



Removal-Fill Fee Rules (HB2238) RAC Meeting # 6 Summary

November 6, 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 November 6, 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)	
Jessica Dorsey (alternate)	League of Oregon Cities	
John van Staveren, SPWS	Pacific Habitat Services, Inc.	
Katie Ryan	Wetlands Conservancy	
Michael Martin	League of Oregon Cities	X
Morgan Allen	Coalition of Oregon School Administrators	X
Peggy Lynch	Oregon League of Women Voters	X
Phil Scoles	Terra Science Inc	
Ryan Krabill	Oregon Farm Bureau	X
Samantha Bayer	Oregon Homebuilders Association	X
Stephanie Pulvers	Association of Oregon Counties	
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
Daniel Evans	Department of State Lands	X
Joe Flager	Department of State Lands	X
Sylvia Ciborowski (Facilitator)	Mosaic Resolutions	X
Interested Parties		
Shawn Priddle	Oregon State Marine Board (OSMB)	X

Welcome and Introductions

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

Agenda Review; Meeting Protocols

Sylvia 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 seek a RAC recommendation on a cost recovery model, hear any final RAC comments on the proposed rules, and gather RAC input on the draft Fiscal Impact Statement, Housing Impact Statement, and Racial Impact Statement.

Discussion – Cost Recovery Models

Sylvia provided context and framing. She reminded the group that they had a discussion on cost recovery at RAC Meeting #5. There, members expressed concern that raising fees too quickly would be a shock and began to show support for a phased-in increase of fees. There was differing opinion on how quickly fees should be phased in, and what the ultimate cost recovery percentage should be. They acknowledged that wetlands are a public good, and that high fees could impact housing affordability. The RAC asked DSL to come back today with numbers on what the fees would look like over a set of years if they were phased in and with annual increases for inflation factored in.

Danielle Boudreaux, Department of State Lands, provided background information.

- Reviewed a chart showing the estimated revenues that fees would bring in under the four proposed cost recovery models, as well as the average expenditures per year.
- Noted that DSL discussed the cost recovery input from the RAC with DSL leadership. Leadership expressed support for the phased in approach that the RAC has been discussing. They suggested that under a phased in approach, fees should reach the ultimate cost recovery allocation over a five-year period, not longer, for planning and implementation purposes.
- Showed members a [proposed fee schedule](#) that begins with a 60% cost recovery allocation and builds towards 85% cost recovery over a five year period, with 5% annual inflation increases.

RAC Discussion: General Comments and Clarifying Questions

Sylvia invited participants to ask clarifying questions to better understand the cost recovery options.

- Chris Gannon and Samantha Bayer asked for some examples of projects that would fall under removal-fill permit Tiers 3, 4 and 5. Russ Klassen pointed to the [criteria for the various tiers](#) and walked through several examples. He noted that an application from Multnomah County to replace a culvert on Sauvie Island would fall into Tier 2. An application from a golf club seeking to redo a golf course element with nearly 1 acre of wetland impacts would fall into Tier 3.

Under this Tier 3 example, the project likely includes a mitigation plan which requires significant staff review time for monitoring and tracking site performance. It is the square footage of wetland impacts that qualifies a project as Tier 3 or above, rather than the cubic yardage of fill or removal.

- Samantha Bayer noted that the removal-fill fee jumps significantly between Tiers 2 and 3. General public and applicants may be shocked by this difference, and it would be important to describe why the upper tier applications have such a higher fee, explaining the nexus between the fee amount and what it takes to process that type of application.
- Danielle provided information on applications over the last five years. Generally, most projects would have fallen into Tier 2, some into Tiers 3 and 4, and a small number into Tier 5.
- Ryan Krabill introduced himself as the Oregon Farm Bureau representative. He had questions about the 5% annual increase for inflation. Staff noted that DSL recommended a round 5% increase, which is similar to the Consumer Price Index (CPI) of 4.25% and that RAC members have been supportive of this proposal as it provides stability for businesses. Ryan expressed concern about a lack of assurance that fees would not continue to increase substantially in the future. Staff clarified that the proposed rules would outline fees for the next 5 years and then at year 4 would enter rulemaking to develop fees for the next 5-year cycle. This provides some predictability for short term future.

RAC Discussion: Cost Recovery Model Recommendation

Sylvia began by asking each of the members to state any initial reactions to the proposed fee schedule that shows a gradual increase in fees over a five-year period to get from 60% to 85% cost recovery, and to provide initial observations or recommendations. Members noted:

- Chris Gannon noted general support of the model, with concern that reaching 85% cost recovery may be too high. He noted that a 75% cost recovery may be more appropriate to reflect the public stake in wetlands. He was supportive of the 5-year fee ramp up period.
- Peggy Lynch echoed the importance of explaining the differences in tiers and applicant types to the public and noted that the law requires protection of wetlands. She reiterated support for having a longer ramp-up period to increase fees and would advocate for an ultimate 73% cost recovery model. She noted that it is important to have the 5% annual increase to account for increasing staff costs over time. She also suggested that the fee schedule clearly describe which fee categories/tiers could include additional hourly charges if permit processing time is exceedingly large.
- Morgan Allen expressed that the proposed fee schedule is the minimum acceptable and would prefer to reach 100% cost recovery at some point in time. He noted that the program is subsidized by the Common School Fund, so every dollar not paid by applicants comes out of K-12 public education. He noted that many other state fees are entirely fee based, and the use of CSF to subsidize fees is an outlier for state government.
 - Peggy Lynch noted that fees charged by other natural resource do not fully cover the of processing those applications. Morgan clarified that the DSL program is unique in that

CSF dollars can be used, whereas other natural resource agencies get General Fund dollars to subsidize their programs.

- Ryan Krabill expressed support for comments made the Oregon Farm Bureau in earlier meetings. He noted that the program seeks to protect waters of the state, which are a public good, and it is important that the public have a stake in the program. He also wondered about using contractors as a way to provide cost savings to the agency.
- Samantha Bayer commented that the fees seem too high and are a major shift from the 20% cost recovery average today. She suggested starting at a 40% cost recovery and moving to 73% cost recovery over a five-year period. Many important housing projects, including infill and affordable housing, would fall into tiers 3 or 4. She also noted that there is a need to reconsider the underlying structure of funding and reducing reliance on the CSF.
- Brad Livingston expressed support for the proposed fee schedule that increases fees to reach 85% cost recovery over time. He advocated for reducing reliance on CSF dollars.

She then invited members to discuss and ask questions of one another.

- Chris Gannon suggested a compromise proposal that starts at 50% cost recovery in Year 1, 65% cost recovery in Year 3, and 75% cost recovery in Year 5. In addition to this, would want to see a RAC recommendation to stop use of CSF dollars and instead use General Funds or some other source to fund the balance. Peggy Lynch noted that part of the CSF responsibility is to help with protection of waters of the state.
- Morgan Allen reiterated that he would like to see nothing less than 85% cost recovery over time. For applicants, the fee difference at 75% or 85% cost recovery is not very high. He noted he would not be supportive of starting at a 40% or 50% cost recovery. Public education dollars subsidize a program that has nothing to do with public education. He noted that the Oregon School Boards Association was hopeful that a rulemaking process could provide a fix to the funding problem, and there is a high level of frustration with decisions that are not financially advantageous to public education. The public education sector is also dealing with a lack of other revenues that they typically receive due to lower timber receipts and decreases in natural resource revenues. For these reasons, it is important to limit the amount of CSF dollars used.
- Peggy Lynch noted that the bulk of education dollars come from the General Fund, so using General Fund dollars rather than CSF for the removal-fill program may still result in fewer dollars for education.

Sylvia thanked members for their discussion and noted that the DSL team would relay the different points of view to DSL leadership.

Discussion – Rule Language and Tiers Follow-Up

Pete Ryan, Russ Klassen and Danielle Boudreaux, Department of State Lands, provided context and reviewed comments that RAC members have made to date on the various rule divisions, as well as DSL responses to these comments. Sylvia invited RAC members to discuss after each rule division.

Division 90 (Wetland Delineations and Determinations)

Pete reviewed RAC comments and DSL responses in the [comment tracker](#), and members discussed.

- Brad Livingston asked for an update on the suggestion to exempt ODOT or other entities that fund a liaison position. Staff noted that this can be discussed offline. Whether or not this appears in the rules will depend on where the cost recovery recommendation lands. Peggy Lynch noted concern that if agencies with liaisons do not pay fees, it may mean that other applicants have to bear more of the cost burden.
- Chris Gannon expressed appreciation for the explanation on how restoration projects are often exempt from fees.

Sylvia asked if members had any other comments or concerns about the Division 90 rule updates, and members expressed no additional concerns or comments.

Division 89 (General Authorizations) and Divisions 85 and 93 (Individual and General Permits)

Russ reviewed RAC comments and DSL responses in the [comment tracker](#), and members discussed.

- Chris Gannon had an additional suggested edit for OAR 141-085-0545(2)(a)(B). He appreciated the staff update to this rule, but suggested that the term “applicant” be used in place of “proponent.” For watershed projects, the person or entity funding a project, doing the project, and applying for the project are often different. DSL noted the change and recognized that this could mean mirroring the change in other parts of the rules.

Sylvia asked if members had any other comments or concerns about the Division 89, 85, and 93 rule updates, and members expressed no additional concerns or comments.

Review – Notice of Proposed Rulemaking Components

Danielle presented the three draft components that make up the public notice:

- [Fiscal Impact Statement](#)
- [Racial Equity Statement](#)
- [Housing Impact Statement](#)

She noted that the Fiscal Impact Statement and Racial Equity Statement are required by law. There is also a requirement that a committee be invited to comment on the Fiscal Impact Statement. DSL is not required to file a Housing Impact Statement, but voluntarily chose to write one for this rulemaking in recognition of potential housing cost impacts.

RAC Discussion

Sylvia encouraged members to ask clarifying questions and provide input. She asked if anything else needs to be added to the statements, and whether they capture everything that is important to include. Members noted:

Discussion on Fiscal Impact Statement

- Peggy Lynch noted that the general public has a financial stake in wetlands protection. The permitting program has a benefit to the general public, and if wetlands are lost, that is a cost to

the public as well. DSL noted that the FIS is meant to focus on the cost of compliance, and would consider how to incorporate the general public's interest into the document if possible.

Discussion on Racial Equity Statement

- Peggy Lynch suggested that the general public be added to the list of persons and groups subject to the rules. The general public has a role because they can comment on the rules.

Discussion on Housing Impact Statement

- Chris Gannon commented that the housing impacts are well summarized. He asked whether the terminology referencing "Essential Indigenous Anadromous Salmonid Habitat" is correct. DSL noted that that this is the correct formal term for this kind of habitat.

Interested Party Comments

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

Next Steps

Danielle reviewed next steps for the process. RAC members will receive the RAC Meeting #6 meeting summary and recording next week, as well as a survey on the RAC process. All materials will be posted to the rulemaking website. In the coming weeks, DSL will present a RAC fee schedule recommendation to DSL leadership for their consideration.

Danielle reviewed the timeline of rulemaking events:

- January 2025: Public comment period and public rule hearing (Notice of Proposed Rulemaking published)
- February – April 2025: Internal review and approval process
- May 2025: Final rules and materials are filed with the Secretary of State
- July 1, 2025: Effective date of new rule language and fees

Peggy Lynch requested that DSL notify the RAC if there are any bills or legislative activities related to this rulemaking. DSL made note to track this.

Adjourn

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