



# Oregon

Tina Kotek, Governor

## Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

[www.oregon.gov/dsl](http://www.oregon.gov/dsl)

## State Land Board

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October 29, 2024

KM410/8660-ENF

Tina Kotek  
Governor

LaVonne Griffin-Valade  
Secretary of State

Tobias Read  
State Treasurer

## STATE OF OREGON

### DEPARTMENT OF STATE LANDS

In the Matter of Violation of OAR 141-082-0260  
By PHILLIP WEISS  
7325 SW MALLARD CT.  
PORTLAND, OR 97223

File No: ENF-8660

Notice of Proposed Action  
(Post-seizure Notice)

And Opportunity for a Hearing

Pursuant to the Abandoned or Derelict vessel statutes in ORS 830.908 to 830.948, the Department of State Lands (hereinafter the Department) has seized the abandoned or derelict vessel referenced in this notice, based on violation of the applicable provisions of OAR 141-082-0255 and 141-082-0260 and ORS 830.908 through 830.948 as more particularly set forth below. In support of the proposed action, the Department asserts as follows:

#### I. AUTHORITIES

The State is the owner of certain submerged and submersible lands in this state, including those in Willamette River in Multnomah County (Oregon Admission Act, 11 Stat. 383 (1859); ORS 274.025; and ORS 274.710). The State delegated authority to the Department for the management of these submerged and submersible State lands (ORS 274.040 and ORS 274.710).

The Department rules provide that no person shall place a vessel on or make use of state-owned submerged and/ or submersible land without the required authorization described OAR 141-082-

0265 and defined in OAR 141-082-0255 unless the use is exempt from such authorization by law or these rules (ORS 274.040, OAR 141-082-0265, and OAR 141-082-0260(4)).

Unauthorized use of state-owned land constitutes a trespass (OAR 141-082- 0315(1)). The Director of the Department is required to investigate and prosecute all trespasses on state lands (ORS 273.185).

The Legislature has authorized enforcement agencies to investigate and seize vessels that are abandoned or derelict (ORS 830.908 to 830.948). The Department is an enforcement agency authorized to enforce the Abandoned and Derelict Vessel laws (ORS 830.908(4)). The Department's address and telephone number are:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301  
(503)986-5200  
dsl.waterways@dsl.oregon.gov

An enforcement agency may seize a vessel if the agency has probable cause to believe that the vessel is abandoned or derelict, and the owner fails to correct the issues identified in the agency's notice (ORS 830.911). In some situations, an enforcement agency may immediately seize the vessel, board the vessel, or take other actions as authorized by ORS 830.911.

At any time before the date specified in this Notice, the owner may immediately reclaim a seized vessel by (a) Paying all costs incurred by the enforcement agency in salvaging, towing and storing the vessel; and (b) Establishing to the satisfaction of the enforcement agency that the owner is able to move the vessel to a place where the vessel can be lawfully kept (ORS 830.933).

If a vessel is seized and not reclaimed in the manner provided by this Notice, title to the vessel and all personal property found in the vessel vests in the enforcement agency, and the enforcement agency may sell or otherwise dispose of the vessel and the property (ORS 830.933(2)).

The owner has a right to a hearing. If a hearing is requested, the hearing must be held within seven business days of the request. Statute sets out further requirements for the hearing (ORS 830.936).

A request for a hearing after a seizure must be in writing and submitted to the enforcement agency no more than 10 business days after the notice is given. The request must include a statement of the specific grounds on which the seizure is challenged, and whether the owner challenges the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency (ORS 830.931(4)). If the owner requests a pre-seizure hearing under ORS 830.918(5), the owner may request a post-seizure hearing only for the purpose of challenging

the reasonableness of any salvage, towing or storage costs incurred by the enforcement agency (ORS 830.931(5)).

If the owner requests a hearing but fails to appear at the hearing, the enforcement agency will proceed with the proposed action and the owner may be precluded from any further hearings on the matter (ORS 830.936).

Not less than 30 days after seizing a vessel, the enforcement agency may sell or destroy the vessel. The owner of a vessel shall be responsible for all costs arising out of salvage, towing, storage, and disposal of the seized vessel (ORS 830.938).

A vessel owner who fails to comply with a notice issued under ORS 830.918 or an order issued under ORS 830.936 may be found guilty of the offense of failure to remove an abandoned vessel or possession of a derelict vessel, both Class A violations (ORS 830.944 and ORS 830.990(9)).

## II. FACTUAL ALLEGATIONS

1. The vessel *OR 407 AEU* is a 9' Personal Watercraft manufactured in 1996 by Yamaha (HIN# YAMA1716H596) ("Vessel").
2. Phillip Weiss is listed as the owner of the Vessel through the Oregon State Marine Board
3. At the time of seizure, the Vessel was up on the sand on Goat Island on the Columbia River in Columbia County (45.944356, -122.814154). There was significant damage, and the motor had been removed from the Vessel.
4. Phillip Weiss does not have authorization from the Department to leave Vessel on state-owned submerged and/or submersible land.
5. The Vessel is in danger of sinking when the water levels rise in the near future.
6. The vessel was seized without notice as a derelict vessel in danger of sinking (ORS 830.911, ORS 830.923)

## III. CONCLUSIONS OF LAW

Based on the foregoing and pursuant to the authority cited above, the Department was authorized to seize Vessel as abandoned and derelict, pursuant to ORS 830.911. Title and ownership of Vessel and all personal property found on Vessel shall be vested with the Department on **November 29, 2024, at 5:00PM**. After this date, the Department is authorized to sell or otherwise dispose of the Vessel and the property pursuant to ORS 830.933(2).

Phillip Weiss is the owner of Vessel as defined in ORS 830.908. Phillip Weiss shall be liable to the Department for costs arising out of salvage, towing, storage, and disposal of Vessel, pursuant to ORS 830.938, which we estimate could approach \$20,000. If the Department's costs exceed \$20,000, the Department shall provide Phillip Weiss an updated notice of the Department's costs.

#### **IV. RIGHT TO RECLAIM VESSEL**

An owner may reclaim the Vessel by (a) paying all costs incurred by the Department in salvaging, towing, and storing the Vessel, and (b) establishing to the satisfaction of the Department that he is able to move Vessel to a place where it can be lawfully kept. An owner may reclaim Vessel by completing the above-described steps and moving the Vessel to a location where it can be lawfully kept by **November 29, 2024 at 5:00PM**.

If an owner does not reclaim the Vessel as provided above and move it to a location where it can be lawfully kept, the title and ownership of Vessel and all personal property found on the Vessel will be vested with the Department of State Lands. The Department may then sell or otherwise dispose of the Vessel and property pursuant to ORS 830.933(2). The Department may also pursue cost recovery efforts against owner for the Department's costs to salvage, tow, store and dispose of the Vessel.

#### **V. RIGHT TO HEARING**

An owner who is provided post-seizure notice has a right to a hearing on the post-seizure notice. A request for a hearing must be in writing and submitted to the Department no more than 10 business days after the post-seizure notice is given. A request for a hearing must be submitted before **November 12, 2024, at 5:00PM**. An owner may mail a request for a hearing to:

Department of State Lands  
775 Summer Street NE, Suite 100  
Salem, OR 97301  
503-986-5200  
[dsl.waterways@dsl.oregon.gov](mailto:dsl.waterways@dsl.oregon.gov)

The request must include a statement of the specific grounds on which the seizure is challenged, and whether the owner challenges the reasonableness of any salvage, towing, or storage costs incurred by the Department (ORS 830.931(4)). If an owner requested a pre-seizure hearing under ORS 830.918(5), that owner may request a post-seizure hearing only for the purpose of challenging the reasonableness of any salvage, towing or storage costs incurred by the Department (ORS 830.931(5)).

If an owner submits a timely request for a hearing, the Department must set a time for the hearing that is no more than seven business days after receiving the hearing request. The Department will notify the owner of the time and the place of the hearing. The owner will also be

given information on the procedures, right of representation, and other rights of parties relating to the conduct of the hearing before commencement of the hearing. If the owner's request for a hearing is not received by the Department within 10 business days or if the request otherwise fails to comply with the requirements of ORS 830.936, ORS 830.918, and ORS 830.931, then the owner's right to a hearing shall be considered waived.

## **VI. FINAL ORDER BY DEFAULT**

If a request for a hearing is not submitted within 10 business days of the notice, or if an owner requests a hearing and then either withdraws the hearing request or fails to appear at a scheduled hearing, and does not otherwise reclaim and move the Vessel, this Notice becomes a final order by default, and the title to the Vessel and personal property will vest in the Department. The owner of the Vessel will be responsible for all costs arising out of salvage, towing, storage, and disposal of the Vessel. If this Notice becomes a final order by default, the Department designates its file on this matter, including any materials submitted by an owner that relate to this matter, as the record for purposes of proving a prima facie case.

## **VII. FEDERAL SERVICEMEMBERS CIVIL RELIEF ACT**

Active duty servicemembers have a right to stay certain proceedings under the federal Servicemembers Civil Relief Act. See generally 50 USC 3901 et seq. For more information, contact the Oregon State Bar (800-452-8260), the Oregon Military Department (503-584-3571), or the nearest United States Armed Forces Legal Assistance Office (<http://legalassistance.law.af.mil>). The Oregon Military Department does not have a toll-free telephone number.

DATED on this 29<sup>th</sup> day of October, 2024.



Josh Mulhollem  
Manager, Waterways Stewardship Program  
Aquatic Resource Management Division  
Oregon Department of State Lands

CERTIFICATE OF FILING/SERVICE

I hereby certify that on the 29<sup>th</sup> day of October, 2024, I posted the substance of this notice on a website maintained by the Department of State Lands.

I further certify that on the 29<sup>th</sup> day of October, 2024, I served the within Post Seizure Notice on Phillip Weiss certified and first-class mail to the addresses listed below:

7324 SW Mallard Ct  
Portland, OR 97223

DATED this 29<sup>th</sup> day of October 2024.

Print name: Heather Klebs

Position: Support Services Specialist







