

WAC 332-30-123 Aquatic land use rentals for water-dependent uses. All requirements in this section shall apply to the department and to port districts managing aquatic lands under a management agreement (WAC 332-30-114). The annual rental for water-dependent use leases of state-owned aquatic land shall be: The per unit assessed value of the upland tax parcel, exclusive of improvements, multiplied by the units of lease area multiplied by thirty percent multiplied by the real rate of return. Expressed as a formula, it is: $UV \times LA \times .30 \times r = AR$. Each of the letter variables in this formula have specific criteria for their use as described below. This step by step presentation covers the typical situations within each section first, followed by alternatives for more unique situations.

(1) **Overall considerations.**

(a) Criteria for use of formula. The formula:

(i) Shall be applied to all leases for water-dependent uses, except as otherwise provided by statute;

(ii) Shall not be used for areas of filled state-owned aquatic lands having upland characteristics where the department can charge rent for such fills (see WAC 332-30-125), renewable and nonrenewable resource uses, or areas meeting criteria for public use (see WAC 332-30-130); and

(iii) Shall cease being used for leases intended for water-dependent uses when the lease area is not actively developed for such purposes as specified in the lease contract. Rental in such situations shall be determined under the appropriate section of this chapter.

(b) Criteria for applicability to leases. The formula shall be used to calculate rentals for:

(i) All new leases and all pending applications to lease or re-lease as of October 1, 1984;

(ii) All existing leases, where the lease allows calculation of total rent by the appropriate department methods in effect at the time of rental adjustment. Leases in this category previously affected by legislated rental increase limits, shall have the formula applied on the first lease anniversary date after September 30, 1984. Other conditions of these leases not related to rent shall continue until termination or amendment as specified by the lease contract. Leases in this category not previously affected by legislated rental increase limits and scheduled for a rent adjustment after October 1, 1985, shall have the option of retaining the current rent or electing to pay the formula rent under the same conditions as specified in (iii) of this subsection.

(iii) Leases containing specific rent adjustment procedures or schedules shall have the rent determined by the formula when requested by the lessee. Holders of such leases shall be notified prior to their lease anniversary date of both the lease contract rent and formula rent. A selection of the formula rent by the lessee shall require an amendment to the lease which shall include all applicable aquatic land laws and implementing regulations.

(2) **Physical criteria of upland tax parcels.**

(a) The upland tax parcel used shall be used in conjunction with the leased area and have some portion with upland characteristics. The upland tax parcel shall be waterfront, except that if the waterfront parcel's assessed value is inconsistent with the purposes of the lease as described in subsection (3) of this section, and there is a landward parcel also used in conjunction with the leased area that meets all the criteria in this subsection (2) and is consistent with the purposes of the lease as described in subsection (3) of this section,

then such landward parcel shall be used. If no upland tax parcel meets these criteria, then an alternative shall be selected under the criteria of subsection (4) of this section. For the purposes of this section, "upland characteristics" means fill or other improvements or alterations that allow for development of the property as if it were uplands and that have been valued by the county assessor as uplands.

(b) For leases without a physical connection with upland property (for example, open water moorage and anchorage areas, or mitigation or conservation sites not abutting the shoreline), the upland tax parcel used shall:

(i) If the lease is associated with a local upland facility, be an appropriate parcel at the facility; or

(ii) If the lease is of the same use class within the water-dependent category (as listed in subsection (4) of this section) as at least one other lease within the county that is associated with a local upland facility, be an appropriate parcel at the nearest such facility; or

(iii) If there is no such local upland facility, be an alternate parcel selected under the criteria of subsection (4) of this section.

(c) Priority of selection. If more than one upland tax parcel meets the physical criteria, the priority of selection shall be:

(i) The parcel that is structurally connected to the lease area;

(ii) The parcel that abuts the lease area;

(iii) The parcel closest in distance to the lease area.

If more than one upland tax parcel remains after this selection priority, then each upland tax parcel will be used for its portion of the lease area. If there is mutual agreement with the lessee, a single upland tax parcel may be used for the entire lease area. When the unit value of the upland tax parcels are equal, only one upland tax parcel shall be used for the lease area.

(d) The unit value of the upland tax parcel shall be expressed in terms of dollars per square foot or dollars per acre, by dividing the assessed value of the upland tax parcel by the number of square feet or acres in the upland tax parcel. This procedure shall be used in all cases even if the value attributable to the upland tax parcel was assessed using some other unit of value, e.g., front footage, or lot value. Only the "land value" category of the assessment record shall be used; not any assessment record category related to improvements.

(3) **Consistent assessment.** In addition to the criteria in subsection (2) of this section, the upland tax parcel's assessed value must be consistent with the purposes of the lease. On this basis, the following situations are examples, but are not an exclusive list, of what the department will consider inconsistent and shall either require adjustment as specified, or selection of an alternative upland tax parcel under subsection (4) of this section:

(a) The upland tax parcel is not assessed. (See chapter 84.36 RCW Exemptions);

(b) Official date of assessment is more than four years old. (See RCW 84.41.030);

(c) The "assessment" results from a special tax classification or other adjustment by the county assessor not reflecting fair market value as developable upland property. Examples include classifications under: State-regulated utilities (chapter 84.12 RCW), Timber and forest lands (chapter 84.33 RCW), and Open space (chapter 84.34 RCW). This inconsistency may be corrected by substituting the fair market value for the parcel if such value is part of the assessment records;

(d) If the assessed valuation of the upland tax parcel to be used is under appeal as a matter of record before any county or state agency, the valuation on the assessor's records shall be used, however, any changes in valuation resulting from such appeal will result in an equitable adjustment of future rental;

(e) The majority of the upland tax parcel area is not used in conjunction with a water-dependent use. This inconsistency may be corrected by using the value and area of the portion of the upland tax parcel that is used in conjunction with water-dependent use if this portion can be segregated from the assessment records; and

(f) The size of the upland tax parcel in acres or square feet is not known or its small size results in a nominal valuation, e.g., unbuildable lot; and

(g) The assessed value reflects the presence of contamination on the uplands, when the contamination on the uplands does not impair the use of the leasehold. This inconsistency may be corrected by substituting the full value for the upland parcel as if there were no contamination, if such value is part of the assessment records.

(4) **Selection of the nearest comparable upland tax parcel.** When the upland tax parcel does not meet the physical criteria or has an inconsistent assessment that can't be corrected from the assessment records, an alternative upland tax parcel shall be selected which meets the criteria. The nearest upland tax parcel shall be determined by measurement along the shoreline from the inconsistent upland tax parcel.

(a) The alternative upland tax parcel shall be located by order of selection priority:

(i) Within the same city as the lease area, and if not applicable or found;

(ii) Within the same county and water body as the lease area, and if not found;

(iii) Within the same county on similar bodies of water, and if not found;

(iv) Within the state.

(b) Within each locational priority of (a) of this subsection, the priority for a comparable upland tax parcel shall be:

(i) The same use class within the water-dependent category as the lease area use. For the purposes of this section, some examples of use classes include:

(A) Marinas and recreational moorage, including recreational boat launches and local upland facilities for open water moorage;

(B) Industrial and commercial shipping terminals and moorage;

(C) Conservation and natural resource protection areas;

(D) Mitigation sites; and

(E) For water-oriented floating homes, the same use class means any floating home;

(ii) Any water-dependent use within the same upland zoning;

(iii) Any water-dependent use; and

(iv) Any water-oriented use.

(5) **Aquatic land lease area.** The area under lease shall be expressed in square feet or acres.

(a) Where more than one use class separately exist on a lease area, the formula shall only be applied to the water-dependent use area. Other use areas of the lease shall be treated according to the regulations for the specific use.

(b) If a water-dependent and a nonwater-dependent use exist on the same portion of the lease, the rent for such portion shall be ne-

gotiated taking into account the proportion of the improvements each use occuppies.

(6) **Real rate of return.**

(a) Until July 1, 1989, the real rate of return to be used in the formula shall be five percent.

(b) On July 1, 1989, and on each July 1 thereafter the department shall calculate the real rate of return for that fiscal year under the following limitations:

(i) It shall not change by more than one percentage point from the rate in effect for the previous fiscal year; and

(ii) It shall not be greater than seven percent nor less than three percent.

(7) **Annual inflation adjustment of rent.** The department shall use the inflation rate on a fiscal year basis e.g., the inflation rate for calendar year 1984 shall be used during the period July 1, 1985 through June 30, 1986. The rate will be published in a newspaper of record. Adjustment to the annual rent of a lease shall occur on the anniversary date of the lease except when the rent is redetermined under subsection (9) of this section. The inflation adjustment each year is the inflation rate times the previous year's rent except in cases of stairstepping.

(8) **Stairstepping rental changes.**

(a) Initial increases for leases in effect on October 1, 1984. If the application of the formula results in an increase of more than one hundred dollars and more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between each year's inflation adjusted formula rent and the previous rent.

Example

Previous rent = \$100.00 Formula rent = \$403.00 Inflation = 5%/yr.

Yr.	Formula Rent	Previous Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$200.00
2	423.15	100.00	323.15	106.64	306.64
3	444.31	100.00	344.31	113.62	420.26
4	466.52	-	-	-	466.52

(b) Initial decreases for leases in effect on October 1, 1984. If the application of the formula results in a decrease of more than thirty-three percent, stairstepping to the formula rent shall occur over the first three years in amounts equal to thirty-three percent of the difference between the previous rent and each year's inflation adjusted formula rent.

Example

Previous rent = \$403.00 Formula rent = \$100.00 Inflation = 5%/yr.

Yr.	Previous Rent	Formula Rent	Difference	33%	Stairstep Rent
1	\$403.00	\$100.00	\$303.00	\$100.00	\$303.00
2	403.00	105.00	298.00	98.34	204.66
3	403.00	110.25	292.75	96.61	108.05
4	-	115.76	-	-	115.76

(c) If a lease in effect on October 1, 1984, contains more than one water-dependent or water-oriented use and the rental calculations for each such use (e.g., log booming and log storage) result in different rentals per unit of lease area, the total of the rents for those portions of the lease area shall be used to determine if the

stairstepping provisions of (a) or (b) of this subsection apply to the lease.

(d) If a lease in effect on October 1, 1984, contains a nonwater-dependent use in addition to a water-dependent or oriented use, the stairstepping provisions of (a) or (b) of this subsection:

(i) Shall apply to the water-dependent use area if it exists separately (see subsection (5)(a) of this section);

(ii) Shall not apply to any portion of the lease area jointly occupied by a water-dependent and nonwater-dependent use (see subsection (5)(b) of this section).

(e) Subsequent increases. After completion of any initial stairstepping under (a) and (b) of this subsection due to the first application of the formula, the rent for any lease or portion thereof calculated by the formula shall not increase by more than fifty percent per unit area from the previous year's per unit area rent.

(f) All initial stairstepping of rentals shall only occur during the term of existing leases.

(9) The annual rental shall be redetermined by the formula every four years or as provided by the existing lease language. If an existing lease calls for redetermination of rental during an initial stairstepping period, it shall be determined on the scheduled date and applied (with inflation adjustments) at the end of the initial stair-step period.

[Statutory Authority: RCW 79.105.360, 79.105.320. WSR 06-18-082, § 332-30-123, filed 9/5/06, effective 10/6/06. Statutory Authority: RCW 79.105.360. WSR 06-06-005 (Order 724), § 332-30-123, filed 2/16/06, effective 3/19/06. Statutory Authority: RCW 79.90.540. WSR 05-23-033, § 332-30-123, filed 11/8/05, effective 12/9/05. Statutory Authority: 1984 c 221 and RCW 79.90.540. WSR 84-23-014 (Resolution No. 470), § 332-30-123, filed 11/9/84.]