



Permitting and Mitigation in Oregon's Wetlands and Waters (Division 85) RAC Meeting # 5 Summary

July 9, 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 July 9, 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	X
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
Julia Bond	Alternate for Kaitlin Lovell, City of Portland	X
Kaitlin Lovell	Mitigation Banking Policy Director, City of Portland	
Katie Ryan	Alternate for Becky, Wetland Conservancy	X
Mackenzie Butler	Alternate for Emily Alcott, Interfluve	X
Marnie Keller	Environmental Services Programs Manager, Cow Creek Band of Umpqua Tribe of Indians	X
Michael Martin	League of Oregon Cities	X
Melissa Brown	Alternate for Julia Bond, City of Portland	
Ron Wierenga	Deputy Director, Clackamas Water Environment Services (Association of Oregon Counties representative)	X
Sue Brady	Alternate for Dana Kurtz, Anderson Perry	X
Staff		
Dana Hicks	Department of State Lands	
Danielle Boudreaux	Department of State Lands	X
Grey Wolf	Department of State Lands	X

Jane Rombouts	Department of State Lands	X
Melody Rudenko	Department of State Lands	X
Bethany Harrington	Department of State Lands	X
Charles Rendon	Department of State Lands	X
Daniel Evans	Department of State Lands	X
Ivy Jones	Department of State Lands	X
Jevra Brown	Department of State Lands	X
Jessica Salgado	Department of State Lands	X
Advisors		
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)	
Interested Parties		
John Krolak	Lane County Environmental Specialist	X
Mauria Pappagallo	Lane County Stormwater Management Services	X

Welcome and Introductions

Samantha Meysohn, a facilitator from Kearns & West, welcomed participants to the fifth 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 proposed draft rule changes relating to compensatory mitigation (CM). DSL staff, RAC members, and technical advisors then introduced themselves and shared their affiliations and roles.

Agenda Review; Zoom Protocols

Samantha 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– Compensatory Mitigation – Regulatory History and Proposed Rule Changes

Samantha introduced Grey Wolf, Oregon Department of State Lands (DSL), who presented background information on compensatory mitigation to support the upcoming discussion on proposed rule changes. Grey began by reviewing Oregon's statutory directives, including the Wetlands Policy and the Removal-Fill Law which require compensatory mitigation for unavoidable permanent losses to waters of this state.

Grey explained that mitigation involves a sequence of steps: avoidance, minimization, and compensation. They emphasized that compensatory mitigation refers specifically to the final step of this process. Grey used a three-legged stool analogy to illustrate that all three components must be addressed for mitigation to be considered complete.

Grey then reviewed the four methods of compensatory mitigation defined by DSL: restoration, enhancement, creation, and preservation. Each method has specific requirements. For example, restoration requires proof that the site was formerly a wetland, and enhancement must address hydrologic degradation. Preservation must involve sites with exceptional ecological features and a documented threat, often shown by the zoning of the land on which an aquatic resource is located. Grey mentioned that while base compensatory mitigation ratios exist in Div 85 rules for enhancement, creation and restoration, there is no base ratio for preservation. However, DSL typically applies a ten-to-one ratio for preservation and can increase or decrease that ratio based on various factors.

Grey outlined five mitigation options available to applicants: permittee-responsible mitigation, mitigation banking, advanced mitigation, in-lieu fee (ILF) mitigation, and payment in-lieu (PIL). Permittee-responsible mitigation is built and maintained by the applicant. Mitigation banking and ILF mitigation allows applicants to buy credits from a sponsor who assumes responsibility for site performance. DSL does not prioritize one option over another with the exception of PIL. PIL is considered the compensatory mitigation option of last resort.

Grey explained that in-lieu fee mitigation operates like a bank includes requirements for compensatory mitigation site construction in a watershed within three years of advance credit release. Payment in-lieu involves contributions to the Oregon Removal-Fill Mitigation Fund and does not meet federal mitigation standards. Using PIL as compensatory mitigation can also present unique challenges such as temporal loss of, and an inability of a mitigation project to match to the functions and values of impacted resources. Advanced mitigation allows applicants to create extra credits in advance and reserve them for future use with DSL approval.

Members had the following questions and comments:

- One RAC member asked why the three-year site impact requirement is not included in the rule for in-lieu fee program start and release sites.
 - *Response: The in-lieu fee program is already governed by the 2008 federal mitigation rule, which includes that three-year requirement. We did not include it in the state rule because we can lean on the existing federal regulation. Anyone using the in-lieu fee program must also get approval from the U.S. Army Corps of Engineers (USACE), who administers that program. That is why we did not carry over the three-year window into the state rule.*
- Another RAC member asked whether DSL has used this rulemaking opportunity to engage with USACE about the possibility of accepting payment in-lieu in the future.
 - *Response: We have not pursued that discussion because USACE has made it clear that it is a nonstarter. They would need to change the federal 2008 mitigation rule to allow it, which would require Congressional action. They have told us they are not open to it at this time.*
- A RAC member asked whether advanced mitigation could be tied to a list of future projects, such as those in a five- or six-year transportation Capital Improvement Plan, assuming the sites meet eligibility requirements.

- *Response: Yes, and in fact we prefer that approach. Agencies like the Oregon Department of Transportation (ODOT) can often project out their capital improvement projects into the future which allows them to anticipate potential future impacts. This helps in planning advanced mitigation sites. Just keep in mind that even with DSL approval, each individual impact still needs to be reviewed to ensure the advanced site meets state matching and principal objective requirements.*
- One RAC member commented that Eastern Oregon lacks mitigation banks, forcing applicants to build their own wetland mitigation areas at higher cost and often with lower ecological value. They asked if there is a way to address this through the rulemaking.
 - *Response: We understand this challenge and have been working with the Governor's Office, various municipalities, and others to expand mitigation options beyond the Willamette Valley and the coast. While the proposed rule updates do not directly address this, we are taking steps behind the scenes to increase compensatory mitigation options statewide.*
 - The same RAC member expressed interest in staying informed and helping connect clients to DSL. They emphasized that although there are more wetlands in western Oregon, there are also important wetland resources in eastern regions, and the lack of mitigation options raises equity concerns.
 - *Response: Although it may be perceived as inequitable, DSL is not the primary driver of some of the key factors involved in mitigation banking (examples – site selection, economics of banking, etc). Our role is to support public and private entities in establishing banks, but ultimately, another party has to take the initiative. We are trying to connect more with the market and share information with potential sponsors as much as possible.*
- Another RAC member added that there are also no in-lieu fee options in Eastern Oregon, and that either banks or in-lieu fee programs would be beneficial.
 - *Response: Yes, and if you hear of anyone interested in starting a bank or becoming an in-lieu fee sponsor in that region, let us know. We (DSL and the Corps) hold monthly pre-prospectus meetings and can get them into our process to discuss their concepts.*
- A RAC member asked how DSL determines prices for in-lieu fee credits, especially since DSL is currently the only sponsor.
 - *Response: We base our credit prices on the actual costs of restoration, creation, and enhancement work. We do not make a profit or add any markup. In general, in-lieu fee credits tend to be cheaper than mitigation banking credits because we are a state agency and cannot profit from the program.*
- One RAC member asked whether DSL accounts for inflation when pricing, since implementation may occur down the road.

- *Response: For our in-lieu fee projects, inflation is not an issue because they are already created. However, in the payment in-lieu program, we often collect funds before inflation increases costs. That means we sometimes end up with a funding deficit when it comes time to implement the full scope of work, including construction, monitoring, and delineation, etc.*

Discussion – Draft rule changes for Updates for Compensatory Mitigation Banking and In-Lieu Fee Programs

Grey transitioned from background concepts to proposed rule updates related to compensatory mitigation. They explained that not all proposed changes would be discussed in the meeting, only those needing input from the full RAC. Danielle Boudreaux, DSL, would be documenting RAC feedback throughout the discussion, although it would not be shown on screen.

Rule 0510 (18), (19), (16), and (67) Definition Changes

Grey began with proposed definition changes in Division 85. They explained that the term “compensatory non-wetland mitigation” would be removed because it is no longer used in rule. The definition of “compensatory wetland mitigation” would be simplified to mean “compensatory mitigation involving wetlands.” A new definition, “compensatory stream mitigation,” would be added to clarify when the rules refer specifically to rivers and streams, reflecting the expanded focus on stream mitigation in this rulemaking. Grey also stated that the term “non-wetland waters” would be deleted, as it does not appear elsewhere in the rules.

There were no questions or comments from RAC members regarding this section.

Rule 0680 (2)(a)(F): Compensatory Mitigation Applicability and the Principal Objectives Additions

Grey continued with proposed updates to general mitigation rules. They explained that DSL is proposing to revise Rule 0680 to clarify how the agency applies mitigation standards. Updates would reinforce the requirement that applicants must follow the full mitigation sequence of avoiding, minimizing, and then compensating for impacts. The rule would also emphasize that compensatory mitigation must be consistent with DSL’s mitigation goals and policies.

Grey noted that DSL is not proposing significant changes to the evaluation of avoidance and minimization. Instead, the updates are intended to improve clarity and alignment with other sections of rule. They highlighted that applicants must address all parts of the mitigation sequence, and that DSL will evaluate proposals based on the overall effectiveness in meeting program objectives.

The following summarizes the group’s discussion:

- One RAC member suggested adding the phrase “where appropriate” when referencing restoration and creation as the newly added principal objective. They noted that creation is especially high risk and restoration in the wrong location can be ineffective, so the rule should specify that these actions are only appropriate in certain contexts.
 - *Response: To better align with statute, we will consider adding the phrase “where appropriate” to the end of the principal objective language.*
- The same RAC member added that restoration and creation should be tied to broader conservation efforts, such as landscape or watershed management plans. They noted that

without this connection, created wetlands might become isolated features without broader ecological benefit.

- *Response: We recognize that without integration into larger conservation planning, restoration and creation efforts may not be meaningful. We will explore language that better reflects the importance of context, such as "where appropriate" or "where indicated in conservation planning documents."*
- Another RAC member pointed out a lack of clarity around the type of impacts being addressed, particularly the difference between permanent and temporary impacts. They recommended a text revision to better distinguish compensatory mitigation requirements for permanent impacts:

“141-085-0680(2) There may be value in adding clarification of applicability for specific impact type (i.e. permanent impact) to align with the definitions of CM and mitigation given CM is only required where mitigation is proposed through substitution. Recommend department revise text to: ‘For projects where adverse impacts to Waters of this State can only be mitigated through CM, CM will be required.’”
- *Response: Thank you for that recommendation. As a clarification, compensatory mitigation is only required for permanent impacts. Temporary impacts, which must be rectified within a 24-month period, are addressed through site rectification plans and monitoring, but they do not trigger compensatory mitigation.*
- A RAC member raised concerns about how DSL would evaluate whether a project meets objective F, especially regarding how much restoration or creation is required. They described a lack of clarity around thresholds, such as how many acres of enhancement versus restoration would suffice.
 - *Response: We are not proposing specific thresholds like “X acres of restoration” to meet objective F. These principal objectives are meant to be maximized wholistically, not met individually or through rigid formulas. The goal is to guide the conceptual development of mitigation projects, with an emphasis on increasing wetland area (i.e. the “resource base”), where feasible.*
- The same RAC member followed up, asking whether any level of increase qualifies under this objective, and suggested that high-level enhancement might be a worthwhile addition to the focus, alongside restoration and creation.
 - *Response: Our intent is to avoid net loss of aquatic resources, and we recognize that enhancement often results in a loss of wetland area and, sometimes, functions and values.*

Rule 0692(4)(c): Mitigation Accounting Addition

Grey introduced proposed revisions to Section 0692(4)(c) of the rule, which outlines how DSL determines the amount of compensatory mitigation required for impacts to waters of the State. Grey explained that the proposed revision to 0692(4)(c) adds language to clarify that minimum administrative protection requirements for compensatory wetland mitigation include ownership by a

public entity or one of Oregon's federally recognized tribes, along with a management plan or deed restriction. They noted that this addition reflects an effort to recognize Tribal sovereignty explicitly and aligns with updates to DSL's administrative protection rules, which would be discussed next.

The following summarizes the group's discussion:

- One RAC member expressed concern about a proposed statement regarding minimum protection requirements, noting that it does not align with the federal rule. They explained that federal guidance does not differentiate between types of compensatory mitigation, it simply refers to "compensatory mitigation sites," all of which require site protection. They specifically objected to the statement implying that no minimum protection requirements exist for non-wetland mitigation types, such as streams, since that differentiation is not present at the federal level.
 - *Response: The intent of including this clarification is to help practitioners better understand DSL's approach. From our perspective, and based on our statute and rule, we do not have minimum administrative protection requirements for other types of compensatory mitigation outside of wetlands.*
 - *Additional Response: This is not a new rule, it is simply a clarifying statement. We have received enough questions about this point that we believe it is helpful to include the clarification here for transparency, even though it already exists elsewhere in the rule.*

0695 (3): Administrative Protection of CM Sites Edit

Grey explained that Section 0695 of the rule outlines the requirements for administrative protection of compensatory mitigation sites. They stated that DSL is proposing to revise Section 3 to clarify that compensatory mitigation sites owned by a public entity or one of Oregon's federally recognized Tribes may meet administrative protection requirements through an adopted management plan. Grey noted that such plans must ensure appropriate protection of the site as determined by the Department, and while a site protection instrument may be used, it is not required. They emphasized that the purpose of this revision is to eliminate ambiguity and affirm that Tribal Nations, as the sovereign nations that they are, should not be subject to more stringent baseline protection requirements than public entities or federal, state or local governments.

There were no questions or comments from RAC members regarding this section.

0694 (1)(g): Special Requirements for CM Additions

Grey explained that Section 0694 outlines specific requirements for the use of enhancement and preservation as compensatory mitigation. They stated that DSL is proposing to add subsection (1)(g) to the list of special requirements for enhancement. This proposal parallels the recent addition of a principal objective related to creation and restoration. Grey noted that the rationale for this change stems from DSL's recognition that it is not meeting its statutory directive to maintain a stable wetland resource base. They emphasized that, because enhancement often results in a net loss of wetland

area, the addition of subsection (1)(g) is intended to help prevent further loss in areas that have already experienced disproportionate wetland decline. Grey concluded by stating that DSL anticipates the need to develop additional public and internal guidance related to enhancement and the new special requirement, and that initial ideas for such guidance are already in progress.

The following summarizes the group's discussion:

- One RAC member said the term “waters of this State” should be capitalized.
- A RAC member asked how DSL will determine which locations have disproportionate wetland loss.
 - *Response: We are still developing that approach. We plan to use tools such as 8-digit HUCs as a starting point, along with removal-fill permit data and possibly historical or anecdotal information. We aim to maintain some flexibility in the rule and build more detailed guidance alongside it.*
- Another RAC member said that if the goal is no net loss of wetlands statewide, it may be unnecessary to identify specific locations with disproportionate wetland loss.
 - *Response: We agree that the goal to maintain a “stable resource base” of wetlands is a state-wide goal. However, how DSL executes compensatory mitigation eligibility is at the level of the 8-digit HUC or within service areas for ILF projects and mitigation banks. This is the “how” behind how DSL through our Removal Fill program goes about ensuring that we maintain that stable base of wetlands. So we need to understand patterns of wetland loss at that scale to guide decisions effectively.*
- One RAC member suggested removing the phrase “in locations with disproportionate wetland loss” to simplify the rule and reduce ambiguity.
 - *Response: We will consider simplifying the language and appreciate the suggestion. Our intent is to allow flexibility while still directing mitigation to areas where it is most needed.*
- An additional RAC member said the rule language could create confusion without clear definitions or a published map showing areas of disproportionate wetland loss.
 - *Response: We understand the concern. We will likely develop guidance that will help clarify what is meant by “location” and “disproportionate”, and what scale we are referencing.*
- Another RAC member expressed concern that overly complex rules could create barriers to mitigation, especially given how difficult mitigation already is in some areas.
 - *Response: We are trying to balance program goals with feasibility, and we will be careful not to create unnecessary roadblocks.*
- One RAC member said the rule should prioritize areas of high conservation value rather than areas with high wetland loss.

- A RAC member asked whether resource base refers to the area of wetlands or their function.
 - *Response: In this context, resource base refers to the area or acreage of wetlands. Even if functions are improved, we still need to prevent net loss of wetland area.*
- Another RAC member asked whether enhancement is prohibited in areas with disproportionate wetland loss.
 - *Response: Enhancement is not prohibited, but it would likely need to be a more minor component of a larger mitigation project that includes restoration or creation.*
- One RAC member said that limiting enhancement in certain areas could reduce flexibility and create uncertainty in project planning.
- A RAC member said that the terms “location” and “disproportionate wetland loss” are unclear and need to be better defined.
 - *Response: We agree. Clarifying those terms is a key next step, and we will address that in upcoming guidance.*

0710 (5): Monitoring Requirements for CM Addition

Grey reviewed a proposed revision to Section 5 regarding monitoring requirements for compensatory mitigation. They explained that DSL is proposing to add language allowing the Department to require additional monitoring and compensatory mitigation plan modifications if a mitigation site is not self-sustaining, even if it appears to meet performance standards. Grey noted that this change addresses scenarios where a mitigation site passes final monitoring due to recent or last-minute maintenance efforts, despite not meeting standards consistently over time. They emphasized that DSL seeks to ensure mitigation sites are truly self-sustaining and require minimal human intervention following the monitoring period. The proposed addition preserves DSL’s ability to extend monitoring if necessary to evaluate long-term site viability.

The following summarizes the group’s discussion:

- One RAC member asked for more consideration around wetland creation, particularly in connection with the proposed rule addition.
 - *Response: We agree that this is a critical issue. As we encourage creation more in the future, we will focus especially on achieving self-sustaining hydrology. That will be a key indicator, along with other elements like soils and vegetation.*
- Another RAC member asked whether the current rule language about creation is linked to DSL’s broader evaluation of creation as a compensatory mitigation option.
 - *Response: Yes, those are related discussions. We are continuing to examine how to support successful creation projects, especially in terms of sustainability and long-term outcomes.*

- One RAC member said the term “self-sustaining” is vague and questioned what it is intended to mean. They suggested that terms like “ecologically sustainable,” “adaptable,” “resilient,” or “positive trend over time” might be more accurate.
 - *Response: We will consider using an alternative phrase, and we appreciate the suggestion to improve clarity.*
- A RAC member said that certain habitat types, like prairies, would never meet a strict definition of self-sustaining, and questioned whether those systems would be excluded under the proposed language.
 - *Response: We understand that concern and agree it is important to acknowledge the diversity of habitat types. We will consider language that better reflects ecological realities and does not exclude important systems.*
- An additional RAC member said that mitigation banks often track trends in vegetation composition, and that the term trajectory might better reflect how sites are assessed.
 - *Response: We agree. Trajectory-based measures are commonly used and could be incorporated to support the intended outcomes without implying unrealistic permanence.*
- One RAC member suggested removing the term self-sustaining entirely, or at minimum providing a clear definition. They said performance standards might be a better place to capture the intended outcomes.
 - *Response: We will consider removing the term or defining it more clearly. Including relevant indicators in performance standards could address the intent more effectively.*
- Another RAC member said that some level of disturbance or ecological change may be desirable and planned for, especially in the context of climate change or urban pressures. They said that ongoing management challenges do not necessarily mean a site is failing.
 - *Response: Those are important realities to factor in, and we will take them into account as we refine the language and guidance.*
- An additional RAC member expressed support for the previous comments and emphasized the value of framing outcomes in terms of ecological trajectory. They said it is important to reflect the dynamic nature of ecosystems.

0750: Payment to and Expenditures from the Oregon Removal-Fill Mitigation Fund Calculation

Jane Rombouts, DSL, presented proposed revisions to Section 0750, which outlines how payment in-lieu (PIL) amounts are calculated and how PIL funds are used. She began by reviewing the PIL program and its purpose, which is to allow applicants to meet their compensatory mitigation obligations by paying into DSL’s Removal-Fill Mitigation Fund. DSL then uses these funds to implement compensatory mitigation projects that offset permitted impacts.

Jane explained that the proposed revisions aim to simplify the PIL calculation formula, improve transparency, and provide greater flexibility for adjusting cost inputs in the future. A key change includes modifying the mathematical formula by replacing the mitigation multiplier as a divisor with a

multiplier, eliminating the need to convert it into a decimal ratio. This adjustment makes the calculation more intuitive and transparent.

Additional revisions include removing the fixed 10 percent definition for administrative costs to allow DSL more flexibility in calculating actual administrative expenses. In the definition of restoration cost, the phrase “per unit area” was removed to ensure algebraic consistency with other variables in the equation. Minor formatting changes were also proposed, such as consistently writing out the word “percent” and standardizing unit usage by removing references to area from the definition of the mitigation multiplier.

In the second portion of Section 0750, which addresses how PIL funds may be spent, DSL proposes removing the phrase “and fund a staff position.” Jane explained that this change is intended to give DSL greater flexibility in how the program is administered, including decisions regarding staffing.

Members had the following questions and comments:

- One RAC member asked whether the rule should define what administrative costs include. They questioned whether it covers only staff time or also other elements like monitoring.
 - *Response: That is exactly the kind of question that led us to seek more flexibility in the rule. We removed the 10 percent cap because we realized we need to better understand what administrative costs actually include. Those costs could vary depending on project location, the entity involved, or funding sources, so we plan to refine this further.*
- A RAC member asked whether administrative costs are separate from restoration costs such as engineering, construction, and planting.
 - *Response: Yes, administrative costs are distinct. Restoration costs include direct implementation work like construction and planting, while administrative costs cover project management activities that support that work.*
- Another RAC member noted that administrative costs have traditionally been calculated as 10 percent but acknowledged they can vary widely.
 - *Response: That is correct. While 10 percent has been a common estimate, we recognize that actual costs differ depending on many factors. That is why we moved away from a fixed percentage and are looking to better define these costs.*
- One RAC member pointed out a formatting issue in the rule text: an extra space between “Mitigation Bank” and “in which.”

Rule 0510 (45), (58), (59), (71), (93), (102) Definition Edits

Grey introduced proposed revisions to Section 510, which contain definitions related to the in-lieu fee and banking. They explained that the definition of “in-lieu fee mitigation” in section (45) is being updated to more clearly recognize both the in-lieu fee program and in-lieu fee mitigation as distinct compensatory mitigation options. The revised definition states that in-lieu fee mitigation refers to a mitigation bank where the sponsor is a government or nonprofit natural resource management entity, and where advanced credits may be released upon approval of an in-lieu fee instrument, prior to the approval of a mitigation site by the Department. Grey added that a single in-lieu fee instrument may allow for the future authorization of additional mitigation sites. They noted that the changes are

intended to clarify and strengthen the definition to better reflect the structure and function of in-lieu fee programs.

There were no questions or comments from RAC members regarding this section.

Rule 0510 (58) Definition Edits

Grey described a proposed revision to the definition of “mitigation bank” in section (58). They explained that the update includes correcting the statutory reference and adding a new sentence to clarify how a mitigation bank functions within the removal-fill program. Grey read the proposed sentence, which states that a mitigation bank is used to compensate for reasonably expected adverse impacts of project development on waters of the state, with fees paid by the applicant to a sponsor. They noted that the revision is intended to align the definition with current statutory language and to provide clearer guidance on how mitigation banks are utilized in practice.

Members had the following questions and comments:

- One participant asked whether the phrase “waters of the State” should be capitalized in this section as well, noting that it may be inconsistent with other parts of Division 85.
 - *We will review the document to make sure that capitalization is consistent throughout the rule.*
- A RAC member suggested removing the phrase “reasonably expected,” saying it adds unnecessary words and that the phrase could simply state to compensate for adverse impacts.

Rule 0510 (59) Definition Edits

Grey explained that the definition of “mitigation bank instrument” in section (59) is being revised to include language clarifying that such instruments may be created for individual banks, umbrella bank programs, or in-lieu fee mitigation programs.

There were no questions or comments from RAC members regarding this section.

Rule 0510 (71) Definition Edits Grey then introduced a proposed change to the definition of “mitigation bank prospectus,” which would now be titled simply “prospectus” in section (71). This revision is intended to ensure consistent use of the term across all types of mitigation programs.

There were no questions or comments from RAC members regarding this section.

Rule 0510 (93) Definition Edits Continuing with this theme of broadening applicability, Grey explained that the term “mitigation bank sponsor” in section (93) would be changed to “sponsor.” They stated that this adjustment would allow the term to be used flexibly in the context of all program types. Grey noted that the intended meaning of “sponsor” can be readily inferred based on the context in which it appears within the rules.

There were no questions or comments from RAC members regarding this section.

Rule 0510 (102) Definition Edits

Grey introduced the addition of a new term and definition for “umbrella mitigation bank” in section (102). They explained that this term, widely used in compensatory mitigation practice since the 2008 Mitigation Rule, refers to a structure in which multiple compensatory mitigation sites can be

authorized and added under a single umbrella banking instrument. Grey clarified that this definition is being added to distinguish umbrella mitigation banks from individual mitigation banks and to acknowledge the terms established use in the field (of aquatic resource compensatory mitigation.)

There were no questions or comments from RAC members regarding this section.

Rule 0720 (1), (4)(c), Mitigation Banking Purpose, Applicability, and Policies Edits

Grey introduced proposed revisions to Section 0720, which outlines the general purpose and policies related to mitigation banking and in-lieu fee programs. They explained that DSL is updating section (1) to clarify that the section applies to all types of compensatory mitigation, banking, and crediting programs. Grey read the revised language, which states that mitigation banking involves payments to an approved sponsor to satisfy compensatory mitigation requirements for impacts to waters of the State. The revised text also clarifies that the rules apply to individual mitigation banks, umbrella mitigation banks, and in-lieu fee programs.

Grey further explained that DSL is proposing to add a new final sentence to Section 1, which has been moved from section (4)(c). The purpose of this change is to consolidate all rules related to banks and in-lieu fee programs in one section, making it easier for DSL staff and the public to locate relevant requirements. Grey read the proposed sentence: "The department may limit the number and type of in-lieu fee sponsors." They emphasized that this sentence is not new policy, but language relocated from another part of the rule for improved organization and clarity.

There were no questions or comments from RAC members regarding these sections.

Rule 0725 (3) Process for Establishing Mitigation Banks Addition

Grey explained that DSL is proposing to add a subsection under section (3) to maintain consistency between the rule and statute regarding the Statutory Directive. This directive establishes the opportunity to increase wetland resources by encouraging wetland restoration and creation where appropriate. Grey clarified that DSL interprets "appropriate" to mean locations where there have been disproportionate wetland losses. In these locations, restoration and creation are considered the more appropriate compensatory mitigation methods because they lead to net wetland gains in area, functions, and values.

Members had the following comment:

- One RAC member said that it might be better to keep the language more general by using "where appropriate" rather than specifying that the best place to invest is only where losses have occurred, especially given uncertainty about the scale and location of those losses. They suggested reverting to the original wording to maintain flexibility.

Rule 0725 (4) Process for Establishing Mitigation Banks Additions

Grey explained that DSL is proposing to add section (4) to provide clear prospectus content requirements for umbrella mitigation banks. The prospectus is the foundational document prepared when a sponsor receives approval from DSL to proceed with their conceptual plan. The information required differs somewhat from that of the subsequent mitigation bank instrument. A key distinction is that umbrella banks require approval of the conceptual framework for determining service areas under the umbrella instrument. Detailed site-specific information such as location and service area is not

required unless already known. This information will be included later in compensatory mitigation plans for individual mitigation sites approved and amended to the umbrella instrument.

There were no questions or comments from RAC members regarding this section.

Rule 0725 (5) Process for Establishing Mitigation Banks Additions

DSL is proposing to add section (5) to clarify prospectus content requirements for in-lieu fee programs. Similar to umbrella banks, in-lieu fee programs require approval of a conceptual framework for service areas under the program instrument. Detailed site-specific information is not required unless known at the prospectus stage and will be included later in compensatory mitigation plans for individual mitigation sites approved and amended to the program instrument. Grey also noted a unique feature of in-lieu fee programs is the option to receive advanced credit releases in specific service areas. These advanced credits may be sold and used as seed money to create compensatory mitigation sites. Therefore, DSL proposes to require sponsors to submit proposed service areas for advanced credit sales along with a planning framework to identify and secure future mitigation sites within each service area.

There were no questions or comments from RAC members regarding this section.

Rule 0725 (12) Process for Establishing Mitigation Banks Additions

Grey stated that the current rule allows a mitigation bank instrument to serve as the removal fill permit application, but DSL is proposing to remove this option in section (12). DSL believes permitting experts should manage the permit process separately from the mitigation bank instrument review because the permitting requirements vary and require specialized expertise. Additionally, no sponsors have used this option since its inception. Another key reason for DSL's proposal to remove this allowance from rule is that the current bank instrument template lacks the required information for a joint permit application. Updating the mitigation bank instrument template would require a major overhaul. DSL prefers to keep the permitting and bank instrument processes distinct.

There were no questions or comments from RAC members regarding this section.

Rule 0725 (12M), Process for Establishing Mitigation Banks Additions DSL proposes to add subsection (M) to section (12) to clarify what information must be submitted with an in-lieu fee program-specific mitigation bank instrument. This requirement is in addition to the general information needed for a bank-specific instrument.

There were no questions or comments from RAC members regarding this section.

Rule 0730 (2): Establishment of Mitigation Credits Edits

Grey explained that Section 730 outlines how mitigation credits are established. DSL is proposing to remove section (2), which addresses bonus credits, because this rule is now outdated and no longer relevant. New mitigation banks are required to include long-term stewardship funding provisions within their mitigation bank instruments. Grey clarified that bonus credits were previously recognized at the discretion of the department, in consultation with the Interagency Review Team, to cover the reasonable costs of adding long-term stewardship provisions to existing banks that were approved without such measures. Bonus credits allowed mitigation bank sponsors to potentially add one or two extra credits to sell in order to provide an endowment or funding mechanism for long-term

stewardship. Since current bank instruments now require built-in long-term funding mechanisms, DSL is removing the bonus credits provision.

There were no questions or comments from RAC members regarding this section.

Rule 0730 (4): Establishment of Mitigation Credits Edits

Grey stated that DSL is proposing to remove section (4), which addresses wetland credits for non-wetland waters. This section currently allows the department to recognize wetland credits for improvements in non-wetland areas such as stream channel habitat, riparian floodplains, non-wetland inclusions within wetland upland mosaics, and other ecosystem components that provide ecological benefits to a larger wetland bank. Grey explained that this section is being removed because DSL is proposing a robust stream crediting system, including buffer crediting, as discussed in previous Rule Advisory Committee meetings.

Members had the following questions and comments:

- A RAC member said that they understand that upland buffer credits are currently given on wetland mitigation sites and expressed concern that removing certain language might unintentionally affect those credits. They noted that most upland buffers are in riparian floodplains or wetland-upland mosaics and hoped those would not be impacted.
 - *Response: We will carefully review the language to ensure that removing it does not inadvertently eliminate approval of upland buffers in wetland mitigation sites. We will comb through the rule text to prevent any oversight.*

Rule 0735 (6): Release, Use and Sale of Mitigation Credits Addition

Grey explained that section 735 outlines how mitigation credits are released, used, and sold. DSL is proposing to add section (6), which requires sponsors of in-lieu fee programs to establish a program account at a financial institution that is a member of the Federal Deposit Insurance Corporation or an equivalent entity. All interest and earnings accruing in this program account must remain within the account and may only be used for the selection, design, acquisition, implementation, and management of in-lieu fee projects. A small percentage of funds may be used for administrative costs if approved for the mitigation banking instrument. Grey noted that this addition is intended to align state rule with existing 2008 federal mitigation rule requirements.

There were no questions or comments from RAC members regarding this section.

Rule 0740 (12) Authorization for Mitigation Banks Edits

Grey stated that section 740 outlines the general authorization process for mitigation banks. The key proposed update involves removing existing rule language that allows a mitigation bank instrument to be used as the removal fill permit application in section (12). The reasons for disallowing this option were covered earlier in the discussion of section 725 which addresses the process for establishing mitigation banks.

There were no questions or comments from RAC members regarding this section.

Interested Party Comments

Samantha 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 August 6, 2025. She explained that a meeting agenda will be sent to RAC members by July 30, along with a list of topics to be presented.

Additionally, Danielle shared that office hours for RAC members will be held at 10 a.m. on Monday, August 4, specifically for technical questions and answers in preparation for the August meeting.

Lastly, Danielle shared that the Meeting #5 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

Samantha closed the meeting by thanking DSL staff, RAC members, and interested parties for their participation, reminding members of the next meeting date on August 6. 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.