

Wetland Mitigation Banking Chapter 173-700 WAC

Q: What is a wetland mitigation bank?

A: A wetland mitigation bank (bank) is a site where wetlands are restored, created, enhanced or preserved. A bank is established to generate increases in wetland function called credits that can be used or sold to provide compensation for unavoidable wetland losses.

Q: How is wetland mitigation banking different from other types of mitigation?

A: **Concurrent or “permittee-responsible” mitigation:** Generally, the wetlands are built after the permit is issued and the adverse impact occurs. Mitigation can occur on or off site.

Advance mitigation: Wetland sites are built in advance to compensate for project impacts already identified. Advanced mitigation can combine compensation for multiple wetland losses.

Wetland mitigation banking: Wetland areas are established before unavoidable permitted losses occur. These are typically used to offset unknown wetland losses associated with several permits, rather than a single project.

Q: What are the benefits of wetland mitigation banking?

A: Wetland mitigation banks provide many benefits, such as:

- Reducing the time lag between the lost or reduced wetland functions and values from a project and environmental compensation for those impacts.
- Sites can be planned consistent with local watershed planning efforts.
- Combining mitigation needs of small projects into one larger wetland complex.
- Providing mechanisms for long-term protection, management and maintenance.

DEFINITIONS

Credits: A unit of trade representing the increase in the ecological value of the bank site measured by acreage, functions, or other assessment method.

Interagency Review Team: A group of federal, state, tribal, and local regulatory and resource agency representatives who are invited to participate in negotiations with the sponsor on the terms and conditions of the instrument.

Mitigation Banking Instrument: The documentation of agency and sponsor concurrence on the objectives and administration of the wetland mitigation bank. This instrument describes in detail the physical and legal characteristics of the bank, including how the bank will be established and operated.

Performance standards: Measurable criteria for determining if project goals and objectives are being met. Performance standards document a desired state, threshold values, or amount of change necessary to indicate the bank is working successfully.

Service area: A specific geographic area in which a bank can reasonably be expected to provide appropriate compensation for unavoidable impacts to wetlands.

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Q: What are the limits of wetland mitigation banking?

A: Wetland mitigation banking is one tool for compensating for unavoidable wetland impacts. Banking can't solve all mitigation-related problems, and may not be suitable for all projects. Startup costs can be high and require a long-term commitment from the bank sponsor (sponsor).

Q: Are wetland mitigation banks regulated differently than other types of mitigation projects?

A: No. Wetland mitigation banks are held to the same regulatory requirements as existing mitigation projects. However, banks have a specific review and approval process under both state and federal rules.

Q: What is the process for reviewing wetland mitigation bank proposals?

A: Wetland mitigation banks go through the following certification steps:

- **The review process starts when the sponsor submits a prospectus to Ecology.** The department determines if the prospectus is complete and provides feedback, if necessary. Once the prospectus is complete, notice is issued seeking public input regarding the proposed bank.
- **The Interagency Review Team (IRT) is convened.** The IRT reviews and provides technical input on the sponsor's bank design, service area, performance measures, and decides the number of potential bank credits. Public comments are considered during the technical review stage.
- **Sponsor submits a draft Mitigation Banking Instrument (Instrument) for IRT review and comments.** The sponsor incorporates these comments and submits a Final Instrument to the IRT. Once the instrument is determined complete, notice is issued seeking public input regarding the bank certification.
- **Sponsor arranges for signing after all necessary comments are incorporated and approved by the IRT.** The certification process is complete once Ecology, the sponsor and the local jurisdictions' signatures are received.

Q: What is the local government's role in the certification process?

A: Ecology cannot certify a wetland mitigation bank without local approval. After a sponsor submits a prospectus, the local government is contacted and invited to be part of the IRT. Each local jurisdiction where the bank would be located must sign the bank's mitigation banking instrument for the certification to be complete. To encourage local involvement in the certification process, Ecology has clarified the role of local governments in the rule.

Q: How can the public get involved in the wetland mitigation bank certification process?

A: There are several opportunities during the certification process, where the public can review and comment on a proposed wetland mitigation bank. An initial public notice is issued on the prospectus. A second public notice is issued on the mitigation banking instrument.

The public can also stay involved with the program by joining Ecology's wetland mitigation banking listserv at: <http://listserv.wa.gov/cgi-bin/wa?A0=WETLAND-MITIGATION-BANKING>.

Q: Will wetland mitigation banks result in more wetlands being lost?

A: Applicants proposing projects that will impact wetlands must go through mitigation sequencing to avoid and minimize wetland losses, regardless of whether they propose to use credits as compensation. Credits can only be used when the permitting agency determines that the unavoidable wetland impacts are adequately offset by the wetland mitigation bank.

Q: Will the creation of wetland mitigation banks result in larger wetland mitigation failures?

A: Ecology's rule is designed to ensure banks do not result in large-scale failures. The rule includes several mechanisms for ensuring successful banks. These include:

- Rigorous technical review.
- Site monitoring.
- Financial assurances.
- Permanent protection of the bank site.

Additionally, credits are metered out over time to ensure that when credits are used they represent actual increases in wetland area and functions. Credits are only released when the bank meets specific, pre-identified benchmarks (performance standards). These benchmarks are tied to attaining certain levels of gain in wetland area and functions.

Q: How does Ecology ensure that wetland mitigation banks are located in the right areas?

A: The 2004 Pilot Program showed us that while wetland mitigation banks may not be proposed in the most ecologically appropriate location, they may be proposed where land is less costly. Site selection criteria within the rule states banks must be consistent with watershed restoration priorities and designed to restore ecological processes.

Q: Can Ecology deny poor wetland mitigation bank proposals?

A: Yes. The rule includes criteria for when Ecology can deny an inappropriate or poor wetland mitigation bank proposal. Bank proposals must be ecologically appropriate and able to provide appropriate mitigation for anticipated wetland losses – or face being denied. These criteria also meet federal mitigation rules.

Q: How does Ecology ensure that a wetland mitigation bank won't fail?

A: Ecology can't guarantee a wetland mitigation bank won't fail. However, Ecology uses several tools to minimize that risk including:

- Requirements for extensive technical information to support proposed designs.
- Intense review and evaluation by regulatory agencies.
- A credit release schedule that ties the ability to sell credits to the bank attaining certain performance standards.
- Suspending credit sale or transfer if a bank fails to meet performance standards or if used inappropriately.
- Consistent and ongoing oversight to ensure that problems are identified early in the bank site development.

Finally, sponsors must post financial assurances for their project. If a sponsor defaults or fails to fulfill their obligations under the mitigation banking instrument, Ecology and the U.S. Army Corps of Engineers can access a bank's financial assurances to hire contractors to repair and maintain wetlands on the bank site.

Q: Where can I find information on wetland mitigation banks?

A: Ecology's website contains a map of all the wetland mitigation banks in Washington State. Detailed information can be found by simply clicking on the bank name displayed on the map. The map is located at: <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/map.html>.