Removal-Fill Fees (OAR 141-085, -089, -090, -093) Rulemaking Public Comments and Agency Responses

Comments & Agency Response

The comment period was open from January 2, 2025, to February 15, 2025, at 5:00 PM. The Department received 9 comments in total:

- Two oral comments were made during the February 3rd public rule hearing
- One written comment was submitted as a PDF letter
- Four written comments were received via DSL's online submission form
- Two written comments were received vis the DSL Rules' email address

Please note that comments are presented in the order they were received by the Department, with most recent comments listed first. Comments that were received via PDF are attached at the end of the document.

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Jodi F., Schott and Associates – February 17, 2025 (via online form)

Comment:

As a wetland consultant, I am concerned that the significant fee increases for wetland delineation review and permitting over the next 5 years will place an undue burden on property owners, developers, farmers, small businesses and in some case local counties/cities. While the tiered fee structure aims to distribute costs fairly, it could disproportionately impact smaller landowners who lack financial resources.

Many of our delineation reports will fall within the Tier 2 category. However, there can be a large discrepancy between the size of the report simply based on how many wetlands are onsite and how many sample plots are recorded. A complex vernal pool site may be more appropriate for the larger review fee (example Tier 2, Year 5), but a smaller site with just over 0.20-acres of wetland with minimal sample plots would be subject to the same fee, which seems a bit unreasonable.

Agency Response:

The current fees paid by developers, property owners, and other permit applicants covers just 21% of the costs associated with Oregon's removal-fill permitting process. On average, it costs The Common School Fund $2.8 million every year to cover the remaining costs. For Wetland Delineations average staff time to conduct a Tier 1 review is 6 hours, average time for a Tier 2 Delineation review is 9 hours, and a Tier 3 review averages 23 hours. Considering RAC input,

DSL decided to keep a greater than 0.2 wetland acres split for Tier 2 because that wetland area is also used as a key criterion for removal-fill permitting.

Jordan C., Oregon Association of County Engineers and Surveyors (OACES) – February 13, 2025 (via PDF letter)

Comment: *Please see the PDF for the full comment; below is an excerpt from the letter.*

Oregon Counties value environmental stewardship and sustainable land management. Our Public Works Departments have reviewed the proposed fee changes for Oregon's Removal-Fill Program for Protecting Wetlands and Waters and are eager to be a part of the conversation.

Our members have expressed concerns that counties and other municipalities would not be categorized as “Applicant Type 1” a category designated for non-income-producing, and habitat improvement projects, and instead would be categorized as “Applicant Type 2” which does not reflect the role that counties play as stewards of environmental welfare and requires three times the fee.

Agency Response: In response to this comment and others, DSL updated the definitions of applicant types to Application Type A and Type B to focus on the nature of the project—specifically whether it is for-profit or not—regardless of who is applying. Most public infrastructure projects would likely be in the Type A category and reduce application fees for public projects.

Andrea R., Rabe Consulting – February 3, 2025 (via email)

Comment:

I am very concerned that the sliding schedule to determine DSL review fees after the delineation has been completed does not allow for consultants to provide accurate client proposal costs.

DEQ started a similar sliding scale for 401 permits, which ranges from $1000-17000. This is a large price range to provide a client on a proposal for a small project.

I would strongly recommend that DSL finds a method of assessing fees which can be determined prior to the delineation being completed so consultants can represent fees accurately to the clients on an "up-front" basis. Clients make decisions on projects based on economics and the proposal numbers often determine whether the client moves ahead with the project.

Agency Response: House Bill 2238 directs the Department to adopt, by rule, a tiered fee structure for removal-fill permits and wetland delineation reports. A tiered structure minimizes over-charging applicants with small projects or under-charging applicants with large projects.

DSL encourages consultants to utilize desktop review, such as Oregon’s Statewide Wetlands Inventory map, to estimate which tier a project will fall into, and using the tier criteria and prices in contracts to provide a sliding scale in a bid.

For removal-fill permit applications, the fee tiers account for project complexity and average review times. Most project tier criteria will be known at the time of application and applicants and their consultants can estimate their project tier. A few criteria, such the need for public hearings, cannot be known ahead of time. However, these criteria offer less frequently apply to the most complex and high public interest projects. Initially, the proposed rules allowed DSL to charge an additional hourly rate for both Tier 4 and Tier 5 projects if staff time exceeded the standard fee. This has been revised: the hourly rate now applies only to Tier 5.

Jeremy M., Klamath County Public Works – February 3, 2025 (via online form)

Comment:

Please consider streamlining the process for bridge replacements and major maintenance. In the early 2000's counties and cities could design, permit, and construct a bridge in a 12 month window of time. Now with permitting it takes closer to 3 years. Klamath County has 206 bridges, at one bridge per three years, it works out to be a 600 year cycle for replacements or major maintenance. In most cases the bridge repair or replacement is the third or fourth generation bridge in heavily disturbed locations. In all cases, the wetland process and cultural permit process are unique, even if a similar bridge was repaired on the same waterway in close proximity. One exemption to consider would be to allow a small amount of riprap to be placed in front of the bridge foundation on each side of the bridge without a permit. This riprap is ultimately to protect the multi million dollar bridge from scour during high flow events in the stream or river.

In summary, please consider a categorical exclusion or exemption process for certain bridge repairs or replacement to help save everyone (including DSL) time and money and help speed up repairs and replacement of our public bridges.

Agency Response: This comment primarily asks for revisions that cannot be made because they are not a part of this rulemaking, which is limited to fees and program cost recovery. The comment does however reference costs, and the agency did make a revision to the Applicant type definitions to reduce fees for many of the project types referenced.

In response to this comment and others, DSL updated the definitions of applicant types to Application Type A and Type B to focus on the nature of the project—specifically whether it is for-profit or not—regardless of who is applying. Most public infrastructure projects would likely be in the Type A category and reduce application fees for public projects.

Jeremy M., Klamath County Public Works, Oregon Association of County Engineers and Surveyors – February 3, 2025 (via public rule hearing – oral comment)

Comment: *Comments also submitted via online form; see comment above.*

Klamath County and OACES would like to encourage a streamlined process to help reduce permitting timeline and fees for bridge replacements. We advocate for exploring categorical exclusions or exemptions for specific bridge maintenance or replacement.

As an industry we used to design, permit, bridges each fall and winter, bid them in the spring and construct them in the summer and fall. So essentially, in 12 months we could get a bridge

replaced. Now permitting, including hiring consultants for wetland delineation and cultural investigation can take 12 months just by itself. Usually, the DSL and Corps *[US Army Corps of Engineers]* process takes 6 to 12 months design. So even a very fast track bridge project can take approximately 3 years from start to finish to replace one bridge. Klamath County has 206 bridges, and the average bridge lasts about 50 to 60 years, the temper structures that we have. So replacing one every 3 years puts us on a 200 year, or sorry a 600 year cycle for each bridge, which is completely unacceptable for us to make any progress at replacing or major maintenance on these bridges. In most cases these bridges are a 3rd or 4th generation bridge, and in a heavily disturbed area. In all cases, even in the same waterway, every single wetland delineation and DSL consultation, including SHPO *[State Historic Preservation Office]* and cultural, is unique and independent of the last process that we went through, even if it's only a year or 2 apart.

So again, please consider categorical exclusions or exemptions to help everyone, including DSL. save time and money and help speed up replacement of our public assets and bridges. Thank you.

Agency Response: *Comments also submitted via online form; see comment and agency response above.*

Sharon W., Century Ranch (retired owner) – February 3, 2025 (via public rule hearing – oral comment)

Comment:

I want to thank you for the opportunity to comment on the new fee schedule for DSL. Permitting. My husband and I are retired, and our son is the 4th generation to run our Century Ranch. Years ago, I worked with Eric Mittz, formerly of DSL. On local issues, with the intent to keep the fill removal process simple for agriculture producers, especially those of us who own prior converted and farmed wetlands in the Coquille Valley. My husband was chairman of a drainage district and maintaining the infrastructure which are the tide gates and ditches. It was important for agriculture production as well as the protection of our rural residential roads.

On February 11th, 1999, the district applied for a joint permit to replace the existing tide control structure which was at the end of its life without major changes, and one of the lids was designed and built through an ODFW. Project. I pulled a copy of the permit, and it was 22 pages long, and there was no hydrology reports required and no mitigation. The project engineering was completed through the USDA NRCS program, at no cost to the district. The total cost of the project, along with the legal process, to procure a district bond to pay for the tide gate was around $150,000. Now this again was in 1999, the district landowners paid the bond off. In 10 years this same tide gate was replaced this summer. The permit was well over 500 pages long. Regulations now require mitigation, hydrology reports, muted title regulators, and a whole lot more in the joint permit. 3.5 million dollars worth of grants from State, Federal, and nonprofits were secured to pay for the new tide gate replacement. The point I'm trying to make is the regulatory system has hindered and basically stopped regular agriculture producers like our family from maintaining their drainage systems, which have been in existence for well over a hundred years.

Real agriculture producers cannot afford to repair their infrastructure, due to the increased cost and required technical guidance, regulations, permitting and mitigation. This increase in

regulations not only impacts the landowner but requires extensive DSL staff time to review. DSL, with their extensive rules and regulations, have created a staffing and time consuming process that is no longer economical for your department or for us, and it has created an extensive timeline for permitting the bottom line is, there has been a general increase in cost driven by an increasingly complex process.

I would appreciate it if you would recognize who produces the food on your table and the food and habitat for the many species of wildlife that live on our agriculture lands. Therefore, I encourage you to reevaluate your fill and removal regulations for agriculture, lands, and the fees for permitting. Keep the process simple and economically cost effective for agriculture as well as DSL.

Thank you again for allowing me the time to express my view on this issue.

Agency Response: This comment asks for some revisions that cannot be made because they are not a part of this rulemaking, which is limited to fees and program cost recovery. The comment does however reference costs, and the agency did make a revision to the Applicant type definitions. DSL updated the definitions of applicant types to Application Type A and Type B to focus on the nature of the project—specifically whether it is for-profit or not—regardless of who is applying. Application Fees for projects with profit as a goal, will still have higher application fees, as is currently the case.

There are several exemptions from permitting under the Removal-Fill Law specific to agricultural activities, and certain activities and structures, including maintenance and reconstruction of water control structures.

Jay Harland, CSA Planning Ltd. – January 21, 2025 (via email)

Comment:

The fees should have an incentive structure to put in good applications with thorough details. Similarly, timely review by DSL should be required to retain the entire fee.

In land use applications, failure to make a decision in the required time can result in the government having to return the fee. A similar incentive mechanism should be built it. The time delay is more costly the actual fee.

Agency Response: This comment requests two mechanisms to encourage predictable timelines for the department to review to reduce the time delay costs to applicants. The first request is for an incentive (reduced fee) for applicants to provide good/detailed applications. The second request is for DSL to return a portion of the fee if it does not complete a timely review.

DSL will use the application fee to review an application for completeness. If an applicant submits an incomplete application, the department notes the incomplete items and sends the application back to the applicant for revision. If the application is resubmitted within 120 calendar days, resubmittal resets the review timelines. If the revised application is not resubmitted within 120 calendar days, the department may close the application and retains the application fee. This process already provides incentive for applicants to provide complete applications.

DSL has clarified rule to better describe how we will bill for tier fees and other fees for removal-fill applications, how long applicants have to pay, and the consequences of non-payment. These timelines allow DSL to process applications according to our statutory time limits, even if a fee is not paid, unless a time extension is mutually agreed to by the applicant and DSL.

Chris Gannon, Crooked River Watershed Council – January 6, 2025 (via online form)

Comment:

The upper limit for user-based fees should be 75%, not 85%. This reduction would better and more appropriately represent the publics responsibility or role in supporting the program. Because the citizens of Oregon also benefit from this regulatory program to protect Oregon waters, they should bear no less than 25% of the program costs. I think the Common School Fund is not the appropriate public funding source, but rather, the states General Fund should be the source of the public's share of the program costs.

Agency Response: DSL updated the definitions of applicant types to Applicant Type A and Type B to focus on the nature of the project—specifically whether it is for-profit or not—regardless of who is applying. To reflect the revised applicant definitions, DSL rebalanced the fee structure, which resulted in some fee increases. To prevent excessive increases, the overall cost recovery target was reduced from 85% to 80%, striking a balance between affordability and program sustainability. However, this will result in fewer costs being recovered. Reassigning DSL program costs to the General Fund would require legislative and executive action outside of this rulemaking process.

OACES
OREGON ASSOCIATION OF COUNTY ENGINEERS AND SURVEYORS

February 13, 2025
Oregon Department of State Lands
Vicki L Walker, Director
775 Summer St NE # 100
Salem, OR 97301

Dear Director Walker,

The Oregon Association of County Engineers and Surveyors (OACES), an affiliate of the Association of Oregon Counties (AOC), represents Oregon's 36 county public works agencies and road departments across the state. County roads are a critical component of Oregon's integrated road system and are responsible for over 60% of Oregon's non-federal road network, over 32,000 total miles, and over 3,400 bridges.

Oregon Counties value environmental stewardship and sustainable land management. Our Public Works Departments have reviewed the proposed fee changes for Oregon's Removal-Fill Program for Protecting Wetlands and Waters and are eager to be a part of the conversation.

Our members have expressed concerns that counties and other municipalities would not be categorized as "Applicant Type 1" a category designated for non-income-producing, and habitat improvement projects, and instead would be categorized as "Applicant Type 2" which does not reflect the role that counties play as stewards of environmental welfare and requires three times the fee.

Our member counties have worked closely with the Department of State Lands (DSL) to preserve Oregon's wetlands and waterways while also safely maintaining public infrastructure. The review of capital replacement projects could be simplified by developing programmatic permits and categorical exclusions for certain common place and recurrent maintenance and capital replacement activities such as riprap placement in front of bridge abutments.

Counties are eager to collaborate with DSL to identify opportunities to prevent duplicated work and implement cost saving measures. Both permit applicants and DSL staff are required to complete the same data gathering, research, and analysis to determine project conditions. When counties have professional environmental staff, these efforts should be completed by the project applicant with DSL's oversight and guidance. We also suggest developing a fast track permitting process when similar bridges and culverts are on the same water-way, or when repair work is required for the same bridge within five years of the last issued permit.

Today, each bridge project on the same waterway is subject to a unique permit which starts from scratch. These projects can cost hundreds of thousands of dollars at a minimum, with most of the cost frequently attributed to permitting. For example, the cost to place rip rap in front of a bridge abutment can typically range between $10,000 and $20,000, however the cost of hiring consultants and obtaining the appropriate permits can range between $50,000 and $100,000 and

cause the project to extend an additional 18 to 24 months. These delays can also result in weight restricted bridges or potential bridge failures, thereby cutting off communities from heavy vehicle shipping and emergency response vehicles.

County road departments play a key role in managing Oregon's wetlands and waters, and are grateful to be included in the discussion, as the subsequent policy changes will have a severe impact on counties and county land management. We hope to have the opportunity for more in-depth conversations going forward to help create a new permit that is both successful and implementable.

Thank you for the opportunity to provide comments.

Sincerely,

Mikel Diwan
Public Works Director, Lincoln County
President, Oregon Association of County Engineers and Surveyors