

Wetland Mitigation Overview

Wetlands are essential for protecting Washington waters. They support and protect communities and businesses by filtering drinking water, holding flood waters, providing fish and wildlife habitat, and supporting wildlife-related recreation. State and federal regulations protect wetlands and other aquatic habitats such as streams, rivers, and lakes.



Every year in Washington State, private builders and local, state, and federal governments spend millions of dollars countering or “mitigating” the negative effects that developing the land can have on our wetlands and other aquatic resources. Regardless of how they offer to offset the impacts, developers proposing projects that will adversely impact wetlands must go through the steps of mitigation sequencing.

Mitigation Sequencing:

1. Avoid damage to wetlands wherever possible.
2. Minimize any damage that can't be avoided.
3. Compensate for any remaining damage to wetlands.

Step three of mitigation sequencing, called compensatory mitigation, is the stage where unavoidable impacts to wetland functions are offset by restoring, creating, enhancing, or preserving critical habitat within a specific watershed or geographic area. Developers do everything possible to meet steps one and two before compensatory mitigation is an option.

Typically, compensatory mitigation is done using developer-responsible mitigation, wetland mitigation banks, and in-lieu fee mitigation. This document is designed to explain how in-lieu fee mitigation works, its benefits, and the review and approval process in Washington.

In-Lieu Fees

State and federal laws require that wetland impacts be avoided and minimized before development can occur. Under the in-lieu fee mitigation option, a public or private developer pays a fee to a non-profit or governmental natural resource agency called the “sponsor” rather than building compensatory mitigation themselves. The sponsor uses the funds to restore, create, enhance, or preserve critical wetland functions within the same watershed or geographic area where the development will occur.

Typically, in-lieu fee funds are held in trust by the sponsor until there is sufficient money to construct a mitigation project. The sponsor must implement a mitigation project within three years of receiving the funds. The increase in wetland functions developed by the in-lieu fee project generates credits. Credits can then be purchased by developers required to offset wetland losses from construction and development projects in the watershed or service area.

Benefits and Limitations

In-lieu fee benefits include:

- Selecting project sites based on local watershed needs and plans.
- Combining mitigation needs from the impacts of many small projects into larger, more sustainable wetland complexes.
- Allows public and private developers, frequently inexperienced in wetland mitigation, to buy credits that transfers their mitigation responsibilities to the in-lieu fee sponsor.
- Providing permanent mechanisms for long-term protection, management, and maintenance of the mitigation project sites.

In-lieu fee limitations include:

- May not be suitable for all construction and development projects.
- Requires a long-term commitment by the sponsor.
- May be more short-term loss of wetland function because the mitigation site could be constructed up to 3 years after the wetland impact.



How In-Lieu Fees Relate to Existing Regulations

Unlike wetland mitigation banking, Ecology doesn't have a State rule that specifically addresses in-lieu fee programs. Ecology regulates in-lieu fee programs under state and federal water quality laws. Under current law, developers seeking local, state, or federal construction permits for projects that will have unavoidable impacts to wetlands and other aquatic resources must follow mitigation sequencing.

The availability of an in-lieu fee program doesn't change state and federal laws requiring developers to avoid and minimize wetland impacts. In the past, developers were responsible for designing, constructing, and maintaining wetland mitigation on site.

Since most developers have little expertise in wetland mitigation, the results have often been marginal wetlands that failed to restore lost functions.



How In-Lieu Fee Programs Provide Greater Benefit

In-lieu fees typically combine the fees collected from many projects with small wetland impacts into a single more ecologically-valuable wetland mitigation project. Sponsors have both the resources and incentive to work with wetland specialists and other technical professionals to ensure mitigation projects achieve their goals.

In-lieu fee programs can increase ecological benefits while improving efficiencies in wetland application and permitting processes. These programs streamline the environmental review process for developers and allow for wetland mitigation that provides a greater overall benefit for the region.

Review and Approval Process

In-lieu fee programs are reviewed and approved by the U.S. Army Corps of Engineers (Corps) under the federal mitigation rule. The Corps invites Ecology to participate in the review and approval process as a co-chair of the Interagency Review Team.

In-lieu fee programs go through the following certification steps:

1. Sponsor submits a prospectus to Ecology and the Corps. Once the prospectus is determined complete, public notice is issued seeking public comment regarding the proposed project.
2. The Interagency Review Team (IRT) is convened. The IRT may include representatives from Ecology, Corps, Environmental Protection Agency, U.S. Fish & Wildlife Service, NOAA-Fisheries, local, and tribal governments, and other state agencies including the Washington departments of Fish and Wildlife and Natural Resources. This team reviews and provides technical input regarding the in-lieu-fee program details such as, sponsor qualifications, geographic extent of the program, prioritization of watershed needs, and program account information.
3. The sponsor submits a draft in-lieu fee instrument to the IRT for review and comment. These comments are then incorporated by the sponsor and submitted as a Final Instrument to the team.
4. Once the final instrument is approved by the IRT, the sponsor arranges for signing.
5. The approval process is complete once Ecology, the Corps, and sponsor sign the in-lieu fee instrument. Local and tribal governments may also want to sign the instrument.

Site Selection and Watershed Planning

Sites proposed by the in-lieu fee sponsor are reviewed by the Interagency Review Team. Ecology recommends sponsors select sites using a watershed approach. Site selection guidance is provided in the following Ecology publications:

- *Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington)*
www.ecy.wa.gov/biblio/0906032.html
- *Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington)*
www.ecy.wa.gov/biblio/1006007.html

In-lieu fee projects work best when implemented hand in hand with local watershed and land-use planning efforts. Sites should be designed and located to address specific watershed needs such as restoring watershed processes and wetland functions that are in short supply, critically important, and currently disrupted. All in-lieu fee mitigation sites have a public comment period.



Focus on In-Lieu Fee Mitigation

Credits

The number of credits awarded to an in-lieu fee mitigation site is determined by how well the site improves the water quality, hydrologic functions, and habitat functions. Credits are determined by taking into account site-specific and watershed information. Ecology, the Corps, and the Interagency Review Team use the following credit-debit guidance as the basis for determining the number of credits to be released to the sponsor.

- *Calculating Credits and Debits for Compensatory Mitigation in Wetlands (Western Washington)* www.ecy.wa.gov/biblio/1006011.html
- *Calculating Credits and Debits for Compensatory Mitigation in Wetlands (Eastern Washington)* www.ecy.wa.gov/biblio/1106015.html

The credits become available over time to ensure they represent actual increases in wetland area and functions. Credits are released only when an in-lieu fee project meets specific, pre-identified performance standards. These standards are tied to attaining certain levels of improvement in wetland area, value, and functions.

Ensuring a Successful In-Lieu Fee Program

Each in-lieu fee program will have financial assurances established to ensure satisfactory compliance with its in-lieu fee instrument. Financial assurances will be established for site performance, long-term monitoring and maintenance, and other aspects of the program.

Each in-lieu fee program is required to have a monitoring plan to determine and verify how each mitigation site is functioning. If monitoring or site visits show mitigation is unsuccessful, Ecology or the Corps can require the sponsor to correct the problem. If the sponsor is unable or unwilling to make corrections, Ecology or the Corps can access the financial assurances to pay a third party to correct the problems and ensure the site provides successful mitigation.

More Information

For more about in-lieu fee mitigation: <http://www.ecy.wa.gov/mitigation/ilf.html>

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Accommodation Requests:

To request ADA accommodation including materials in a format for the visually impaired, call the Shorelands and Environmental Assistance Program, 360-407-6600. Persons with impaired hearing may call Washington Relay Service at 711. Persons with speech disability may call TTY at 877-833-6341.

