasing purposes because they need to be supported by a fee rate study every 2 years. Instead, lease rates should reflect real market value for commercial purposes and should be guided by policies and guidance that other state departments use. The important thing is to have a defensible method, and to have different methods for commercial and residential leases.

RAC Comments on Annual Increases

Blake explained that DSL is proposing that lease rates as well as application fees increase by 5% each year to account for inflation and increased staff costs. Members had the following comments:

- Jim Ryan pointed out that under a recent rulemaking, other DSL rates are being increased at 3% and wondered how a 5% annual increase could be justified. He suggested using a 3% increase for lease rates for consistency. DSL staff had concerns that a 3% increase may not actually keep up with inflation.
- Dylan noted that ODOT leases are fixed at 3% annual increases as well.
- Garrett suggested that the agency could have a different basis for application fee increases since those are more based on staff time costs.
- Dylan added that typically permit and application fees are set by and justified on a Fee Rate Study every two years; while lease rates for public agencies are market-based logic.
- Several members supported annual 3% increases for lease rates rather than 5% increases, which seem more in line with longer term CPI projections.

RAC Comments on Lease Rate Caps

Blake explained that DSL is proposing that annual leases at renewal be capped at 1.5 times the last rent (if the rent increased at more than 1.5 times under the formula). Additionally, the rules propose annual lease caps of $150,000; and $175,000 after 15 years. Members had the following comments:

- Justin noted that the Jantzen Marina lease would increase from $33,000 to $1.5 million if uncapped. The caps are necessary to help with this issue, but the caps create inequity because everyone will effectively have the same lease whether big or small.
- Jim Ryan asked for the reasoning behind a 1.5 times cap as opposed to some other number like 1.1 or 1.3. He worried about the impact of exponential growth until a lease reaches $150,000. Blake noted that the caps are intended to limit immediate large increases for properties that have exceptionally high valuations. It is a mitigating factor to prevent rents from racing to the top. Very few leases would be in the situation of having the cap come into play, and most of those are in Multnomah County.
- Dylan pointed out that state law limits residential rate increases to 10% each year. He suggested that if lots of residential leases are low value and need to catch up, they only increase by 10% each year at a maximum. He suggested that commercial leases be reappraised

every 5 years and reassessed. Several other members agreed that residential leases should follow state guidance and increase no more than 10% each year.

- Garrett had concerns that the caps lead to unequal fees especially for smaller lessees. He suggested that rather than having the $150,000 caps on some leases, slow down lease increases for everybody.
- Laurel had a question about the fiscal impact of 5% increases for public facility licenses applications every year.

RAC Comments on Rental Rate Modifiers and Rental Rate

Blake explained that DSL is proposing a list of ways that rental rates can be adjusted. The list is based on the types of activities and uses that tend to appear in lease applications, and how the department has viewed those activities historically. The modifiers assume lower rates for uses that have low or minimal impact, including personal recreation. Rates are higher for commercial activities, and there are location-based modifiers as well. DSL proposes a rental rate of between 3 and 8%, adjusted based on the modifiers. Members had the following comments:

- Jim Ryan commented that a modifier for an urban area does not seem appropriate because an urban lease rate would already be higher due to a higher ALV. He asked how DSL settled on a 3-8% rental rate and the values for the modifiers. Blake noted that DSL looked at how other states set their rental rates. Washington uses 3-7% for their rental rates. DSL currently uses a 5% rental rate in the riparian value method. DSL wants to be able to adjust the rate based on various factors that reduce or increase liability and risk for DSL, which is reflected in the modifiers.
- Jim Ryan suggested defining the modifiers in the rules, and others agreed.
- Jim Ryan suggested a different rate for moorages and marinas that are non-profit operations or are homes (for example, a 1% reduction). Alan and Lindsey noted that anything that takes away public right to use property should pay an appropriate fee because it restricts public use, including marinas and homeowners.
- Dylan noted that it is important that the rule changes do not lead to a loss in housing, whether that is considered residential housing or commercial residential. He suggested separating out treatment of residential and non-residential or perhaps having a “residential” modifier to avoid impact on housing. Blake added that HOAs would be considered non-commercial; perhaps this category could be broadened to other associations that are not seeking commercial gain.
- Dylan noted that the modifiers should encourage leaseholds that provide public access. There is significant benefit to public when there is safe water access. He suggested a modifier that brings the rental rate down for commercial leaseholds that provide a public boat launch, for example. Several others agreed with incentivizing public access.
- Mike Dunning suggested a carve out or something other than the commercial rate for public ports. These are public entities that operate for public benefit.

Discussion – Financial Assurances

Blake Helm explained that DSL proposes adding requirements in the rules for registration holders to obtain insurance. This would protect structures over Oregon-owned waterways from risks associated with being on a waterway. RAC members discussed this provision briefly at the last RAC meeting and expressed some concerns about the surety requirement, and DSL has updated the proposed rule language.

The proposed rule language:

- Notes that insurance providers are subject to DSL's acceptance. Registration holders are required to provide proof of coverage. They can provide a certificate of deposit in leu of insurance.
- Lists the conditions under which DSL would require surety, and states that any surety requirement would need director approval. Essentially, this is a high bar for requiring a surety, and not something DSL would require in everyday lease agreements.

RAC Questions and Comments

Sylvia invited RAC members to ask questions and provide input. A member noted that the updated language looks better. Members are invited to continue to consider the proposed language and provide written input before or at RAC 4.

Background: Application review process for new & renewal applications (0280, 0281 & 0290)

Justin provided background on updated rules for the application review process for new and renewal applications. He noted:

- Many of the proposed changes clarify the rules and remove duplicative language. Some rules are consolidated into their own sections.
- The rules consolidate the reasoning for why DSL may reject or deny an application.
- The rules also include new criteria for what type of public comment the department will consider for applications that need to go out for public comment. The intent is to set the scope so that DSL receives useful comments.
- The preference right and competitive bid process is consolidated into its own rule section. Most of the language remains largely the same. Some language from statute is pulled in that specifies what a competitive bid must contain. Also added language to clarify when public bids are not required or when the preference right is not required.
- The rules define when an applicant can and should apply for renewal (not less than 180 days and not more than 1 year before expiration of current authorization). The rules define the instances when a new application fee, rather than just a renewal fee, is required.
- The rules also clarify the existing process for renewal applications that include a change in use or area.

RAC Discussion on review process for new & renewal applications

Justin asked members to review the proposed rules and be ready to discuss at the next RAC meeting. Members had the following questions and comments:

- Members asked for clarity on the renewal period of 180 days to 1 year.
- Members asked when DSL sends out reminder notices for renewals. Staff noted that DSL tries to send the first renewal reminder about 60 days before renewal is due. The agency is in the process of implementing a new platform that will allow for automatic email notification for things like lease renewal reminders.
- Members asked how many applications for renewal DSL receives each year, and whether the proposed fees cover the administrative work to process them. DSL noted that the number of applications varies. Current application fees are in line with administrative costs, although some of the indirect work may not be covered.
- Mike Dunning asked if DSL could share the formula with the RAC to help show whether the proposed changes are meeting goals and objectives. Blake noted that DSL can share the formula, assumptions, and what staff costs are included.

Interested Party Comments

Sylvia invited interested parties to make comments. No interested parties provided comment.

Next Steps

Danielle reviewed next steps for the process:

DSL will meet with DSL program managers to review outcomes of RAC discussion and consider any potential changes to the lease calculation method.

RAC members will receive the RAC Meeting #3 summary and recording next week. The next RAC Meeting is on Feb 19, 2025.

At least one week in advance of each RAC meeting, RAC members will receive a meeting agenda and related materials. All materials will be posted to the rulemaking website: www.oregon.gov/dsl/Pages/rulemaking.aspx.

Adjourn

DSL staff thanked RAC members for their participation and adjourned the meeting.