



## Removal-Fill Fee Rules (HB2238) RAC Meeting # 5 Summary

October 9, 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 October 9, 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	X
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>		
Shawn Priddle	Oregon State Marine Board (OSMB)	X

## **Welcome and Introductions**

Sylvia Ciborowski, Mosaic Resolutions, welcomed participants to the fifth 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 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 past RAC comments on proposed rule language and tiers and seek final input on rules and tiers; discuss and seek a RAC recommendation on a cost recovery model; and review and seek input on the three Notice components.

Since several RAC members indicated they needed to leave the meeting early, the group agreed to begin with the cost recovery discussion.

## **Discussion – Rule Language and Tiers Follow-Up**

This topic will be discussed at the November RAC meeting.

## **Discussion – Cost Recovery Models**

Danielle Boudreaux, Department of State Lands, provided background information on the cost recovery models.

- 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. The chart also showed the weighting of how each of the program areas contribute to overall cost recovery. She noted that cost recovery today is around 21%. Proposed fees under the 60% cost recovery model are equivalent to about a 40% increase over today's fees, on average.
- Reviewed proposed fees for each of the program areas under the four cost recovery models, as well as current fees.

Dana Hicks, Department of State Lands, reviewed RAC comments to date on cost recovery options, using the comment tracker. RAC members have expressed that wetlands are a public good, and some program fees should be kept low to account for this. The RAC has also suggested potentially phasing in fees, with lower fees at first and then getting closer to full cost recovery over a period of years. Some suggested a higher fee for expedited service; DSL leadership thinks this would be inequitable to those that cannot pay the higher fee and it is not recommended. The RAC agreed that offsite wetland determinations should be a free service. There have also been comments suggesting a lower cost recovery to reduce the burden on housing.

### RAC Discussion: General Comments and Clarifying Questions

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

- Peggy Lynch suggested that staff develop easier to understand language for the fees, noting that the terms “Tiers” and “Type 1 and 2” may be difficult for the public to understand.
- Peggy asked for clarification on who subsidizes the “no cost” wetland determinations. Staff noted that the whole program absorbs that cost.
- Peggy asked for confirmation of the DSL Policy Option Packages (POPs) to help fund the wetlands program in general. She noted that the context of where funding is coming from is helpful for this fees rulemaking process. Staff confirmed that DSL has submitted legislative concepts to address some resource needs and to respond to the Governor’s housing initiative. They noted there are three POPs for General Funds related to the Housing Production Advisory Council (HPAC) recommendations.
- Samantha Bayer agreed that it is important to consider the fee changes in relation to what funding may potentially come in from the General Fund to offset costs. Peggy clarified that the current POPs are separate from permit fees that deal with processing of specific permits, and that fees will need to increase to some degree to more accurately pay for the removal-fill program.

### RAC Discussion: Cost Recovery Model Recommendation

Sylvia began by asking each of the members to briefly state which cost recovery model they are leaning towards, and why, including what values or objectives the cost recovery should seek to achieve.

Members noted:

- Brad Livingston expressed support for a phased-in approach starting with 60% cost recovery and then moving towards 85% to 93% cost recovery over time. To the extent possible, Common School Fund (CSF) dollars should not be used for the program.
- Chris Gannon agreed with a phased-in approach starting with 60% cost recovery and then eventually weaning off of CSF funding. Ramping up to a higher cost recovery over about a five-year period minimum would be appropriate. There is concern about shock to the permit payers, as 60% cost recovery is already a 40% increase in fees on average. It is also important to express to the legislature the importance of public funding contributions to the program.
- John van Staveren agreed with Brad and Chris and emphasized the shock factor to permit payers. Many agencies have a lot of Tier 3 facilities projects and fee increases for those will be a shock. The fees are too low now, and incremental increases over the years have been too low. Still, it is important to start with a lower cost recovery percentage and then phase in to a higher percentage.
- Katie Ryan agreed with the comments and supported moving towards at least 85% cost recovery if not 98% over time. She agreed it is important that the legislature understand that the program supports a public good.

- Michael Martin noted that League of Oregon Cities members are facing a lot of fee increases in different areas. When these are all combined, it is a challenge. He supports a phased-in approach starting with a lower cost recovery percentage. It is also important to understand what it means for the General Fund to make up any difference.
- Peggy Lynch expressed support for a phased-in approach that starts with 60% cost recovery and moves towards a maximum of 85% cost recovery. She suggested that bump ups in fees should occur every 2 or 4 years. She noted the CSF is responsible for the lands of waters of the state, so there is not a concern about using those funds to help fund the program. The important thing is that permit payers need to be able to plan for fee increases and know about them well in advance for business planning purposes. It is also important to factor in and discuss the annual 5% increase for inflation, which is separate from increases to account for cost recovery.
- Samantha Bayer noted that she has not discussed the proposals with the Oregon Homebuilders Association (OHBA) and does not have a formal OHBA position. Fees under all of the cost recovery proposals seem too high, and homebuilders are already paying too much in permits across the board. Increases would have a disparate impact on affordable housing developers. A 40% cost recovery model would be more palatable, with a phased-in approach. OHBA would not support full cost recovery; the conversation should go to the legislature for General Fund contributions, since the program is about protecting a resource for the common good.
- Stephanie Pulvers generally agreed with a phased-in approach that begins with 60% cost recovery and works up slowly. She also suggested eventual review of the applicant types, and consideration for including municipal projects as Type 1 to help maintain infrastructure projects in the face of so many costs and regulation increases.

Sylvia summarized key similarities between RAC perspectives: Many RAC members expressed concern that raising fees too much too quickly would be a shock to fee payers. It is important to acknowledge that the Removal-Fill program helps pay for a public good, and many support looking to the legislature and General Fund for contributions. There is support for a phased-in increase of fees, and many felt that beginning at 60% cost recovery and ramping up over a period of years to something closer to 85% or 98% could be a workable approach.

Sylvia noted that the hope today would be to reach a consensus recommendation from the RAC on a cost recovery proposal; and if a full consensus cannot be reached, then DSL would bring to leadership the various ideas and opinions that were expressed and whether there was a majority and minority recommendation.

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

- Chris Gannon expressed that many RAC members seem to be aligned around a phased-in approach that begins at 60% cost recovery and then ramps up. He suggested 85% as the upper limit.
- Samantha Bayer noted that OHBA would not support the proposal outlined. She noted that for the housing community, the fee increases are very high. She also noted that the Oregon Farm Bureau is not at the meeting today and they and others from the regulated community would likely have concerns with the proposal.

- Sylvia acknowledged that several RAC members are not present today. She noted that RAC members Efren Zamudio and Morgan Allen, who could not be here today, did provide email comments that were supportive of a phased approach in fees that ramps up to a higher cost recovery percentage, with less reliance on the Common School Fund.
- Chris Gannon wondered if providing some exemption or differentiation for projects on Exclusive Farm Use (EFU) lands would help reduce costs for the agricultural community. There were some concerns from others about this approach since it singles out a specific community, other permittees would have to make up the difference, and there are already broad exemptions for agricultural activities.
- Sylvia asked members to indicate via a straw poll whether they would support a phased-in approach that begins with 60% cost recovery and then reaches 85% cost recovery over some period of years. Brad Livingston, Peggy Lunch, Katie Ryan, Stephanie Pulvers, Jessica Dorsey, and Chris Gannon supported this approach, and Samantha Beyer did not. Members suggested determining the number of years for the phasing in, and how the 5% annual increase for inflation factors in.
- Members discussed the phase-in time period. Chris Gannon expressed support for reaching 85% cost recovery over a minimum of five years, or three biennia. Jessica Dorsey also supported spreading the increase over three biennia. Peggy Lynch suggested that each increase in fees occur at 2 or 3 biennia; this would allow for a slower ramp up in fees over a total period of 8 to 12 years. She noted that a longer ramp up in fees is preferable to reduce the shock on fee payers, but this needs to be balanced with DSL leadership desire for more cost recovery earlier on.
- Members paused to reflect on the meeting process. Some noted that several RAC members are not present, and that they were not ready to come to a recommendation today. Some others suggested that today should be considered as brainstorming potential options and make a decision or recommendation at a future meeting. Sylvia clarified that if the group does not come to a full consensus, DSL would communicate to leadership the various points of view and options that were considered and this could include a majority recommendation and minority report.
- There was confusion over how the 5% annual increase for inflation would factor into the increases over time alongside the cost recovery percentage increases. Some asked whether the 5% increase is necessary on top of the cost recovery increases. Others noted that if fees are not adjusted for inflation, then DSL will not achieve the cost recovery goals. One noted that DEQ uses a 3% annual inflation rate in its fees, and it is never enough and the agency has to seek additional funding. RAC members noted that it would be helpful to see the actual fees by year, taking into account both inflation and the cost recovery percentage jumps.
- DSL staff clarified that the rules include a 5-year fee schedule, and the fee amounts and the inflation adjustment can be reevaluated around Year 4. Members noted that it is helpful to hear that the fees can be reevaluated in the future, rather than giving a blanket 5% increase per year for inflation when the true inflation rate could be different in the future. DSL noted that

although the proposed rules include 5 years of fees, but there could be a proposal to include fewer or more years of fees.

- The group agreed that DSL should come back to the November RAC meeting with some numbers on what the fees would look like for a phased-in approach.

### **Review – Notice of Proposed Rulemaking Components**

This topic will be discussed at the November RAC meeting.

### **Interested Party Comments**

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

### **Next Steps**

Sylvia noted that because many RAC members had to leave today's meeting early or were not present, the team would delay discussion on these two topics for the November meeting:

- Rule language and tiers follow-up
- Notice of proposed rulemaking components

The November meeting will also include continued discussion on a RAC recommendation for a cost recovery model.

Danielle reviewed next steps for the process. Following this meeting any revisions to the draft rule language and proposed tiered fee structure and fees will be sent to RAC members. RAC members will receive the RAC Meeting #5 meeting summary and recording next week.

The next RAC meeting is scheduled for November 6, 2024.

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.