



OAR 141-090 RAC Meeting #2 Summary

Tuesday, December 6, 2022 – 2:00 p.m. to 4:00 p.m.

Overview

The OAR 141-090 Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on December 6, 2022, via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules for wetland delineation report requirements and for jurisdictional determinations for the purpose of regulating fill and removal within waters of the state.

RAC Members and Attendance

Name	Affiliation	Present?
Members		
Allen Martin	Geo Resources	Y
Brad Livingston	Oregon Department of Transportation	Y
Jessica Dorsey	City of Hillsboro; League of Oregon Cities	Y
Jodi Forgione	Schott & Associates, Inc.	Y
John van Staveren	The Wetlands Conservancy; Pacific Habitat Services, Inc.	Y
Branden Pursinger	Association of Oregon Counties	Y
Lauren Poor	Oregon Farm Bureau	
Phil Scoles	Terra Science, Inc.	Y
Stacey Reed	AKS Engineering & Forestry	Y
Katie Ryan	The Wetlands Conservancy	
Samantha Bayer	The Oregon Home Builders Association	Y
Ed Strohmaier	Tetra Tech	Y
Staff/Advisors		
Bill Ryan	DSL, Deputy Director	
Danielle Boudreaux	DSL, Rules and Records Coordinator	Y
Pete Ryan	DSL, Project Manager	Y
Lynne McAllister	DSL, Jurisdiction Coordinator	Y
Dana Hicks	DSL, Planning & Policy Manager	
Steve Faust	3J Consulting, Inc., Facilitator	Y
Interested Parties		
Melanie O'Meara	US Army Corps of Engineers	
Chris Stevenson	DSL, Jurisdiction Coordinator	
Daniel Evans	DSL, Jurisdiction Coordinator	
Jess Salgado	DSL, Jurisdiction Coordinator	
Jevra Brown	DSL, Aquatic Resource Planner	Y
Matt Uritis	DSL, Jurisdiction Coordinator	
Dan Antonson	DSL, GIS Specialist	Y

Name	Affiliation	Present?
Members		
Ariel Nelson	League of Oregon Cities	Y

Welcome and Introductions

Steve Faust, Facilitator, and Peter Ryan, DSL Project Manager welcomed everyone, and each member in turn introduced themselves to the rest of the group.

Discussion of Draft Rules

Peter started at the beginning of the rules and going section by section, rule by rule, provided DSL’s responses for comments received following the last RAC meeting. The responses were also provided to RAC members prior to the meeting and so will not be added here. Following each reading of DSL’s responses to RAC member comments, DSL asked if there were any new questions or comments. What follows is a summary of the discussions held when there were additional questions and comments by RAC members.

Rule 141-090-0005 - no new discussion

Rule 141-090-0010 - no new discussion

Rule 141-090-0015 - no new discussion

Rule 141-090-0020 - no new discussion

Rule 141-090-0025 - One RAC member felt DSL’s requirement for a “NRCS county soil survey map” in section (9)(e) could be clarified by additional language explaining how soil maps can also be prepared with data downloaded to a GIS. However, because this section of the rule pertains to figures prepared by DSL for DSL use, we feel the current language is sufficient. The comment also applied to another section in the rule. [141-090-0035(13)(d)]. The NRCS maps referred to at the second location are for those prepared by persons submitting reports to DSL. DSL feels that the intent of the rule is clear at the second location and does not require additional language.

Rule 141-090-0030 - no new discussion

Rule 141-090-0032 - no new discussion

Rule 141-090-0035 – The proposed requirement to submit GIS data that would conform to Delineation GIS Template and Data Description provided by the DSL led to a new discussion and suggestions to

change requirement to voluntary. RAC members also felt the proposed requirements would be difficult to implement and costly for small consulting companies. One RAC member also recommended that DSL consider accepting AutoCAD files for this requirement because many consultants already have the capability to provide that file type. Additionally, RAC members felt it would be difficult to approve the proposed GIS Template and Data Description document without first having the chance to review it. DSL agrees and will discuss this requirement with staff to see if this requirement can be modified. If new language is proposed, it will be shared with the RAC before the next meeting.

Additionally, the RAC had new discussion surrounding DSL's proposal to require classifying wetlands for Cowardin and HGM. Members felt the minimum size of 0.10 acres for identifying and mapping separate Cowardin or HGM classes within the same wetland was too small and recommended increasing the minimum size for identifying and mapping separate classes to 0.5 acres. The discussion was identical for each location where this size requirement was stated in rule, including in sections for Field Methods, Report Text, and the Delineation Map. DSL will take this recommendation to staff and provide a response to the RAC before the next meeting.

Finally, following up on a brief discussing held during the meeting, one RAC member shared an additional recommendation through email to all the members immediately following the meeting. The email asked everyone to consider revising the section of the rule that describes what precipitation information must be included in the report text. DSL will take this recommendation to staff and provide a response to the RAC before the next meeting.

Rule 141-090-0040 - no new discussion

Rule 141-090-0045 - no new discussion

Rule 141-090-0050 – One RAC member noted section (4)(b) of the proposed appeal process needed a slight revision for clarity. DSL agreed and added the word “decision” to the second sentence of part (b).

General comment for entire rule set – DSL will take the RAC comments that they were not able to approve during the meeting, including requirements for GIS, the minimum size for identifying and mapping separate classes, and how to record precipitation data, to staff and provides staff responses for each recommendation before the next meeting.

Public Comment

Based on timing for the fourth RAC meeting, the public comment period will not begin before March, 2023.

Summary of questions DSL needs to answer soon

RAC meeting #4 will include finishing up any specific rulemaking items remaining after today's meeting. DSL will reach out to staff to get answers for the following:

- Can DSL phase in over time the requirement for submitting GIS data, starting with voluntary submittals followed by mandatory submittals after some set period?
- Can DSL get a draft GIS template and data dictionary ready for review by the 4th RAC meeting?
- Can we include an allowance for accepting CAD files in our GIS rules?
- Will increasing the minimum size for identifying and mapping separate wetland classes to 0.5 acre cause problems for DSL's permitting staff?
- Can DSL modify the rule that describes how precipitation data is collected based on an emailed recommendation sent to the RAC following the third meeting?

Next Steps

- The fourth RAC meeting will be scheduled for January 9.
- DSL will share draft copies of the following at the next RAC meeting:
 - Division 90 Rules
 - Fiscal Impact Statement
 - Racial Equity Statement
 - Notice of Proposed Rulemaking