



Removal-Fill Fee Rules (HB2238) RAC Meeting # 3 Summary

August 28, 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 August 28, 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
Efren Zamudio	Oregon School Boards Association (OSBA)	X
Eric Olsen (alternate)	Multi/Tech Engineering Services, Inc.	
Jessica Dorsey (alternate)	League of Oregon Cities	
John van Staveren, SPWS	Pacific Habitat Services, Inc.	X
Katie Ryan	Wetlands Conservancy	X
Lauren Poor	Oregon Farm Bureau	X
Michael Martin	League of Oregon Cities	X
Morgan Allen	Coalition of Oregon School Administrators	
Natalie Janney	Multi/Tech Engineering Services, Inc.	X
Peggy Lynch	Oregon League of Women Voters	X
Phil Scoles	Terra Science Inc	
Samantha Bayer	Oregon Homebuilders Association	
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
Sylvia Ciborowski (Facilitator)	Mosaic Resolutions	X
Interested Parties		
Shawn Priddle	Oregon State Marine Board (OSMB)	X
George Donnerberg		X

Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the third meeting of the Rulemaking Advisory Committee (RAC) for Proposed Fees for Removal-Fill Permits, General Authorizations, and Wetland Determinations/Delineations. RAC members introduced themselves.

Agenda Review; Meeting 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>.

She noted that the purpose of today's meeting is to revisit information about fees for wetland determinations and wetland delineation report reviews, and to discuss proposed fees and rules for General Authorizations. The meeting will include time to discuss potential fiscal and racial equity impacts of the proposed fees and rules.

Revisit Division 90 – Wetland Determinations and Delineation Report Reviews; Review updated information and discuss cost recovery options

Danielle Boudreaux, Department of State Lands, explained that the DSL team discovered some errors in the calculations of estimated revenues for Tier 1 wetland delineation report reviews. The proposed fees for wetland delineation report reviews have not changed as a result, but DSL has corrected the cost recovery percentages. The corrected cost recovery percentages and proposed fees are:

Application Type	60%	73%	85%	100%
Tier 1	\$600	\$850	\$1,100	\$1,350
Tier 2	\$1,200	\$1,450	\$1,700	\$1,950
Tier 3	\$3,500	\$4,000	\$4,500	\$5,000
On-site	\$450	\$500	\$550	\$600
Reissuance Fee	\$600	\$850	\$1,100	\$1,350

Danielle provided additional information requested by RAC members. She noted that the estimated revenue from wetland determinations and delineation report reviews accounts for 20% of the total program cost recovery.

Danielle and Sylvia asked RAC members to consider whether there is additional information they would like to see related to the fees. They also asked whether members would prefer to delay the RAC conversation on proposed cost recovery models until members have had a chance to review the fees, tiers, and rules for all portions of the program.

Members had the following questions and comments.

Requests for Additional Information

- Lauren Poor noted that it would be helpful to see the percentage increase in fees at all tiers and cost recovery models. For farmers and Oregon Farm Bureau members, it is important to easily understand how much more they will be paying.
- Natalie Janney noted that it would be helpful to see more of the calculations that went into developing the proposed fees at the different cost recovery models. This would lead to better transparency. The values in the table presented are not proportionate to one another; applicants and people in the industry will want to understand how the fees are established. Other members agreed. Danielle noted that DSL will seek to provide more information on how the fees were calculated.

Discussion on Cost Recovery Options

- Members agreed that they would prefer to make a cost recovery percentage recommendation after reviewing the fees, tiers, and rules for all permit types.
- Peggy Lynch noted that it is important to keep fees low for wetland determinations and delineations report reviews because these provide important information about wetlands. Low fees will encourage learning about wetlands. She noted interest in hearing RAC member perspectives on the appropriate cost recovery model.

Presentation – Division 89 – General Authorizations: Background; Fees; Data Methodology

Russ Klassen and Danielle Boudreaux, Department of State Lands, provided background information on General Authorizations (GAs) and development of proposed fees. They noted:

- GAs can be granted when a category of activities of removal-fill are substantially similar in nature, would cause only minimal individual and cumulative environmental impacts, and would not result in long-term harm to the water resources of the state.
- There are seven types of GAs, including:
 - Activities with minimal disturbances within Essential Salmonid Habitat (ESH),
 - Over-water structure activities, such as docks and pilings,
 - Activities that have temporary impacts to wetlands and waterways,
 - Waterway bank stabilization using bioengineering activities,
 - Waterway habitat improvement activities,
 - Wetland ecosystem improvement activities, and
 - Non-motorized in-stream placer mining in essential salmonid habitat (ESH).
- Certain voluntary habitat restoration activities are exempt, but they do require notice to the agency. There are three types of exempt habitat restoration activities that require a notice,

which include: ditch and drain tile removal; placement of large wood, boulders, and spawning gravels; and activities customarily associated with habitat restoration in ESH.

- Reviewed the process for GAs and notification review.
- Current fee for GAs: A \$250 flat fee is currently required for two types of activities, if they include over 50 cubic yards or more of removal and fill. The first is for over-water structures and the second is for activities that result in temporary impacts to wetlands and waterways.
- Reviewed a summary table of the number of GAs by type and exempt notifications that have occurred over the last five years for over-water structures and for activities that result in temporary impacts to wetlands and waterways.
- Determination of the fee for GAs: HB 2238 states that the Department shall establish a fee based on the cost of processing GAs; this is different from the tiered approach required for wetland delineations and removal-fill permits. The cost of processing the GAs was determined by using staff time tracking data.
- The proposed fees for GAs at the various cost recovery percentages are:

Fee Type	60%	73%	85%	100%
Submission	\$300	\$350	\$400	\$450
Request to Revise/Transfer	\$50	\$75	\$85	\$100

- Presented the estimated revenues from GA fees at the various cost recovery percentages. The revenues represent 2.3% of the program cost recovery at each level. They are not a large impact to total cost recovery.
- Reviewed the draft rule language. The draft rule language includes placeholders for fees because DSL is asking the RAC for a recommended cost recovery proposal. The agency also proposes a 5% yearly increase in fees to keep up with economic growth.

RAC Discussion – Proposed Fees; Draft Rule: Division 89 – General Authorizations

Sylvia Ciborowski encouraged members to ask clarifying questions and provide input. They had the following questions and comments.

Clarifying Questions and General Comments

- Lauren Poor asked whether the GA fees have any relationship to the agricultural exemption permit through the Oregon Department of Agriculture for dry ditch cleaning. Staff clarified that they are not connected.
- Lauren Poor asked for clarification on fees for activities that include fewer than 50 cubic yards of removal and fill. Staff noted that under the proposed fees, all GAs will now be required to pay the flat fee (unless exempt), even if they are for fewer than 50 cubic yards of removal and fill. The reason for this is because the fee is now based on staff processing time as directed by

the House Bill. Some GAs activities are for less than 50 cubic yards in ESH because the threshold for requiring a permit when working in ESH is zero.

- Chris Gannon asked whether the proposed fees would cover the actual costs of processing GAs. Staff responded that a goal is to keep the fees for GAs as low as possible, because the agency recognizes that GAs are beneficial to the public.
- Lauren Poor clarified whether farmers who are seeking to clean ditches and remove less than 50 cubic yards of material would be required to file a notice. Staff noted that the requirements for that particular activity are not changing under these rules, and there is not a fee or notice requirement for that activity.
- Members asked staff to provide information about the percentage increase in GA fees in an updated table.

Input on Proposed Fees

- Peggy Lynch cautioned against increasing fees for activities that are a public good and result in benefits to Oregonians. Some of the notifications are helpful not just for the agency, but also for the general public that care about wetlands and waters. Higher fees for activities that result in profit for the applicant (such as for removal-fill activities) are appropriate.
- Chris Gannon suggested an exemption or lower fee of \$100 for wetland habitat improvement and ecosystem improvement GAs, since these have a high public benefit in Oregon. Given that the GAs only impact 2.3% of the total program budget, it seems this would warrant additional thinking. Several other RAC members agreed.
 - Lauren Poor noted that there is concern that when woody debris washes downstream from these habitat and ecosystem improvement projects, agricultural owners may need to clean this out of the system, needing to pay the fee with no discount. Staff noted that there is an exemption that allows materials to be removed without a permit if it threatens property, and that exemption is unchanged with the proposed fee change.
 - Staff noted that they will look at the House Bill language to see if it limits the ability to provide a discount for beneficial projects. They noted that habitat restoration projects are a type of GA that do take more time to process compared to other GA types. There may be a different approach to try to address the suggestion to have a lower cost for habitat restoration projects.
- Brad Livingston suggested an exemption on fees for agencies such as ODOT that fund liaisons. DSL staff noted they can look into this and can look into how the amount ODOT pays for a liaison compares to what ODOT would pay in proposed fees. They also noted that the Intergovernmental Agreement (IGA) with ODOT could be updated to address the issue. It is important to be equitable to agencies that have liaisons.

Input on Rules

- Peggy Lynch noted that DEQ fees increase at the rate of about 3% per year, and the agency usually has to ask for more funding each year because it is not enough. The 5% annual increase

for DSL's fees does make sense, especially since so much of the cost comes from staff salaries which typically rise at a rate faster than the Consumer Price Index (CPI).

- Other RAC members noted that the 5% annual increase sounds appropriate and none expressed concerns about the increase. Peggy Lynch noted the benefit of stability for applicants; if they know that the fee raises at 5% each year they can plan better.
- A member asked for clarification on the term "No State Permit" in the rules. Staff clarified that a "No State Permit" is the same thing as the exemptions for voluntary habitat restoration activities that were presented in the slides. Staff noted that it may be helpful to refer back to Division 85 terminology to be consistent.

Dana Hicks let members know that staff are tracking comments and suggestions and will bring responses to future meetings.

Discussion – Fiscal Impact Statement Questions

Danielle explained that the Notice of Proposed Rulemaking requires agencies to provide a Fiscal Impact Statement (FIS) and a Racial Equity Statement. The FIS is intended to identify the fiscal impact of the proposed rules on affected parties, including government agencies and small businesses. She then reviewed a [worksheet](#) that shows the types of questions that the agency considers in drafting the FIS.

She noted that members will have discussion on the Housing Impact Statement at a future meeting. DSL is not required to do a Housing Impact Statement but will do one voluntarily because the fees may have an impact on housing.

Members had the following comments:

- State agencies likely to be affected by the rule include: ODOT or other state agencies who fund a state liaison position, and agencies that fund conservation projects such as Oregon Department of Fish and Wildlife (ODFW) and Oregon Watershed Enhancement Board (OWEB).
- Members of the public likely to be economically affected include agricultural landowners, as well as irrigation districts (who are quasi-public).

Discussion – Racial Impact Statement Questions

Danielle explained that the Racial Impact Statement is intended to identify the effect of the proposed rules to racial equity within the state of Oregon. She then reviewed a [worksheet](#) that shows the types of questions that the agency considers in drafting the Racial Impact Statement.

Members had the following questions and comments:

- There may be a potential impact on Tribes. Staff noted that the nine Federally Recognized Tribes were invited on the RAC but did not accept a position. Staff can reach out to the state archaeologist and Tribes to learn about potential impacts from the proposed rules and fee changes.
- The cost of accessing data may be a barrier for lower income people.

Interested Party Comments

Sylvia invited interested parties to make comments. No interested parties provided comments.

Next Steps

Danielle reviewed next steps for the process. Following this meeting any revisions to the draft rule language and fees will be sent to the RAC members. One change identified is to add a reference to Division 85 in the rules when talking about the No State Permits for voluntary habitat restoration. RAC members will receive the RAC Meeting #3 meeting summary and recording next week.

The next RAC meeting is scheduled for September 11, 2024, and will focus on individual, general, and emergency permits (Divisions 85 and 93). Members will receive a meeting agenda and related materials a week before that meeting. All materials will be posted to the rulemaking website: www.oregon.gov/dsl/Pages/rulemaking.aspx.

Adjourn

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