



## Removal-Fill Fee Rules (HB2238) RAC Meeting # 4 Summary

September 11, 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 September 11, 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?
<b>Members</b>		
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	X
John van Staveren, SPWS	Pacific Habitat Services, Inc.	X
Katie Ryan	Wetlands Conservancy	X
Lauren Poor	Oregon Farm Bureau	
Michael Martin	League of Oregon Cities	
Morgan Allen	Coalition of Oregon School Administrators	
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
<b>Staff/Advisors</b>		
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
Sylvia Ciborowski (Facilitator)	Mosaic Resolutions	X
<b>Interested Parties</b>		
Colin McLaren		X
Mazekl		X
Mike Schmeiske		X
Molly Putnam	OGEC	X
Natalie Janney	Multi/Tech Engineering Services, Inc.	X
Stan Tonneson	Waterfront Organizations of Oregon (WOOO)	X

## Welcome and Introductions

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the fourth 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.

RAC members introduced themselves. Samantha Bayer introduced herself as the RAC member for the Oregon Homebuilders Association.

## 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 review information and discuss proposed fee tiers, fees, and rules for Divisions 85 (Individual Removal-Fill Permits) and 93 (General Removal-Fill Permits). She noted there will be time at the next RAC meeting to continue the discussion on Divisions 85 and 93 if needed.

## Presentation – Background; Fees; Data Methodology: Divisions 85 and 93 – Removal-Fill Permits

Dana Hicks, Russ Klassen and Danielle Boudreaux, Department of State Lands, provided background information on individual and general removal-fill permits. They noted:

- There are four categories of removal-fill permits:
  1. Individual permits are the standard path for removal or fill of material in waters of the state, unless a special category applies.
  2. General permits include a select set of activities, including transportation related structures, minor removal-fill impacts, Jackson County Vernal Pools, maintenance dredging, and certain ocean renewable energy facilities.
  3. Emergency authorization permits are for situations where there is a direct threat to substantial property and there is not time to get another permit. It allows for the minimum activity necessary to alleviate the threat.
  4. "No State Permits" are letters from Department verifying that the activity doesn't require a permit.
- Presented the process for review of individual and general permit applications, including timelines for review.
- Presented the process for review of emergency authorizations. In some cases, the conditions of the authorization may include a requirement to revise the project and apply for a removal-fill permit after the emergency has subsided.
- Reviewed current fees: The applicant is required to pay the base application fee plus the removal-fill fee which is adjusted annually based on the CPI changes. Base fees were last increased in 2007.
  - The current base application fee is:
    - \$399 for removal permits for public bodies/commercial operators

- \$136 for removal permits for private operators
  - \$990 for fill permits for public bodies/commercial operators
  - \$399 for fill permits for private operators
- Current removal and fill fees are based on volume. The maximum removal fee is \$999 for public bodies/commercial operators and \$736 for private operators. The maximum fill fee is \$1,590 for public bodies/commercial operators and \$999 for private operators. If there is both a removal and fill action, the applicant pays the greater of the two fees, not both.
- Reviewed current revenues from removal-fill permits over the last five years, which are an average of \$417,179 per year.
- Reviewed how the tiers and fees were determined. HB2238 directs the agency to establish project tiers for fees. In doing so, DSL is to consider the administrative cost to the department as well as impacts to waters of state associated with the different project types. DSL worked with staff to understand what elements of permit applications add more complexity and review time, and also considered how the tiers could be established to facilitate voluntary habitat improvement projects in order to encourage projects that help with DSL’s mission of protecting waters of the state.
- DSL also considered the types of applicants, with the goal of making allowances for single household owners for projects that are not for profit and groups organized for habitat improvement for project that are not for profit.
- Reviewed the number of applicants that are received by Type 1 and Type 2 applicants over the past five years.
- Reviewed the number of renewals and modifications that have been submitted over the last five years.
- Fees were determined by looking at staff time tracking data and creating a calculation using staff salary data to determine hourly staff cost. The base fee was calculated by looking at the time to process a No State Permit, which is equivalent to a completeness review. The fees at different tiers reflect the complexity and staff time needed to process an application at each tier, as well as the impact on waters of the state for projects at each tier level. Applications at higher level tiers bear more of the cost.
- The proposed fees for removal-fill permits are:

Tier	60% Cost Recovery	73% Cost Recovery	85% Cost Recovery	Full Cost Recovery
Application Fee	\$600	\$650	\$700	\$750
	\$1,800	\$1,950	\$2,100	\$2,250
Tier 1	\$200	\$450	\$700	\$950
	\$600	\$1,350	\$2,100	\$2,850

Tier 2	\$400	\$650	\$900	\$1,150
	\$1,200	\$1,950	\$2,700	\$3,450
Tier 3	\$3,000	\$3,750	\$4,500	\$5,250
	\$9,000	\$11,250	\$13,500	\$15,750
Tier 4	\$4,000	\$4,750	\$5,500	\$6,250
	\$12,000	\$14,250	\$16,500	\$18,750
Tier 5	\$6,000	\$6,750	\$7,500	\$8,250
	\$18,000	\$20,250	\$22,500	\$24,750

*Line one (darker blue) for each row is the fee for Applicant Type 1 and line two (lighter blue) is for Applicant Type 2.*

*Applicants will pay both an application fee and the applicable tier fee.*

- Reviewed estimated revenues from removal-fill permits across the various cost recovery models. Revenues from removal-fill permits represent 78-79% of total program cost recovery at each recovery option.
- Reviewed the percentage cost increase for applicant types 1 and 2 at each tier.
- Reviewed the permit tiers and criteria for projects under each tier. The intent of the tiered system is to strike a balance between recovering for actual staff time to process applications, and also protecting waters of this state.
  - Each applicant would pay the base application fee, and the remaining fee would be due when the permit is issued. If no state permit is required, then only the base application fee is required.
  - Tier 1 projects are those that have a primary purpose of voluntary habitat improvement. These are typically habitat improvement projects that are larger in scale and don't qualify for an exemption or general authorization.
  - Most projects fall into Tier 2. These are projects that will have minor impacts, and wetland impacts of less than 0.2 acres.
  - Tier 5 projects are outliers. These projects required extended application review time, sometimes years. The agency would be able to staff track time and, if warranted, charge more than what is in the rules.
- There are also fees for permit renewal, in-water work variance requests, and for modification of permit conditions or transfer of a permit.

### **RAC Discussion – Proposed Fee Tier and Fees: Divisions 85 and 93 – Removal-Fill Permits**

Sylvia Ciborowski encouraged members to ask clarifying questions and provide input on the proposed tiers, criteria, and fees. They had the following questions and comments.

#### Clarifying Questions and General Comments

- Samantha Bayer asked for clarification on the difference between Type 1 and Type 2 applicants. DSL staff explained that Type 1 applicants include single household owners doing a project that is not for profit, or groups like watershed councils organized for habitat improvement doing a project that is not for profit. All others are Type 2. A “not for profit” project by a single household owner is something that will not generate revenue, such as putting in a driveway, building a home, or building structures for residential use. Commercial agricultural producers and municipalities would fall into the Type 2 category, unless their project is an exempt activity.
- Chris Gannon asked for clarification on what it means that removal-fill permit revenues represent 78%-79% of the total program cost recovery at each level. DSL staff displayed a chart showing how much each piece of the program contributes to total program cost recovery. Revenues from fees for each of the program areas are a proportion of the overall program. Revenues from wetland determination and delineation fees represent about 19%, general authorizations represent 2%, and removal-fill permits represent 78-79% of the total program cost.
- Chris Gannon asked whether projects in Essential Salmon Habitat (ESH) areas would qualify under Tier 1 if they are for habitat improvement. Staff replied that they could as long as they meet all other Tier 1 criteria.

#### Input on Proposed Criteria, Tiers and Fees

- Peggy Lynch noted that there are parts of the program that occur regardless of how many fees are assessed. For example, DSL may meet with applicants to help them determine what type of permit to apply for, and staff are available to answer questions outside of individual applications. The agency needs to cover all of these costs that are not application-specific.
- Samantha Bayer agreed with the general concept of higher fees for applications that are more complicated and take more time to process. However, some of the percentage increases are shocking. There was fear that removal of the statutory fee cap would lead to significant fee increases, and that seems to be playing out here.
- Chris Gannon asked for an example of a Tier 5 project, and whether there has been concern about such drastic increases in fees at this level. Staff noted the Jordan Cove project would fall under Tier 5, or similar pipeline projects that cover many miles. These projects take a lot of staff time, may include many public meetings and comments, and require DSL to engage directors and attorneys. People generally understand that fees should be higher for these very large projects. Several RAC members agreed that very large projects should pay much more. Peggy Lynch noted that the Jordan Cove project cost DSL a lot of staff time that was never recovered.
- Staff clarified that the current removal-fill fee is based on cubic yardage and does not take into account the amount of waters of the state that are impacted. Chris Gannon supported moving away from the cubic yardage calculation.
- Samantha Bayer noted that she would consult with homebuilding members to better understand what tiers housing projects would tend to fall in, and to ask whether the project criteria make sense. She noted that a challenge in building housing is that projects are site

specific and vary greatly. Chris Gannon wondered if criteria related to density of housing or size of housing could be useful.

- Jessica Dorsey supported the Type 1 designation for single property owners that want to build their own house on property they own.
- Samantha Bayer noted that the fee amounts cannot be looked at in a vacuum. The applicant pays the fee, but also has to spend a lot of time and money preparing a very thorough application to avoid risking delay and permit denial. The increase in fees mean that applicants are paying for both their own staff time and DSL's staff time. Jessica Dorsey agreed and added that many other departments are also increasing their fees.

#### Input and Clarifications on Cost Recovery Options

- Peggy Lynch sought clarification on the RAC role in the cost recovery decision. Dana Hicks noted that the RAC is charged with recommending a cost recovery model. If the ultimate recommendation is something less than full cost recovery, the Department will need to work with the State Land Board to discuss where the balance should come from. Still, DSL is interested in comments from the RAC on where the balance could come from or what actions the State Land Board could pursue. *Note: The legislature is ultimately responsible for allocating general fund and authorizing agency budgets.*
- Samantha Bayer asked whether the intent is that the Common School Fund (CSF) no longer be used to pay for the program. Dana Hicks noted that the legislature directed the Department to consider full cost recovery through fees. There is interest from some stakeholders in having fees cover less than the full cost.
- Samantha Bayer recommended a reduced cost recovery model. Even just 40-50% cost recovery means doubling of fees for some tiers. Increased removal-fill fees are on top of many other fee increases in the housing industry. Reducing the burden on CSF dollars could lead to an increased burden on the housing industry.
- Peggy Lynch recommended cost recovery of around 50 or 60 percent, which is more in line with what other state agencies do. It is also important to pay attention to impacts of incremental fee increases over the years.
- Chris Gannon suggested that when the RAC makes its cost recovery recommendation, it include a statement or the story behind why they made that recommendation. Staff agreed and noted that the meeting summaries tell the story of how the RAC got to its recommendation, and this will be relayed to decision-makers.

#### **RAC Discussion – Proposed Rule Language: Divisions 85 and 93 – Removal-Fill Permits**

Danielle reminded members that the draft 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.

Dana walked through the draft rules for Divisions 85 and 93.

## Input on Rules

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

- Chris Gannon suggested rewriting OAR 141-085-0545(1)(b) to make it more clear: “...appropriate fees *per tier* within 120 calendar days of tier identification.”
- Chris Gannon suggested clarifying what is meant by “nonprofit” habitat improvement project in OAR 141-085-0545(2)(a)(B). He agreed that the intent of a project should be for nonprofit purposes, but projects are not typically called “nonprofit projects.” Instead, it is typical that group or body doing the project is a nonprofit group.
- Peggy Lynch suggested that RAC members consult with attorneys in their groups to review the rules and provide their input.
- Peggy Lynch noted that in OAR 141-093-0120, the word “OAR” needs to be placed in front of “141-085-0545.”
- Chris Gannon suggested adding the word “renewal” before the word “fees” in OAR 141-093-0120.

## **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 proposed tiered fee structures and fees will be sent to RAC members. This will include a revision to show the correct cost recovery percentages in the tables. RAC members will receive the RAC Meeting #4 meeting summary and recording next week.

Prior to the next RAC meeting, the team will send out drafts of the Fiscal Impact Statement, Racial Equity Impact Statement, and Housing Impact Statement.

The next RAC meeting is scheduled for October 9, 2024. It will be focused on continuing to seek input on Divisions 85 and 93, reviewing the three impact statements, and seeking RAC input and recommendation on a cost recovery model.

Danielle also asked members to hold November 6, 2024 and December 4, 2024 as potential dates for additional RAC meetings.

All materials will be posted to the rulemaking website: [www.oregon.gov/dsl/Pages/rulemaking.aspx](http://www.oregon.gov/dsl/Pages/rulemaking.aspx).

## **Adjourn**

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