



Waterway Leases, Licenses and Registrations (Division 82) RAC Meeting # 1 Summary

November 13, 2024; 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 November 13, 2024 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?
Members		
Alan Hanson	Oregon State Marine Board (OSMB)	X
Dylan Paul	City of Portland, Real Estate Services	X
Elizabeth Bowden	Columbia Crossings (Alternate)	X
Garrett Phillips	Columbia River Estuary Study Taskforce (CREST)	X
Jim Ryan	Waterfront Organizations of Oregon (WOOO)	X
Jon Hie	Hyak Maritime, LLC / Hyak Tongue Point, LLC	
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
Interested Parties		
Nataliya Stranadko	Department of State Lands	X
Amanda Becker		X
Angel	Department of State Lands	X
B Brupbacher	Department of State Lands	X
Carol		X
Catina Piliaris		X
Chris Van Drimmelen	Oregon State University	X
Craig Herman	Coos Curry Farm Bureau	X
David		X
Erin Serra	Department of State Lands	X

Name	Affiliation	Present?
Members		
Jaclyn Zatta	Department of State Lands	X
Jennifer Miller	Department of State Lands	X
John Ugai		X
Kyler		X
Lori Steele	West Coast Seafood Processors Association	X
Melody Rudenko	Department of State Lands	X

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the first meeting of the Rulemaking Advisory Committee (RAC). She introduced herself as facilitator for the process and highlighted the purpose of the meeting as an opportunity to hear background information and understand the roles and responsibilities of RAC members.

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>

Rulemaking Process

Danielle Boudreaux, DSL Rules and Records Coordinator, reviewed the RAC process and principles. She noted that the RAC is being convened to provide input on proposed lease rates and calculation method, proposed changes to application fees, proposed rule language, and potential fiscal impacts of the changes.

She reviewed the DSL rulemaking process, which includes approval to initiate rulemaking based on need, drafting of rule language, and engagement with the RAC. After the RAC process there will be a Notice of Proposed Rulemaking and a public comment period. Following that, the rules will be filed with the Secretary of State for subsequent adoption.

Operating Principles; RAC Role

Sylvia reviewed key highlights of the RAC Operating Principles, noting that the [Operating Principles](#) document is included in the meeting packet. She covered:

RAC member roles and responsibilities:

- The RAC is advisory to DSL. Members are responsible for attending all meetings and reviewing background materials to prepare for meetings. Members are encouraged to work collaboratively and consider multiple perspectives while discussing issues and coming to recommendations.

- RAC members may have alternates. RAC members are responsible for ensuring alternates are up to speed to be able to participate. Members should contact Sylvia to provide notice of alternates attending meetings at least 24 hours in advance of RAC meetings.
- Members are encouraged to bring up and address issues as early as possible in the process and avoid reopening issues that have been fully discussed in prior meetings. They should also seek to propose alternatives to resolve differences that meet multiple perspectives.
- RAC members should generally defer to DSL for all media communications related to the group’s process and recommendations and represent only their own perspective to the media unless otherwise discussed with the group or DSL.

The RAC meeting schedule, which includes six meetings:

#	Date	Time	Topic
1	November 13, 2024	9:00 AM	Administrative: Overview
2	December 11, 2024	9:00 AM	Lease rates, application fees and financial assurance requirements
3	January 22, 2025	9:00 AM	General provisions and lease conditions and application review process
4	February 19, 2025	9:00 AM	Abandoned and Derelict Vessels; administrative, formatting, and grammatical changes;
5	March 19, 2025	9:00 AM	Communication plan, fees & formulas sheet, updated application form, updated authorization forms
6	April 16, 2025	9:00 AM	Review materials for the Notice of Proposed Rulemaking

Facilitator role and DSL role:

- The facilitator’s role is to ensure a safe, welcoming environment where all members can participate, and conduct meetings to foster collaborative communication. The facilitator will distribute meeting summaries. Information disclosed in confidence to the facilitator will be kept confidential, though written communications may be subject to public records law. Members should reach out to the facilitator as the primary contact throughout the rulemaking.
- DSL’s role is to provide technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC. The Department will also be responsible for scheduling meetings, preparing meeting summaries, and maintaining a public record of the RAC process.

Public meetings and records:

- RAC meetings are public meetings and are open to the public. Interested parties are invited to observe and will have an opportunity to make timed comments at RAC meetings.

- All rulemaking written communications are public records and may be released in response to a public records request.

Sylvia asked RAC members if they had any questions or concerns with the Operating Principles, or whether they had any concerns about using these as the principles to guide their discussions. Members voiced no concerns.

Background and Rulemaking Purpose & Scope

Blake Helm, DSL Proprietary Specialist, provided background on DSL's proprietary program and authorizations. The presentation included:

DSL's proprietary program manages roughly 5,000 authorizations across the State of Oregon. Authorizations include easements, leases, licenses, access agreements and registrations and are issued under nine different divisions of administrative rules.

DSL proprietary staff have a number of duties within the program, including: processing applications, conducting site visits, reviewing certificates of insurance, handling compliance issues with authorization holders, and handling inquiries from the public.

Blake noted that this rulemaking process will cover three types of authorizations and one type of certification: public facility licenses, wharf certifications, registrations, and leases. As of June 30, 2024, active authorizations include 226 public facility licenses, 530 waterway leases, and 2,936 waterway registrations.

Blake then reviewed program revenues and expenditures for FY 2024. In that year, program expenditures totaled \$1.6 million. Revenue from application fees alone totaled about \$48,000. Of this total, \$33,000 came from Division 82 waterway leases and public facility license fees. With those revenues, proprietary coordinators processed 85 applications. Revenue from waterway registrations totaled \$177,000. With those revenues, waterway registration technicians processed 515 applications.

Blake noted that Division 82 also covers the Submerged Lands Enhancement Fund (SLEF). The SLEF is used to help covers costs for voluntary waterway stewardship projects. DSL appropriates money for the SLEF and has set aside \$200,000 for the SLEF in the last two biennia. DSL awards grants on a biennium basis.

Blake then reviewed the rulemaking overview and need. The last time DSL updated Division 82 was in 2013. At that time, three different methods for calculating rents were established in rule. After 11 years of implementation, issues have come up with the calculation methods, for example, similar users are not always paying similar rates. Additionally, some high-profile events have highlighted the need for a more sustainable way to do operations. For example, a lessee along the Columbia River stockpiling barely floatable vessels and unknown substances; this required a state-funded \$24 million clean-up that came out of the Common School Fund (CSF). Through normal site visits at other locations, DSL has seen similar levels of derelict structures and concerning issues. DSL seeks to amend the rules to required lessees to maintain their premises free of debris and remove unauthorized vessels.

To address these and other issues, the rulemaking seeks to make these updates:

- Simplify the method for calculating lease rates from three to one.
- Increase application fees to track with inflation, followed by an annual increase of 5%.
- Add a Submerged Lands Enhancement Fund fee to leases so that funding does not come out of programmatic costs.
- Add additional application fees in certain cases, for example for applications requiring review by the Department of Justice and for leases that go into holdover status.
- Set the initial lease term to five years instead of the current term which is up to 15 years. This is more in line with industry standards and will help DSL address management of waterway issues sooner.
- Require financial assurance for registrations (i.e., require that the lessees maintain insurance on structures).
- Use clear and simple language where current rule is confusing or overly complicated.

Blake then reviewed key comments that DSL has heard from RAC members and interested parties so far.

RAC Discussion

Members had the following questions and comments on the background information:

- Jim Ryan asked for clarity on the annual revenue that DSL receives from lease fees. Blake responded that DSL collects around \$2.4 million in lease fees annually. Some of those fees are used to process applications, since application fees are not enough to cover the actual cost of processing applications.
- Jim Ryan, Dylan Paul, and Mike Dunning requested more information on the totality of revenues that DSL receives and program expenditures relative to overall program revenue. They wanted to understand what the \$1.5 million of FY 2024 program expenditures covers. Blake noted that DSL can provide a summary of revenues and how expenditures are allocated for RAC Meeting #2 and will try to highlight the expenditures related to processing applications versus managing authorizations.
- Jim Ryan asked if DSL could show how much revenue is brought in by lessee type, as this would be helpful to understand fiscal impact. He referenced the appendix to the 2018 Waterway Leasing Study produced by Portland State University that includes a table of leases by type and associated revenues. Blake noted that DSL would see what it can provide, though some information may be difficult to manually extract. DSL can provide some examples from sample leases at next meeting that compares how the lease would have been calculated previously, and what the calculation would be under proposed rules.
- Jim Ryan asked for clarity on the proposed five-year lease term and how it applies to renewed leases. Blake explained that under the proposed rules, when a lease is renewed, there would be certain conditions that allow for an extended term beyond five years. Existing leases would not be affected; the term of existing leases will play out.

- Jim Ryan asked if the inspections every three years would allow DSL to cancel or modify the lease terms at that inspection period. Blake explained that DSL cannot modify leases unilaterally. The inspections allow DSL to highlight deficiencies. The best opportunity to modify leases is at the renewal date.

Interested Party Comments

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

Next Steps

Danielle reviewed next steps for the process. Staff will post all materials to the rulemaking website, including proposed rule language. Members will receive an email this week with that link to the proposed rule language and compensation rates and fees for their review. RAC members will receive the RAC Meeting #1 meeting summary and recording next week. The next RAC Meeting is on December 11, 2024.

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.

Sylvia added that RAC members should schedule individual meetings with the facilitator to be held in November and early December. This will be an important opportunity to hear initial input on the rules and help inform RAC agendas moving forward.

Adjourn

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