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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141
DEPARTMENT OF STATE LANDS

FILED

06/15/2022 5:30 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: ADMINISTRATIVE RULES FOR AUTHORIZING SPECIAL USES ON STATE-OWNED LAND

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/31/2022 11:59 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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Salem, OR 97301

Filed By:
Allison Daniel
Rules Coordinator

HEARING(S)

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

DATE: 07/21/2022

TIME: 5:30 PM - 7:00 PM

OFFICER: Amber McKernan

ADDRESS: Department of State Lands
775 Summer St. NE

Suite 100

Salem, OR 97301

SPECIAL INSTRUCTIONS:

The public hearing will be held virtually via Zoom. Meeting links and call-in information are on the DSL website.

NEED FOR THE RULE(S)

Authorizations for Communication Site Facilities managed by the Department are currently administered by the Division 125 rules. With the adoption of the Division 126 rules, the Division 125 rules specific to Communication Site Facilities are no longer necessary.

Amendment of Division 125 rules is necessary to remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes, available online at www.oregonlegislature.gov or from the agency; and Oregon Administrative Rules, available online at sos.oregon.gov/archives/Pages/Oregon_administrative_rules.aspx or from the agency.

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

A commitment to equity acknowledges that not all people, or all communities, are starting from the same place due to

historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.

The proposed amendments to Division 125 rules and the adoption of Division 126 rules establishes rules for the administration and authorization of communication site facility leases on state-owned lands. The proposed rules do not represent a substantive change in policy and will functionally have no impact on employees, employers, or anyone else doing business with the department. Thus, it is highly unlikely that the rule change will impact racial equity in the state.

The department will be closely monitoring implementation of the amended Division 125 rules and the proposed Division 126 rules to look for potential unintended consequences though, as noted above, the overall general impact of the rule change will be negligible.

FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate any additional administrative costs to the state with the adoption and changes to these rules. This includes administering the application process, working with the applicant and affected stakeholders, drafting all required authorizations, compliance monitoring, legal defense of agency decisions, and State Land Board review and approval as needed.

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).

It is anticipated that these rules will not have any fiscal impact on state agencies, units of local government, members of the public, or small businesses. We do not expect the revision of these rules to require any other governmental agencies to engage in rulemaking or to adopt subsequent code or ordinance. There is no expected increase in reporting, recordkeeping, and other administrative activities, including professional services for small business. There will be no additional costs of compliance resulting from equipment, supplies, labor, and administration.

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

The Rulemaking Advisory Committee (RAC) included representatives from businesses and groups most likely to be impacted by these rule changes. Some of the affected stakeholders included, but are not limited to: wireless telecommunications representatives, current leaseholders, non-profit entities, state agencies, public utilities, Common School Fund beneficiaries, and federally recognized Tribes in Oregon.

Multiple small business representatives were invited to participate on the RAC but did not respond to the invite.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

141-125-0100, 141-125-0110, 141-125-0120, 141-125-0140, 141-125-0150, 141-125-0160, 141-125-0200

AMEND: 141-125-0100

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and

communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0100

Purpose And Applicability ¶¶

(1) These rules:¶

(a) Apply to the management of state-owned Trust and Non-Trust Land for special uses.¶

(b) Establish a process for authorizing such uses through the granting of leases, licenses and, short-term access authorizations (hereafter collectively referred to as a special use authorization).¶

(c) Do not apply to the granting of proprietary authorizations for uses specifically governed by other Department administrative rules¶

(2) A special use is one not governed by other Department administrative rules. Special uses include, but are not limited to, using state-owned land (including historically filled land) for:¶

(a) Agriculture;¶

~~(b) Communications facilities;¶~~

~~(c) Industrial, business, commercial and residential purposes;¶~~

~~(d) Native seed harvesting;¶~~

~~(e) Scientific experiments and demonstration projects;¶~~

~~(f) Conventions, sporting and other events;¶~~

~~(g) Recreational cabins;¶~~

~~(h) Commercial outfitting and guiding services;¶~~

~~(i) Motion picture filming and set construction;¶~~

~~(j) Renewable energy projects including, but not limited to wind turbines and wind farms, solar energy installations, geothermal resources installations and biomass generating facilities, and their related transmission lines within the authorized area;¶~~

~~(k) Removal of semiprecious stones, petrified wood and fossils for commercial purposes;¶~~

~~(l) Parking lots;¶~~

~~(m) Materials and equipment storage;¶~~

~~(n) Warehouses;¶~~

~~(o) Marine service and repair facilities on state-owned upland;¶~~

~~(p) Resorts and recreational facilities;¶~~

~~(q) Golf courses;¶~~

~~(r) Upland quarries;¶~~

~~(s) Geological investigations;¶~~

~~(t) Liquefied natural gas receiving plants;¶~~

~~(u) Grazing on land other than that designated as rangeland;¶~~

~~(v) Removal of juniper and other trees, plants or biomass for commercial use; and¶~~

~~(w) Removal of sunken logs, woody debris and abandoned pilings for their commercial value.¶~~

(3) The Director may determine other uses and developments similar to those specified in OAR 141-125-0100(2) that are also subject to a special use authorization and these rules.

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2; & 5

AMEND: 141-125-0110

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0110

Policies ¶

- (1) Pursuant to Article VIII, Section 5(2) of the Oregon Constitution, the State Land Board, through the Department, has a constitutional responsibility to manage all land (Trust and Non-Trust) under its jurisdiction "with the object of obtaining the greatest benefit for the people of this state, consistent with the conservation of this resource under sound techniques of land management."¶
- (2) All Trust Land will be managed in accordance with the need to maximize long-term financial benefit to the Common School Fund.¶
- (3) The Department will follow the guiding principles and resource-specific management prescriptions contained in the Asset Management Plan, and consider the comments received from federal, state, and local governments and interested persons when determining whether to authorize or condition a special use authorization on state-owned land.¶
- ~~(4) The use of state-owned land for the placement of communications facilities is recognized by the Department as a conditionally allowable use of that land, subject to and consistent with the requirements and provisions of the Telecommunications Act of 1996 and other applicable federal, state, and local laws.¶~~
- ~~(5) Each individual use of, or development placed on state-owned land will constitute a separate discrete activity subject to payment of compensation as required by these or other applicable Department rules, or as determined by the Director.¶~~
- ~~(6) Uses of, and developments placed in, on or over state-owned land pursuant to a special use authorization will conform with local (including comprehensive land use planning and zoning ordinance requirements), state, and federal laws.¶~~
- ~~(7) The Department will not grant a special use authorization if it determines that the proposed use or development would unreasonably impact uses or developments proposed or already in place within the requested area. Such a determination will be made by the Department after consulting with holders of leases, licenses, permits and easements granted by the Department in the requested area, and other interested persons.¶~~
- ~~(8) All uses subject to these rules must be authorized by a special use authorization issued by the Department. Authorization to occupy state-owned land cannot be obtained by adverse possession regardless of the length of time the use or development has been in existence.¶~~
- ~~(9) The Department may:¶~~
 - ~~(a) Conduct field inspections to determine if uses of, and developments in, on or over state-owned land are authorized by, or conform with the terms and conditions of a special use authorization and, if not,¶~~
 - ~~(b) Pursue whatever remedies are available under law to ensure that the unauthorized uses subject to a special use authorization are either brought into compliance with the requirements of these rules or removed.¶~~
- ~~(10) The Department will honor the terms and conditions of any existing valid lease or license for a special use granted by the Department including any that entitle the lessee or licensee to renewal if the holder of the authorization has complied with all terms and conditions of the authorization and applies to the Department for a renewal as prescribed in these rules.¶~~
- ~~(11) Holders of a license to conduct a demonstration project for a land-based (that is, not on state-owned submerged and submersible land) wind farm geothermal resource installation or solar energy installation will be given the first right to apply for a lease for the area authorized under the license.¶~~
- ~~(12) The Department may, at its discretion, authorize a demonstration project for a land based renewable energy project as part of a lease with the commercial electrical energy generating installation.¶~~
- ~~(13) The Department may, at its discretion, deny a special use authorization if the applicant's financial status or past business practices, or both, indicate that the applicant may not:¶~~
 - ~~(a) Be able to fully meet the terms and conditions of a special use authorization offered by the Department; or¶~~
 - ~~(b) Use the land applied for in a way that meets the provisions of OAR 141-125-0110.¶~~
- ~~(14) Notwithstanding the provisions of ORS 274.885, the Department will not allow or authorize the removal of kelp or other seaweed for commercial purposes.¶~~
- ~~(15) Notwithstanding the provisions of these rules, the Department may:¶~~
 - ~~(a) Initiate projects involving special uses of, or developments in, on or over the land it manages by itself or in conjunction with other persons;¶~~
 - ~~(b) Request proposals for special uses of, or developments on land it manages and select and award a lease~~

through a competitive bid process to develop the use(s) or development(s) based on the policies provided in OAR 141-125-0110; and¶

(c) Negotiate and accept compensation in the form of services in lieu of monetary payments provided for in these rules.

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0120

Definitions ¶¶

- (1) "Agriculture" means the cultivation of land to grow crops or the raising of livestock.¶¶
- (2) "Applicant" is any person applying for a special use authorization.¶¶
- (3) "Appraised Value" means an estimate of the current fair market value of property derived by disinterested persons of suitable qualifications, for example, a licensed independent appraiser.¶¶
- (4) "Asset Management Plan" is the plan adopted by the State Land Board that provides the policy direction and management principles to guide both the short and long term management by the Department of State Lands of the Common School Fund's real estate assets.¶¶
- (5) "Authorized" is the area of state-owned land defined in the special use authorization for which a use is authorized.¶¶
- (6) "Biomass" refers to renewable organic matter such as agricultural crops and residue, wood and wood waste, animal and human waste, aquatic plants and organic components of municipal and industrial wastes.¶¶
- (7) "Biomass Generating Facility" includes, but is not limited to the furnaces, boilers, combustors, digesters, gasifiers, turbine systems and other related equipment used to produce electricity, steam, heat, or biofuel from biomass.¶¶
- (8) "By-Products" means all commercially valuable products other than heat energy obtained in conjunction with the development of Geothermal Resources excluding oil, hydrocarbon gas, and other hydrocarbon substances.¶¶
- (9) "Commercial" means a use that results in or is associated with any monetary consideration or gain.¶¶
- (10) "Commercial Electrical Energy Generating Installation"¶¶
 - (a) Is any electrical energy generating facility:¶¶
 - (A) Operated as a commercial venture (as contrasted to being operated as a demonstration project);¶¶
 - (B) Connected to the regional power grid and used to meet local or regional demand for electricity; or¶¶
 - (C) Used to meet all or part of the electricity demand by a person who may otherwise have to purchase the electricity produced by the facility from another source.¶¶
 - (b) Does not include any solar, wind or hydroelectric devices operated by a person who uses them to generate electricity for their home and who sells excess self-generated electricity back to a utility under a net metering agreement.¶¶
- ~~(11) "Communications Facility" consists of the towers, antennas, dishes, buildings and associated equipment used to transmit or receive radio, microwave, wireless communications, and other electronic signals. The roads, pipes, conduits, and fiber optic, electrical, and other cables that cross state-owned land to serve a communications facility, however, are governed by the administrative rules for granting easements on state-owned land.¶¶~~
- ~~(12) "Comparative compensatory payment" is the amount of money paid to the owners of parcels that are similar to the state-owned land requested by an applicant for a use that is the same as, or similar to that requested by an applicant. When the applicant's requested use is in, on or over Trust Land, the comparative compensatory payment is the maximum amount of money private landowners receive for the same or similar uses in, on or over parcels that they own that are similar to the Trust Land requested by the applicant.¶¶~~
- ~~(13) "Compensation" or "Compensatory Payment" is the amount of money paid for a special use authorization to the Department for the use of Department-managed land.¶¶~~
- ~~(14) "Construction Period" as applied to wind, geothermal resources and solar energy projects is the time during which construction of the commercial electrical energy generating installation is underway.¶¶~~
- ~~(15) "Cropshare" is a method of determining the compensation to be paid by a lessee for the use of state-owned land for agricultural purposes in which the owner of the land receives a pre-agreed percentage of the value of the crop at the time it is harvested or sold.¶¶~~
- ~~(16) "Demonstration Project" is a limited duration activity of less than three years designed primarily to investigate or test the economic and technological viability of a concept or use of state-owned land under a license granted by the Department.¶¶~~
- ~~(17) "Department" means the Department of State Lands.¶¶~~
- ~~(18) "Development" is any structure (for example, a communications or cellular tower, shed or barn, fence, irrigation system, wind turbine, solar mirror or recreational cabin) authorized by the Department on an area of state-owned land managed by the Department.¶¶~~
- ~~(19) "Director" means the Director of the Department of State Lands or designee.¶¶~~

(2019) "Geothermal Resources" means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by or which may be extracted from, the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or of oil, hydrocarbon gas, or other hydrocarbon substances, but including specifically:¶¶

(a) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;¶¶

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;¶¶

(c) Heat or other associated energy found in geothermal formations; and¶¶

(d) Any by-product derived from them.¶¶

(210) "Historically Filled Lands" means those lands protruding above the line of ordinary high water, whether or not connected with the adjoining or opposite upland or riparian land on the same side of the body of water, which have been created prior to May 28, 1963 upon state-owned submerged and submersible land by artificial fill or deposit, and not including bridges, wharves and similar structures constructed upon state-owned submerged and submersible land by other than artificial fill or deposit.¶¶

(221) "Industrial, Business and Commercial Purpose" are uses of state-owned land not governed by other Department administrative rules. Such uses include, but are not limited to office buildings, manufacturing facilities, retail stores, outfitting and guide facilities and restaurants.¶¶

(232) "Lease" is a written authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions. The term of a lease is for one to 30 years.¶¶

(243) "Lessee" refers to any person having a special uses lease granted by the Department authorizing a special use on state-owned land managed by the Department.¶¶

(254) "License" is a written authorization issued by the Department to a person allowing the non-exclusive, short-term use of a specific area of state-owned land for a specific use under specific terms and conditions. A special use license has a maximum term of less than three years.¶¶

(265) "Licensee" refers to any person having a special use license granted by the Department authorizing a special use on state-owned land managed by the Department.¶¶

(276) "Materials and Equipment Storage" means the storage of logs, hay, containers, automobiles, coal, machinery or other items or materials on state-owned land (exclusive of rock, sand, gravel and silt derived from state-owned submerged and submersible land which are governed by other administrative rules).¶¶

(287) "Non-Trust Land" is land owned or managed by the Department other than Trust Land. Examples of Non-Trust Land include state-owned Swamp Land Act Land, and submerged and submersible land (land below ordinary high water) under navigable and tidally influenced waterways.¶¶

(298) "Operation Period" as applied to wind, solar, geothermal resources and biomass energy projects begins when the delivery of electricity from the commercial electrical generating installation begins.¶¶

(3029) "Outfitting and Guiding Services" include, but are not limited to commercial businesses involved in leading, protecting, instructing, training, packing, guiding, transporting, supervising, interpreting, or otherwise assisting any person in the conduct of outdoor recreational activities. The rental of equipment alone for use in outdoor recreational activities does not constitute commercial outfitting and guiding services.¶¶

(310) "Person" includes individuals, corporation, associations, firms, partnerships, limited liability companies and joint stock companies as well as any state or other governmental or political subdivision or agency, public corporation, public authority, or Indian Tribe.¶¶

(321) "Preference Right" means a riparian property owner's statutory privilege, as found in ORS 274.040(1), to obtain a lease without advertisement or competitive bid for the state-owned submerged and submersible land that fronts and abuts the riparian owner's property. The Department will not recognize a claim of lease preference right from a non-riparian owner. A person claiming the right of occupancy to submerged and submersible land under a conveyance recorded before January 1, 1981, has a preference right to the requested area.¶¶

(332) "Preference Right Holder" means the person holding the preference right to lease as defined in these rules and ORS 274.040(1).¶¶

(343) "Rangeland" is state land designated and managed by the Department for rangeland purposes.¶¶

(354) "Rangeland Purpose" is the use of rangeland for livestock grazing or conservation use.¶¶

(365) "Recreational Cabin" is a dwelling used only periodically or seasonally and is not the principal residence of the owner(s).¶¶

(376) "Semiprecious Stones" are gemstones having a commercial value that is less than precious stones such as diamonds, rubies, emeralds and sapphires. Semiprecious stones include, but are not limited to amethyst, garnet, jade, sunstone, topaz, tourmaline and zircon.¶¶

(387) "Short Term Access Authorization" is a non-renewable written authorization issued by the Department for a specific length of time determined by the Director that allows a person to enter a specific parcel of state-owned land for a particular purpose as described in OAR 141-125-0205.¶¶

(398) "Solar Energy Installation" includes, but is not limited to the photovoltaic panels, mirrors, power towers, heat engines, generators, transformers, inverters, parabolic troughs and other equipment required to produce electricity from solar energy.¶¶

(4039) "Special Use" is a use of state-owned land not specifically governed by other Department administrative rules. Special uses are listed in OAR 141-125-0100(2) and (3).¶¶

(440) "Special Use Authorization" is a lease, license or short-term access authorization issued by the Department to a person to use a specific area of state-owned land for a special use under specific terms and conditions.¶¶

(421) "State Owned Land" is land owned or managed by the Department or its agents and includes Trust and Non-Trust Land.¶¶

(432) "Submerged Land" means land lying below the line of ordinary low water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.¶¶

(443) "Submersible Land" means land lying above the line of ordinary low water and below the line of ordinary high water of all title navigable and tidally influenced water within the boundaries of the State of Oregon.¶¶

(454) "Sunken Log, Woody Debris and Abandoned Piling Salvage" means the retrieval of sunken logs, woody debris and abandoned pilings lying on, or partially or wholly embedded in state-owned land underlying Oregon's rivers and lakes that are removed for their commercial value.¶¶

(465) "Territorial Sea" has the same meaning as provided in ORS 196.405(6). It includes the waters and seabed extending three geographical miles seaward from the line of mean low water to the extent of state jurisdiction.¶¶

(476) "Trust Land" is land granted to the state upon its admission into the Union, or obtained by the state as the result of an exchange of Trust Land, or obtained in lieu of originally granted Trust Land, or purchased with trust funds, or obtained through foreclosure of loans using trust funds.¶¶

(487) "Upland Quarry" is a site on state-owned land from which rock, boulders, sand, gravel, silt or soil is removed for use for commercial and non-commercial purposes.¶¶

(498) "Wind Farm" is a facility consisting of wind turbines interconnected by an electrical collection system.¶¶

(5049) "Wind Turbine" is a machine that converts the force of the wind into electrical energy. A wind turbine usually consists of one or more moving blades connected to an electrical generator that is mounted on a tower.

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5

AMEND: 141-125-0140

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0140

Lease or License Application Review and Approval Process ¶¶

(1) Upon receipt of an application for a lease or license, the Department will determine:¶¶

(a) If the application is complete;¶¶

(b) If the subject area is available for the requested use;¶¶

(c) What method will be used to determine the amount of compensation payable to the Department pursuant to OAR 141-125-0150 and 0160;¶¶

(d) If a lease or license under these rules is the required form of authorization, and¶¶

(e) If additional information is required concerning the:¶¶

(A) Proposed use of the state land; and¶¶

(B) Applicant's financial status, or past business or management practices, or both.¶¶

(2) The Department will then advise the applicant of its determination concerning each of the five factors in OAR 141-125-0140(1). Applications determined by the Department to be incomplete, or for an area in which the use would be incompatible will be returned to the applicant with a written explanation of the reason(s) for rejection.¶¶

(3) If an application rejected for incompleteness is resubmitted within 90 calendar days from the date the Department returned it to the applicant (as determined by the date of postmark) with all deficiencies noted by the Department corrected, no additional application fee will be assessed.¶¶

(4) If more than one application for a specific area is received by the Department for the same or conflicting uses subject to authorization by a lease, the Department may:¶¶

(a) Determine which proposed use best fulfills the policies specified in OAR 141-125-0110, and accept and proceed with that application and deny the others; or¶¶

(b) If neither use is determined by the Department to be demonstrably better, make the subject area available to the public by auction.¶¶

(5) Upon acceptance by the Department, the application will be circulated to various local, state and federal agencies and other interested persons including tribal governments, adjacent property holders, affected lessees and permittees, and easement holders for review and comment. As a part of this review, the Department will specifically request comments concerning:¶¶

(a) The presence of state or federal listed threatened and endangered species (including candidate species), and archaeological and historic resources within the requested area that may be disturbed by the proposed use;¶¶

(b) Conformance of the proposed use with local, state, and federal laws and rules;¶¶

(c) Conformance of the proposed use with the local comprehensive land use plan and zoning ordinances;¶¶

(d) Conformance with the policies described in OAR 141-125-0110 of these rules; and¶¶

(e) Potential conflicts of the proposed use with existing or proposed uses of the requested area.¶¶

~~(6) If the application is for a communications facility, the Department will request comments from the Federal Communications Commission, Public Utility Commission of Oregon, and any other persons owning or leasing communications facilities who advise the Department that they want to receive such applications.¶¶~~

~~(7) The Department may post a notice of an application and opportunity to comment at a local government building, public library, or other appropriate locations in order to ensure that minority and low-income communities are included and aware of a proposed use. The Department shall make paper copies of an application available to any person upon request.¶¶~~

~~(8) After receipt of comments concerning the proposed use, the Department will advise the applicant in writing:¶¶~~

~~(a) If changes in the use or the requested lease or license area are necessary to respond to the comments received;¶¶~~

~~(b) If additional information is required from the applicant, including but not limited to a survey of:¶¶~~

~~(A) State or federal listed threatened and endangered species (including candidate species) within the requested area; and/or¶¶~~

~~(B) Archaeological and historic resources within the requested area.¶¶~~

~~(c) If the area requested for the lease or license will be authorized for use by the applicant through a lease or license, and¶¶~~

~~(d) Whether the subject area will be made available to the public through competitive bidding pursuant to OAR 141-125-0150. Only requests for leases may be subject to competitive bidding.¶¶~~

~~(9) If the Department decides to issue a lease to the applicant without competitive bidding, or a license, the~~

Department will notify the applicant in writing of:¶

(a) The amount of compensation pursuant to OAR 141-125-0160 that the applicant must remit to the Department to obtain the authorization;¶

(b) Any insurance and surety bond required by the Department pursuant to the requirements of OAR 141-125-0180; and¶

(c) A draft copy of the lease or license¶

~~(109)~~ The Department will not grant a lease or license to an applicant until:¶

(a) It has received all fees and compensation specified in these rules, and evidence of any required insurance and surety bond; and¶

(b) The requirements of OAR 141-125-0170(4) of these rules have been met;¶

~~(140)~~ In addition to the provisions of OAR 141-125-0140~~(98)~~, a special use authorization issued by the Department will not be valid until the holder has received all other authorizations required by the Department (such as a Removal-Fill Permit under ORS 196.800 to 196.990) and other applicable local, state, and federal governing bodies to use the state-owned land in the manner requested.¶

~~(121)~~ The Director may refer any applications for a lease or license to the Land Board for review and approval.¶

~~(132)~~ If an application is received and accepted by the Department for a lease on state-owned submerged and submersible land, the Department will, pursuant to the requirements of ORS 274.040, offer a preference right to lease to the eligible party as defined in OAR 141-125-0120~~(321)~~ and ~~(332)~~, hereafter referred to as the preference right holder. The Department will take the following steps to offer this preference right:¶

(a) If the proposed lease area consists of a single parcel, or two or more contiguous parcels owned by the same person, the Department will extend the boundaries of the single parcel or combined group of single-ownership parcels perpendicular to the thread of the stream creating a single lease parcel that fronts and abuts the upland ownership.¶

(b) If the proposed lease area consists of parcels having different owners, the Department will subdivide the requested lease area into smaller parcels by extending lines perpendicular to the thread of the stream from the boundaries of, or within the boundaries of the adjacent riparian tax lot so that there is a separate lease parcel for each parcel of property that fronts and abuts the lease area.¶

(c) In accordance with the proposed use(s), the Department will calculate in a manner consistent with OAR 141-125-0160 a minimum annual compensatory payment for each lease parcel.¶

(d) The Department will notify each preference right holder in writing that a lease application has been approved by the Department and provide 30 calendar days from the date that the letter is postmarked for the preference right holder to exercise the preference right to take the lease at the established minimum annual compensatory payment.¶

(e) If the preference right holder has accepted the offer of a preference right to lease and has executed the lease form and all other documents and remitted the required minimum annual lease rental payment within the required 30 calendar day period, the Department will execute the lease.¶

(f) If the preference right holder does not exercise the preference right to take a lease applied for by another person, the Department will prepare and publish an advertisement for bids pursuant to ORS 274.040 and hold a public auction pursuant to OAR 141-125-0150. The highest qualified bidder will be awarded the lease. The minimum bid amount will be set by the Department.

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2; ~~5~~

AMEND: 141-125-0150

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0150

Competitive Bidding Process ¶¶

(1) Except as provided in OAR 141-125-0110(~~109~~) and 141-125-0140(~~140~~), the Department will determine on a case-by-case basis if an area requested for a lease will be offered to the public through competitive bidding. This decision will be made after considering:¶¶

(a) Whether the area requested for a lease is for a use located on Trust or Non-Trust Land;¶¶

(b) The nature of the use and length of authorization requested;¶¶

(c) The availability of reliable data regarding the comparative compensatory payments for the proposed use; and¶¶

(d) Whether other applications are received by the Department to use the same area requested for the same or competing uses.¶¶

(2) The Department will give Notice of Parcel Availability and provide an opportunity for applications to be submitted if it:¶¶

(a) Determines that the greatest public benefit and/or trust obligations of the Department would be best served by offering the subject area through competitive bidding, or¶¶

(b) Is required to offer all or part of the subject area for competitive bid because the preference right holder did not exercise their preference right to take a lease.¶¶

(3) The Notice of Parcel Availability will state:¶¶

(a) The location and size of the subject area;¶¶

(b) The use approved by the Department for the subject area;¶¶

(c) The type of auction and minimum acceptable bid amount;¶¶

(d) What developments, if any, on the subject area the applicant must purchase from the existing lessee, and a general estimate of the present value of said developments as determined by the Department; and¶¶

(e) The deadline for submitting a completed application to the Department.¶¶

(4) The Notice of Parcel Availability will be:¶¶

(a) Published at the applicant's or, if more than one applicant, applicants' expense, with the cost being divided equally among the applicants, not less than once each week for two successive weeks in a newspaper of general circulation in the county or counties in which the subject parcel is located;¶¶

(b) Posted on the Department's internet web site; and¶¶

(c) Sent to persons indicating an interest in the subject parcel.¶¶

(5) The highest qualified bidder will be awarded the lease at auction subject to satisfaction of the requirements of OAR 141-125-0140(~~98~~) and 141-125-0170(4) of these rules. However, the Department will have the right to reject any and all bids submitted.¶¶

(6) The Department may offer parcels for which no application has been received to the public through a competitive bidding process. When doing this the Department will follow the competitive bidding process provided in OAR 141-125-0150(3) through (5) and be responsible for the expenses of publishing the required notices.

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5

AMEND: 141-125-0160

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0160
Compensation ¶¶

- (1) To establish the amount of annual compensation or minimum bid at auction, the Department will:¶¶
(a) Adhere to the policies contained in OAR 141-125-0110(1) and (2) of these rules, and¶¶
(b) Whenever practicable, base the amount on comparative compensatory payments for publicly or privately-owned parcels located as close as possible to the state-owned land requested by an applicant.¶¶
(2) In the event that reliable data concerning comparative compensatory payments are not available, the Department will select another method of determining the amount of compensatory payment or minimum bid at auction such as a percent of the appraised value of the requested area, percent of crop or product value, or percent of product produced.¶¶
(3) For the uses indicated in OAR 141-125-0160(4) through 141-125-0160(14), the Department will determine the amount of annual compensatory payment owed by the holder of a special use lease or license using the method(s) indicated.¶¶
(4) Agricultural Uses¶¶

As an alternative to basing the amount of compensation due for an agricultural use on comparative compensatory payments, the Department may, at its discretion, use a cropshare approach. If this methodology is used, the state's share will be no less than 25 percent of the value received by the holder of a special use lease or license in payment for each crop harvested from the authorized area.¶¶

~~(5) Communications Facilities¶¶~~

~~The holder of a special use lease or license for a communications facility must remit to the Department on a basis provided in the authorization both:¶¶~~

- ~~(A) The full amount of the base annual compensation determined by the Department to be the comparative compensatory payment for similar communications facilities; and¶¶
(B) A payment equal to 25 percent of the rental received by the lessee during the previous 12 month period from sublessees and sublicensees using the subject facility authorized by the lease or license.¶¶
(b) If the holder of a lease or license for a communications facility allows other persons to use the facility (for example, to place or attach antennas, microwave dishes, or other signal broadcasting or receiving equipment on the site or to a tower), the holder of the authorization must record and report data concerning the number sublessees and sublicensees, and the amount of compensation received from them to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.¶¶~~

~~(6) Upland Quarry¶¶~~

- ~~(a) The holder of a special use lease or license for an upland quarry must remit to the Department:¶¶
(A) Eight percent of the gross revenue received by the lessee or licensee from the sale of the rock, boulders, sand, gravel, silt or soil removed by the lessee or licensee, or¶¶
(B) The compensation rate in effect at the time of removal as provided in OAR 141-014 (Rules for Authorizing Leases and Licenses for the Removal or Use of Rock, Sand, Gravel and Silt Derived from State-Owned Submerged and Submersible Land) for "shorecast dredge spoils" if the lessee or licensee uses the rock, boulders, sand, gravel, silt or soil.¶¶
(b) Data concerning the quantity of rock, boulders, sand, gravel, silt or soil removed and sold, and the revenue received from any sales will be recorded and reported by the lessee or licensee to the Department on a basis and at an interval set by the Department and included as a provision of the license or lease.¶¶
(c) In addition to the compensation required under OAR 141-125-0160(65)(a), the holder of a special use license or lease for an upland quarry is required to pay the compensation due for any easements (for example, roads leading into the quarry and power lines crossing state land) or other forms of authorization required by Department rules.¶¶~~

~~(7) Semiprecious Stones, Petrified Wood and Fossils¶¶~~

~~Any person removing semiprecious stones, petrified wood or fossils for commercial purposes must remit to the Department within 30 calendar days of the removal of any semiprecious stones, petrified wood and fossils:¶¶~~

- ~~(a) Compensatory payment in the amount of 10 percent of the market value of the semiprecious stones, petrified wood and fossils; and¶¶
(b) Photocopies of the evidence used by the lessee or licensee to determine the market value of the semiprecious stones, petrified wood and fossils removed. This evidence must accompany the payment of compensation owed.~~

Documentation suitable to the Department includes, but is not limited to a sales receipt (if the material is sold to another party); an appraisal by a gemologist or mineral dealer; or advertisements for the sale of similar material in lapidary magazines or trade journals.¶

(87) Retrieval of Sunken Logs, Woody Debris and Abandoned Pilings¶

(a) The holder of a special use license or lease to retrieve sunken logs, woody debris and abandoned pilings from state-owned submerged and submersible land for their commercial value must remit to the Department 10 percent of the gross revenue received by the lessee or licensee from the sale of any logs or lumber products produced from the logs.¶

(b) Data concerning the quantity of lumber recovered or sold and revenue received from any sales must be recorded and reported by the lessee or licensee to the Department on a basis to be set by the Department and included as a provision of the license or lease.¶

(c) In addition to the compensation required under OAR 141-125-0160(8)(a), the holder an special use lease or license to retrieve sunken logs, woody debris and abandoned pilings must also pay the compensation due for any easements (for example, storage of logs on state-owned land) or other forms of authorization required by the Department.¶

(98) Wind Turbines/Wind Farms¶

(a) The holder of a special use lease or license must remit to the Department:¶

(A) During the demonstration project period the greatest of:¶

(i) \$500;¶

(ii) \$5.00 per acre of land within the authorized area; or¶

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.¶

(B) During the construction period a one-time installation fee equal to \$3,000 times the number of megawatts of nameplate rated capacity for each wind turbine to be installed as a part of that phase of the development.¶

(C) During the operation period:¶

(i) 2.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine during from the start of the operation through year 10;¶

(ii) 3.5 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 11 through year 15;¶

(iii) 4.0 percent of the gross revenue received by the lessee for, or the value of the electricity generated by each turbine from year 16 until the termination of the operation of that turbine.¶

(D) During the decommissioning period:¶

An amount to be determined by the Director based on the compensation which could reasonably be expected to be received by the Department for the use of the land encumbered by the wind power project.¶

(b) Notwithstanding the provisions of OAR 141-125-0160(98)(a), the director reserves the right to establish another rate of compensation to be charged by the Department during the construction and operation periods based on factors unique to an operation (for example, distance of the operation from major transmission lines and variability of the wind) and comparative compensatory payments.¶

(c) The lessee or licensee will record and report the amount of electricity generated by each wind turbine and wind farm under lease as well as the gross revenue resulting from that generation on a basis to be determined by the Department and included as a provision of the lease. Gross revenue is defined as all revenues earned through the sale of the electricity by the lessee to purchasers.¶

(d) In the event the lessee or licensee consumes all, or a portion of the electricity generated by the wind turbine and wind farm, the Department will establish a value for that electricity based on what the lessee or licensee would have to pay a utility for the equivalent amount of electricity delivered to the lessee's or licensee's point of demand as well as information provided by the lessee.¶

(e) In addition to the compensation required under OAR 141-125-0160(98)(a) and (b) the holder of a lease or license for a wind turbine and wind farm is required to pay to the Department the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.¶

(109) Solar Energy Installation¶

(a) The holder of a special use lease or license for a solar energy installation must remit to the Department:¶

(A) During the demonstration project period the greatest of:¶

(i) \$500;¶

(ii) \$5.00 per acre of land within the authorized area; or¶

(iii) The comparative compensatory payment received by other landowners for similar demonstration projects.¶

(B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.¶

(b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.¶

- (c) In addition to the compensation required under OAR 141-125-0160(109)(a) and
- (b) The holder of a special use lease or license for solar energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
- (110) Geothermal Energy Installation
- (a) The holder of a special use lease or license for a geothermal energy installation must remit to the Department:
- (A) During the demonstration project period the greatest of:
- (i) \$500 per year;
- (ii) \$5.00 per acre of land within the authorized area per year; or
- (iii) The comparative compensatory payment received by other landowners for similar demonstration projects per year.
- (B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments. (i) The Director shall take into consideration current industry standards for annual comparative compensatory payments by reviewing the current Bureau of Land Management Code of Federal Regulations, current comparative compensatory payments received by other states, and comparative compensatory payments received by private landowners under free market conditions.
- (b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.
- (c) Upon the sale, exchange or other disposition for value of by-products produced in conjunction with the production of Geothermal Resources under a license or lease, the holder shall pay royalties as follows:
- (A) Demineralized water - A royalty on the sale of demineralized water shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:
- (i) One percent of the gross sale price of demineralized water sold, exchanged, or otherwise disposed of for value in any calendar month; or
- (ii) The comparative royalty rate received by other landowners for demineralized water regionally.
- (B) Heavy metals, nonhydrocarbon gases, and miscellaneous precipitates -- A royalty on the sale of heavy metals, nonhydrocarbon gases, and miscellaneous precipitates shall be reported and paid to the Department monthly. The royalty payment shall be the greatest of:
- (i) Five percent of the gross sale price of all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of for value in any calendar month; or
- (ii) The comparative royalty rate received by other landowners for all heavy metals, miscellaneous precipitates, and nonhydrocarbon gases sold, exchanged, or otherwise disposed of regionally.
- (d) In addition to the compensation required under OAR 141-125-0160(110)(a), (b) and (c), the holder of a special use lease or license for a geothermal energy installation is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
- (121) Biomass Generating Facility
- (a) The holder of a special use lease or license for a commercial electrical energy generating installation using biomass must remit to the Department:
- (A) During the demonstration project period the greatest of:
- (i) \$500;
- (ii) \$5.00 per acre of land within the authorized area, or
- (iii) The comparative compensatory payment received by other landowners for similar demonstration projects.
- (B) During the construction, operation and decommissioning periods, an amount to be determined by the Director based on comparative compensatory payments.
- (b) Data concerning the amount of generation and its value will be recorded and reported by the lessee to the Department on a basis to be determined by the Department and included as a provision of the license or lease.
- (c) In addition to the compensation required under OAR 141-125-0160(121)(a), the holder of a special use lease for biomass generating facility is required to pay the compensation due for any easements (for example, transmission lines crossing state land) or other forms of authorization required by the Department.
- (d) If the biomass used to fuel a generating facility is obtained from state-owned land, the Director will determine the amount of compensation owed by the lessee for the use of this material.
- (132) Regardless of the type of use that is subject to a special use authorization, the amount of annual compensation received by the Department will not be less than:
- (a) \$500 per year for all leases except those for communications facilities;
- (b) \$750 per year for special use leases for communications facilities;
- (c) \$100 per year for licenses; or
- (d) The minimum bid when the lease is awarded through public auction.

~~(14) Communications facilities located on Non-Trust Land outside of the designated limits of a city may be exempt from the mandatory compensation payments specified in OAR 141-125-0160(5) pursuant to the provisions of ORS 758.010(1). However, the owners of such facilities must apply for and obtain a lease or license from the Department.~~

~~(c) \$100 per year for licenses; or~~

~~(d) The minimum bid when the lease is awarded through public auction.~~

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5

AMEND: 141-125-0200

RULE SUMMARY: The Division 125 amendments remove all language referring to communication sites and communication site facilities, renumber remaining subsections, and ensure all rule references are accurate.

CHANGES TO RULE:

141-125-0200

Assignment of Special Use Leases and Permits; Subleasing ¶¶

- (1) A lease in good standing is assignable.¶¶
- (2) Licenses and short-term access authorizations are non-assignable.¶¶
- (3) To assign a lease, the lessee must submit a:¶¶
 - (a) Notice of proposed assignment on a form provided by the Department at least 60 calendar days prior to the date that the assignment is to occur; and¶¶
 - (b) Non-refundable assignment processing fee of \$750 payable to the Department.¶¶
- (4) The Department may request additional information concerning the proposed assignment.¶¶
- (5) A lessee or licensee wanting to offer a sublease or sublicense to another person must:¶¶
 - (a) Obtain prior written authorization from the Department by applying to the Department on a form provided by the Department at least 60 calendar days prior to the date that the sublease or sublicense is desired; and¶¶
 - (b) Submit a non-refundable sublease or sublicense review fee of \$250 along with the application form; and¶¶
 - (c) ~~If the lease or license is for a communications facility, submit to the Department the amount provided in OAR 141-125-0160(5)(a)(B) for each sublessee or sublicensee at the end of each calendar year.~~

Statutory/Other Authority: ORS 273

Statutes/Other Implemented: OR Const. Art. VIII, Sec. 2, & 5