



February 12, 2026

To: Land Conservation and Development Commission

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Subject: **Agenda Item 13, February 26-27, 2026, LCDC Meeting**

Background on Wetlands Protection in Oregon

I. Agenda Item Summary

At the Land Conservation and Development Commission's request, Department of Land Conservation and Development (DLCD or department) staff and Department of State Lands (DSL) Deputy Director of Aquatic Resource Management Bill Ryan will provide an informational briefing. Presenters will address the relationship and duties of the two state agencies and the US Army Corps of Engineers with respect to wetlands protections in Oregon.

a. Purpose

With increasing pressures on remaining wetlands in Oregon, staff will brief the Land Conservation and Development Commission (LCDC or commission) on the role of state and federal regulatory agencies.

b. Objective

Commissioners are briefed on the background and context for wetlands protection in Oregon. This background should be useful context for the public hearing on the draft wetlands and urbanization rule making later this year.

For further information about this report, please contact Gordon Howard, Community Services Division Manager at 503-856-6935 or gordon.howard@dlcd.oregon.gov.

II. Background

Wetlands provide significant ecological function and benefit to Oregon's ecology and economy.

Since European settlement in the 19th century, much of Oregon's wetlands have been filled, drained, or separated from surface waters that support them. The Willamette Valley has lost approximately 57 percent of its original wetland area. Concerned about the severity of wetland loss, Oregon adopted laws that set a standard of no-net-loss of wetland acres.

In 1973, Oregon adopted the statewide land use program to support the state's economy and livability. The Oregon Legislature decided on an inventory-based land use planning system. Goal 5, a primarily natural resource-focused goal among the 19 Statewide Planning Goals, is distinct from the development-driven permit-by-permit environmental protection laws in other states with wetland protection laws, such as California and Washington. In 1996, LCDC adopted a new set of rules to implement Goal 5. DLCD, with guidance from a range of community members, recognized a need for more robust data on wetland presence. A requirement for local wetlands inventories (LWIs) became a key strategy for contributing to local land use planning programs, based on data and information to provide more certainty for developers.

LWIs are also valuable for improving the Statewide Wetlands Inventory, which in the absence of an LWI relies largely on low accuracy and incomplete data on wetland presence provided by the National Wetlands Inventory, which is managed by the U.S. Fish and Wildlife Service (USFWS).

a. Division of State Lands Removal and Fill Laws

Oregon's Removal-Fill Law, now one of the nation's most robust wetland protection statutes, evolved from a 1960s effort to manage gravel extraction into a comprehensive program for preserving the state's waterways and wetlands.

The law's development followed several key milestones:

1967: The Removal Law. The Oregon Legislature enacted the first statute to regulate the removal of gravel and other materials from state streams.

1971: The Fill Law. To address the escalating problem of uncontrolled filling in estuaries and waterways, the legislature passed a complementary Fill Law.

1977: Expanded Jurisdiction. The state extended jurisdiction to include intermittent streams and freshwater wetlands, the latter added following a clarifying opinion from the Attorney General.

1989: Comprehensive Protection. A major legislative update established protection for all Waters of the State, including converted wetlands brought into agricultural production before 1989.

2019–Present: Mitigation & Modernization. Recent updates have aligned Oregon's mitigation standards with federal rules and granted the Department of State Lands (DSL) authority to adopt new permit fee schedules to sustain the program.

Oregon's Removal-Fill Law protects wetlands by regulating the placement within or removal of material from waters of this state. The law includes a "no net loss" policy regarding wetlands, and requires project proponents to avoid, minimize, and compensate for unavoidable impacts to wetlands and other waters through mitigation, which may involve restoring, creating, or preserving wetland ecosystems.

Because Oregon's law is independent of the federal Clean Water Act, it continues to protect wetlands and waterways even when federal protections are rolled back.

b. Goal 5 Rule for Wetlands Planning

The commission set the first rules for implementing Goal 5, division 16 in 1981. Cities and counties were required by the rules implementing Goal 5 to recognize wetlands and balance an interest in preserving these natural areas with an interest in achieving the other Statewide Planning Goals. Division 16 allowed cities to rely on available information about wetlands. Over time, DLCD found that local governments were not adopting Goal 5 wetland programs, because the location and extent of wetlands is often not readily discernable. Although USFWS' National Wetlands Inventory Program was created in 1974, the scale of the inventory was not suitable for local comprehensive planning. Hence, the Department of State Lands created the Local Wetland Inventory process and the commission adopted rules integrating this process into administrative rules implementing Goal 5.

DLCD's rule for implementing Goal 5 to address wetlands, adopted in 1996, requires a Local Wetlands Inventory (LWI) before local governments can develop a local wetlands protection program. The rule anticipated that all cities would have an LWI for the area within their UGBs in 10-15 years. The Oregon land use planning framework does not require counties to adopt LWIs. An LWI includes a functional assessment that identifies locally significant wetlands. It is these high-functioning, significant wetlands that cities recognize in their comprehensive plan and preserve, unless there are compelling reasons to not protect one. This approach supports crafting urban plans that keep the natural ecological functions of significant wetlands in place, while allowing development in upland areas and in lower functioning wetlands, provided impacts to these wetlands are authorized by a DSL removal-fill permit.

The Oregon Department of State Lands plays a key role in implementing Goal 5 by reviewing and approving Local Wetland Inventories (LWIs), supporting the identification of significant wetlands, and providing technical assistance to local governments. DSL helps implement Goal 5 by managing state-level data on wetlands including the Statewide Wetlands Inventory, ensuring compliance with the zero-net-loss of wetlands law, and regulating development through Removal-Fill laws.

c. US Army Corps of Engineers Permits

The U.S. Army Corps of Engineers (USACE) protects wetlands primarily by regulating the discharge of dredged or fill material under Section 404 of the Clean Water Act. Adopting a "no net loss" policy, the Corps requires developers to avoid, minimize, and compensate for unavoidable impacts through mitigation, which may involve restoring, creating, or preserving wetland ecosystems. For decades, there was significant overlap between waters and wetlands regulated by the federal government (Waters of the U.S. or WOTUS) and those regulated under Oregon's Removal Fill Law (Waters of this State). DSL worked with the USACE to align processes to the extent possible to minimize the regulatory burden of permit applicants requiring permits from both agencies.

In the past decade, U.S. Supreme Court decisions and resulting rulemaking by EPA have significantly reduced the amount of wetlands regulated by the USACE. EPA is currently engaged in another rulemaking effort that is widely anticipated to result in a further reduction of federally regulated waters and wetlands. This contraction of federal protections puts additional pressure on the state system to protect wetlands functions and values. It also presents potential

opportunities to streamline state regulatory processes since they no longer need to align with federal processes in wetlands no longer regulated by the USACE.

III. Conclusion

No action is required. Staff appreciate any questions, guidance or feedback the commission may have.

IV. Attachments

- a. None