

Division 141-090 Proposed Draft Rule Text (begins next page)

Prepared for RAC Meeting #3, December 6, 2022

REDLINE KEY:

Purple Underline = Original revision additions

~~Purple Strikethrough~~ = Original revision deletions

Blue Underline = RAC Meeting 2 additions

~~Blue Strikethrough~~ = RAC Meeting 2 deletions

Red Underline = RAC Comment Review additions

~~Red Strikethrough~~ = RAC Comment Review deletions

1 **Department of State Lands**

2 **Chapter 141**

3 **Division 90**

4 **ADMINISTRATIVE RULES FOR WETLAND DELINEATION REPORT REQUIREMENTS AND FOR**
5 **JURISDICTIONAL DETERMINATIONS FOR THE PURPOSE OF REGULATING FILL AND REMOVAL WITHIN**
6 **WATERS OF ~~THE~~ THIS STATE**

7 **141-090-0005**

8 **Purpose**

9 The purpose of these rules is to establish standards and procedures by which the Department of State
10 Lands makes jurisdictional determinations for the purpose of regulating fill and removal within waters of
11 this state of wetlands and other waters of this state. These rules also establish minimum standards for
12 wetland delineation reports submitted to the Department for review and the procedures for
13 Department review and approval.

14 **Statutory/Other Authority:** ORS 196.845 & 196.692

15 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

16 **History:**

17 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

18 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

19 DSL 1-2004, f. & cert. ef. 5-21-04

20 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

21 **141-090-0010**

22 **Applicability**

23 (1) These rules establish the standards and procedures used by the Department of State Lands to
24 identify wetlands and other waters of this state ~~that which~~ are subject to regulation and authorization
25 requirements of the Removal-Fill Law (ORS 196.800 to 196.990).

26 (2) These rules are supplemental to administrative rules for issuance and enforcement of removal and
27 fill authorizations (OAR 141-085; 141-0102); rules pertaining to wetland conservation plans and local
28 wetlands inventories (OAR 141-086; 141-120); rules pertaining to the identification of significant
29 wetlands (OAR 141-086); rules pertaining to General Authorizations (141-089); rules pertaining to
30 General Permits (141-093) and rules pertaining to Oregon Scenic Waterways (141-100).

31 (3) Agencies such as the U.S. Army Corps of Engineers (Corps of Engineers) and the Natural Resources
32 Conservation Service (NRCS) have separate regulatory authority over waters of the United States and
33 separate jurisdictional determination procedures.

34 **Statutory/Other Authority:** ORS 196.845 & 196.692

35 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

36 **History:**

37 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

38 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

1 DSL 1-2004, f. & cert. ef. 5-21-04
2 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

3 **141-090-0015**

4 **Policy**

5 (1) It is the policy of the State of Oregon that the protection, conservation and best use of the water
6 resources of this state are matters of the utmost public concern (ORS 196.805) and that the state use a
7 single definition of wetlands and a single, uniform methodology of delineating wetland boundaries (ORS
8 196.672).

9 (2) In accord with these policies the Department shall, to the greatest extent possible:

10 (a) Provide a clear process for making, ~~modifying~~ revising, reconsidering, or reissuing jurisdictional
11 determinations, ~~including wetland boundary delineations;~~

12 (b) Make jurisdictional determinations using the best available science, technical guidance and
13 documents;

14 (c) Use sound professional judgment in interpreting maps, ~~aerial photographs~~ remotely sensed imagery,
15 environmental data and other relevant ~~documents~~ information;

16 (d) Provide jurisdictional determinations that improve the level of regulatory certainty for landowners
17 and developers and that help ensure that ~~fill or~~ removal or fill of material in waters of this state does not
18 occur without a required removal or fill permit; and

19 (e) Encourage landowners and developers to utilize wetland delineation reports at the earliest stage of
20 site development planning ~~in order~~ to incorporate measures to avoid and minimize impacts to ~~wetlands~~
21 ~~and other waters~~ of this state and thus prevent unnecessary regulatory delays.

22 (3) Because ~~wetlands and other~~ waters of this state can be affected over time by both natural changes
23 and human activities, jurisdictional determinations are ~~not~~ valid for ~~an indefinite~~ a limited period of
24 time.

25 (4) The Director of the Department of State Lands shall designate employees responsible for making
26 jurisdictional determinations as described in these rules.

27 (5) Final authority for determining the adequacy of the procedures, methods, application of technical
28 documents, interpretation and analysis of maps and data, and conclusions regarding the identification of
29 waters of this state and jurisdictional determinations rests with the Department except ~~as described in~~
30 ~~Oregon Laws 2012, c. 108, § 2, and except~~ when the Department's determination is reviewed by a court
31 of competent jurisdiction.

32 **Statutory/Other Authority:** ORS 196.845 & 196.692

33 **Statutes/Other Implemented:** 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279

34 **History:**

35 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

36 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

37 DSL 1-2004, f. & cert. ef. 5-21-04

38 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

1 **141-090-0020**

2 **Definitions**

3 For the purpose of these rules:

4 (1) "Agent" means a business partner, attorney, or any individual who is legally authorized to represent
5 the landowner's interests.

6 (2) "Applicant" means a person who has applied to the Department for a wetland delineation report
7 approval, a jurisdictional determination ~~and, or~~ a removal or fill authorization.

8 (3) "Aquatic Resources of Special Concern" (ARSC) means waters of this state that provide functions,
9 values and habitats that are limited in quantity because they are naturally rare or have been
10 disproportionately lost due to prior impacts. These include bogs, fens, cold water habitat, hot springs,
11 interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats
12 (alcoves and side channels), ultramafic soil wetlands, vernal pools, wet prairies, wooded tidal wetlands,
13 certain alkaline wetlands and lakes, and others as determined by the Department.

14 ~~(34)~~ "Authorization Application" means the written application for an authorization to place fill in or
15 remove material from waters of this state as required by OAR 141-085, 141-089, 141-0100 and 141-
16 0102.

17 ~~(45)~~ "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators
18 that support the Department's jurisdictional determination.

19 ~~(56)~~ "Change in Circumstances" means a change in site conditions that fundamentally alters the
20 hydrology or substrate to the extent that the "normal circumstances" of waters of this state are
21 changed. The change in circumstances may be due to on- or off-site alterations on a site or alterations
22 offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a
23 jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage
24 system failure that restores former hydrologic conditions to a site, placement of fill material, or a water
25 source diversion.

26 ~~(67)~~ "Consultant" means a person, as defined in ORS 196.800(10), who provides ~~private individual or~~
27 ~~firm whose business is to provide~~ professional services to the public.

28 (8) "Cowardin" means Cowardin, L. M., V. Carter, F. C. Golet, E. T. LaRoe. 1979. Classification of wetlands
29 and deepwater habitats of the United States, U. S. Department of the Interior, Fish and Wildlife Service,
30 Washington, D.C.

31 ~~(789)~~ "Delineation" means a determination of ~~wetland the~~ presence of wetlands and other waters that
32 includes marking ~~the wetland~~ boundaries on the ground and on a detailed map prepared by professional
33 land survey or similar accurate methods.

34 ~~(37434510)~~ "Wetland Delineation Map" means a map included in a Wetland Delineation Report or
35 provided with a JD by the Department that shows the parcel tax lot(s) and ~~/or~~ study area(s) investigated
36 and the location, size, and boundaries of any/all wetlands and other waters.

1 (~~891011~~) "Determination" means a decision that a site may, does, is unlikely to, or does not contain
2 ~~waters of this state, including~~ wetlands or other waters. A determination does not include the ~~precise~~
3 ~~exact~~ location or boundaries of any wetlands or ~~waterways~~ other waters determined to be present.

4 (~~9101112~~) "Director" means the Director of the Department of State Lands or ~~his or her designate~~ their
5 designee.

6 (~~10111213~~) "Department" means the Oregon Department of State Lands, including the Director.

7 (~~121314~~) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or
8 more of material at one location in any waters of this state ~~placement of material or other ground~~
9 ~~disturbance in a wetland or other water~~. However, in designated ESH areas (OAR 141-102) and in
10 designated State Scenic Waterways (OAR 141-100) "fill" means any amount of deposit by artificial
11 means.

12 (~~11131415~~) "Final Order" means a final agency action expressed in writing. "Final order" does not
13 include any tentative or preliminary agency statement, including a "preliminary jurisdictional
14 determination," and does not preclude further agency consideration of the subject matter of the final
15 order.

16 (~~141516~~) "Geographic Information System" (GIS) means a system of hardware, software and data
17 storage that allows for the analysis and display of information that has been geographically referenced.

18 (~~12151617~~) "Global Positioning System" (GPS) means a navigation system which consists of a network of
19 satellites and earth receiver stations which allows a person to determine, via a receiver, their respective
20 position in latitude, longitude, and altitude.

21 (~~1718~~) "Hydrogeomorphic Method" (HGM) means the wetland classification based on a wetland's
22 location in the landscape and the sources and characteristics of water flow defined in Adamus,
23 P.R.2001.Guidebook for hydrogeomorphic (HGM)-based assessment of Oregon wetland and riparian
24 sites: Statewide classification and profiles. Oregon Division of State Lands, Salem, OR.

25 (~~13161819~~) "Indicator" means soil characteristics, vegetation, hydrology evidence, or other field data
26 that indicate, by their presence or absence, the existence of certain environmental conditions.
27 Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction
28 over wetlands and other waters of this state.

29 (~~14171920~~) "Jurisdictional Determination" (JD) means a written decision by the Department that waters
30 of this state subject to regulation and authorization requirements of OAR 141-085, 141-089, 141-0100
31 and 141-0102 are present or not present ~~on~~ within a ~~land parcel~~ study area. The JD may include a
32 delineation of the geographic boundaries of the ~~water~~ area subject to state jurisdiction. For example, a
33 JD may include the location of a wetland boundary or the location of the ordinary high water line
34 ~~or~~ (ordinary high water mark) of a waterway. A JD may, but does not necessarily, include a determination
35 that a particular activity in a water of this state is subject to authorization requirements. The decision
36 record includes the basis of the jurisdictional determination and is a final order subject to
37 reconsideration according to the provisions in 141-090-0050.

38 (~~15182021~~) "Landowner" means the legal owner of the ~~parcel(s)~~ property for which a JD is requested or
39 made.

1 (~~16192122~~) "Local Wetlands Inventory" (LWI) means a wetlands_s inventory map and supporting data that
2 is conducted according to the requirements in OAR 141-086 and has been approved by the Department.

3 (~~17202223~~) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual
4 including the two regional supplements that cover Oregon: Arid West and Western Mountains, Valleys,
5 and Coast, and applicable guidance (see OAR 141-090-0030) all of which is hereby incorporated by
6 reference. The public may obtain a copy of the manual from the Department's website.

7 (~~18212324~~) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S.
8 Fish and Wildlife Service.

9 (~~19222425~~) "New Information" means data, reports, photographs, observations_s or similar information
10 that is provided to or obtained by the Department after the Department has issued a jurisdictional
11 determination or issued an authorization.

12 (~~20232526~~) "Non-wetland" means an area that does not meet the wetland definition and criteria.

13 (~~21242627~~) "Normal Circumstances" means the hydrology, soil and vegetative hydrologic conditions
14 that are naturally normally present, regardless of without regard to whether ~~or not~~ the soil or hydrology
15 has been recently altered or the natural vegetation has been removed ~~or altered~~. "Normal
16 circumstances" includes a consideration of the permanence of any change to the site; for example, if
17 several feet of fill material are_s placed on a wetland_s the new "normal circumstances" may be non-
18 wetland. In such a situation, the Department may determine if the placement of fill material required a
19 fill permit.

20 (~~22252728~~) "Offsite "Off-site Determination" means a determination by the Department or any other
21 person that is conducted without a site visit using resources such as maps, ~~aerial photographs~~ remotely
22 sensed imagery, observations from adjacent areas, or interviews with persons familiar with the site. An
23 offsite off-site determination is ~~considered to be~~ a Preliminary Jurisdictional Determination (PJD) unless
24 otherwise stated in writing by the Department.

25 (~~23262829~~) "Onsite "On-site Determination" means a determination by the Department or any other
26 person that includes a site visit to collect relevant data. An ~~onsite~~ on-site determination by the
27 Department may be either a PJD or a JD.

28 (~~24272930~~) "Other Waters" means all waters ~~of this state~~ other than wetlands regardless of jurisdiction.

29 (~~25283031~~) "Person" means an individual, corporation, firm, partnership, estate, association, body of
30 government_s or other legal entity.

31 (~~26293132~~) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued
32 ~~orally or~~ in writing stating that ~~wetlands or other~~ waters of this state are present or not present ~~on~~
33 within a ~~parcel of land~~ study area. Because a PJD is advisory in nature_s it has no specified duration or
34 expiration and is not subject to appeal. PJDs include all wetland determinations by any person other
35 than the Department; and may also include wetlands mapped on the ~~NWI or on an LWI~~ SWI.

36 (~~27303233~~) "Primary Contact" means the person ~~or firm~~ designated by the landowner, agent_s or
37 applicant to serve as the Department's contact for the purpose of the review and approval of a wetland
38 delineation report.

1 ~~(313334)~~ "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight
2 in tons) in any waters of this state in any calendar year; or the movement by artificial means of an
3 equivalent amount of material on or within the bed of such waters, including channel relocation.
4 However, in designated ESH areas (OAR 141-102) and in designated State Scenic Waterways (OAR 141-
5 100) the 50-cubic-yard minimum threshold does not apply.

6 ~~(28323435)~~ "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder
7 relating to the filling and/or the removal of material in waters of this state.

8 ~~(29333536)~~ "Report" means a wetland delineation or determination report.

9 ~~(30343637)~~ "Sample Plot" means ~~an a portion of a study area on a parcel of land~~ within which
10 environmental data (i.e. e.g., soils, hydrology, and vegetation) are collected that is representative of that
11 area and documented on a wetland determination data form.

12 ~~(31353738)~~ "Site-specific methods" means ~~what the field investigator actually did in order to conduct~~
13 ~~the wetland determination or sampling, delineation, and prepare the wetland delineation report; for~~
14 ~~example, the offsite resources actually consulted, why certain portions of investigative procedures used~~
15 ~~to address the unique circumstances at a study area were or were not selected for field sampling, actual~~
16 ~~plot sizes for vegetation sampling, site. Boilerplate content from the manual and explanation of best~~
17 ~~professional judgment relied upon. A generic description of methods the field investigator generally~~
18 ~~employs is not procedures are not site-specific.~~

19 ~~(363839)~~ "Statewide Wetlands Inventory" (SWI) means a composite of wetland mapping (i.e., LWI, NWI,
20 approved wetland delineations) and other natural resource mapping for the state of Oregon that is
21 provided by the Department. The SWI is a screening tool to help identify approximate locations of
22 potential wetlands and waterways and is continually revised as additional digital mapping information is
23 received or obtained by the Department.

24 ~~(32373940)~~ "Study Area" means the area that was investigated for the presence of waters of this state
25 ~~(e.g., usually a portion of a tax lot(s), parcel or other legally defined geographic area), wetlands and other~~
26 waters.

27 ~~(384041)~~ "Upland" means any land that is not a wetland or other water.

28 ~~(33394142)~~ "Waters of this state" means all natural waterways, ~~all~~ tidal and nontidal bays, intermittent
29 streams, constantly flowing streams, lakes, wetlands, that portion of the Pacific Ocean that is in the
30 boundaries of this state, and all other navigable and ~~nonnavigable~~ non-navigable bodies of water in this
31 state and those portions of the ocean shore, as defined in ORS 390.605. ~~(ORS 196.800(14) and OAR 141-~~
32 ~~085-0010 and 141-085-0015), where removal or fill activities are regulated under a state-assumed~~
33 permit program as provided in 33 U.S.C. 1344(g) of the Federal Water Pollution Control Act, as
34 amended.

35 ~~(34404243)~~ "Wetlands" means those areas that are inundated or saturated by surface or ground water
36 at a frequency and duration sufficient to support, and that under normal circumstances do support, a
37 prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(~~1617~~) and
38 OAR 141-085-~~0010~~0510(110)).

1 (35414344) "Wetland Boundary" means a line marked on the ground and on a map that identifies the
2 boundary line between wetlands and non-wetlands.

3 (36424445) "Wetland Delineation Report" means a written document that contains the methods, data,
4 conclusions, and maps used to determine if wetlands and other waters of this state are present on
5 within a land parcel study area and, if so, describes and maps their location locations and geographic
6 extent. A wetland determination report documenting wetland the presence or absence of wetlands and
7 other waters is included within this definition.

8 **Statutory/Other Authority:** ORS 196.845 & 196.692

9 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

10 **History:**

11 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

12 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

13 DSL 1-2004, f. & cert. ef. 5-21-04

14 DSL 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-23-04

15 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

16 **141-090-0025**

17 **Procedures for Determinations Conducted Entirely by the Department**

18 (1) The Department shall make a determination (PJD or JD) according to the procedures in this section.

19 (2) The Department may make a determination for a number of reasons, including but not limited to:

20 (a) A written request from any person (e.g., a landowner or their agent) requesting a determination for a
21 particular parcel or parcels one or more tax lots or any portion thereof;

22 (b) A Wetland Land Use Notice from a local government as required by ORS 196.676;

23 (c) A site development notice from a local government;

24 (d) A request from a local government or other government entity acting in its capacity to conduct site
25 assessments for project or planning purposes;

26 (e) A removal-fill authorization application, request for a pre-application meeting or a compliance
27 investigation;

28 (f) A request to review and approve a wetland delineation report (see additional requirements and
29 procedures in OAR 141-090-0030, 141-090-0032 and 141-090-0035); or

30 (g) In conjunction with its authority and responsibilities under ORS 196.600 to 196.962, 196.800 to
31 196.990, and any applicable rules of the Department.

32 (3) The Department may prioritize the completion of determinations based upon the availability of staff
33 and budget resources.

34 (4) A request to the Department to provide a wetland determination apart from an authorization
35 application, wetland delineation report submittal, or local government notice shall include:

36 (a) A written request on a form provided by the Department;

- 1 (b) Landowner/ or agent permission to conduct a site visit if an onsite on-site determination is desired;
- 2 (c) Landowner or agent Applicant name, company or agency, mailing address and phone number
- 3 contact information;
- 4 (d) A site location map, such as a city map, showing the precise parcel location with respect to nearest
- 5 streets and parcel site address, if any;
- 6 (e) A detailed site map such as a tax map or hand drawn parcel map plan showing, as appropriate, such
- 7 features as the tax lot boundaries, location of streets, roads, buildings, streams, and area of any planned
- 8 development or removal or fill or excavation, if known; and
- 9 (f) The legal location from the tax map (Township, Range, Section, Quarter-Quarter Section and Tax Lot
- 10 numbers).
- 11 (5) A request for a determination may include additional helpful information, such as:
- 12 (a) A large scale An appropriately-scaled topographic map of the site (e.g., 1 inch = 50 feet);
- 13 (b) A large-scale aerial photograph of the site; or
- 14 (c) ~~Photographs~~ Ground photographs of the site.
- 15 (6) A wetland determination request as described in section (4) and (5) of this rule may not be used to
- 16 obtain agency review and approval of a wetland delineation report (see OAR 141-090-0032 and 141-
- 17 090-0040).
- 18 (7) The Department will review the information provided with the request along with other available
- 19 maps and information and provide a PJD or a JD.
- 20 (8) The Department may request additional information and may conduct a site visit to ensure an
- 21 accurate determination. The Department shall contact the applicant or primary contact prior to
- 22 conducting a site visit.
- 23 (9) An onsite on-site determination conducted by the Department to make a JD or PJD shall include at a
- 24 minimum:
- 25 (a) A location map showing the location of the parcel(s) study area with respect to major roads;
- 26 (b) A parcel tax lot map showing property boundaries;
- 27 (c) The legal location from the tax map (Township, Range, Section, Quarter-Quarter Section and Tax Lot
- 28 numbers);
- 29 (d) The NWI map or, if available, the LWI map appropriate SWI mapping with the site located;
- 30 (e) The county Natural Resources Conservation Service soil survey map with site located and soil type(s)
- 31 mapped on the site identified;
- 32 (f) A sketch map showing the approximate location of any waters of this state on the parcel tax lot(s) or
- 33 within a defined study area;

- 1 (g) At least one data form ~~(or equivalent notes)~~ documenting any wetlands identified or possible
2 wetlands determined not to meet wetland criteria; and
- 3 (h) Conclusions and recommendations regarding additional requirements (e.g., the need for a
4 delineation or permit), as appropriate to the determination request and the situation.
- 5 (10) After review of the information and the site visit, if conducted, the Department may:
- 6 (a) Provide a written PJD or JD in accordance with section (11) of this rule; or
- 7 (b) Provide a written PJD and recommend that the landowner, agent, or applicant obtain a wetland
8 ~~determination and~~ delineation that meets the requirements in OAR 141-090-0030 and 141-090-0035.
- 9 (11) A written PJD or JD by the Department shall include at a minimum:
- 10 (a) A letter or form addressed to the applicant, landowner or agent that includes the location of the
11 ~~parcel tax lot(s) or study area~~ investigated, a file number for future reference, and the expiration date of
12 the JD, or a response on or attached to a wetland land use notice form or other site development notice
13 submitted by a local government;
- 14 (b) Comments regarding the ~~precision or~~ use of the PJD or JD, as appropriate;
- 15 (c) Additional requirements or recommendations, such as the need for a wetland delineation;
- 16 (d) A determination of the requirements or exemptions in accordance with OAR 141-085, 141-089, 141-
17 093, 141-0100, and 141-0102 that apply to any waters of this state identified on the ~~parcel tax lot(s)~~
18 and/or the proposed activity, if the information provided to or obtained by the Department is sufficient
19 to make such determination; and
- 20 (e) A map or reference to a map showing the ~~parcel tax lot(s) or study area~~ investigated and the
21 approximate location of any ~~identified~~ waters of this state ~~identified on the parcel(s)~~, unless the
22 information provided to or obtained by the Department is not sufficient to make or refer to such a map.

23 **Statutory/Other Authority:** ORS 196.845 & 196.692

24 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

25 **History:**

26 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

27 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

28 DSL 1-2004, f. & cert. ef. 5-21-04

29 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

30 **141-090-0030**

31 **Technical Requirements**

32 (1) Wetland determinations and delineations shall be conducted in accordance with ~~the 1987 U.S. Army~~
33 ~~Corps of Engineers Wetlands Delineation Manual ("the manual"), manual, including regional~~
34 ~~supplements and applicable guidance~~, and any supporting technical or guidance documents issued by
35 the Department.

36 (2) ~~The jurisdictional limits of All~~ other waters (e.g., streams, estuaries, ditches) ~~are~~ shall be delineated
37 at the jurisdictional limits described in OAR 141-085-0515.

1 (3) In addition to the requirements in this section, wetland delineation reports submitted to the
2 Department for review and approval shall meet the standards and requirements in OAR 141-090-0035.

3 [Publications: Publications referenced are available from the agency.]

4 **Statutory/Other Authority:** ORS 196.845 & 196.692

5 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

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9 DSL 1-2004, f. & cert. ef. 5-21-04

10 DSL 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-23-04

11 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

12 **141-090-0032**

13 **Fees for Wetland Delineation Report Review**

14 (1) Any person submitting a wetland delineation report to the Department for review and approval must
15 pay to the Department a nonrefundable fee in the amount as determined under ORS 196.818(49). A
16 request for reissuance of an expiring report is not subject to an additional fee.

17 (2) If the person submitting a report withdraws the report from agency review after it has been
18 submitted and the fee paid, or if the Department withdraws the report according to OAR 141-090-
19 0040(3)(d), any resubmittal is subject to a new fee.

20 (3) If a person wishes to change information in or expand the geographic area covered by a report that is
21 pending initial review by the Department, a revised report may replace the previous report in its
22 entirety, without incurring an additional fee. This provision does not apply to changes requested by the
23 Department.

24 (4) A report that has been rejected by the Department per OAR 141-090-0040(3)(f) may be revised and
25 resubmitted along with an additional nonrefundable fee of \$100.00.

26 **Statutory/Other Authority:** ORS 196.845 & 196.692

27 **Statutes/Other Implemented:** 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

28 **History:**

29 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

30 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

31 **141-090-0035**

32 **Standards and Requirements for Wetland Delineation Reports Submitted to the Department**

33 (1) Report Submittal: All wetland delineation reports ("reports") submitted to the Department for
34 review, approval, and a JD shall meet the technical requirements in OAR 141-090-0030 as well as the
35 minimum standards and requirements in this rule. Reports must conform to the report format provided
36 by the Department.

- 1 (2) All wetlands and other waters on the parcel tax lot(s) or study area shall be included; the
2 Department will determine whether or not they are "waters of this state", subject to jurisdiction under
3 OAR 141-085, 141-089, 141-093, 141-100, and 141-102.
- 4 (3) All report text, maps, ~~aerial photographs~~ remotely sensed imagery, ground photographs, and data
5 forms must be legible.
- 6 (4) Reports must be submitted as:
- 7 ~~(a) Paper hard copies, reproduced in color as applicable, unbound and, with the exception of~~
8 ~~photographs, must copy legibly on a black and white copier; or~~
- 9 ~~(b) Digital~~ (a) A single, unlocked PDF files file with minimum resolution of 300 dpi and searchable text for
10 the text portion of the report; or
- 11 (b) Paper hard copies, reproduced in color as applicable, unbound and must copy legibly.
- 12 (5) ~~Submitting Geographic Information System (GIS data must be submitted and conform to the~~
13 ~~Delineation GIS Template and Data Description provided by the Department. Required GIS) data is~~
14 ~~optional but recommended for reports covering large study areas and must conform to the Delineation~~
15 ~~GIS format Template and Data Description provided by the Department.~~
- 16 (a) All georeferenced data sets must be projected using the Oregon Geographic Information Council
17 endorsed state standard: Oregon Lambert conformal conic (Datum: NAD 83; Units: International feet:
18 3.28084; Spheroid: GRS1980).
- 19 (b) Metadata must be completed for each layer and conform to the current Oregon Geographic
20 Information Council Metadata Standard.
- 21 (6) All submittals must include a fully completed and signed "Wetland Delineation Report Cover Form"
22 (current form provided by the Department).
- 23 (7) Field Methods: The field investigation methods and level of detail required for making and
24 documenting a PJD or JD and mapping wetlands and other waters of this state will vary by site. At a
25 minimum:
- 26 (a) The entire ~~parcel (tax lot) or~~ study area whether a tax lot or portion thereof must be investigated
27 during a field investigation. ~~If only a portion of a parcel is investigated, the study area with respect to~~
28 ~~parcel boundaries must be made clear in the report text and shown on the wetland maps.~~
- 29 (b) All ~~waters of this state in addition to~~ wetlands and other waters must be identified, ~~described,~~
30 supported by data as appropriate, ~~and mapped,~~ described, and classified to Cowardin system and class,
31 HGM class, and ARSC type, as applicable. Separate polygons are required when adjoining Cowardin
32 classes are greater than 0.10 acre and when ARSCs are a portion of a larger wetland.
- 33 (c) Sufficient data and additional information shall be collected for any wetlands and other waters ~~of this~~
34 ~~state~~ to enable the Department to make a JD; determine location and ~~also to size of ARSCs within~~
35 mapped features; and determine if removal-fill permit requirements or exemptions apply ~~or if the~~
36 ~~feature identified may be specifically exempt from permit requirements.~~

- 1 (d) The wetland delineation must include sample plots that: represent the characteristics of each
2 wetland present; represent each adjacent non-wetland(s); are paired and located close enough to either
3 side of the wetland boundary to accurately substantiate the wetland boundary location; and are
4 sufficient to characterize long or irregular boundaries.
- 5 (e) Wetland determination sample plot data must be provided for any portion of the study area where
6 there is significant deviation from wetlands mapped shown on the ~~NWI or LWI~~ SWI unless the deviation
7 is due to development that is so significant that it precludes data collection.
- 8 (f) At least one sample plot must be placed in all mapped hydric soil units within the study area.
- 9 (g) At least one sample plot must be placed in the lowest topographic areas or other locations most
10 likely to contain wetlands.
- 11 (8) Study area boundaries, wetland and other water boundaries, and sample plots shall be identified on
12 the ground. For actively managed sites, such as agricultural fields, golf courses, or recreational fields,
13 where it may be impractical to leave the boundary and plot markers on the ground until the JD is issued,
14 their precise mapped location must be readily relocated in the field by the applicant or consultant
15 during a site visit by the Department.
- 16 (9) Because sites are highly variable and JD needs also vary, some situations may warrant deviation from
17 the Field Methods requirements outlined in OAR 141-090-0035(7), for example large geographic areas,
18 linear projects, mosaics, and difficult wetland sites. In such situations, persons conducting wetland
19 delineations are encouraged to consult with the Department prior to field work regarding appropriate
20 methods.
- 21 (10) For farmed sites, field work should be guided by multiple information sources including at least
22 three aerial photos from three different years (early growing season if possible), a detailed topographic
23 survey, and information about site management activities such as irrigation schedules, subsurface
24 drainage systems and plowing frequency and depth.
- 25 (a) Wetland determination and delineation on farmed sites ~~shall~~ may need to follow procedures
26 outlined in the Difficult Wetland Situations ~~Chapter~~ chapter of the appropriate regional supplement to
27 the manual.
- 28 (b) On sites where the hydrology indicators may be missing or misleading due to natural or hydrologic
29 manipulation, hydrologic monitoring may be needed to verify the absence or presence of wetland
30 hydrology. When a hydrology monitoring method alternative to the manual standard is being pursued,
31 the proposed method shall be submitted to the Department in writing for prior approval.
- 32 (11) Wetland and other water boundaries, ~~samples plots, and study area boundaries~~ and sample plot
33 locations must be mapped to the standards described in subsection (a) and (b) of this section.
- 34 (a) Except as provided in subsection (b) of this section, the map ~~precision standard (precision of~~
35 ~~transferring boundaries of features located on the ground to a map) for wetland boundaries, data plots~~
36 ~~and study area boundaries is within one meter (3.28 feet);~~ accuracy standard for wetland and other
37 water boundaries and sample plot locations is within 3.28 feet (one meter) or as otherwise approved by
38 the Department. The accuracy standard is not intended to establish a requirement for authoritative
39 mapping, such as by a professional land surveyor, as described in ORS 672 et seq.

- 1 (b) The minimum delineation mapping accuracy ~~and map precision~~ standard for voluntary wetland
2 ecosystem restoration projects (see OAR 141-089-0800 through 141-089-0815) that do not include
3 compensatory mitigation activities or payment-in-lieu is 50 feet (14.8 meters).
- 4 (c) Mapping procedures may include professional land survey, GPS, measurements made from
5 permanent features identified on ~~the a~~ map or ~~on an~~ from a georeferenced aerial photo photograph or
6 other remotely sensed imagery included with the report, or approximated. ~~For most intensive~~
7 ~~development activities, such as subdivision planning or commercial development, a professional land~~
8 ~~survey may be necessary. The appropriate map precision for removal fill permitting is subject to the~~
9 ~~judgment of when approved by~~ the Department.
- 10 (12) Report Text: The report text must include:
- 11 (a) A detailed description of the site, its landscape setting, and previous and current land uses;₂
- 12 (b) A description, including the approximate year and extent, of any ~~site~~ alterations that likely affected
13 the presence, location or geographic boundaries of any wetlands or other waters on the site (e.g.,
14 surface drainage ditches ~~or~~ fill material, grading);₂
- 15 (c) Precipitation for the day(s) of and 2-week period preceding the field investigation(s), observed and
16 percent of normal rainfall for the water year to date, and for the observed rainfall compared to the
17 NRCS WETS table 30% and 70% chance exceedance values for each of the three months preceding the
18 field investigation;₂
- 19 (d) The date(s) of the field investigation and site-specific methods used to conduct the field
20 investigation, define study area boundaries, select sample plot locations, determine boundaries of
21 wetlands and other waters, interpolate boundaries between paired plots, and make PJDs;₂
- 22 (e) A description of ~~any wetlands~~ all wetland and other ~~waters~~ water polygons identified, including
23 ~~whether or but~~ not limited to:
- 24 (A) Area, in acres, for wetlands, ponds, reservoirs, and lakes; length, in feet and width, of streams,
25 ditches, and reservoirs;
- 26 (B) Whether they extend ~~offsite, and off-site~~;
- 27 (C) Cowardin classification to the characteristics of system and class level (more than one adjoining class
28 within the same wetland must be listed separately when 0.10 acre or more);
- 29 (D) Dominant HGM class;
- 30 (E) Stream flow duration of other waters;
- 31 (F) Type, size, and other water boundaries on location of ARSCs that constitute a portion or all of a
32 mapped feature;
- 33 ~~(G) Information about wetlands below the site; ordinary high water line; and~~
- 34 (GHG) Whether it is a State-approved compensatory mitigation, if known;

- 1 (f) Deviation from ~~NWI mapping, LWI mapping, or previous DSL approved delineations~~ the SWI,
2 supported by wetland determination data or explanation of development in area mapped previously as
3 wetland; wetlands or other waters.
- 4 (g) An explanation of how the location of the ~~parcel study area or tax lot~~ boundaries, ~~data-plots~~ sample
5 plot locations, wetlands, and other ~~features~~ waters depicted on the delineation map(s) were mapped. A
6 ~~statement of precision~~ Explanation must be ~~included with~~ provided for each method used for mapping
7 and to generate the map which features each applies.
- 8 (h) ~~All preliminary jurisdictional determinations shall be supported with~~ Additional information and
9 rationale for all PJDs sufficient to demonstrate jurisdiction based on OAR 141-085-0515 criteria. This
10 information can include, but is not limited to:
- 11 (A) Documentation of fish presence or absence in a stream or ditch, using published maps or reports or
12 information from an authoritative source (e.g., Oregon Department of Fish and Wildlife field staff,
13 StreamNet);
- 14 (B) Information sufficient to determine whether ~~or not~~ an identified water feature is artificially created
15 entirely from upland and the purpose for which it was created~~;~~
- 16 (C) Information about the water feature's wetland status, size, average water depth at ordinary high
17 water, topographic and geomorphological location, mapped soil series and hydric status, and evidence
18 of drainage (e.g., drain tiles ~~or~~ ditching)~~;~~
- 19 (D) Hydrology monitoring data;
- 20 (E) Historical ~~aerial photographs~~ imagery;
- 21 (F) Data or other information on pre-disturbance conditions, such as excavation to an original (formed
22 ~~insitu~~ in situ) soil surface or identification of a former stream course;
- 23 (G) A detailed topographic survey;
- 24 (H) Data collected at a certain time of year;
- 25 (I) Additional plant species identification; or
- 26 (J) Documentation from a ~~Removal~~ removal-fill permit including permit number.
- 27 (i) ~~The results~~ Results and conclusions of the investigation~~;~~ including a table summarizing details in
28 (12)(e) and (h).
- 29 (j) The following disclaimer: "This report documents the investigation, best professional judgment and
30 conclusions of the investigator. It is correct and complete to the best of my knowledge. It should be
31 considered a Preliminary Jurisdictional Determination of wetlands and other waters and used at your
32 own risk unless it has been reviewed and approved in writing by the Oregon Department of State Lands
33 in accordance with OAR 141-090-0005 through 141-090-0055." ~~and~~
- 34 (k) Appendices, as needed.

- 1 (13) Report Figures and Maps: All reports shall include the figures and maps listed in (13)(a) through
2 (13)(g). All maps must include an outline of the study area boundary, a north arrow, a scale bar, and
3 legend of all map elements. Any inset maps must include a scale bar.
- 4 (a) A small-scale location map, such as a city map, clearly naming geographical places, waterways, and
5 major roads in the vicinity.
- 6 (b) Assessors tax lot map(s), ~~which include for~~ the entire study area, either downloaded as PDFs from
7 the Oregon Department of Revenue’s “ORMAP” website or from a County Tax Assessor’s Office GIS
8 data. Maps produced from GIS data must label each tax lot with the Assessors tax map number and tax
9 lot number.
- 10 (c) The appropriate wetland mapping from the SWI (approved delineations, LWI map(s) or if no LWI has
11 been completed, the NWI map(s)).
- 12 (d) The NRCS county soil survey map including the map unit symbol, name, and hydric status for all soil
13 series mapped within the study area;
- 14 (e) At least one recent aerial photograph, preferably taken early in the growing season or during other
15 periods of peak hydrology, that includes the month and year of the photo (include at least three aerial
16 photos from three different years for farmed sites).
- 17 (f) One or more wetland delineation and other waters maps comprising the wetland and water other
18 waters determination or delineation, as appropriate, that meets the requirements in sections (14)
19 through (16) of this rule.
- 20 (g) Ground-level color photographs of the site.
- 21 (14) The wetland delineation and other waters map(s) must be legible and include:
- 22 (a) The boundaries of the entire parcel tax lot(s) subject to investigation; or including tax map and tax lot
23 label(s).
- 24 (b) The study area boundary in relation to the parcel tax lot boundaries, ~~if only a portion of the parcel(s)~~
25 ~~was investigated.~~ For large parcels tax lots with small study areas, a map in addition to the wetland
26 delineation map may be required to show the relationship between the study area and parcel tax lot
27 boundaries.
- 28 (c) An index map if a large project study area needs to be divided into more than one detail map for
29 clarity or map scale issues. ~~The~~ Full-page index map(s) shall show the precise exact location and extent
30 of the areas shown on the detail maps in relationship to the larger study area.
- 31 (d) Locations of existing structures (unless clearly visible on a current aerial photo included ~~in~~ as the
32 report map’s base map), such as culverts, bridges, tidegates, fencelines, powerlines, and roads, where
33 practicable.
- 34 (e) Locations of recent fill, removals, water diversions, or other major alterations;
- 35 (f) The boundaries Boundaries and labeling for mapped features, including:

- 1 (A) Boundaries of all wetlands, ~~including wetlands below the ordinary high water line,~~ and other waters
2 ~~and where they;~~
- 3 (B) Where features extend ~~offsite~~ off-site;
- 4 (C) Area, in acres, for wetlands, ponds, reservoirs, and lakes; length, in feet and width, of streams
5 ditches, and reservoirs;
- 6 (D) Cowardin classification to system and class (more than one adjoining Cowardin class within the same
7 wetland must be mapped separately when 0.10 acre or more) and HGM class;
- 8 (E) ARSC boundaries; and
- 9 (F) State-approved ~~€~~compensatory mitigation site boundaries, if known.
- 10 (g) Numbered sample plots corresponding to data forms (see section (~~1716~~) of this rule);
- 11 (h) Photograph locations and direction of view.
- 12 (i) A statement of ~~the all~~ mapping method methods used and estimated mapping ~~precision~~ accuracy for
13 the ~~study area boundary,~~ wetland and ~~non-wetland water~~ other waters boundaries, and data sample
14 plot points, for example the GPS post-processing error estimate locations. Include statement of sources
15 of remotely sensed imagery, topography, and tax lot data provided.
- 16 ~~(15) The wetlands and other waters identified must be accurately transferred to a linework basemap,~~
17 ~~legible on a black and white photocopy. An aerial photo base layer may be used but the image shall be~~
18 ~~lightened to maintain map legibility.~~
- 19 (~~1615~~) The wetland delineation map(s) shall be at a scale suitable for the study area size and for
20 legibility. For most purposes, an appropriate map scale is 1 inch = 100 feet. For large study areas, a scale
21 of 1 inch = 250 feet may be sufficient. Minimum map scale for a JD and for permitting purposes is
22 subject to Department approval.
- 23 (~~1716~~) Data Form Requirements: All reports shall include a wetland determination data form for each
24 sample plot. The data form used must be ~~that~~ the current version provided with for the appropriate
25 regional supplement to the manual, ~~or other form provided by the Department.~~ All wetland
26 determination data forms must:
- 27 (a) Be fully completed;
- 28 (b) Include only data collected from a single sample plot on a single date (additional dates of hydrology
29 data may be reported in the comments section or provided in a table) and for a single location
30 (identifying latitude and longitude on data form);
- 31 (c) Include the full Latin botanical name and wetland indicator status of all plant species listed per the
32 current National Wetland Plant List;
- 33 (d) Use standard soils terminology and abbreviations as established by the U.S. Department of
34 Agriculture, Natural Resources Conservation Service; and

1 (e) Provide remarks for each disturbed or problematic wetland parameter per procedures outlined in
2 the Difficult Wetland Situations Chapter of the appropriate regional supplement [to the manual](#).

3 **Statutory/Other Authority:** ORS 196.845 & 196.692

4 **Statutes/Other Implemented:** 196.800 – 196.990, 196.600 – 196.665, 196.668 – 96.692 & 197.279

5 **History:**

6 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

7 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

8 DSL 1-2004, f. & cert. ef. 5-21-04

9 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

10 **141-090-0040**

11 **Procedures for Review and Approval of a Wetland Delineation Report Submitted to the Department**
12 **for a Jurisdictional Determination**

13 (1) When a wetland delineation report is submitted to the Department for review, approval and a JD,
14 the Department shall review the report (according to its established priorities) to ensure that:

15 (a) The work meets the technical requirements in OAR 141-090-0030;

16 (b) The report meets the standards and requirements in OAR 141-090-0035;

17 (c) There is sufficient information for the Department to make a JD, including the geographic extent [and](#)
18 [characteristics](#) of any waters identified, as appropriate; and

19 (d) There is sufficient information for the Department to determine the removal-fill authorization
20 requirements or exemptions that apply to the wetlands or other waters identified and/or the activities
21 proposed.

22 (2) The Department shall complete an initial review of the report within 120 calendar days from receipt
23 of the report and the fee.

24 (3) During or upon completion of the Department's review, the Department may take the following
25 actions:

26 (a) Approve all or a portion of the report and PJD by providing a written JD to the landowner, agent, or
27 applicant and the consultant, if any, in accordance with OAR 141-090-0025(10).

28 (b) Request missing information (report incomplete), clarification, or additional data (see OAR 141-090-
29 0035(9), (10), and (12)(h)).

30 (A) The request will be made to the primary contact orally by telephone or in writing by, e-mail or
31 regular U.S. Mail.

32 (B) If the Department makes a written request to the primary contact, the Department will copy the
33 request to the consultant, landowner, [agent](#), and applicant, as appropriate.

34 (C) The primary contact shall be responsible for promptly informing the Department of any change in
35 the primary contact during the Department's review process.

36 (c) Conduct a site visit to ~~confirm~~ [verify](#) the report findings or obtain additional information;

- 1 (d) Withdraw the report from further review if missing payment, ~~additional or clarifying information, or~~
2 ~~requested revisions, are not provided within 60 calendar days of the Department's written request; if~~
3 ~~the landowner, agent, or applicant requests withdrawal or if otherwise determined by the department;~~
- 4 (e) Require revisions of the ~~wetland delineation~~ map(s) and the PJD based upon the report review, any
5 additional information requested, and a site visit, ~~(if conducted,)~~ and provide a JD accordingly after
6 consulting with the primary contact and report author, if different; or
- 7 (f) Reject the report, ~~along~~ with a written explanation to the applicant, consultant, landowner, and
8 agent, as appropriate. Examples of reasons for rejecting a report include, but are not limited to:
- 9 (A) The work has not been completed according to the technical requirements in OAR 141-090-0030.
- 10 (B) The report does not, in the judgment of the Department, accurately reflect site conditions or provide
11 sufficient information for a JD~~;~~
- 12 (C) The report contains major errors, omissions, or inconsistencies according to the standards and
13 requirements in OAR 141-090-0035, such as but not limited to:
- 14 (i) ~~Onsite~~ On-site data ~~is~~ are not collected (e.g., ~~offsite~~ an off-site or reconnaissance level report);
- 15 (ii) No paired plots~~,~~ or number of paired plots is clearly inadequate for length and complexity of wetland
16 boundaries;
- 17 (iii) Data forms with major gaps (e.g., no soils data collected);
- 18 (iv) Wrong data form used;
- 19 (v) Clearly erroneous data or conclusions;
- 20 (vi) All water features are not mapped;
- 21 (vii) Permission for a requested site visit is not granted;
- 22 (viii) Standard report format is not followed (OAR 141-090-0035(1));
- 23 (ix) Report cannot be field~~_~~verified because site preparation or construction has already commenced;
- 24 (x) The Department requests and conducts a site visit and the wetland boundaries and sample plots are
25 not identified on the ground or cannot be accurately ~~relocated~~ located by the consultant or applicant
26 (see OAR 141-090-0035(8));~~or~~
- 27 (xi) After the second written request for information or revisions, the resubmitted information does not
28 address all of the Department's comments or requests, ~~or introduces new errors;~~ or
- 29 ~~(xii) Additional clarifying information, requested revisions, or communication requesting additional time~~
30 ~~are not provided within 60 calendar days of the Department's written request~~ Additional
31 communications, or clarifying information, or requested revisions are not provided within 60 calendar
32 days of the Department's written request.

33 **Statutory/Other Authority:** ORS 196.845 & 196.692

34 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

1 **History:**

2 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

3 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08

4 DSL 1-2004, f. & cert. ef. 5-21-04

5 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

6 **141-090-0045**

7 **Duration, Revision, Expiration and Reissuance of Jurisdictional Determinations**

8 (1) All JDs by the Department shall be in writing and, except as provided in section (2) of this rule, shall
9 remain valid for a period of five years from the date of issuance. A JD may be revised by the Department
10 prior to the expiration date if:

11 (a) A field investigation or new information reveals that site conditions or the geographic extent of
12 waters of this state are not consistent with the information in a report or permit application submitted
13 to the Department;

14 (b) Additional site information or data is provided voluntarily by an applicant, agent, or landowner to the
15 Department;

16 (c) Additional information is provided to or obtained by the Department in conjunction with a request
17 for reconsideration (OAR 141-090-0050), a contested case hearing associated with an authorization
18 application (ORS 196.825(6) and OAR 141-085-0575); or a contested case hearing provided under OAR
19 141-090-0050(4)(a), or an independent review provided under 141-090-0050(4)(b).

20 (d) Information is provided to or obtained by the Department in conjunction with an appeal to the U.S.
21 Army Corps of Engineers of an Approved Jurisdictional Determination (33 CFR Parts 320, 326 and 331);
22 or

23 (e) New information obtained by or provided to the Department shows a change in circumstances
24 resulting in a change in the jurisdictional area.

25 (2) JDs that are issued in the form of a removal-fill authorization will expire after the project is complete
26 or those withdrawn. JDs made for an enforcement action are not subject to the five-year expiration will
27 expire after the case is closed.

28 (3) Upon expiration, a report and JD are no longer valid for determining whether a state removal-fill
29 authorization may be required.

30 (4) If agency approval is still needed or desired, and a wetland professional determines that the wetland
31 boundaries have not changed, the Department may reissue the JD one time for up to five years within
32 one year of the expiration date.

33 (5) To request the reissuance of a JD within one year of the expiration date, the landowner, agent, or
34 applicant with landowner permission must submit information prepared by a wetland professional to
35 the Department, as listed in (a) through (i).

36 (a) A new fully completed wetland delineation/determination report cover form and a request for
37 reissuance of a jurisdictional determination form, referencing the recently expired previously approved
38 wetland delineation number.

- 1 (b) Date of the field inspection and the name of the person conducting the field inspection.
- 2 (c) A concise description of any changes in land use, hydrology, and management of the site and
3 surrounding area relevant to the location and extent of the wetlands and other waters within the study
4 area since the last JD.
- 5 (d) A summary of any relevant changes to the manual that have occurred since the most recent JD was
6 issued and a discussion of those changes on the JD.
- 7 (e) A description of the method used to ~~relocate~~ re-locate the wetland and other waters boundary(ies)
8 in the field and a summary of the supporting evidence used to conclude that the location and extent of
9 wetlands and other waters is the same.
- 10 (f) A ~~wetland delineation~~ map(s) that meets the requirements in OAR 141-090-0035. The ~~recently-~~
11 ~~expired~~ previously approved map can be used if the current mapping requirements are met and the
12 study area boundary is the same.
- 13 (g) A recent aerial photograph with the study area boundary identified.
- 14 (h) Any figures that may have changed from the ~~recently-expired~~ previously approved wetland
15 delineation report, such as a smaller study area.
- 16 (i) Completed data sheets from representative data sample plots illustrating the unchanged wetland and
17 other waters conditions.
- 18 (6) Upon receipt of the reissuance information outlined in subsections (5)(a) through (i), the Department
19 shall review the information within 120 days of receipt and may take the following actions:
- 20 (a) Reissue the original report for ~~up to~~ another 5 years;
- 21 (b) Request missing information, clarification, or additional information;
- 22 (c) Conduct a site visit to confirm the report's findings or to collect additional information;
- 23 (d) Withdraw the request for reissuance from further review if determined to be ineligible, missing
24 additional or clarifying information, or requested information is not provided within 60 calendar days of
25 the Department's written request; or
- 26 (e) Disagree with the conclusion that the wetland and other waters boundaries have not changed and
27 require a new report that satisfies the requirements of OAR 141-090-0035 and payment of the fee
28 described in OAR 141-090-0032 for review of a new delineation report.
- 29 (7) At the discretion of the Department and within staffing ability, a landowner can request the
30 Department ~~to~~ conduct a site visit to determine if a recently expired JD can be reissued or if a new
31 report is required. If only minor boundary changes have occurred, new boundaries may be flagged at
32 the discretion of staff during a site visit and the landowner shall produce and submit a new map that
33 reflects the changes and meets the mapping requirements in OAR 141-090-0035.

34 **Statutory/Other Authority:** ORS 196.845 & 196.692

35 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

36 **History:**

1 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13
2 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
3 DSL 1-2004, f. & cert. ef. 5-21-04
4 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

5 **141-090-0050**

6 **Request for Reconsideration, ~~and~~ Contested Case, ~~and~~ Appeal, ~~and~~ Independent Review**

7 (1) A JD by the Department may be reconsidered upon written request to the Department by the
8 landowner, agent, or applicant with landowner approval within six months of the date of the JD (date
9 the letter or form was signed by the Department). The request for reconsideration initiates an informal
10 review process.

11 (2) New information may be provided by the ~~applicant~~, landowner, agent, ~~applicant~~, or the Department,
12 or may be requested by the Department, as part of the reconsideration process.

13 (3) A reconsideration may result in a modified JD or in the reaffirmation of the original JD.

14 (4) In the event that the landowner, agent, or applicant with landowner permission disagrees with the
15 reconsideration decision, that party may:

16 (a) Request a contested case proceeding pursuant to ORS 183.413 through 183.470 by submitting a
17 written request so that it is received by the Department within 21 calendar days of the reconsideration
18 decision; or

19 (b) Request an appeal by submitting a written request so that it is received by the Department within 21
20 calendar days of the reconsideration decision. The appeal option is available only when the
21 disagreement is over a wetland determination or delineation that has been the subject of
22 reconsideration by the Department. The appeal option is not available for ordinary high water or highest
23 measured tide determinations and does not involve a review of whether the wetland or other water is
24 subject to state regulation.

25 (A) The Director shall decide the appeal within 60 calendar days after the date of delivery of the appeal.

26 (B) The Director may affirm the reconsideration decision, issue a new or modified decision, or request
27 the appellant to submit additional information to support the appeal.

28 (C) When an applicant has exhausted the appeal process before the Director, they may submit an appeal
29 for a contested case hearing pursuant to ORS 183.413 through 183.470.

30 ~~(4) In the event that the landowner, agent, or applicant with landowner permission disagrees with the~~
31 ~~reconsideration decision, the applicant, landowner or agent may:~~

32 ~~(a) Request that party may request a contested case proceeding pursuant to ORS 183.413 through~~
33 ~~183.470 by submitting a written request so that it is received by the Department within 21 calendar days~~
34 ~~of the reconsideration decision; or~~

35 ~~(b) Request an independent review per Oregon Laws 2012, c. 108, § 2 by submitting a written request so~~
36 ~~that it is received by the Department within 21 calendar days of the reconsideration decision. The~~
37 ~~independent review option is available only when the disagreement is over a wetland determination or~~

~~delineation that has been the subject of reconsideration by the Department. The independent review option is not available for ordinary high water or highest measured tide determinations and does not involve a review of whether the wetland or other water is subject to state regulation.~~

~~(5) The Department will maintain a list of persons that are qualified under Oregon Laws 2012, c. 108, § 2 to be independent reviewers and that have qualified through a contract solicitation. If there are no such persons, the list shall be blank.~~

~~(6) Upon receipt of the written request for an independent review, the Department will contact all of the persons on the list maintained by the Department under section (5) of this rule and request that they either disclose all prior knowledge of the land parcel that is the subject of the review and any potential or actual conflicts of interests, or state that they will not serve as an independent reviewer in the review. The person shall sign the disclosure to certify that the disclosure is accurate. The Department will develop a list of persons that made the required disclosures and that have not identified any interest in the land parcel that is the subject of the review. The Department shall provide the list and the signed disclosures to the requestor of the request for an independent review.~~

~~(7) The requestor and the Department shall each select one person from the list developed by the Department under section (6) of this rule.~~

~~(8) The two selected independent reviewers shall select a third person from the list developed by the Department under section (6) of this rule. If the two selected reviewers do not jointly agree on the selection of a third reviewer, the Department shall request the US Army Corps of Engineers to provide a reviewer who has at least five years of experience with wetland delineation per the manual.~~

~~(9) The panel of independent reviewers shall submit to the Department and the requestor a written itemized estimate of the costs of the independent review, including all expenses and fees.~~

~~(10) Upon selection of three independent reviewers, the Department shall enter agreements with each of the independent reviewers, except for an independent reviewer provided by the U.S. Corps of Engineers. The agreements shall include but not be limited to the following:~~

~~(a) A maximum compensation amount not to exceed 120% of the sum of the written itemized estimates of the costs of the independent review provided to the Department by the panel of independent reviewers under section (9) of this rule;~~

~~(b) A maximum term for performance of the independent review of 60 calendar days from the date on which all three independent reviewers were selected; and~~

~~(c) A requirement that the panel of independent reviewers shall determine the cost of the review, subject to the maximum compensation amount.~~

~~(11) The Department will enter into a written agreement with the requestor which includes the following:~~

~~(a) The list of the three independent reviewers selected;~~

~~(b) A promise by the requestor to deliver a deposit to the Department within 5 calendar days in the amount of 60% of the sum of the written itemized estimate;~~

1 ~~(c) A provision stating that the determination of the panel of independent reviewers shall be final and~~
2 ~~binding, with no opportunity for a contested case or any judicial review;~~

3 ~~(d) A provision that the panel of independent reviewers will review the record, conduct a site visit and~~
4 ~~gather additional information if needed, write a decision that includes findings of fact, and a conclusion~~
5 ~~that either affirms or modifies the wetland determination or delineation issued by the Department after~~
6 ~~reconsideration; and~~

7 ~~(e) A promise by the requestor to pay 60% of the cost of the independent review, including all expenses~~
8 ~~and fees, regardless of the outcome of the review. If the amount exceeds the deposit provided under~~
9 ~~section 9, the requestor shall pay the excess amount to the Department within 15 calendar days of the~~
10 ~~issuance of the decision by the panel of independent reviewers. If the amount is less than the deposit~~
11 ~~provided under section 9, the Department will return the excess deposit to the requestor within 15~~
12 ~~calendar days of the issuance of the decision by the panel of independent reviewers.~~

13 ~~(12) The criteria by which the panel of independent reviewers will evaluate the wetland delineation or~~
14 ~~determination shall include only the following:~~

15 ~~(a) OAR 141-090-0005 through 141-090-0020, 141-090-0030, and 141-090-0035;~~

16 ~~(b) OAR 141-090-0045, if the wetland delineation was reissued by the Department; and~~

17 ~~(c) The manual, as defined in OAR 141-090-0020(17).~~

18 ~~(13) The record for the independent review consists of the following:~~

19 ~~(a) The original report submitted per OAR 141-090-0035;~~

20 ~~(b) All documents related to the JD per OAR 141-090-0025 or OAR 141-090-0040; and~~

21 ~~(c) All documents related to the Department's reconsideration per OAR 141-090-0050.~~

22 ~~(14) The panel will take the following actions:~~

23 ~~(a) Review the record;~~

24 ~~(b) Gather additional information and conduct a site visit, if needed; and~~

25 ~~(c) Draft findings of fact and a conclusion that either affirms or modifies the wetland determination or~~
26 ~~delineation that the Department issued after reconsideration.~~

27 ~~(15) Within 60 days of the date on which all three independent reviewers were selected, the panel will~~
28 ~~submit a decision in writing to the Department and to the Requestor that includes findings of fact, a~~
29 ~~conclusion, and a decision that either affirms or modifies the wetland determination or delineation that~~
30 ~~the Department issued after reconsideration.~~

31 **Statutory/Other Authority:** ORS 196.845 & 196.692

32 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692, 197.279

33 & 2012 OL Ch. 108

34 **History:**

35 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13

- 1 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
- 2 DSL 1-2004, f. & cert. ef. 5-21-04
- 3 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01

4 **141-090-0055**
5 **Effective Date**

6 These rules become effective on January 1, 2013.

7 **Statutory/Other Authority:** ORS 196.845 & 196.692

8 **Statutes/Other Implemented:** ORS 196.800 – 196.990, 196.600 – 196.665, 196.668 – 196.692 & 197.279

9 **History:**

- 10 DSL 6-2012, f. 12-13-12, cert. ef. 1-1-13
- 11 DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08
- 12 DSL 1-2004, f. & cert. ef. 5-21-04
- 13 DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01