Waterway Leases, Licenses and Registrations (Division 82) RAC Meeting # 2 Summary

December 11, 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 December 11, 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)	
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
Catina Piliaris		X
Chris Van Drimmelen	Oregon State University	X
David Grant		X
Denise Olson		X
Errin Serra		X
Jeff Ingegrigtsen	Paradise Moorage	X
Jennifer Miller	Department of State Lands	X

Name	Affiliation	Present?
Members		
Jacklyn Zatta		X
Leonard		X
Robert Meyer		X
Stan Tonneson	Rocky Pointe Marina	X
Ted Seitz		X

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the second 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 information on proposed updates to the way lease rates are calculated and increases in application fees, and to hear RAC member input on these topics.

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

Meeting 1 Follow-Up: Lease Revenues

Blake Helm, DSL Proprietary Specialist, presented information on revenue that DSL receives from the waterway leases program. The presentation included:

- Reviewed the types of waterways that Oregon owns and DSL manages. These include Oregon's territorial sea, tidal waterways, navigable waterways, and meandered lakes.
- Reviewed the types of leases that DSL manages by use category. DSL surveyed 419 leases that it manages. 39% of the leases are commercial moorages and marinas, 21% are Marine Industrial Marine Service (MI/MS), 33% are non-commercial moorages and marinas, and 7% are non-marine use. Of these, 8% use the 3% gross method to calculate lease rates, 22% use the riparian value, and 70% use the flat rate method.
- Reviewed the amount of revenue that is brought in by leases under each rental rate calculation method. 70% of leases use the flat rate method, but they only account for 55% of revenue. 22% of leases use the riparian value calculation method, and they bring in 41% of revenue. 8% of leases use the 3% Gross calculation method, and they bring in 4% of revenue. In total, DSL receives $1.55 million in revenue from the 419 leases that were surveyed.
- Revenue is used to cover the department's costs for overseeing uses of Oregon-owned waterways. This oversight is done through 3 programs: propriety program, wetlands program,

and removal fill program. There are many costs associated with the work staff performs. Getting sufficient revenue ensures that the Common School Fund (CSF) does not need to make up the difference. DSL receives money from the General Fund at times, but usually just for very specific projects.

- Reviewed the revenues and expenditures:

Year	Proprietary Revenue	Proprietary Expenditures	Difference (Proprietary)	ARM* Revenue	ARM* Expenditures	Difference (ARM)
2020	$4.34M	$1.54M	$2.80M	$5.65M	$5.22M	$433K
2021	$3.92M	$1.44M	$2.48M	$4.88M	$5.28M	($399K)
2022	$4.04M	$1.94M	$2.10M	$5.81M	$6.03M	($220K)
2023	$2.97M	$5.55M	($2.58M)	$4.68M	$10.44M	($5.76M)
2024	$4.82M	$1.67M	$3.15M	$6.25M	$4.82M	$1.43M
5-yr Total	**$20.09M**	**$12.14M**	**$7.95M**	**$27.27M**	**$31.78M**	**($4.51M)**
5-yr Avg	**$4.02M**	**$2.43M**	**$1.59M**	**$5.45M**	**$6.36M**	**($902K)**

- Reviewed the role of the CSF. The main goal in collecting lease revenue is to compensate the public for the use of public lands. Any excess revenue should be going to the CSF as much as possible. DSL has a fiscal responsibility to manage the CSF using sound management practices. DSL seek to keep the CSF as a sustainable form of income for schools. CSF interest earnings are part of the funding mix for DSL operations, but DSL is seeking to reduce CSF subsidy of DSL programs.

RAC Questions and Comments

Sylvia invited RAC members to ask clarifying questions on the information presented.

- Alan Hanson asked if DSL can provide the acreage or square footage of the 419 leases it surveyed. DSL noted they will seek to provide that at a future time.
- Jim Ryan asked whether DSL is looking for a specific revenue amount from increased fees. DSL staff clarified that they do not have a revenue target. A goal of 100% cost recovery for DSL staff time would likely not be feasible. Instead, the change in lease rates aims to reach the goal of making lease rates more reflective of reasonable market rate values that take into account the value of the land and proposed use activity. Current DSL rates are incredibly low and considered under-market rates.
- Jim Ryan asked whether the information on the 419 leases is the same as what is shown in the 2018 Waterway Leasing Study spreadsheet, noting that the spreadsheet shows over 600 leases managed by DSL. Staff noted that the information presented today includes information from the spreadsheet plus updated information to represent real market values. DSL has a little over 500 active leases; the 600+ leases number in the 2018 report probably included closed and old leases that are no longer active. Jim Ryan expressed an interest in seeming more accurate numbers.

Background: Lease Rates and Financial Assurances

Blake Helm reviewed the purpose of today's meeting, which is to focus on three aspects of the rules:

- OAR 141-082-0305, which outlines the methods, rates and formulas used to calculate lease payments. The proposed changes would streamline methods for calculating lease payments.
- OAR 141-082-0306, which is a new rule and would put all application fees in one place in the rules (except for waterway registration fees, which are in a separate section).
- OAR 141-082-0330(2), which would allow DSL to require waterway registration holders to obtain insurance or other financial assurance.

Blake then provided background information and outlined the proposed changes for calculating lease rates:

- DSL is looking to meet these objectives in update lease rates:
    - Create a single method to calculate rent which is reasonable, market-based, and takes into account the location and activity on the leasehold. Current rental rates for leases often do not accurately reflect the cost associated with the authorized activity or use of the submerged land.
    - Remove the option for using gross revenue to calculate rent because of the administrative burden this method creates.
    - In current rules, fees do not increase as costs to DSL increase. The agency wishes to make sure that fees can increase commensurate with inflation and increased costs.
    - Mitigate negative impacts the changes may have on lessees. There are safeguards in the rules that would limit rate increases.
- DSL determined the proposed lease rates by looking at practices in nearby states. Most often the rates are based on the value of adjacent land, require an appraisal of the land, or consider the revenue of the use of that land. In some cases, the state comes up with an amount and it is not clear why.
- Reviewed the proposed lease rate calculation. The calculation for the lease payment is: ALV x RR x AA = Annual Lease Payment (ALP). The three factors in the calculation include:
    - Adjacent Land Value (ALV) – this is the bare land real market value of adjacent land. In some cases, comparable properties may be looked at if the adjacent land is not appropriate to use for valuation. The value is expressed as dollar per square foot value.
    - Rental Rate (RR) – this is between 3 and 8%. It is a fairly common practice when renting out property to take the value of the property and use a percentage of that value to calculate the rent. There are lots of ways the state can modify the RR, mostly based on location and type of use of the property.
    - Authorized Area (AA) – this is the square footage of the site.
    - The rules include caveats that the ALP must be within a minimum and maximum annual rate. Additionally, the ALP cannot be greater than 1.5 times the last rent payment.

Changes to the rent payment only come into effect when there is a new or renewing lease.

- Reviewed how the changes in lease rates would affect revenue.
    - For the 419 leases that were surveyed, about half would pay the minimum rate of $1,200 under the new lease calculation method. The median rent increase for existing leases would be less than $300. Because current leases have differing lease terms and some may not be up for renewal for a long time, it will take about 20 years for all leases to fall under new lease calculations.
    - Total estimated revenue for the 419 leases in the survey under the new calculation method is about $2.01 million, which is an increase of roughly $455K over revenue received the current calculation methods.
    - Most of the changes are to commercial and noncommercial marina/moorage use categories because most of these use the flat rate method which does not reflect true market rate.
- Showed two examples of how rental rates would be calculated under the proposed method:
    - For a Clackamas County commercial marina & moorage, the last rent was $656 using the 3% gross revenue method. This is what the calculation would look like under the new method:
        - The adjacent land value (ALV) is $20 per square foot.
        - Rental Rate (RR): Under the new method, three considerations and modifiers would apply and lead to an increase of 2.00% in the RR: the property it is in city limits (a 0.5% RR increase), it is in Essential Salmonid Habitat (a 0.75% RR increase), and it is a marina (a 0.75% RR increase). The 2% adjustment is added to the 3% base RR, totaling to a RR of 5%.
        - The authorized area (AA) is 21,750 square feet.
        - The ALP calculation is: ALV x RR x AA =→ 20 x 5% x 21,750 = $22,598
        - However, the new rate is well over the 1.5 maximum increase. Because of that, the minimum ALP of $1,200 applies and the new ALP is $1,200.
    - For a large Clatsop County commercial marina & moorage, the last rent was $5,908 using the 3% gross revenue method. This is what the calculation would look like under the new method:
        - The adjacent land value (ALV) is $0.50 per square foot.
        - Rental Rate (RR): Under the new method, four considerations and modifiers would apply and lead to an increase of 2.5% in the RR: the property is in a Port District and City Limits (a 0.5% increase in RR), is in Essential Salmonid Habitat (a 0.75% RR increase), is in a coastal zone (a 0.5% RR increase) and it is a marina (a 0.75% RR increase). The 2.5% adjustment is added to the 3% base RR, totaling to a RR of 5.5%.

- The authorized area (AA) is 609,040 square feet.
- The ALP calculation is: ALV x RR x AA =→ 0.50 x 5.5% x 609,040 = $16,749
- This is over the 1.5 maximum increase, so the rate is adjusted and the new ALP is $8,862. (i.e., the previous rent of $5,908 multiplied by 1.5)

RAC Discussion on Draft Rules for Lease Rates (OAR 141-082-0305)

Members had the following questions and comments on the proposed rules for lease rates:

- Dylan Paul noted that the new calculation might mean dramatic increases for some lessees and asked if DSL would consider a multi-year roll out or allow for rates to increase more slowly over a period of time, especially for lessees that have significant rate increases. Blake noted that rules limit rate increases to no more than 1.5 times the last rent, which helps keep rate increases from jumping significantly.
- Jim Ryan asked for clarification on the term "cost associated with authorized activity." DSL said this means the cost to DSL to manage the facility. For example, it costs more to DSL to manage and regulate a commercial marina versus a property with recreational use.
- Jim Ryan expressed appreciation for DSL's mission and the difficulties of getting work done with minimal staff. He noted that at the last State Land Board meeting, Board members said the purpose of the rule changes is to increase equity and simplify the calculations. However, the new lease calculation method doesn't seem to accomplish that. The 1.5 rate increase cap will mean more inequity between lessees that are hugely underpaying today and those that are closer to market rate today. DSL should consider some other measures for those leases where there is a huge gap between what the lessee is paying today versus what it would pay under the new method. The new method is also more complex (not simpler). 70% of leases are flat rate leases, which are the most administratively efficient, and are very easy to calculate. The new method seems more complex because DSL will need to calculate and monitor ALV for every lease. It is also unclear how the RR considerations and modifiers were developed.
- Jim Ryan and Jon Hie commented that the 5% annual increase for inflation seems too high, and is above current inflation levels. They suggested tying the annual increase to inflation. Staff noted that the Department of Justice has commented that rules should set a percentage increase rather than tying an increase to CPI to avoid ceding authority to another agency.
    - Jon Hie and Jim Ryan suggested that the annual increase be lower than 5% to be more reflective of actual inflation increases. Jim Ryan suggested looking at the Department of Labor statistics on inflation for rents.
- Jon Hie noted that the lease calculation formula and modifiers seem reasonable at first glance, and will need more time to look at them.
- Alan Hanson expressed support for DSL's goal of setting lease rates in a way that would adequately compensate the public for use of lands, rather than trying to reach some revenue goal. Lease rates should represent market rates. When leasing waterways, it means that other users cannot use that property. Alan also suggested that DSL partner with Oregon State Marine

Board (OSMB) in reviewing leases to understand how the new uses will affect other water body users.

- Mike Dunning expressed concern that not having a revenue target makes the lease calculation method seem arbitrary.
- Mike Dunning noted concern about the RR modifier for marinas. Public marinas cannot recoup costs the way commercial marinas can, and this should be considered when developing the RR for public marinas.
- Dylan Paul noted that the new method seems to lead to a long-tern sustainable program management effort. A revenue target would be inappropriate. Instead, it is reasonable to make lease rates more consistent and sustainable over time.
- Dylan Paul suggested an RR multiplier that allows for more public access. There could be more recreation and public access on the river if a modifier allows for it.
- Dylan Paul suggested rules that require a license for boats that are anchoring for more than 3 days, to more effectively deal with unlicensed activity.
- Justin Russell noted that the proposed rules have no modifier for historic vessels and structures, but perhaps there should be because that is a higher risk category.

RAC Discussion on Financial Assurances (OAR 141-082-0330)

RAC members will have an opportunity to discuss the rule updates for financial assurances for waterway registrations at a future meeting.

Dylan Paul expressed concerns about the burden of a surety bond requirement on lessees. Staff noted that the default way for lessees to show financial assurance is by carrying insurance. There are only rare instances where DSL would ask for the lessee to obtain a surety bond and does so in consultation with DAS Emergency Risk Management.

Background: Application Fees

Blake Helm provided background on the proposal to increase application fees. He noted:

- The proposed increases to application fees and waterway registration fees reflect inflationary increases since January 2013, which is when Division 82 rules were last updated. In general, the proposal is to increase fees currently set at $750 to $1000; and increase fees currently set at $375 to $500.
- The new fees are based on the minimum fee in the proposed fee schedule, which is $500. The fees would increase by 5% each year to account for inflation and increase in staff costs.
- There is also a proposed Submerged Lands Enhancement Fund (SLEF) fee of $100 to help DSL provide a sustainable funding source for the SLEF.

- DSL goes through a multi-step process whenever it receives an application. The application fee covers the staff cost to do all of this work.

RAC Discussion on Application Fees (OAR 141-082-0306)

Members had the following questions and comments on proposed increases to application fees:

- Jon Hie noted that the fee amounts seem reasonable but has concern over a 5% annual increase in fees, which outpaces inflation and would represent a 22% increase over five years.
- Jim Ryan noted that there is a lot of work that staff does to process applications, and suggested increasing fees beyond what is suggested to more accurately cover all staff time. He wondered if staff could figure out the actual staff time and charge fees commensurate with that. Staff responded that DSL has preliminary data on staff time and cost to review applications, but it is a small data set and it could take years to have a good sample size of data.
- Dylan Paul commented that the application fees are reasonable and are in line with what the City of Portland charges for a similar application review program. He suggested a reduced fee or different fee tier for applications for projects that have a public benefit or provide public use and access.

Interested Party Comments

Sylvia invited interested parties to make comments. Three interested parties provided comment.

- Ted Seitz asked how the public can make comments on the rules and ask questions. Staff replied there will be a public comment period after the draft rules have gone through the RAC process. The public should make their comments at that time or during public comment periods at RAC meetings. The public can also contact Blake Helm if they have questions or want to understand what the proposed rules would mean for their lease.
- Stan Tonneson, Rocky Point Marina, said that his marina includes 56 floating homes in the Portland Metro Area which are rent controlled. The rent controls are going down from 5% to a lower CPI value. The marinas cannot pass costs on to homeowners. Oregon has 2,000 empty slips. It is hard to raise rates because that would make the slips even less competitive.
- Jeff Ingegrigtsen, owner of Paradise Moorage, noted that the Governor and Treasurer spoke about CPI as a factor in the telecom industry. The upland method is not the best method. The modifications are cumbersome, subjective, and require a lot of potential increase in staff hours. Since most leases are flat rate leases, that is a better method. Hope that the CPI and the flat rate can continue.

Next Steps

Danielle reviewed next steps for the process. RAC members will receive the RAC Meeting #2 summary and recording next week. The next RAC Meeting is on January 22, 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.

DSL will cover the financial assurances topic at a future meeting since we did not have time for it today.

Jim Ryan added that the RAC has not had a lot of time to interact as a committee. The staff presentation took a lot of the meeting today, and the RAC will need time to discuss and get a sense of what others are thinking. He hoped for less presentation and more time for RAC input at future meetings.

Staff thanked members for their comments, noting that their input will make the rules better. Staff will consider the comments made today and consider how the rules can be changed in response. They will also work to ensure that there is more time for RAC discussion at future meetings. They noted that the RAC is advised against meeting outside of formal RAC meetings to avoid coming together as a quorum outside of the public process.

Adjourn

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