



Oregon

Kate Brown, Governor

Department of State Lands

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State Land Board

Date: October 5, 2018

Kate Brown

Governor

To: Aquatic Resource Management Division Proprietary Staff

From: Vicki L. Walker, Director

Dennis Richardson

Secretary of State

RE: Waterway Lease Compliance Inspections, Document Review and Engagement

Tobias Read

State Treasurer

Issue:

The waterway leasing program has been the subject of some high-profile cleanup efforts, and increased scrutiny from state lawmakers and stakeholder groups. In 2018, the Department requested additional allocation from the State Land Board to complete leasehold cleanup efforts. The Department also requested that the State Land Board approve a legislative concept to acquire state insurance, and to set up an account to fund some cleanup efforts.

The Department proposes to pay for the insurance and cleanup account through a surcharge on waterway authorization holders. For this to be possible, the agency will need to clearly monitor and document the status and condition of leases and leaseholds.

Discussion:

The Department's mission is "To ensure a Common School Fund legacy through sound management of our trust responsibilities and the protection of waters of the state."¹

The Department must manage submerged and submersible lands to ensure the collective rights of the public, including riparian owners, to fully use and enjoy this resource for commerce, navigation, fishing, recreation and other public trust values. These rights are collectively referred to as "public trust rights." The Department cannot authorize a proposed use if it would result in an unreasonable interference with the public trust rights of commerce, navigation, fishing and recreation. The public trust rights have been described by courts as creating a "trust" obligation and provide a sense of the heightened duty under which the Department operates.

¹ Oregon Department of State Lands, Strategic Plan 2017-2021

Guidance:

To meet the Department's trust obligation, and the expectations of the State Land Board and the State Legislature, the Department will take the following steps to enhance the management of state-owned waterways when administering waterway leases:

- Proprietary Coordinators will perform compliance inspections/site visits of leaseholds on a three (3) year rotation. As of July 1, 2017, there were 556 active waterway leases².
 - Compliance inspections should be generally dispersed across the calendar year.
 - The Proprietary Coordinator will develop a plan for compliance inspections in their territory. This plan will be submitted to the Regional Manager and Lead Worker.
 - The Lead Worker may ask for status updates on meeting the annual compliance inspection goals. Any required follow up will be done between the Proprietary Coordinator and the Regional Manager.
 - Results of a compliance inspection will be recorded on a form (developed through Laserfiche Forms) to be uploaded to the electronic file (currently LAS). Any photos or supporting documentation will also be uploaded to the electronic file. An example form is attached to this guidance.
 - Any required follow up should be documented in a letter (e-mail is OK) to the lessee within two weeks of the inspection. Documentation will be uploaded to the electronic file.
- Proprietary Coordinators will offer to meet with lessees to review the terms and conditions of the authorization at the time of issuance, renewal and assignment.
 - This meeting may be in person or by other agreed upon means.
 - The Proprietary Coordinator will complete a lease review checklist (developed through Laserfiche Forms) that will be uploaded to the electronic file (currently LAS). An example is attached to this guidance.
 - Any required follow up should be documented in a letter (e-mail is OK) to the lessee within two weeks of the lease review. Documentation will be uploaded to the electronic file.

The implementation of these items should improve our relationship and communication with lessees and improve the management of leaseholds by:

- Catching compliance issues more quickly and following up thereafter; and
- Making sure that lessees are aware and understand their responsibilities under the lease up front.

Please contact your Regional Manager, Deputy Director, or me with any questions or concerns.

² Oregon Department of State Lands, Aquatic Resource Management Program Report, Fiscal Year 2017(July 1, 2016 through June 30, 2017)