



Removal-Fill Fee Rules (HB2238) RAC Meeting # 2 Summary

August 14, 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 14, 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.	X
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	X
Michael Martin	League of Oregon Cities	
Morgan Allen	Coalition of Oregon School Administrators	X
Natalie Janney	Multi/Tech Engineering Services, Inc.	X
Peggy Lynch	Oregon League of Women Voters	
Phil Scoles	Terra Science Inc	X
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
Trevor Griffiths	Department of State Lands	X
Chris Stevenson	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 second 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.

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 key purpose of today’s meeting is discussion of proposed fees, fee tiers, and rules for Division 90: Wetland Determination and Delineation Reports. The meeting will also introduce the purpose and types of questions used to develop the Fiscal Impact Statement and Racial Equity Statement.

Presentation – Background; Tiers; Data Methodology (Division 90: Wetland Determination and Delineation Report Fees)

Pete Ryan, Department of State Lands, provided background information on wetland determinations and delineation reports. He defined wetland “determination” and “on-site determination” and reviewed the eight process steps for off-site and on-site wetland determination requests. He defined “wetland delineation report” and noted that a delineation report is needed to obtain a removal-fill permit. He reviewed the five steps for reviewing a wetland delineation report.

Pete then reviewed current fees, revenues, and expenditures for wetland determinations and wetland delineation reports. He noted:

- Currently, there is no cost for wetland determinations. Current fees for wetland delineation report reviews are as follows:
 - Initial fee: \$559
 - Resubmittal fee: \$100
 - Reissuance fee: No cost

It was difficult to find comparable costs in other states, because research into states included in the National Association of Trust Lands (NASTL) could not find a comparable program.

- The number of on-site determinations and wetland delineation report reviews that have occurred each year between 2019 and 2023.
- The annual revenues and expenditures for reviews each year between 2019 and 2023. On average, revenues are \$156,366 per year and expenditures are \$722,568 per year, resulting in a large gap that is currently covered by Common School Fund (CSF) dollars.

Pete noted that DSL is proposing a tiered structure for fees for wetland delineation report reviews. He explained the proposed tiered structure and criteria for each tier:

- Tier 1 includes delineation report reviews with 0.20 or fewer wetland acres. The 0.20 acres or less size was chosen because it is already used as a key eligibility criteria for removal-fill permitting. Above that number, permitting and report review gets more complicated. The average time spent reviewing Tier 1 reports is 5.5 hours and approximately 43% of reports fall into Tier 1.
- Tier 2 includes delineation report reviews with 0.21 or greater wetland acres. The 0.21 acres or greater value was chosen because of its relationship to removal-fill permitting eligibility criteria. The average time spent reviewing Tier 2 reports is 8.6 hours and approximately 53% of reports fall into Tier 2.
- Tier 3 includes delineation report reviews with 0.21 or greater wetland acres, and the study area is in a west side county and the study area is greater than 100 acres, or the study area is in an east side county and the study area is greater than 200 acres. The distinction between east side and west side counties was made because typically the west side has wetter conditions, and therefore, more wetland and waterway boundaries to review and approve.

Typical projects that would fall under Tier 3 are utility lines, solar projects, or wind farms. The average time spent on review of a Tier 3 report is 23.3 hours, and about 4% of reports fall into Tier 3.

Danielle Boudreaux, Department of State Lands, then reviewed the data methodology used to develop the proposed tiers and fee amounts. She noted that staff tracked how their time was spent reviewing wetland delineation reports from 2021 to 2023. They collected data on the size of study area, size of wetland area, and amount of time in hours to complete review. The data was then used to determine the average amount of time and cost for review of reports at each tier level.

Danielle then reviewed how the team estimated the cost of on-site wetland determinations using an estimated round-trip mileage, state reimbursement rate, and hourly staff salary. She noted that a goal of the program is to keep off-site determinations free and have on-site determinations be low cost because these are an important entry point to educate the public about wetlands and the removal-fill program requirements.

Danielle then reviewed the proposed fees for each tier at different cost recovery models:

Application Type	50%	70%	85%	100%
Wetland Delineation Tier 1	\$600	\$850	\$1,100	\$1,350
Wetland Delineation Tier 2	\$1,200	\$1,450	\$1,700	\$1,950
Wetland Delineation Tier 3	\$3,500	\$4,000	\$4,500	\$5,000
On-site determination	\$450	\$500	\$550	\$600
Reissuance Fee	\$600	\$850	\$1,100	\$1,350

She also reviewed the estimated revenue to DSL at each cost recovery model. Even at 100% cost recovery, the estimated revenue does not cover the full cost of wetland delineations and determinations report review. This is because the interest is in keeping off-site determinations and delineations free or low cost. Instead, the tiered fees contribute to overall program cost recovery.

Danielle then introduced the [proposed rule language](#), noting there are placeholders for the fee amounts because the agency is asking the RAC for a recommendation on which cost recovery proposal to use. The agency also proposes an annual fee increase of 5% to keep up with economic growth. In the statute, current fee increases are based on the Consumer Price Index (CPI) but the CPI cannot be used in rule as a basis for fee increases.

RAC Discussion – Proposed Tiers and Fees; Draft Rule

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

Clarifying Questions and General Comments

- A couple of members were concerned that the estimated fee revenues do not actually add up to the cost recovery percentages in the table, noting that it seems difficult to understand. They requested information on what percentage of the wetland delineations and determination costs are actually covered by the proposed fee amounts. They also noted it would be helpful to see the difference in fees if each piece of the program reaches full cost recovery, in addition to looking at fees that contribute to overall program cost recovery.
 - Danielle clarified that the agency made a choice to look at cost recovery of the total removal-fill program rather than cost recovery for each piece of the program. The DSL team will work to provide more detailed information at future meetings, and could look at full cost recovery for each piece of the program separately.
 - DSL staff clarified that there is no charge for off-site wetlands determinations, and this is in line with other processes that Wetland Ecologists do that are no charge, such as the process for wetland land use notices that come in from county and city planners. Phil Scoles provided an email comment noting that DSL has required cities and counties to request review so it makes sense not to charge.
- Lauren Poor requested that in the future, charts show the current fees in the chart for comparison with proposed fees.
- Brad Livingston noted that the Washington Department of Ecology charges fees and this may be a state program to look at for comparison.
- Morgan Allen noted that the gap between revenue and expenditures is currently being covered by CSF dollars. The CSF is constitutionally dedicated to cover K-12 schools.
- Chris Gannon asked whether fees have increased over time, since the chart indicates that average revenues have increased over time between 2019 and 2023. Pete responded that the fees do increase annually based on CPI, and there may be some other factors that have led to an increase in revenue over the years.

- John van Staveren asked whether DSL will reassess the fee for a wetland delineation if it turns out that there are more wetland acres than indicated in the original report. Pete responded that the agency was not considering reassessing the fee but can consider this. John noted that it may make sense to reassess the fee in some cases, for example if the client is a large private developer.
- Jessica Dorsey asked whether staff time to review reports has changed after implementation of new report standards that were recently adopted. DSL Staff clarified that the new standards were partially implemented in June 2023, so the data used in the analysis do not include these changes.
- Phil Scoles submitted email comments, noting that the number of sample plots is more time consuming than parcel size when conducting the wetland determination process. He also noted that some delineations require site visits and others don't.

Input on Proposed Tiers, Criteria, and Fees for Tiers

- Jessica Dorsey noted that in general the criteria for the tiers makes sense. She asked for clarification on why Tier 3 distinguishes the number of acres for east and westside projects. Pete responded that there are more wetlands and waterway boundaries to review in westside counties, which means the review is more complicated and takes more staff time.
- Chris Gannon appreciated the tiering approach. He wondered whether the difference in staff time for review is really that big for Tier 1 and 2 projects where the wetland acres are just slightly different.
- Chris Gannon suggested a modest charge for offsite determinations, because they do take some staff time. Pete noted that there is no proposed charge for offsite determinations because the agency wants to allow people easy access to the determinations that would keep them from being in violation. Chris agreed that these can be great educational opportunities, and it seems like the determinations are being subsidized to get at this interest.
- Eric Olsen suggested distinguishing the tiers based on lineal footage of delineated wetland, rather than acreage. It seems that this would more accurately correspond to the complexity of review.
- Chris Gannon suggested an additional layer of criteria that considers the proposed project's objective. For example, restoration projects have an ecological objective and seek to avoid wetland impacts or even improve wetlands and waterways, so could be considered for a lower fee. DSL staff noted that at the wetland delineation and determination stage, the project intent is not yet known. But this can be a consideration for permit fees.
- Brad Livingston suggested that the rules exempt ODOT, or other entities funding a Liaison, from paying fees. Staff and members clarified that the ODOT liaison is covered by a project charge and the liaison covers about 85% of the review time.

Input on Cost Recovery Options

- Brad Livingston asked for clarification on the intent of the legislation. Danielle responded that the legislation directs DSL to explore full cost recovery. There is an interest in not subsidizing

the program using CSF dollars. At the same time, the agency recognizes that a significant jump in fees would be difficult for permittees.

- Natalie commented that wetlands are a public good, and it is appropriate for the public to have some portion of responsibility for the program. She expressed support for less than full cost recovery through fees.
- Lauren Poor agreed and suggested that a general fund share should be looked to, with 50% or 75% cost recovery through fees. Natural resource agencies get less than 2% of general fund per biennium, and there should be a stronger effort to seek more general funding.
- Morgan Allen agreed that seeking general funds makes sense. He assumed DSL has pursued that option and that request was denied. He also suggested a phasing in of fees, with lower fees at first and then increases of fees to get to full cost recovery over a 3- or 5-year period to reduce shock to the system. He advocated for full cost recovery from the applicant. Otherwise, the funding comes out of public education, which is also a public good.
- Eric Olsen suggested a higher fee for applicants seeking expedited service. There are certain projects that would pay more to get expedited permits, such as housing developments. That could be another way to recapture some funds. Efen Zamudio agreed and would like to explore the feasibility of this idea.
- Lauren Poor added that the removal-fill fees will be more of a concern than the wetland delineation and report review fees. Fees are going up everywhere, and the impact on permittees is cumulative. This is especially difficult for permittees in the commodities market, who cannot pass on cost to the consumer.
- Phil Scoles emailed a suggestion that staff time for offsite determinations be excluded from cost recovery and instead be covered by general funds.

Input on Rules

- Chris Gannon expressed support for the 5% fee increase per year because it is easy and predictable, and in line with the current approach of increasing fees annually based on the CPI.

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 Fiscal Impact Statement 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.

Members had the following questions and comments:

- Chris Gannon noted that because local government is subject to same fees and permits as all permittees, governments could be economically impacted. Conservation groups that do

conservation projects on private lands are also impacted, and significantly so because they have limited funding.

- Jessica Dorsey noted that if counties and cities pay higher fees, this impacts the public generally because the public funds these governments. Stephanie Pulvers agreed and noted the difficulty in so much permitting and fees to do even minor projects.

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 no questions or comments.

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 the RAC members. RAC members will receive the RAC Meeting #2 meeting summary and recording next week.

The next RAC meeting is scheduled for August 28, 2024 and will focus on General Authorization Fees (Division 90). 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.