



**Permitting and Mitigation in Oregon’s Wetlands and Waters (Division 85)  
RAC Meeting # 2 Summary**

**April 2, 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 April 2, 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**

| <b>Name</b>     | <b>Affiliation</b>  | <b>Present?</b> |
|-----------------|---|-----------------|
| <b>Members</b>  |   |                 |
| 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                    |                 |
| 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               |

| <b>Staff</b>              |  |   |
|---------------------------|--|---|
| Danielle Boudreaux        | Department of State Lands  | X |
| Grey Wolf                 | Department of State Lands  | X |
| Melody Rudenko            | Department of State Lands  | X |
| Daniel Evans              | Department of State Lands  | X |
| Charles Redon             | Department of State Lands  | X |
| <b>Advisors</b>           |  |   |
| Andrea Seager             | Advisor<br>U.S. Army Corps of Engineers  | X |
| Joy Lovett                | Advisor<br>Land Use and Waterway<br>Alterations Coordinator, Oregon<br>Department of Fish and Wildlife<br>(ODFW) | X |
| Shelley Tattam            | Advisor<br>401 Program Project Manager,<br>Department of Environmental<br>Quality (DEQ)                          | X |
| <b>Interested Parties</b> |  |   |
| Catina Piliaris           | Lakeside Industries  | X |
| Candice Diorio            | Environmental Permits Specialist<br>at Oregon Department of<br>Transportation                                    | X |
| Jane Rombouts             | Department of State Lands  | X |
| Jennifer Mongolo          | Streamscape Environmental LLC  | X |
| Taya MacLean              | Parametrix   | X |
| Tony Vingiello            | Dudek  | X |

### **Welcome and Introductions**

Madeline Kane, a facilitator from Kearns & West, welcomed participants to the second meeting of the Rulemaking Advisory Committee (RAC) for Permitting and Mitigation in Oregon’s Wetlands and Waters. She highlighted the purpose of the meeting which was to discuss the proposed draft rules relating to permitting and jurisdictions. 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>.

### **Presentation – RAC Member Interviews**

Madeline summarized key takeaways from the RAC member interviews conducted between meetings, highlighting their expertise and priorities. Members bring significant experience in conservation,

mitigation banking, habitat classification, permitting, policy development, and scientific fields like ecology and land use planning. Priorities include clarity in mitigation banking, regulatory consistency, high standards for mitigation, and alignment with state, local, and federal policies. Members also emphasized challenges such as resource access, costs, and expertise, along with the need to balance diverse stakeholder interests. While not all priorities will be directly addressed in rulemaking, understanding these perspectives is crucial for shaping the process.

### **Presentation – Background and Context for Permitting and Jurisdictions**

Madeline introduced Daniel Evans, DSL, who presented background information relating to defining Highest Measured Tide, the use of the Elevation-Based Estuary Extent Model (EBEEM), and clarifying Oregon State Scenic Waterways, and Related Adjacent Lands. Daniel paused between sections for questions. He began with a proposed revision to the definition of “Highest Measured Tide,” OAR 141-085-0015, which would add tidal rivers to the existing reference to estuaries and tidal bays. This change is intended to create consistency with statute and other rule definitions, such as “Tidal Waters.” Daniel clarified that this update is specific to saline systems and does not alter jurisdiction in freshwater areas, like the Willamette River.

Members had the following questions and comments:

- A RAC member questioned whether the update is specific to saline systems was clear in the rule text.
  - *Response: The definition of estuary elsewhere in the rule does specify saltwater systems, but I agree that further clarification may be warranted.*

Daniel presented proposed updates to OAR 141-085-0515(2), which addresses how jurisdictional boundaries are determined in estuarine environments. The proposed change would add an additional method for identifying jurisdictional elevation by incorporating the Elevation-Based Estuary Extent Model (EBEEM) alongside the existing use of tidal gages and field indicators. Daniel explained that while the current rule prioritizes the use of tidal gages, the limited number of gages on the Oregon coast, only three, often necessitates alternative methods.

EBEEM uses LiDAR and West Coast estuary modeling to provide predictive elevation data based on a 100-year record, helping to narrow in on relevant elevation ranges. This model, already in use by DLCD for statewide planning Goals 16 and 17, supports early desktop review and field verification, allowing practitioners to make site-specific adjustments using established field indicators. Daniel noted that while EBEEM is not intended to replace fieldwork, it offers a useful tool in situations where estuary delineation is difficult due to site size, inaccessibility, or safety concerns. By incorporating EBEEM into the rule, DSL aims to improve consistency and efficiency in how estuarine boundaries are determined.

Members had the following questions and comments:

- A RAC member asked whether the rule implies that a land survey is the preferred approach if available and if there is a hierarchy of acceptable methods defined by DSL. They also questioned whether the rule language should include the word “extent” to align with the model’s name.

- *Response: Tidal gages are the primary method, but due to their scarcity, other options must often be used. EBEEM is not meant to replace field indicators but rather serve as an additional tool.*
- *Response: DSL will review the definition to see if further clarification is needed.*
- One member questioned why maps are not created in advance using the model to predetermine jurisdictional areas.
  - *Response: Models are only as reliable as the data they incorporate, and environmental conditions change over time. Maintaining up-to-date inventory models is not always feasible.*
  - *Response: EBEEM includes sections where best professional judgment must be applied. Changes in the landscape, such as levees or repairs, may alter the model's accuracy. The model is a tool to consider, but professional judgment is still necessary for final determinations.*

Daniel discussed updates to the section of rule related to Oregon State Scenic Waterways, and Related Adjacent Lands, to align with statute and OAR 141-100. The updates clarify that "state scenic waterway" includes both the waterway and adjacent land, defined in statute as a quarter mile on either side of the bank. While Oregon Parks and Recreation Department (OPRD) currently has jurisdiction over these lands, DSL is often the first point of contact for projects within the quarter-mile zone. To address confusion over permit thresholds and notification responsibilities, the revised rule codifies existing practices, including the zero cubic yard threshold for removal-fill activity and DSL's ongoing practice of sharing project applications with OPRD for review. The Deschutes River is being used as a primary example throughout these updates.

Members had the following questions and comments:

- A RAC member suggested adding the definition of "related adjacent lands" directly into the rule section to reduce confusion.
  - *Response: The definition is included in the ORS but that is not a bad idea.*
- A RAC member asked whether this rule change also applies to DEQ's Outstanding Resource Waters, noting that some rivers may not fall under OPR jurisdiction but could still require additional protection. They questioned whether other agencies should also be referenced for consistency.
  - *Response: We can review our current rules. OAR 141-085-0520 already specifies certain areas, including ocean renewables, facilities, and ESA habitat, but we need to confirm if wetland removal-fill activities over 0 cubic yards are required for other agency-designated waters.*
  - *Response: This rule falls under the section addressing removal-fill jurisdiction by volume of material. Normally, the jurisdictional threshold is 50 cubic yards, but for specific water types, it drops to 0. If there are additional areas needing inclusion, we may need to add a reference to DEQ Outstanding Resource Waters, as found in OAR 340-041-0004, to ensure clarity.*

- One member clarified that this modification does not add related adjacent lands but instead clarifies the existing statutory reference. They asked for confirmation that this is not a new addition.
  - *Response: Correct, this change is only a clarification.*

### **Discussion – Permit and Jurisdiction; Draft Rules**

Madeline explained that the rules discussion would include live edits to the rules on screen, with pauses for member comments and questions to ensure consensus. Only the previously identified rules were covered, but members were encouraged to flag any formatting changes they wished to discuss.

The following summarizes the group’s discussion by rule number:

#### Rule 141-085-0510(42)

The RAC discussed the definition of "tidal river" and raised concerns about whether it clearly distinguishes between freshwater and saline environments. Members questioned how the term is being used in relation to estuaries and whether additional clarification is needed.

An agency advisor expressed concern that the definition of "highest measured tide" lacks precision regarding tidal rivers and their extent, making it unclear how the boundary is determined.

Several members pointed out that tidal fluctuations can significantly impact water levels, citing examples from the Columbia Slough where tides create up to a seven-foot difference. They suggested adding language to specify whether the definition applies to the saline portion of a river.

The RAC questioned whether "tidal river" is defined in statute or rule and whether a reference could be included for clarity.

Members suggested modifying the language to either explicitly include estuaries or avoid using undefined terms.

A member proposed referencing "tidal waters" as defined in the rule to ensure consistency, but DSL noted that doing so might limit jurisdiction to the intertidal zone rather than the full estuary.

#### Rule 141-085-0515(2)

The RAC discussed adding the word “extent” to the rule language for clarity.

The group sought clarification on whether a hierarchy exists within the methods outlined in the rule.

#### Rule 141-085-0510(85)

No discussion

#### Rule 141-085-0510(3)

A RAC member raised a question about the inclusion of cold-water habitat, noting that the term could be broadly interpreted.

The RAC suggested adding language specifying that these terms are “as defined by DEQ” to ensure consistency.

#### Rule 141-085-0510(41)

A member recommended adding “or enhancement” to the title to align with the proposed changes, as enhancement projects are included in the updated definition.

Another member suggested including the phrase “would reestablish a water of this state or improve” for clarity.

The group discussed potential clarifications regarding the application of the updated definition, especially for general authorizations and mitigation processes.

Several members suggested further defining “restoration” to prevent ambiguity.

A member suggested replacing “restoration” with “habitat improvement” to avoid confusion,

#### Rule 141-085-0510 (16)&(79)

No discussion

#### Rule 141-085-0530

A member inquired about proposing additional changes beyond the current proposals.

A member raised concerns about municipal storm systems and ponds not being called out in the exemptions.

Another member noted the challenge of balancing federal FEMA rules with DSL exemptions, particularly in floodplains. The group discussed how to ensure consistency across regulations to avoid future issues.

A member raised concerns about legally constructed stormwater systems that may still require maintenance.

#### **Interested Party Comments**

Madeline opened the floor for interested party comments, however no comments were made.

#### **Next Steps**

Danielle outlined the upcoming schedule for the next RAC meeting on May 21, noting that there is a significant amount of time between the two meetings. She explained that a meeting agenda will be sent to RAC members by May 14, along with a list of the rules to be presented.

Additionally, Danielle shared that office hours for RAC members will be held at 10 a.m. on Monday, May 19, specifically for technical questions and answers in preparation for the May 21 meeting.

Lastly, Danielle shared that the Meeting #2 Summary will be sent to RAC members in the coming weeks and that all meeting materials, including the most recent meeting’s recording, 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, reminding members of the next meeting date on May 21. She also expressed appreciation for the engagement and feedback received, reiterated the reminder about office hours,

and welcomed members to reach out via email for further inquiries. Finally, she noted that an evaluation would be sent out.