



# **Rulemaking Advisory Committee**

**Proposed Fees for Removal-Fill  
Permits, General Authorizations,  
Wetland  
Determinations/Delineations**

**July 10, 2024**

# Meeting Agenda

9:00 AM	Introductions
9:20 AM	Rulemaking Process
9:30 AM	Rulemaking Advisory Committee (RAC): Roles and Principles
9:50 AM	Background and Rulemaking Purpose and Scope
10:45 AM	Interested Party Comments
10:55 AM	Next Steps
11:00 AM	<i>Meeting ends</i>

**Meeting Goals:** *Outline everyone's roles, responsibilities, and expectations; understand the need for this rulemaking; and gain base knowledge on DSL programs impacted by the rulemaking.*

# Zoom Protocols



Each person who wishes to speak will be asked to raise their hand.

- To raise your hand, click the reactions near the bottom of your screen and click “raise hand” or by pressing star 9 if you are on the phone.
- Will seek a balance of speaking time during discussions
- *For technical support, please message us in the chat.*
- Please keep your mic muted unless it is your turn to speak. Use of video is encouraged.
- We ask that all participants be respectful of each other and DSL representatives.



# Rulemaking Advisory Committee (RAC): Process and Principles



Josh Mulhollem  
Dept. of Marine Research

Bill Ryan

# Purpose of the RAC

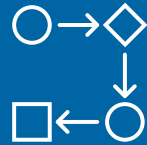


This RAC is being convened to provide input on proposed fees, and related rule language, for the removal-fill regulatory program at the Department of State Lands.

Subsequent RAC meetings will consider the proposed fees for:

- removal-fill permits
- wetland delineation reports
- general authorizations

# DSL Rulemaking Process



Approval to initiate is provided by the DSL Director or State Land Board. DSL staff draft initial rule language.

**Need established; rule language drafted**

Draft rule language, "Need for the Rules," "Fiscal Impact Statement," and "Racial Equity Statement" are reviewed and approved.

**Rulemaking Advisory Committee convened**

**Rules filed and adopted**

**30-day public comment period**

Approval to file with SOS is provided by the DSL Director or State Land Board.

Notice of Proposed Rulemaking is published by the SOS, and a public rule hearing is held midway through the comment period.

# RAC Operating Principles



## RAC Member Role

RAC members are responsible for:

- Advising the Department on proposed fees and rule language.
  - Group is an advisory board.
  - Role is to provide advice and frame policy choices.
- Attending and participating in the meetings.
- Considering a range of issues and options to:
  - Address them,
  - Discuss the pros and cons,
  - Seek to develop recommendations.



# RAC Operating Principles



## RAC Member Role

RAC members are responsible for:

- Reviewing background materials to understand the issues for discussion at the RAC meetings.
- Working collaboratively with one another to explore issues and develop recommendations.
- Considering the perspectives and input of other stakeholders and the public and including them in recommendations as appropriate.



# RAC Operating Principles



## RAC Member Role and Alternates

RAC membership and term of service is at DSL's discretion.

Membership is intended to represent a diversity of expertise, skillsets, and viewpoints. If a scheduling conflict arises, members may be represented by a designated alternate. Notice must be provided to the facilitator at least 24 hours before the meeting.

# RAC Operating Principles



## Schedule of 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)

# RAC Operating Principles



## Rulemaking Team

*The facilitator is your primary contact throughout this rulemaking.*

Sylvia Ciborowski

Sylvia@mosaicresolutions.com  
(832) 877-5249

*Department of State Lands staff coordinating the rulemaking and as technical advisors:*

- Danielle Boudreaux, Rules Coordinator, danielle.boudreaux@dsl.oregon.gov
- Pete Ryan, Planning & Policy Aquatic Resource Specialist, Peter.RYAN@dsl.oregon.gov
- Russ Klassen, Planning & Policy Removal Fill Specialist, Russ.KLASSEN@dsl.oregon.gov

# RAC Operating Principles



## Facilitator Role

The facilitator is responsible for:

- Ensuring a safe, welcoming environment where all members can participate.
- Conducting meetings to foster conversations to provide input on the proposed rule language and fees.
- Preparing meeting summaries that outline the topics discussed and any remaining issues which need to be further explored.
- Providing coordination between meetings, serving as the primary communicator between RAC members as well as between the RAC and the Department.



# RAC Operating Principles



## Facilitator Role

- The facilitator will not act as an advocate on behalf of any issue, interest group, or member.
- While the facilitator may make recommendations regarding the process, they will not make any substantive decisions.
- Information disclosed in confidence will be kept confidential by the facilitator, though written communications may be subject to public records law.
- RAC members are encouraged to approach the facilitator if/when procedural issues arise.

# RAC Operating Principles



## Department of State Lands Role

DSL staff are responsible for:

- Providing technical and administrative support, information, institutional knowledge and expertise, and advice to the RAC.
- Scheduling meetings, preparing meeting materials, and maintaining a public record of the RAC process.

# RAC

## Operating Principles



## Operating Procedure Protocols

Members agree to:

- Act in good faith through all aspects of the RAC process.
- Attend all meetings.
- Be respectful of other members, interested parties, staff, and members of the public.
- Make every effort to address their concerns with the group.

# RAC

## Operating Principles



## Operating Procedure Protocols

Members agree to:

- Provide input on the proposed rule language, tiered fee structures, fee schedules, and the fiscal impact.
- Those with differing recommendations are responsible for proposing alternative solutions or approaches to resolve differences.
- Meetings will be conducted in a way that fosters collaborative discussion.
- Members will honor decisions made and avoid re-opening issues once resolved.



# RAC Operating Principles



## Operating Procedure Protocols

Members agree to:

- Ensure any written communications regarding the RAC or rulemaking process are mindful of these procedural ground rules and are respectful, even if highlighting different perspectives.
- Generally, defer to DSL for all media communications related to the group's process and recommendations and represent only their own perspective in interviews unless otherwise discussed with the group or DSL.
- Raise all concerns, especially those being discussed for the first time, at RAC meetings and not in or through the media.

# RAC Operating Principles



## Public Meetings and Records

RAC meetings are public meetings and are open to the public.

All rulemaking records, including formal documents, rule drafts, meeting summaries and exhibits, meeting recordings, and communications, are public records and may be released in response to a public records request.

*“Communications” refers to all statements and votes made during meetings, memoranda, work projects, emails and correspondence, and documents or materials developed to fulfill the goals of the rulemaking.*

# RAC Operating Principles



## Interested Parties

Interested parties are:

- Invited to observe, but not permitted to participate during RAC member discussion.
- Able to provide a timed comment, as time allows, after RAC members have concluded business.

At a later date, after the RAC process has concluded, DSL will invite public comments on the proposed rules and will hold a public hearing, prior to consideration and adoption.



# Background: Common School Fund and the Removal-Fill Regulatory Program



*Beaver dam in Cullaby Creek, Warrenton, OR / Photo: Dan Cary*



# Common School Fund



DSL is the administrative agency of the State Land Board, which oversees the lands Oregon was granted at statehood to help fund public schools, and the Common School Fund.

Every one of Oregon's 197 public school districts receives money from the Common School Fund every year.

School Year	Total Distributed to Oregon's Schools
2024	\$74.2 million
2023	\$72.2 million
2022	\$64.2 million

# Common School Fund



Today, DSL manages ~681,000 acres of school lands to produce revenue for the Common School Fund. Revenue generated by other DSL programs, including oversight of Oregon-owned waterways and the regulatory programs administering Oregon's Removal-Fill Law, also goes to the Fund.

Common School Fund interest earnings are part of the funding mix for DSL operations. But multiple DSL key performance measures and strategic initiatives are aimed at eliminating or reducing Common School Fund subsidy of our programs.

# Removal-Fill Laws



The Removal-Fill laws can be 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.

These laws are in place for the protection, conservation, and best use of the water resources of this state. They're administered through the Department's regulatory program, which issues permits or authorizations for the removal or filling of material.

# Removal-Fill Program



The Department's regulatory program includes:



Wetland  
determinations



Wetland  
Delineation Report  
review



Issuance and enforcement of  
removal-fill permits and  
general authorizations





## Wetland Determinations and Delineation Reports (ORS 196.818 and OAR 141-090)

*Determinations* identify if potentially jurisdictional wetlands or other waters such as streams and ponds are present.

A *delineation report* includes detailed mapping and documentation of the size, location, and other qualities of the wetlands and waters. A delineation report is needed to obtain a removal-fill permit.





*Photo: Metolius River, by Jessica Salgado, DSL*

## Individual Removal-Fill Permits (ORS 196.810 and OAR 141-085)

Permits that generally have more than minimal adverse effects to waterways or wetlands, are more complicated, often involve more than one removal-fill activity, or involve a substantial mitigation obligation. These projects do not qualify for General Permits or General Authorizations.

Types of permit activities include:

- Voluntary Habitat Enhancement
- Barrier Removal
- Industrial Development
- Overwater Structures
- Parking Area, Associated Structures





## General Removal-Fill Permits (ORS 196.816 and OAR 141-093)

A streamlined permit covering activities that are substantially similar in nature, recurring or ongoing, and have predictable effects and outcomes. General Permits may be by order or established through rulemaking. Notably, the U.S. Forest Service and Bureau of Land Management have a general permit by order for certain restoration activities on public lands and partnering private lands in Oregon. While this counts as only one permit, many projects occur under it.

Types of permit activities include:

- Dredging
- Transportation-related structures



## Emergency Permits / Authorizations (ORS 196.810)

Authorizations for emergencies that pose a direct threat to human health, safety or substantial property, and where prompt removal-fill action is required to address the threat. Approval is given as quickly as possible in emergency situations. Work must be limited to the minimum necessary to alleviate the threat.





## **No State Permits (NSP) (OAR 141-085-0555)**

Applications that are determined to be exempt from needing a DSL permit are provided an official “no state permit required” letter by the Department. Landowners may need this letter for various reasons. These decisions do not require an application fee but still require staff time to review and are an official decision.



## General Authorizations (ORS 196.850 and OAR 141-089)

A streamlined permit for specific types of removal-fill activities that have minimal adverse effects on wetlands and waterways. General Authorizations are preapproved but require a 30-day notice to the Department prior to the removal-fill activity.

Types of general authorizations include:

- Minimal Disturbance within Essential Salmonid Habitat (ESH)
- Waterway Habitat Improvement
- Nonmotorized In-Stream Placer Mining



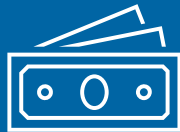
# Rulemaking: Overview and Need



*Field of Camas at Butler Mitigation Bank / Photo: Grey Wolf*



# Funding the Removal-Fill Program

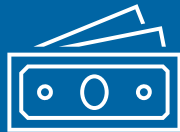


The current removal-fill fee structure is outlined in ORS 196.815, which establishes base fees and stipulates fees will be adjusted annually based on changes to the Consumer Price Index for All Urban Consumers, West Region (All Items).

Base fees were last increased during the 2007 Regular Legislative Session (HB 2105, Chapter 849 Oregon Laws 2007).

The existing removal-fill fee structure does not align with the actual permitting process, resulting in years of unmet costs.

# Funding the Removal-Fill Program



**21%**

Existing fees charged for those services cover only 21% of costs associated with the removal-fill permitting process.

**\$2.7M**

The Common School Fund is heavily subsidizing the program. An average of \$2.7 million is expended annually to cover the gap.

## Aquatic Resource Management Regulatory Program Cost Recovery

(Removal-Fill Permits, Wetland Delineation Reports, General Authorizations)

Year	Revenues	Expenditures	Revenues Less Expenditures	Cost Recovery Percentage
2019	654,056.11	2,897,200.12	(2,243,144.01)	23%
2020	710,651.75	3,262,961.98	(2,552,310.23)	22%
2021	679,629.22	3,366,903.86	(2,687,274.64)	20%
2022	722,384.61	3,536,441.28	(2,814,056.67)	20%
2023	923,587.52	4,401,114.55	(3,477,527.03)	21%
<b>5-Year Average</b>	<b>738,061.84</b>	<b>3,492,924.36</b>	<b>(2,754,862.52)</b>	<b>21%</b>

# Need for Rulemaking



In 2023, the Oregon Legislature passed HB2238, which directs the Department to adopt, by rule, a tiered fee structure for removal-fill permits and wetland delineation reports, and fees for 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.

# Goals of the RAC Meetings



During the upcoming RAC meetings, members will be asked to provide input on:

- proposed tiered fee structures,
- proposed fees,
- related proposed rule language, and
- potential fiscal impacts.

*Rulemaking related to policy changes has been or will be separate from this rulemaking process.*



# Related Rulemakings to Improve the Removal-Fill Program



Through recent and upcoming policy-focused rulemaking, the Department is also identifying ways to:

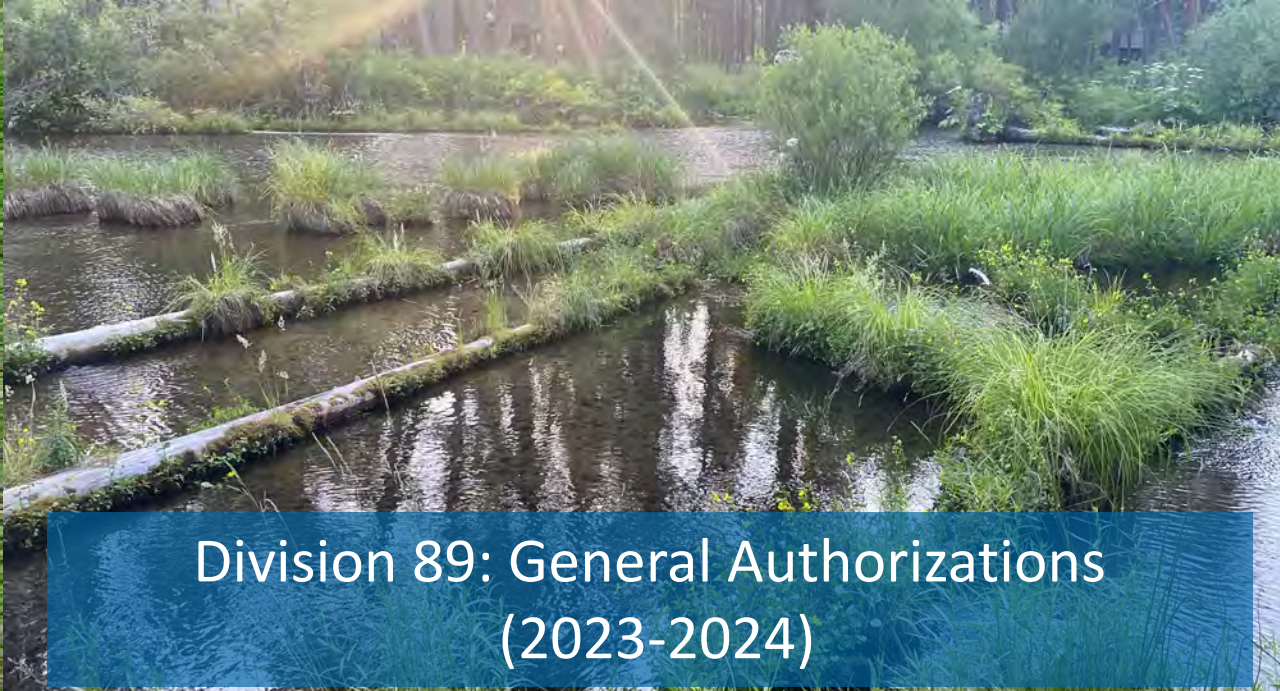
- improve review processes,
- refine submission requirements to prevent staff requests for more information,
- update rules for clarity and transparency, and
- increase the number of activities eligible for general authorizations.



## Related Rulemakings

A photograph of a wetland delineation site. A red-handled shovel and a yellow measuring tape are on the ground next to a small hole dug into the earth. A white plastic bag is also visible.

Division 90: Wetland Delineation Reports  
(2023)

A photograph of a stream with several large logs placed across it to create barriers. The water is dark and reflects the surrounding greenery.

Division 89: General Authorizations  
(2023-2024)

A photograph of three field workers in green shirts and caps. They are gathered around a table, looking at documents and a laptop. One worker is pointing at a document.

Division 85: Removal-Fill Permitting (2025)

A photograph of two field workers, a woman and a man, standing by a stream. They are both wearing backpacks and looking at a document held by the man. The stream is surrounded by lush green trees and vegetation.

Division 93: General Permits (late 2025)



# Determining the Proposed Tiered Fee Structures



To determine the tiered fee structure, Planning and Policy 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/authorization and wetland delineation the Department reviews, as well as the benefits to the environment.

Additionally, several data sets were included in the calculation of the proposed fees:

- Fiscal data (i.e., revenues, expenditures, staff salary)
- Staff time tracking data
- Annual permit application data
- Annual general authorization notifications
- Annual number of wetland determinations/delineations received

# What We Heard



- 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.
- 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.





## Interested Party Comments

Please raise your hand  
to speak.

Please keep comments  
limited to 3 minutes.





# Interested Party Comments



Use the "Raise Hand" feature to provide community input. Time is limited and we may not be able to hear from all of you today.

- To raise your hand, click the reactions near the bottom of your screen and click "raise hand" or by pressing star 9 if you are on the phone.
- You will be called in the order in which hands are raised.
- Please keep your mic muted unless it is your turn to speak.

## When it's your turn to speak:

- When your turn is coming up, the moderator will call on you to begin speaking.
- Please say your name, where you're from, and any organization you're representing.
- Please keep your remarks to **three minutes** and be respectful of each other and agency representatives. We will help track your time.

## What's Next?

- Following this meeting draft rule language and proposed tiered fee structures and fees will be sent to the RAC members.
- In the next week, a meeting summary will be sent to RAC members and today's meeting recording will be posted.
- Prior to each meeting, a meeting agenda will be sent, as well as draft fiscal impact statements.
- All meeting materials will be posted to DSL's Rulemaking website: [www.oregon.gov/dsl/Pages/rulemaking.aspx](http://www.oregon.gov/dsl/Pages/rulemaking.aspx)



# Thank You!

**Facilitator**

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**Oregon Department of State Lands**

Danielle Boudreaux, Rulemaking  
Coordinator

**[Oregon.gov/DSL](http://Oregon.gov/DSL)**