JUST THE FACTS...

ABOUT COMPENSATORY MITIGATION FOR WETLAND IMPACTS

When people apply for a permit to place fill in a wetland, they discover immediately that they must follow a process to "mitigate" the impacts to the wetland. This fact sheet explains the mitigation process and the different compensatory mitigation options that may be available to the permit applicant. More detailed information and mitigation rules are available from the DSL Web site (see below) or from permit staff.

What Does Mitigation Mean?

The dictionary definition of mitigation is "to reduce the effect of an action." In wetland regulations, the term has the same meaning—to reduce the adverse effects of a proposed project. The main point to remember is that mitigation is a *process*. It starts with evaluating how a project might avoid wetland impacts. If the impact cannot be completely avoided, the next step is to look at ways to minimize "unavoidable" impacts. Only after a legitimate effort has been made to avoid and minimize adverse impacts does "compensatory mitigation" come into play. This sequential process is established in both state and federal law.

What Is Compensatory Mitigation?

Compensatory mitigation is creating, restoring, or enhancing wetlands to replace or "compensate" for the wetland area and functions lost through the permitted alteration. Constructing a wetland in an area that never supported wetlands historically is called *creation*. Wetland creation is often difficult because the upland soils are not good at retaining water. *Restoration* means re-establishing wetland hydrology and vegetation to a site that was historically wetland but has been dried out by diking, draining, or filling. *Enhancement* is improving an existing but badly degraded wetland by correcting the conditions that cause it to be degraded. This might include providing more water to the site and reestablishing native plant communities. The enhancement goal is to measurably improve the condition and functions of the wetland.

When Is Compensatory Mitigation Required?

Compensatory mitigation is required as a condition of any state permit to place fill or excavate in a wetland. When a permit application is received by DSL, the permit coordinator determines whether the applicant has adequately explored project alternatives that would avoid wetland impacts completely and also those that would minimize impacts. If there are practicable alternatives with no or minimal wetland impact, those alternatives must be pursued. Compensatory mitigation is required for the unavoidable impacts.

Basic Mitigation Process Steps

Steps taken before compensatory mitigation is considered

- Delineate wetland boundaries on the development site and obtain DSL concurrence.
- Analyze project development needs for the site.
- Determine whether the project can be completed without any direct impact (fill or excavation) in the wetlands.
- If not, identify project alternatives that will minimize wetland impacts.
- Finalize development/project plans that minimize wetland impacts.

Steps taken after alternatives are fully explored and impacts minimized

- Evaluate project impacts on wetland acreage and functions (conduct a wetland function assessment).
- Develop a compensatory mitigation plan that meets minimum ratios and replaces lost functions, or proposes purchase of mitigation bank credits or "payment to provide mitigation" (see reverse side of fact sheet).
- Obtain DSL approval of the mitigation plan (part of application review process).
- Construct mitigation project before or at the same time (same growing season) that the development project is constructed, unless otherwise authorized by DSL.
- Monitor mitigation project for required period of time (usually 5 years) and take corrective action to ensure project success, as necessary.

Must Wetlands Be Replaced On an Acre-for-Acre Basis?

DSL's rules set minimum ratios that vary by the type of compensatory mitigation proposed, as follows:

- Restoration ratio is 1:1 (1 acre restored for every 1 acre lost)
- Creation ratio is 1.5:1 (1.5 acres created for every 1 acre lost)
- Enhancement ratio is 3:1 (3 acres enhanced for every 1 acre lost)
- Enhancement of cropped wetlands is 2:1 (2 acres enhanced for every 1 acre lost)

The ratios reflect both the probability of mitigation project success and the state's mandate to maintain wetland acreage and functions.

Compensatory Mitigation Options

Onsite mitigation refers to conducting the compensatory mitigation project on the same parcel where the wetland impact will occur. This is frequently the easiest option and may be the best one for minimizing the adverse impacts of developments in a given area. For example, if localized flooding is a problem, it's important to maintain local flood storage capability. Sometimes, however, onsite mitigation is not practicable (e.g., for small wetland impacts) or is not the best option for replacing wetland functions.

Offsite mitigation is when the mitigation site is not part of the development site. Instead, the mitigation project is constructed at some other appropriate site.

Purchase credits from a mitigation bank—a mitigation bank is a large wetland mitigation project constructed by a public entity or private party to compensate for future wetland impacts. DSL has specific rules for how a mitigation bank will be developed, operated, and monitored. "Credits" are the units of exchange. They are usually based on acre units (one acre impact = one credit) and their value is determined by the actual cost of creating the credit in the bank. Private bank sponsors include all land and operation costs and will also figure in a margin of profit. DSL staff may approve purchase of credit from a bank if onsite mitigation options are not practicable or not environmentally preferable.

Payment to provide mitigation—as a last resort, applicants may be allowed to make a payment to DSL rather than construct the mitigation project themselves. If the development site is within the "service area" of a mitigation bank with credits available, the applicant must take that option before payment to provide is allowed. The payment to provide amount is based on the average cost of credits from all approved banks in Oregon. Money paid to DSL is used to fund restoration, creation, and/or enhancement of wetlands and other waters of the state.

How Well Does Compensatory Mitigation Work?

There have been many studies throughout the U.S. on how well compensatory mitigation is working. Most studies evaluate only very basic factors, such as whether plantings survived. However, the National Research Council conducted a nationwide study (in 2001) and made many recommendations for improving compensatory mitigation success.

The "success" of a mitigation project depends upon multiple factors including appropriate siting, adequate water source, and the site's ability to be self-maintaining. In general, restoration of former wetlands has a higher likelihood of success than wetland creation or enhancement. Because wetland enhancement sites are already wetland, this most common type of compensatory mitigation results in a loss of wetland area; therefore, it is very important that wetland functions are significantly improved. Mitigation banks can provide many practical and ecological benefits over small, onsite mitigation projects, but are not always the best choice for replacing localized wetland functions and values.

DSL studies of mitigation compliance with permit conditions have found that:

- Most compensatory mitigation projects required by a permit were completed.
- There were often significant differences in what was permitted and what was completed, resulting in a small net loss of wetland acreage.

There is limited data with which to evaluate the functional success of mitigation projects.