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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 141  
DEPARTMENT OF STATE LANDS

**FILED**  
07/27/2022 9:26 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Restrictions for State-Owned Property on Hayden Island in Multnomah County (Columbia River)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/31/2022 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: 08/15/2022

TIME: 5:30 PM - 7:00 PM

OFFICER: Blake Helm

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 under Proposed Rulemaking.

NEED FOR THE RULE(S)

On May 9, 2022, the Department of State Lands Director enacted emergency restrictions of public use for a roughly 500-yard segment of the Columbia riverbank along the north side of Hayden Island that is only accessible by water or private uplands. The Department has received numerous reports from local law enforcement, emergency services, and the Portland Harbor Master of activities associated with unauthorized camps that are seriously impacting the safety and health of the riverbank and river, as well as the nearby community. Activities of concern include threats of violence, unauthorized and uncontrolled fires, multiple shopping carts, abandoned vehicles, and numerous items of trash.

A temporary administrative order was filed with the Secretary of State's office on May 13, 2022. The restrictions are in effect until November 9, 2022.

Revisions to OAR 141-088 are needed to address illegal and nuisance activity on state-owned land. These activities include but are not limited to offensive littering and dumping; reckless burning and open fires; damage to riparian vegetation and wildlife habitat; interference with property; and damage to property.

## DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 273 and 274 are available on the Oregon Legislature's website:

[https://www.oregonlegislature.gov/bills\\_laws/pages/ors.aspx](https://www.oregonlegislature.gov/bills_laws/pages/ors.aspx)

OAR 141-088 is available on the Secretary of State's website.

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## 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 Restrictions for State-Owned Property on Hayden Island in Multnomah County (Columbia River) 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? RAC discussion identified a number of groups affected by the rule, they include, small businesses, recreational users, guides and outfitters, law enforcement and other municipal agencies and the houseless community generally.
  - What issues is the rule seeking to address? Which racial groups are likely to be affected by those issues? The rule seeks to address nuisance issues on state-owned property. City wide, houseless communities are disproportionately comprised of BIPOC. However, anecdotal evidence was presented that communities around the Hayden Island closure were majority white.
  - Ultimately, what impacts does this rule have on racial equity? The Department has determined, in agreement with the RAC and through careful consideration and evaluation, that this rule is unlikely to impact racial equity in Oregon.
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## FISCAL AND ECONOMIC IMPACT:

The Department does not anticipate this rulemaking to pose significant fiscal and economic impact to public or private interests. The proposed rule seeks to address illegal and nuisance activities on state-owned land. There are no developed or authorized uses at these locations. The proposed rule language takes into consideration and makes exceptions for "Government personnel on official business, public and private employees performing company business, vehicles and persons involved in rescue or emergency activities, and Department authorized persons and adjacent landowners inspecting or maintaining property." The draft rule language is consistent with existing recreational restrictions in OAR 141-088, will protect state-owned lands from damage, and will assist in the posting of occupied encampments for removal. The permanent use restrictions are one element of a long-term solution for ensuring healthy, safe waterways.

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## 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).*

The Department does not believe that the proposed changes to this rule, if adopted, will have any substantial economic impact on the public, or state or local government agencies. Possible economic impacts include, but are not limited to:

- (1) Increased costs to the Department for the manufacture and placement of signs, and the publication of public notices describing the restrictions on, or closure to, public recreational use;
- (2) Increased costs to state and local law enforcement, as any restriction or closure is another activity that state and

local law enforcement must monitor. State and local law enforcement were informed of the restrictions and are in support of the proposed rule.

Only small businesses that use state-owned land for recreational purposes may be impacted by any restrictions or closures imposed on recreational use—and only if such restrictions or a closure were imposed on a site, parcel, or area of state-owned land which a small business currently uses or may want to use in the future. It is not feasible to estimate the number of such small business, however, it is unlikely that there will be any significant cost for small businesses to comply with the proposed rule.

The Department does not believe that the proposed rule, if adopted, will result in increased costs for reporting, recordkeeping, and other administrative activities conducted by small businesses.

The Department does not believe that the proposed rule, if adopted, will result in increased costs for equipment, supplies, labor, or administration.

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

At the time that the proposed rule is 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 businesses. In addition, the Department engaged the Waterfront Organizations of Oregon (WOOO) to participate in the RAC and rulemaking process. Their participation allowed small business owners to directly engage the Department and provide feedback on policy concepts.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 141-088-0240

RULE SUMMARY: Restricts public use of the bank of the Columbia River along the north side of Hayden Island, between river mile 106 and 107.

CHANGES TO RULE:

141-088-0240

Restrictions for State-Owned Property on Hayden Island in Multnomah County (Columbia River)

All state-owned submersible land that is under the jurisdiction of the Department between the line of ordinary high water and the line of ordinary low water on the north side of Hayden Island between River Mile 106 and River Mile 107 of the Columbia River, west of the Oregon and Washington I-5 Bridge and east of a wing dam, located in Section 34, Township 2 North, Range 1 East, Willamette meridian, in Multnomah County, Oregon is closed to:

(1) All uses between 10 p.m. and 5 a.m.:

(2) The establishment of a campsite at any time. For purposes of this section, "campsite" means any place where any bedding, sleeping bag or other material used for bedding purposes, or where any stove is placed, established or maintained for the purpose of maintaining a temporary place to live, whether such a place incorporates the use of any tent, lean-to, shack or any other structure; and

(3) Fires at any time.

(4) Excepted from this restriction are Government personnel on official business, public and private employees performing company business, vehicles and persons involved in rescue or emergency activities, and Department authorized persons and adjacent landowners inspecting or maintaining property. This exception does not allow the entities identified or their representatives to establish a campsite on the lands in question

Statutory/Other Authority: ORS 183, ORS 273, ORS 274

Statutes/Other Implemented: ORS 273, ORS 274