

Prospectus Submittal Procedures for Federal and State Wetland Mitigation Banks in Washington State

Introduction

The prospectus provides a conceptual overview of the proposed wetland mitigation bank (bank) and serves as the basis for initial public and Interagency Review Team (IRT)¹ review and comment. The prospectus must summarize information associated with the proposed bank at a sufficient level of detail to support informed public and IRT comment. As IRT Co-chairs, the U.S. Army Corps of Engineers (Corps) and Washington Department of Ecology (Ecology) are the final decision-making authority of the IRT. The Corps and Ecology use the prospectus and comments received during the public notice period to make an initial determination on whether there are critical issues that may affect the ability of the bank to be certified. For specific rule language pertaining to the prospectus and other elements of the bank certification process, see the [Federal Rule](#)² and the [State Rule](#).³

Overview

Preliminary Review of the Draft Prospectus

Prior to prospectus submittal, the Sponsor may elect to submit a draft prospectus to the Co-chairs⁴ for comment and consultation. This preliminary review is optional but strongly recommended. It is intended to identify potential issues early so the Sponsor may attempt to address those issues prior to the start of the formal review process.

Prospectus

The Sponsor is responsible for preparing all documentation associated with bank establishment including the prospectus. The Sponsor must submit electronic copies of the prospectus to the Co-chairs. These files should be in the format of a pdf (complete prospectus including figures) and a Word document (prospectus text only). If the e-mail submittal is over 10 MB, contact the Co-chairs to determine the best format (e.g., FTP site). The Sponsor must provide hard copies to IRT members upon request. To be considered complete, a prospectus must contain all the information identified in the attached checklist at a sufficient level of detail to support informed comments from the public and IRT.

When the prospectus is submitted, the Sponsor must also submit an electronic copy (e.g., pdf) of a recent Title Report (or Preliminary Title Commitment) for the proposed bank site parcel(s). Please note: a Title Insurance Policy is not a substitute for a Title Report. The Title Report must include the results of a title search and copies of all referenced documents (e.g., legal property description, taxes, easements, encumbrances, liens, judgments, assignments, covenants, restrictions, conditions, etc.). URL links to the referenced documents will not be

¹ An interagency group of federal, tribal, state, and/or local regulatory and resource agency representatives that reviews documentation and makes decisions for the establishment and management of a bank.

² The Corps and EPA Federal Mitigation Rule, formally titled: Compensatory Mitigation for Losses of Aquatic Resources: Final Rule, 33 CFR Parts 325 and 332, 40 CFR Part 230 can be found on EPA's website at: https://www.epa.gov/sites/default/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf.

³ The State Rule, formally titled: Wetland Mitigation Banks, Chapter 173-700 WAC is located on Ecology's website at: <https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true>

⁴ Contact information including email addresses can be found for the IRT Co-chairs on Ecology's website at <https://ecology.wa.gov/water-shorelines/wetlands/mitigation/wetland-mitigation-banking/contacts/irt-contacts>

accepted. The Title Report and associated referenced documents must be submitted as a stand-alone document, and it will not be made available through the joint public notice for the prospectus.

On receipt of the Sponsor's prospectus, the Co-chairs will review the document. The Co-chairs will notify the Sponsor in writing within 30 days of receipt of the prospectus whether the document is complete. If the prospectus is determined to not be complete, the Co-chairs will notify the Sponsor of any additional information necessary to complete the prospectus. If the prospectus is determined complete, the Co-chairs will move forward with a joint public notice.

Joint Public Notice, Review, and Comment

Within 30 days of a prospectus completeness determination, the Co-chairs will issue a joint public notice on the proposed bank.⁵ The public notice will include a summary of the prospectus and indicate that the full prospectus is available to the public for review at the applicable agency office or their website.

The public notice comment period will be a minimum of 30 days. The Co-chairs will notify the Sponsor if the comment period is extended beyond 30 days, including an explanation of why the longer comment period is necessary.

The Co-chairs will provide the Sponsor a copy of all comments received in response to the public notice within 15 days of the close of the public comment period. The Sponsor must provide their written response addressing these public comments to the Co-chairs to inform the initial evaluation.

Initial Evaluation

After the end of the comment period, the Co-chairs review the comments received in response to the public notice as well as the Sponsor's written response to these comments and make an initial evaluation of the potential of the proposed bank to provide compensatory mitigation for activities authorized by regulatory permits, and on the ecological appropriateness of the bank. The Co-chairs will provide the Sponsor with the initial evaluation letter within 30 days of receipt of the Sponsor's response to the public notice comments.

If the Co-chairs determine the proposed bank has potential for providing appropriate compensatory mitigation for activities authorized by permits and is ecologically appropriate, the initial evaluation letter will inform the Sponsor that they may proceed to the technical review stage of the certification process.

If the Co-chairs determine the proposed bank does not have potential for providing appropriate compensatory mitigation for permits or is not ecologically appropriate, the initial evaluation letter will provide the reasons for that determination. The Sponsor may revise the prospectus to address the Co-chairs' concerns and submit a revised prospectus. If the Sponsor submits a revised prospectus, a revised joint public notice may be issued.

⁵ Public notices will be issued in accordance with the public notice procedures at 33 CFR 325.3 and as specified in WAC 173-700-240 and 173-700-241.

Prospectus Checklist for Federal and State Wetland Mitigation Banks

The prospectus must summarize information associated with the proposed wetland mitigation bank (bank) at a sufficient level of detail to support informed public and Interagency Review Team (IRT) comment.

The prospectus should be organized in a report format including a cover page, table of contents, page numbers, and headings/titles for each section discussed. Information should be provided in complete sentences and paragraphs. This checklist is meant as a guide for what should be covered in the prospectus discussion and associated figures, not as a question and answer form.

To view past prospectus submittals, visit: the [Corps' Regulatory In Lieu Fee Bank and Information Tracking System \(RIBITS\) website](#).⁶

*****Please provide a completed checklist with the prospectus submittal*****

- Cover page including bank name, Sponsor name, and submittal date.
- 1. Page #: Insert page #(s). Provide contact information for the Sponsor.
- 2. Page #: Insert page #(s). List the goals and objectives of the proposed bank.
- 3. Page #: Insert page #(s). Describe the proposed bank site location including city or county, address, proximity to existing roads and other landmarks, parcel numbers, section/township/range, and latitude/longitude.
- 4. Page #: Insert page #(s). State how the bank meets any watershed restoration needs and how its design and location are ecologically appropriate. Include references to supporting documents.
- 5. Page #: Insert page #(s). Provide rationale for site selection that includes, but not limited to, the following:
 - a. Banks must be sited based on a watershed approach;⁷
 - b. Banks must be sited, planned, and designed to be self-sustaining over time;
 - c. Ecological suitability, ecological sustainability, and land use compatibility;
 - d. Compatibility of the proposed bank with designated [agricultural lands of long-term commercial significance \(ALLCS\)](#);⁸ and
 - e. Requirements specified in the State Rule, [WAC 173-700-303](#),⁹ and the [Federal Rule](#),¹⁰ 33 CFR §332.8 d(2)(vii)(A) and 40 CFR §230.98 d(2)(vii)(A).
- 6. Page #: Insert page #(s). State the general need for the proposed bank.

⁶ <https://ribits.ops.usace.army.mil>

⁷ Guidance on site selection can be found in Ecology publications: [Selecting Wetland Mitigation Sites Using a Watershed Approach \(Western Washington\)](#) <https://apps.ecology.wa.gov/publications/documents/0906032.pdf> and [\(Eastern Washington\)](#) <https://apps.ecology.wa.gov/publications/documents/1006007.pdf>

⁸ WAC 173-700-104, Definitions: <https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-104>

⁹ <https://app.leg.wa.gov/WAC/default.aspx?cite=173-700-303>

¹⁰ The Corps and EPA Federal Mitigation Rule, formally titled: [Compensatory Mitigation for Losses of Aquatic Resources: Final Rule](#), 33 CFR Parts 325 and 332, 40 CFR Part 230 can be found on EPA's website at: https://www.epa.gov/sites/default/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf.

7. Page #: Insert page #(s). Describe existing conditions of the proposed bank site including, but not limited to:
- a. Land ownership;
 - b. Local land use or zoning designation;
 - c. Current and historic uses;
 - d. Presence of liens, rights-of-way, easements, and/or other encumbrances;
 - e. The landscape position of the site including water resource inventory area (WRIA), basin, and sub-basin location;
 - f. Number, sizes, and types of existing wetlands present on the site including Washington State Department of Ecology Wetland Rating, Cowardin classification, and hydrogeomorphic (HGM) class of each wetland. Include a table;
 - g. Other aquatic resources (streams, ponds, ditches, and other water features) and upland habitat types present;
 - h. Available information on water sources including surface water features, preliminary ground water information; soil types; and vegetation;
 - i. A preliminary analysis of the functions and levels of functions provided by on-site wetlands, streams, and other aquatic resources;
 - j. Adjacent land uses that might affect the bank's functions including zoning;
 - k. Site constraints, conflicts, or known risks that could affect bank development or functions;
 - l. Identification of all buildings, structures, and other built features, and whether these structures would remain on the bank site after construction; and
 - m. Identification of existing mitigation sites and whether they would remain on-site after construction.
8. Page #: Insert page #(s). Describe conceptual site design, including but not limited to:
- a. Proposed types and approximate sizes of wetlands;
 - b. Other proposed habitat types to be provided;
 - c. Proposed gains in functions that the bank is anticipated to provide;
 - d. Description of alterations to hydrology;
 - e. Location of grading, if applicable; and
 - f. Proposed structures (e.g., perch poles, weirs, trails, etc.).
9. Page #: Insert page #(s). Describe the proposed service area and accompanying watershed-based rationale that demonstrates the service area is ecologically appropriate.
10. Page #: Insert page #(s). Discuss existing water rights on the site, and whether water rights have been applied for or secured for the site, if needed.
11. Page #: Insert page #(s). Identify the proposed permanent site protection mechanism.
12. Page #: Insert page #(s). Describe the proposed ownership arrangements and long-term management strategy for the bank.

- 13. Page #: Insert page #(s). Describe how the proposed bank project meets federal, state, and local laws and rules.
- 14. Page #: Insert page #(s). Identify whether the bank site is fully or partially located on ALLCS.
- 15. Page #: Insert page #(s). Describe the qualifications of the Sponsor to successfully complete the bank project(s) proposed, including information describing any past such activities by the Sponsor.
- 16. Page #: Insert page #(s). Describe the qualifications of the main design team and their areas of expertise.
- 17. Figures should be legible and accessible¹¹ when printed on 8 ½ x 11 paper for the public notice. Required figures include but are not limited to:
 - a. Figure #: Insert figure #(s). Vicinity Map.
 - b. Figure(s) #: Insert figure #(s). Existing Conditions Site Maps indicating the following:
 - i. Total area of site;
 - ii. Location, size, wetland category, and number of existing wetlands;
 - iii. Location of all streams, ponds, and other aquatic features on or adjacent to the site;
 - iv. Location and type of all known water control features on or adjacent to the site; and
 - v. Presence and location of rights-of-way, easements, and/or other encumbrances.
 - c. Figure #: Insert figure #(s). Parcel Map including parcel numbers.
 - d. Figure #: Insert figure #(s). Soil Map.
 - e. Figure #: Insert figure #(s). Proposed Conceptual Design.
 - f. Figure #: Insert figure #(s). Proposed Service Area Map.
 - g. Figure #: Insert figure #(s). Additional figures, as necessary.
- 18. Title Report and Associated Referenced Documents. (Stand-alone document).

¹¹ [U.S. General Service Administration, Tips and Agency-Developed Guidance to meet accessibility standards \(Section 508\)](https://www.section508.gov/create/documents/) <https://www.section508.gov/create/documents/> and [WA.gov Electronic and Data Accessibility website](https://wa.gov/people-with-disabilities/electronic-and-data-accessibility) <https://wa.gov/people-with-disabilities/electronic-and-data-accessibility>

Reference Material

Rules

- [Washington State Wetland Mitigation Banks Rule](https://app.leg.wa.gov/WAC/default.aspx?cite=173-700)
<https://app.leg.wa.gov/WAC/default.aspx?cite=173-700>
 - [WAC 173-700-104, Definitions](https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-104)
<https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-104>
 - [173-700-240, Public notices](https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-240)
<https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-240>
 - [173-700-241, Notification on the prospectus and proposed certification](https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-241)
<https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-241>
 - [173-700-303, Site selection](https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-303)
<https://apps.leg.wa.gov/wac/default.aspx?cite=173-700&full=true#173-700-303>
- [Corps and EPA Compensatory Mitigation for Losses of Aquatic Resources; Final Rule](https://www.epa.gov/sites/default/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf)
https://www.epa.gov/sites/default/files/2015-03/documents/2008_04_10_wetlands_wetlands_mitigation_final_rule_4_10_08.pdf
 - [33 CFR Part 325, Processing of Department of the Army Permits](https://www.ecfr.gov/current/title-33/part-325)
<https://www.ecfr.gov/current/title-33/part-325>
 - [33 CFR Part 332, Compensatory Mitigation for Losses of Aquatic Resources](https://www.ecfr.gov/current/title-33/part-332)
<https://www.ecfr.gov/current/title-33/part-332>
 - [40 CFR Part 230, Section 404\(B\)\(1\) Guidelines for Specification of Disposal Sites for Dredged or Fill Material](https://www.ecfr.gov/current/title-40/part-230)
<https://www.ecfr.gov/current/title-40/part-230>
 - [33 CFR §325.3, Public Notice](https://www.ecfr.gov/current/title-33/section-325.3)
<https://www.ecfr.gov/current/title-33/section-325.3>
 - [33 CFR § 332.8, Mitigation banks and in-lieu fee programs](https://www.ecfr.gov/current/title-33/section-332.8)
<https://www.ecfr.gov/current/title-33/section-332.8>

Websites

- [Washington State Department of Ecology-Wetland Mitigation Banking](https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Wetland-mitigation-banking)
<https://ecology.wa.gov/Water-Shorelines/Wetlands/Mitigation/Wetland-mitigation-banking>
 - [Templates & guidance documents](https://ecology.wa.gov/water-shorelines/wetlands/mitigation/wetland-mitigation-banking/templates-guidance-documents)
<https://ecology.wa.gov/water-shorelines/wetlands/mitigation/wetland-mitigation-banking/templates-guidance-documents>
 - [Wetland tools & resources](https://ecology.wa.gov/water-shorelines/wetlands/tools-resources)
<https://ecology.wa.gov/water-shorelines/wetlands/tools-resources>
- [WA.gov Electronic and Data Accessibility Website](https://wa.gov/people-with-disabilities/electronic-and-data-accessibility)
<https://wa.gov/people-with-disabilities/electronic-and-data-accessibility>
- [U.S. Army Corps of Engineers, Seattle District, Regulatory Program](http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory.aspx)
<http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory.aspx>
<http://www.nws.usace.army.mil/Missions/CivilWorks/Regulatory.aspx>

- [Corps' Regulatory In Lieu Fee and Bank Information Tracking System \(RIBITS\) website](https://ribits.ops.usace.army.mil)
<https://ribits.ops.usace.army.mil>
- [U.S. Environmental Protection Agency – Wetlands Protection and Restoration](http://www.epa.gov/wetlands)
<http://www.epa.gov/wetlands>
- [U.S. General Service Administration, Tips and Agency-Developed Guidance to meet accessibility standards \(Section 508\)](https://www.section508.gov/create/documents/)
<https://www.section508.gov/create/documents/>

Publications

- [Selecting Wetland Mitigation Sites Using a Watershed Approach – Eastern Washington](https://apps.ecology.wa.gov/publications/documents/1006007.pdf)
<https://apps.ecology.wa.gov/publications/documents/1006007.pdf>
- [Selecting Wetland Mitigation Sites Using a Watershed Approach – Western Washington](https://apps.ecology.wa.gov/publications/documents/0906032.pdf)
<https://apps.ecology.wa.gov/publications/documents/0906032.pdf>
- [Washington State Wetland Rating System - Eastern Washington](https://apps.ecology.wa.gov/publications/documents/1406030.pdf)
<https://apps.ecology.wa.gov/publications/documents/1406030.pdf>
- [Washington State Wetland Rating System - Western Washington](https://apps.ecology.wa.gov/publications/documents/2306009.pdf)
<https://apps.ecology.wa.gov/publications/documents/2306009.pdf>