

Wetland Mitigation Banks

Overview

The Washington Department of Ecology (Ecology) is proposing to adopt a new rule related to wetland mitigation banks (banks). This rule will lay out criteria and a certification process to establish wetland mitigation banks across the state.

A wetland mitigation bank is a wetland restoration project designed to offset or “mitigate” environmental damages to wetlands from development, before harm occurs. These mitigation efforts can restore, create, enhance, and preserve critical wetland functions within a specific watershed or geographic area.

Why wetland mitigation banking is important

State and federal laws strongly discourage the loss of wetlands due to development. Wetlands are essential to maintaining and restoring Washington waters. They filter drinking water, hold flood waters, recharge groundwater, provide habitat for fish and wildlife, and offer recreation opportunities. Wetland mitigation banking is an innovative strategy to engage the private sector and the power of the marketplace to sustain Washington’s remaining wetlands.

To ensure successful mitigation, bank proposals go through extensive review by an interagency team to gain state certification and federal approval. Besides Ecology, the team may also include representatives from the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency, as well as affected local and tribal governments.

How wetland mitigation banks work

Wetland mitigation banks are designed to increase wetland functions within a defined area. Banks generate “credits” that are tracked on a ledger, similar to a regular bank account. Ecology and its partner regulatory agencies award credits to bank sponsors once a proposed bank meets specific performance standards – also called “benchmarks.” Tying the release of bank credits to achieving benchmarks ensures the success of mitigation before unavoidable damage occurs at another site.

Once credits are added to the ledger, a bank sponsor can use or sell them to a developer who needs to compensate for unavoidable wetland impacts. When credits are used or sold, they are debited from the ledger. Once a credit has been debited, it cannot be used to compensate for any other impacts.

MORE INFORMATION ON WETLAND MITIGATION BANKING

General information

To learn more about wetland mitigation banking:

www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking

173-700 Rule information

To learn more about the rule and the rule process:

<http://198.238.211.77:8004/programs/sea/wetlands/mitigation/rule/index.html>

Sign up for e-mail updates

To stay informed about the wetland mitigation banking program, join the wetland banking listserv:

<http://listserv.wa.gov/cgi-bin/wa?AO=WETLAND-MITIGATION-BANKING>

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How wetland mitigation banks relate to existing regulations

Wetlands are regulated under a number of different laws including the Federal Clean Water Act, the state Water Pollution Control Act, and local critical area ordinances. The U.S. Army Corps of Engineers currently regulates wetland mitigation banks and other forms of compensatory wetland mitigation. Under current law, parties seeking permits for development that affects wetlands must follow a mitigation sequence:

- **Avoid** damage to wetlands wherever possible.
- **Minimize** any damage that can't be avoided.
- **Compensate** for any remaining damage to wetlands.

The availability of wetland mitigation bank credits does not negate state and federal laws that require developers to **avoid** and **minimize** wetland damage. Wetland mitigation banks enable developers to **compensate** for unavoidable damages before harming a wetland at the development site.

In the past, developers have been responsible for designing, constructing, and maintaining wetland mitigation on-site. Since most developers have little expertise in wetland mitigation, the results have often been small, isolated "postage stamp" wetlands that failed to restore lost wetland functions.

Wetland mitigation banks, on the other hand, typically combine many small wetland mitigation projects into a single, larger project of more ecological value. Banks sponsors have both the resources and the incentive to work with wetland specialists and other technical professionals to ensure that the bank achieves its mitigation goals.

With proper implementation and guidelines, wetland mitigation banking has the potential to increase ecological benefits and improve efficiencies in wetland application and permitting processes. Applicants using bank credits will benefit from lower permitting costs, and the public will gain because the required

compensation for authorized impacts to a natural wetland is already on the ground.

How the proposed rule will change existing practices

This proposed rule focuses on procedures for certifying wetland mitigation banks as well as the process for implementing banks. Essentially, this rule adds another tool to the regulatory toolbox for mitigating unavoidable wetland impacts.

Ecological benefits of wetland mitigation banking include:

- Greater likelihood of ecological success, since bank projects go through significant regulatory review of the site selection and design prior to the bank being authorized to generate and use credits. Bank projects must show on-the-ground benefits before credits are awarded and used for impacts.
- Larger, more diverse mitigation sites that are better connected to existing habitat areas. This supports a greater diversity of habitat and wetland functions and creates more sustainable systems.
- Reduction in temporal losses, since bank projects are generally constructed in advance of impacts. (Temporal loss is the loss of functions between the time an impact occurs and the time the functions are re-established.)
- A planning tool that meets wetland needs within a watershed, basin, or particular landscape, rather than being tied to piecemeal mitigation.
- Economic incentives to increase compliance. The bank sponsor shoulders the burden of demonstrating up-front that the mitigation effort is successful.
- More efficient permitting processes. Bank sponsors will have opportunities to certify banks through local, state, and federal permitting processes simultaneously. Developers proposing to purchase credits from a bank will experience a more-

streamlined permit process because the compensatory mitigation is already built and functioning.

- Reduced enforcement burden on regulatory agencies. Each bank sponsor must demonstrate that performance standards are met prior to the release of credits.

Key issues addressed through the proposed rule

The proposed rule identifies the criteria necessary for implementing an environmentally sound banking system and also describes the certification process. The rule also addresses the following topics:

- Designating the geographic service area in which a bank can reasonably be expected to provide appropriate compensation. The service area can vary, depending on the wetland functions being provided, type of impacts anticipated to be offset, local and regional conditions, and so on.
- Considerations for assigning bank credit values, based on variables such as acreage, wetland ratings, wetland type, and function.
- A schedule for releasing credits as part of the certification process. Credit release will be tied to attaining pre-determined performance standards.
- Streamlining the bank certification process. This will occur through an interagency review team that brings all pertinent players to the table. Ecology will serve as the chair of the review team. In cases where banks are also seeking federal approval, the U.S. Army Corps of Engineers will serve as co-chair.
- Agreements between the bank sponsor and the review team will be formalized in a contract called a mitigation banking instrument. To complete the certification, state law requires that the contract be signed by the bank sponsor, Ecology, and the local jurisdiction(s). Representatives from federal

and tribal government are encouraged, but not required, to sign the contract as well.

Wetland mitigation banking and watershed planning

Wetland mitigation banking works best when implemented hand-in-hand with local watershed and land-use planning. Ideally, banks can be designed and located to address specific watershed needs such as enhancing or restoring wetland functions that are in short supply, critically important, or currently disrupted. Sound ecological assessment and characterization of watersheds – combined with sound transportation, infrastructure, and development planning – will ensure that banks are designed and located in areas where they will serve the greatest ecological good.

The proposed process for certifying and establishing wetland mitigation banks includes incentives to site and design banks that provide significant ecological benefits and restore watershed processes in areas identified as high priorities under a watershed-based approach to mitigation.