



Removal-Fill Fee Rules (HB2238) RAC Meeting # 1 Summary

July 10, 2024; 9:00 a.m.

Overview

The Removal-Fill Fee Rules (HB2238) Rulemaking Advisory Committee was convened by the Oregon Department of State Lands on July 10, 2024 via Zoom. The RAC was convened to provide input on proposed amendments to the administrative rules governing fees for removal-fill permits, general authorizations, and wetland determinations and delineations.

RAC Members and Attendance

Name	Affiliation	Present?
Members		
Brad Livingston	Oregon Department of Transportation (ODOT)	X
Chris Gannon	Network of Oregon Watershed Councils	X
John van Staveren, SPWS	Pacific Habitat Services, Inc.	X
Katie Ryan	Wetlands Conservancy	X
Lauren Poor	Oregon Farm Bureau	X
Morgan Allen	Coalition of Oregon School Administrators	X
Peggy Lynch	Oregon League of Women Voters	X
Phil Scoles	Terra Science Inc	
Samantha Bayer	Oregon Homebuilders Association	X
Stephanie Pulvers	Association of Oregon Counties	X
Staff/Advisors		
Dana Hicks	Department of State Lands	X
Danielle Boudreaux	Department of State Lands	X
Pete Ryan	Department of State Lands	X
Russ Klassen	Department of State Lands	X
Ellie Forness	Department of State Lands	X
Joe Flager	Department of State Lands	X
Interested Parties		
Brittany Mills	Oregon Department of Agriculture (ODA)	X
Christina Rubidoux	Klamath Tribes	X
Michael Jamieson		X
Ron Schmidt	Waterfront Organizations of Oregon (WOOO)	X
Shawn Priddle	Oregon State Marine Board (OSMB)	X
Stan Tonneson	Waterfront Organizations of Oregon (WOOO)	X

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the first meeting of the Rulemaking Advisory Committee (RAC) for Proposed Fees for Removal-Fill Permits, General Authorizations, and Wetland Determinations/Delineations. She introduced herself as facilitator for the process and highlighted the purpose of the meeting as an opportunity to hear background information and understand the roles and responsibilities of RAC participants.

Department of State Lands (DSL) staff and RAC members introduced themselves.

Agenda Review; Zoom Protocols

Sylvia Ciborowski reviewed the [meeting agenda](#) and noted materials in the packet, which are available on the rulemaking website: <https://www.oregon.gov/dsl/pages/rulemaking.aspx>

Rulemaking Process

Danielle Boudreaux, DSL Rules and Records Coordinator, reviewed the purpose of the RAC. She noted that the RAC is being convened to provide input on proposed fees and related rule language for the removal-fill program at DSL. Subsequent RAC meetings will consider the proposed fees for removal-fill permits, wetland delineation reports, and general authorizations.

She reviewed the DSL rulemaking process, which includes approval to initiate the rulemaking process based on need, drafting of rule language, and engagement with the RAC on draft rule language, the Fiscal Impact Statement, and the Racial Equity Statement. After the RAC process, there will be a notice of Proposed Rulemaking and a 30-day public comment period. Following that, the rules will be filed with the Secretary of State for subsequent adoption.

Operating Principles; RAC Role

Sylvia reviewed key highlights of the RAC Operating Principles, noting that the [Operating Principles](#) document is included in the meeting packet. She covered:

RAC member roles and responsibilities:

- The RAC is advisory to DSL on proposed fees and rule language. Members are responsible for attending all meetings and reviewing background materials to prepare for meetings. Members are encouraged to work collaboratively and consider multiple perspectives while discussing issues and coming to recommendations.
- RAC members may have alternates. RAC members are responsible for ensuring alternates are up to speed to be able to participate. Members should contact Sylvia to provide notice of alternates attending meetings at least 24 hours in advance of RAC meetings.
- Members are encouraged to bring up and address issues as early as possible in the process and avoid reopening issues that have been fully discussed in prior meetings. They should also seek to propose alternatives to resolve differences that meet multiple perspectives.
- RAC members should generally defer to DSL for all media communications related to the group's process and recommendations and represent only their own perspective to the media unless otherwise discussed with the group or DSL.

The RAC meeting schedule, which includes seven meetings:

#	Date	Time	Topic
1	July 10, 2024	9:00 AM	Administrative: Overview
2	August 14, 2024	9:00 AM	<u>Division 90</u> : Wetland Determination and Delineation Report Fees
3	August 28, 2024	9:00 AM	<u>Division 89</u> : General Authorization Fees
4	September 11, 2024	9:00 AM	<u>Division 85 and 93</u> : Individual, General, and Emergency Permits
5	October 9, 2024	9:00 AM	<u>Division 85 and 93</u> : Individual, General, and Emergency Permits
--	November 6, 2024	--	(Potential meeting, as needed)
--	December 4, 2024	--	(Potential meeting, as needed)

Facilitator role and DSL role:

- The facilitator’s role is to ensure a safe, welcoming environment where all members can participate, and conduct meetings to foster collaborative communication. The facilitator will distribute meeting summaries. Information disclosed in confidence to the facilitator will be kept confidential, though written communications may be subject to public records law. Members should reach out to the facilitator as the primary contact throughout the rulemaking.
- DSL’s role is to provide technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC. The Department will also be responsible for scheduling meetings, preparing meeting summaries, and maintaining a public record of the RAC process.

Public meetings and records:

- RAC meetings are public meetings and are open to the public. Interested parties are invited to observe and will have an opportunity to make timed comments at RAC meetings.
- All rulemaking written communications are public records and may be released in response to a public records request.

Background and Rulemaking Purpose & Scope

Danielle provided information on the need for this rulemaking, the various programs and permits involved, and other background information related to the rulemaking. The presentation included:

The Common School Fund (CSF) was established to help fund public schools, and every school district receives some money from the CSF every year. Under ORS 196.815, 196.818, and 196.850, fees from the Department’s regulatory (i.e., removal-fill) program are credited to the CSF to administer Oregon’s Removal-Fill laws.

Removal Fill laws are found in ORS 196.600 through 196.921. They govern the removal of material from the beds and banks or filling of the waters of this state, which include wetlands. The laws are

administered through the Department's regulatory program, which issues permits or authorizations for the removal or filling of material. These regulatory programs include:

- Wetland determinations,
- Wetland Delineation Report review, and
- Issuance and enforcement of removal-fill permits and general authorizations.

Danielle briefly reviewed the types of permits, reports, and authorizations, and the statutes and rules that govern them, including:

- Wetland Determinations and Delineation Reports (which are governed by ORS 196.818 and administered by OAR 141-090)
- Individual Removal-Fill Permits (which are governed by ORS 196.810 and administered by OAR 141-085)
- General Removal-Fill Permits (which are governed by ORS 196.816 and implemented through OAR 141-093)
- Emergency Permits / Authorizations (which are governed by ORS 196.810)
- No State Permits, often referred to as NSPs (which are implemented through OAR 141-085-0555)
- General Authorizations (which are governed by ORS 196.850 and implemented through OAR 141-089)

RAC members will hear more detailed information about these at future meetings.

Danielle reviewed the need for this rulemaking, noting that the existing removal-fill fee structure does not align with the actual permitting process, resulting in years of unmet costs. Existing fees charged cover only 21% of the costs associated with the removal-fill permitting process, and the CSF expends an average of \$2.7 million annually to cover the gap in program costs. She presented a table showing the last five years of revenues and expenditures for the regulatory program, which demonstrates cost recovery at only 21% on average.

In 2023, the Oregon Legislature passed HB2238, which directs the Department to adopt, by rule, a tiered fee structure for removal-fill permits, wetland delineation reports, and general authorizations. Additionally, the bill puts forth that the Director will evaluate the impact of fully recovering, through fees, the cost of administering the removal-fill program associated with different project types, as well as the impacts on the waters of the state.

Danielle then reviewed the goals of the upcoming RAC meetings, where members will be asked to provide input on proposed tiered fee structures, proposed fee schedules, related proposed rule language, and potential fiscal impacts. Rulemaking related to policy changes has been or will be separate from this rulemaking process.

Danielle noted that there are several recent and upcoming policy-focused rulemakings, where the Department is identifying ways to improve review processes, refine submission requirements to

prevent staff requests for more information, update rules for clarity and transparency, and increase the number of activities eligible for general authorizations. These include:

- Division 90: Wetland Delineation Reports (completed in 2023)
- Division 89: General Authorizations (completed in 2023-2024)
- Division 85: Removal-Fill Permitting (beginning in 2025)
- Division 93: General Permits (beginning in late 2025)

Danielle noted that DSL has worked to determine a proposed tiered fee structure. To do so, staff members looked closely at the complexity (e.g., length of time for review, size and scope of the project) of each type of permit or authorization the Department reviews, and the benefits to the environment. Additionally, several data sets were included in the calculation of the proposed fees. After today's meeting, members will receive the proposed tiered fee structure and methodology for their review.

Danielle added that the DSL Communications Officer talked to RAC members in advance of today's meeting to hear initial thoughts and comments. She reviewed key comments which included:

- Small-scale projects should not be treated the same as large-scale projects.
- DSL customer service is highly valued.
- Those impacted by increased fees have varying levels of flexibility in accommodating them.
- Housing production is a critical issue.
- The rules should strike a balance between the competing priorities (public school funding vs. regulated public / housing).
- Increasing fees drastically in a short amount of time is not realistic to implement.

RAC Discussion

Members had the following questions and comments on the background information:

- Samantha Bayer and Morgan Allen asked for clarification about the finding that existing fees charged cover only 21% of the costs associated with the removal-fill permitting process. DSL staff noted that the costs include the cost of staff time, overhead costs, attorney review, and the many things involved in administering the regulatory program.
- Morgan Allen asked how many permits are applied for annually, and whether some are more heavily subsidized than others. DSL staff noted that more detailed information will be provided later. A five year average of permit applications, General Authorization notifications, wetland delineation reports, and wetland determinations will be provided at future meetings.
- Peggy Lynch added that some permit types require more staff time and hopes to have conversations on that in future meetings. She noted that in addition to discussing the fees themselves, she also hopes the RAC has an opportunity to discuss what the agency is doing related to removal-fill programs, and whether actions are sufficient to protect wetlands.

- Samantha Bayer noted that it would be helpful to understand the different costs and fees that applicants pay for different permit types. These regulatory fees, plus the costs that housing developers pay for wetlands consultants, impact the overall cost of housing. It will be important to get a good baseline understanding of total cost, not just cost incurred by the state.
- Peggy Lynch pointed out that in addition to this fee rulemaking process, the Governor is looking at multiple complex issues, including data collection around housing and wetlands issues. DSL staff confirmed that DSL is working with the Governor's Housing Office and considering some potential funding and policy change concepts for consideration in the next legislative session.
- Chris Gannon asked about the history of the fee structure and whether DSL has approached the legislature for general funds to cover some of the program costs, since the permitting is about protecting resources for all Oregonians rather than just benefiting the permit applicants. DSL staff responded that they are not aware of DSL approaching the legislature for general funds in the past but will look into it for future meetings. DSL noted that future RAC meetings will include discussion on different cost recovery percentages. If the rules propose something less than 100% cost recovery through fees, DSL will need to find a funding source to cover the balance.
- Peggy Lynch added that DSL has almost never received general funds. Oregon has had a history and culture of requesting fees for service. The conversation is now beginning on division of pay responsibility between the person who wants the service and the general public.

Interested Party Comments

Sylvia invited interested parties to make comments. Two people provided comments:

Stan Tonneson, Waterfront Organizations of Oregon (WOOO), said that WOOO represents marinas, yacht clubs, and other entities that conduct dredging. He asked whether the fees under this RAC apply to dredging in marinas. DSL staff replied that dredging fees are covered here. Stan noted that because many marinas do dredging it is surprising that they would not be included in the RAC.

- DSL noted that propriety leases for submerged lands are covered under Division 82 and are not part of this rulemaking. This rulemaking covers general permits for maintenance dredging.

Next Steps

Danielle reviewed next steps for the process. RAC members will receive draft rule language for all four divisions covered by this rulemaking in the next two days so that they can review everything together. RAC members will receive the RAC Meeting #1 meeting summary and recording next week.

At least one week in advance of each RAC meeting, RAC members will receive a meeting agenda, Fiscal Impact Statement language, and related materials. All materials will be posted to the rulemaking website: www.oregon.gov/dsl/Pages/rulemaking.aspx.

RAC members should schedule individual meetings with the facilitator to be held in mid-July. This will be an important opportunity to hear initial input on the rules and help inform RAC agendas moving forward.

Adjourn

Sylvia reminded members that their next meeting is on August 14, 2024.

DSL staff thanked RAC members for their participation and adjourned the meeting.