



**Permitting and Mitigation in Oregon’s Wetlands and Waters (Division 85)
RAC Meeting # 1 Summary**

March 12, 2025; 9:00 a.m.

Overview

The Permitting and Mitigation in Oregon’s Wetlands and Waters (Division 85) Rulemaking Advisory Committee was convened by the Oregon Department of State Lands (DSL) on March 12, 2025, via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules governing permitting and mitigation in wetlands and waters.

RAC Members and Attendance

Name	Affiliation	Present?
Members		
Becky Kreag	Board Member, The Wetlands Conservancy	X
Brad Livingston	Wetlands Program Lead, Oregon Department of Transportation	X
Brian Cook	Permitting Program Manager, Clean Water Services	X
Dana Kurtz	Senior Environmental Scientist, Anderson Perry	
Emily Alcott	Principal Ecologist & Fluvial Geomorphologist, Interfluve	
Jesse Steele	Executive Director, Grande Ronde Model Watershed	X
Jonas Moiel	Senior Ecologist / Principal, Green Banks, LLC	X
Kaitlin Lovell	Mitigation Banking Policy Director, City of Portland	X
Marnie Keller	Environmental Services Programs Manager, Cow Creek Band of Umpqua Tribe of Indians	X
Michael Martin	League of Oregon Cities	
Ron Wierenga	Deputy Director, Clackamas Water Environment Services (Association of Oregon Counties representative)	X
Sue Brady	Alternate for Dana Kurtz	X

Staff		
Danielle Boudreaux	Department of State Lands	X
Grey Wolf	Department of State Lands	X
Melody Rudenko	Department of State Lands	X
Advisors		
Andrea Seager	Advisor U.S. Army Corps of Engineers	
Joy Lovett	Advisor Land Use and Waterway Alterations Coordinator, Oregon Department of Fish and Wildlife (ODFW)	X
Shelley Tattam	Advisor 401 Program Project Manager, Department of Environmental Quality (DEQ)	X
Interested Parties		
Bethany Harrington	Department of State Lands	X
Brandy McClay	Department of State Lands	X
Charles Redon	Department of State Lands	X
Daniel Evans	Department of State Lands	X
Jane Rombouts	Department of State Lands	X
Jess Salgado	Department of State Lands	X
Ken Bierly	Former Wetlands Program Manager at the Department of State Lands	X
Mike Schmeiske	Department of State Lands	X

Welcome and Introductions

Madeline Kane, a facilitator from Kearns & West, welcomed participants to the first meeting of the Rulemaking Advisory Committee (RAC) for Permitting and Mitigation in Oregon’s Wetlands and Waters. She introduced herself as facilitator for the process and highlighted the purpose of the meeting as an opportunity to build understanding of the rulemaking process, to clarify the role of the RAC members, and to share the purpose and scope of this rulemaking. DSL staff, RAC members, and technical advisors then introduced themselves and shared their affiliation and roles.

Agenda Review; Zoom Protocols

Madeline provided an overview of the [meeting agenda](#) and reviewed Zoom protocols, including chat usage and technical support instructions. Meeting materials were shared via email prior to the session and can also be found on the rulemaking website:

<https://www.oregon.gov/dsl/pages/rulemaking.aspx>.

Rulemaking Process

Danielle Boudreaux, DSL Rules and Records Coordinator, explained the RAC's purpose, defined administrative rules, and shared the steps involved in DSL's rulemaking process. The RAC is tasked with reviewing and providing input on stream compensatory mitigation, mitigation banking options, estuary mapping, and rule clarifications.

She reviewed the DSL rulemaking process, which includes drafting proposed rules, engaging in RAC meetings for discussion, a public comment period, and final adoption of the rules. She also noted that there would be further opportunities for public participation, including an open comment period and at least one public hearing. No questions were raised following this presentation.

Operating Principles; RAC Role

Madeline provided an overview of the RAC [Operating Principles](#), which was shared in advance with RAC members. She covered:

RAC Member roles and responsibilities:

- Reviewing background materials to understand the issues for discussion at RAC meetings.
- Working collaboratively with one another to explore issues and develop recommendations.
- Considering the perspectives and input of other stakeholders and the public and including them in recommendations as appropriate. Materials will be distributed to members at least one week prior to each meeting for review.
- Members are expected to consider a range of issues and options to address them, discuss the pros and cons of the issues/options presented, and seek to develop recommendations reflecting the "sense of the group."
- Members agree to participate in good faith and to act in the best interest of the group and its charge.
- Members acknowledge that the group is an advisory body to DSL and that its role is to provide advice and frame policy choices. Rulemaking authority rests with the Department.

The RAC meeting schedule, which includes six meetings:

#	Date	Topic
1	March 12, 2025	Introduction to rulemaking, RAC roles and responsibilities, Division 85 background. Set groundwork for RAC/facilitator interviews to follow.
2	April 2, 2025	Review changes to permitting and jurisdiction topics.
3	May 21, 2025	Present the technical details of stream mitigation accounting and introduce the parts of rule and rule language added to implement the accounting procedures
4	June 11, 2025	Continue with the specific rule changes needed to implement the stream mitigation accounting. Tying the changes back to the developed protocols.

5	July 9, 2025	Review changes to umbrella banking, in-lieu fee programs, clarifying banking processes, promotion of wetland creation and restoration.
6	August 6, 2025	Conclude any outstanding discussion regarding the proposed rules. Discuss fiscal and equity impact statements, review public review process and hearings, go over next steps/timeline and any other requirements for RAC members

Facilitator role and DSL role:

- The facilitator will provide coordination between meetings, serving as the primary communicator between RAC members and between the RAC and the Department.
- Information disclosed in confidence will be kept confidential by the facilitator, though written communications may be subject to public records law.
- Ensure a safe, welcoming environment where all members can participate.
- Conduct meetings to foster collaborative decision-making and consensus-building.
- Prepare meeting summaries that outline the topics discussed, the areas where there is agreement, and any remaining issues on which agreement was not reached.
- DSL will provide technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC.
- The Department will coordinate with the facilitator to distribute meeting materials and prepare and distribute meeting summaries.

Public meetings and records:

- RAC meetings are public meetings and are open to the public. Interested parties are invited to observe and will have an opportunity to make timed comments at RAC meetings.
- All rulemaking written communications are public records and may be released in response to a public records request.

Background and Rulemaking Purpose & Scope

Melody Rudenko, DSL, provided an overview of DSL’s Removal-Fill Program (Program), which ensures that impacts to state waters align with conservation goals and public resource use, and discussed the legal foundation under ORS 196.600-196.921. She explained that the Program’s goal is to achieve no net loss of aquatic resources, and that the Program accomplishes its goals through mitigation requirements, permitting removal-fill activities, and ensuring compliance.

Melody then provided a preview of the rules that govern the Program and that will be included in this rulemaking, including, jurisdictional waters, exemptions, permitting processes, mitigation requirements, banking and in-lieu fees, advanced aquatic resource plans, and enforcement actions.

Melody explained that DSL determines jurisdictions based on the type of water of the state, and the volume of material. She defined the waters of the state as wetlands, rivers, and streams, bays and estuaries, lakes, reservoirs, large ponds, and the Pacific Ocean (to 3 miles offshore).

DSL requires authorization for work in Oregon's waters, and Melody explained the different types of authorization and permits required. She explained that the majority of the permitting considered in this rulemaking will concern individual permits, which include residential subdivisions, commercial development, new culverts, road, and other infrastructure.

Grey Wolf, DSL, provided an overview of mitigation as a part of aquatic resource management, and explained that the goal of mitigation is to work toward a zero net loss of Oregon's aquatic resources while protecting their long-term environmental and social benefits. They explained that the mitigation process relies on three elements: avoidance, minimization and rectification, and compensatory mitigation. They presented the options for compensatory mitigation, including permittee-responsible mitigation, in-lieu fee, and payment in-lieu. They emphasized the need for a structured approach to stream mitigation, as the current case-by-case determinations lack consistency.

Melody then explained the need for the rulemaking, and the contents of the rulemaking. She stated the need is:

- Clarity, efficiency, and transparency of regulatory process
- Stream compensatory mitigation framework that is predictable and effective
- Address gaps in guidance for umbrella mitigation banks, and in-lieu fee programs
- Attainment of "no net loss" goal of program
- Limitations of which projects are considered habitat restoration
- Mapping of coastal waters and wetlands improvements

She shared that while the focus of the rules being considered mainly relate to mitigation, DSL will be tracking recommendations outside of the scope of this rulemaking to be included in future efforts.

RAC Discussion

Madeline facilitated a discussion session where members raised the following questions:

- Kaitlin Lovell asked about tribal consultation regarding in-lieu fee limitations. Melody responded that all nine federally recognized tribes were invited to participate in the RAC, and DSL welcomes further engagement.
- Kaitlin Lovell also inquired about assessment methodologies for large river systems. Melody noted that Washington State received a grant to explore alternative methods, which DSL may adopt once available.

Poll: Preferred Meeting Time

Danielle facilitated a poll to determine preferred meeting times, and members provided input on their availability. The majority expressed a preference for morning meetings. Sue and Dana indicated that

while they preferred the afternoon, they could attend in the morning. Brian also preferred afternoon meetings but did not consider it a requirement.

Interested Party Comments

Madeline opened the floor for public comment:

Ken Bierly emphasized the importance of aligning DSL's mitigation standards with floodplain management requirements under the Endangered Species Act settlement. Grey acknowledged this concern and discussed ongoing interagency coordination efforts to enhance multi-benefit mitigation projects.

Next Steps

Danielle reviewed the next steps for the process. She shared that RAC members will receive the RAC Meeting #1 summary and recording the following week. Additionally, Danielle shared that prior to each meeting, members will also receive a meeting agenda and related materials at least one week in advance. She also mentioned that if any in-person meetings are scheduled, they will always include a hybrid option for remote participation.

Danielle explained that DSL staff will set up office hours at 10 a.m. on the Monday before each RAC meeting to answer questions, and to share information. These office hours are optional and subject to change based on staff availability. It was also mentioned that RAC members should schedule individual meetings with the facilitator as an opportunity to discuss initial input on the rules and help shape future agendas.

Lastly, Danielle shared that all meeting materials will be posted to the rulemaking website:

<https://www.oregon.gov/dsl/pages/rulemaking.aspx>

Adjourn

Madeline closed the meeting by thanking DSL staff, RAC members, and interested parties for their participation. She expressed enthusiasm for future discussions and collaboration and reminded members that the next meeting would be on April 2.