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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED

10/19/2023 3:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Restriction on motor vehicles and discharge of firearms at the Sandy River, Multnomah County.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/01/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Danielle Boudreaux
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/15/2023

TIME: 6:00 PM

OFFICER: Chris Castelli

HEARING LOCATION

ADDRESS: Kellogg Community Room, 234 SW Kendall Ct., Troutdale, OR 97060

SPECIAL INSTRUCTIONS:

This proposed rule will be presented to the State Land Board for adoption in 2024 and will be open to further public comment. For State Land Board agendas please visit <https://www.oregon.gov/dsl/Board/Pages/SLBmeetings.aspx>.

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-444-9171

CONFERENCE ID: 2508868653

SPECIAL INSTRUCTIONS:

Web Passcode: w#EnJ067

Phone Passcode: 87671005

NEED FOR THE RULE(S)

The Department of State Lands oversees the beds and banks of the Sandy River, as well as approximately 50 acres of natural area adjacent to the Sandy River Delta, a 1,500-acre U.S. Forest Service natural area extensively used for recreation.

For more than a decade, this area has been used for long-term camping by people experiencing unsheltered homelessness. The Department works with the U.S. Forest Service, the Multnomah County Sheriff's Office Homeless

Outreach and Programs Engagement (HOPE) Team, METRO regional government, and other partners to reduce impacts of long-term camping, with an emphasis on connecting people with services and housing.

The Department and partners are receiving increased reports of vehicles being driven and parked on state-owned lands, and of firearms being discharged. Concerns with these uses include:

- Firearm discharge puts people using the natural area at risk. Thick brush reduces visibility past 100 yards in most places. In addition, Troutdale Airport is directly across the river and aircraft frequently fly directly overhead.
- Driving and parking in the natural area creates safety and health risks. Since trails are unlit and for pedestrian use only, the use of vehicles on them increases the risk and likelihood of injury. Fire risk is also increased when vehicles access the natural area as the heat from the engine and exhaust can ignite dry brush. The area has no maintained roads, and therefore vehicles park over brush.
- Additionally, vehicles leak fuel, oil, and other toxic liquids, and introduce exhaust, affecting both human and environmental health. They can damage vegetation, create rutted trails, and increase runoff and soil erosion through soil compaction, both of which contribute to the degradation of water quality.

On August 1, 2023, the Department enacted emergency restrictions on use of vehicles and firearms on state-owned lands at Sandy River Delta to address the health, safety, and environmental hazards created by driving vehicles and discharging firearms in the natural area.

The Department is undertaking the rulemaking process to permanently restrict vehicle use and discharge of firearms. Sandy River Delta partners support both the emergency restrictions and the permanent restrictions through rulemaking.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

- Oregon Constitution, Article VIII, Sections 2, 4, 5, & 7:
https://www.oregonlegislature.gov/bills_laws/Pages/OrConst.aspx
- ORS 273-State Lands Generally: https://www.oregonlegislature.gov/bills_laws/ors/ors273.html
- ORS 274-Submersible and Submerged Lands: https://www.oregonlegislature.gov/bills_laws/ors/ors274.html
- OAR 141-088-Public Recreational Use of State-Owned Property:
<https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=353>
- August 8, 2023 State Land Board Meeting-Agenda Item #3:
https://www.oregon.gov/dsl/Board/Documents/August08_2023LandBoardMeetingPacketweb.pdf

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Oregon Department of State Lands is committed to the fair, just, and unbiased treatment of people of all races. Actively identifying and addressing inequities to ensure inclusive public service is one of the Department's five core values.

Evaluating who a proposed administrative rule will impact, and how the rule may impact some groups of people differently than others, is essential to providing equitable service. During the rulemaking process, the Department and the Rulemaking Advisory Committee examined the following to ultimately determine the impacts the rule may have on racial equity:

- What persons and groups are subject to the rule?
- What issues the rule is seeking to address? Which racial groups are likely to be affected by those issues?
- Ultimately, what impacts may this rule have on racial equity?

The adoption of the rule is unlikely to impact racial equity in Oregon. Those likely to be subject to the proposed rules include all Oregonians, though in particular, recreational enthusiasts and people experiencing unsheltered homelessness will be most often subject to the restrictions. The proposed rules seek to address illegal and nuisance activities on Oregon-owned land, preserve the natural resources of Oregon, and improve the health and safety conditions for the public utilizing this natural area. Some exceptions will be for government employees on government business, and private companies (utility companies) that must access the property for company or official business.

FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate the proposed rulemaking to pose significant fiscal and economic impact to public or private interests. There are no developed or authorized uses at this location. The proposed rule takes into consideration and makes exceptions for government employees on government business, private companies needing access for official business and access for rescue and emergency workers. The proposed rules are consistent with existing recreational restrictions in OAR 141-088, et. sq., will help ensure safe and legal activity on Oregon-owned lands, and will protect Oregon-owned lands from damage. The permanent use restrictions are one element of a long-term solution for ensuring, safe and healthy waterways.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) It is anticipated that the following public entities will have a minimal fiscal impact from the adoption of these rules:

- Oregon Department of State Lands. Land Manager of the effected lands. Increased cost of monitoring, signage, rule implementation and enforcement. This agency is proposing the draft rule with the support of the State Land Board.
- Multnomah County Sheriff's Office. Local law enforcement, and partner to the Oregon Department of State Lands. Increased cost of monitoring, reporting, and enforcement. This agency has been consulted and is in support of the draft rule.
- United States Forest Service. Adjacent landowner, and partner to the Oregon Department of State Lands. Increased costs for monitoring and coordinating issues that affect both state and federal property. This agency has been consulted and is in support of the draft rule.

(2)(a) Only small businesses that use Oregon-owned land for recreational purposes would be impacted by any restrictions or closures imposed, and only if such restrictions were imposed on a site, parcel, or area of Oregon-owned land which a small business currently uses or may want to use in the future. Currently the Department is not aware of any small businesses that meet this criteria and use the Sandy River Delta for business purposes. It is unlikely that there will be any significant cost for small businesses to comply with the proposed rulemaking.

(2)(b) The Department does not anticipate the proposed rulemaking, if adopted, to result in increased costs for reporting, recordkeeping, and other administrative activities conducted by small businesses.

(2)(c) The Department does not anticipate the proposed rulemaking, if adopted, to result in increased costs of professional services, equipment supplies, labor and increased administration for small businesses to comply with the proposed rulemaking.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

At the time that the changes to these rules are made available to the public for review and comment, notice of their availability will be sent to persons on the Department's mailing list, many of whom are associated with or represent small business. In addition, the Department convened a Rule Advisory Committee, with multiple members representing small business interests. Their participation provided the Department with direct feedback on policy concepts from small business owners.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 141-088-0036

RULE SUMMARY: Restrictions on Use of Motorized Vehicles and discharge of firearms on the State-Owned lands of and adjacent to the Sandy River.

CHANGES TO RULE:

141-088-0036

Restrictions for State-Owned Property at the Sandy River Delta in Multnomah County

(1) All state-owned land that is under the jurisdiction of the Department, including state-owned lands between the line of ordinary high water and the line of ordinary low water, and any uplands of current or former islands in the Sandy River Delta from River Mile 0.0 to 2.5, or from the mouth of the Sandy River to the I-84 bridge crossing, including the Columbia River Side Channel, is closed to:

(a) Any, and all, use of motorized vehicles, including all-terrain vehicles.

(b) Any, and all, discharge of firearms.

(2) Excepted from this restriction are:

(a) Government personnel on official business,

(b) public and private employees performing company business as authorized by the Department,

(c) vehicles and persons involved in rescue or emergency activities,

(d) waterfowl hunters on foot during authorized waterfowl hunting season and in possession of a legal hunting license,

(e) Department authorized persons, and

(f) adjacent landowners inspecting or maintaining property.

(3) Any person who commits any criminal conduct on state lands described under (1), or violates any use restriction imposed by this rule, may be prohibited from entering or using state lands that are under management by the Department at the Sandy River Delta.

(a) The Director shall issue a written notice that explains the extent and duration of the prohibition./

(b) The person subject to the prohibition may appeal the decision and request a contested case hearing pursuant to ORS 183.413 through 183.470, by submitting a written request within 20 calendar days of the date of service of the notice./

Statutory/Other Authority: ORS 273.045

Statutes/Other Implemented: Oregon Constitution Article VIII, Section 5, ORS 273.171, ORS 274.025