

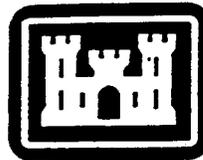
# *SPECIAL PUBLIC NOTICE*



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REGION 10  
Seattle, WA



US Army Corps  
of Engineers

Seattle District



Western WA Office  
Lacey, WA

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## **GUIDELINES FOR IMPLEMENTATION OF COMPENSATORY MITIGATION REQUIREMENTS FOR CONVERSION OF WETLANDS TO CRANBERRY BOGS**

### **BACKGROUND**

The U.S. Army Corps of Engineers, (Corps) regulates the expansion of existing, and creation of new, cranberry operations in wetlands under Section 404 of the Clean Water Act. In 1992, the Corps created a special Nationwide Permit (NWP 34) for expansion of existing cranberry bogs of up to 10 acres; new operations continue to be processed under the existing Corps Individual Permit process.

A number of actions have occurred since 1992 to reduce cranberry operation's impact to the existing aquatic environment. The Washington State Department of Ecology (Ecology) worked with representatives from the cranberry industry, Corps, U.S. Fish and Wildlife Service, Western Washington Office (USFWS), and Washington Department of Fish and Wildlife (WDFW) in developing regional conditions for the water quality certification of NWP 34. In addition to this, the cranberry industry and the resource agencies have proactively worked to develop a set of Best Management Practices (BMP's) to lessen environmental impacts from cranberry farming. One key issue that was raised during this process and continues to be discussed is the cranberry industry's suggestion that most wetland functions provided by "natural" wetlands are maintained after they are put into cranberry production. Agency staff agreed that some wetland functions may remain, but that wildlife habitat for some species is lost when native plant communities are replaced by an intensively managed food crop/simplified wetland system.

Questions have arisen by the agencies concerning the need for additional mitigation requirements in terms of avoidance, minimization, and compensation for unavoidable impacts to wetlands through restoration, enhancement, creation, and/or preservation of wetlands, due to cranberry projects. Guidance concerning compensatory mitigation ratios, used to implement mitigation requirements, was identified as a need for cranberry expansion and new operations in the state of Washington.

Factors that have led to State and Federal agency staff to consider mitigation include the following:

- Pacific County passed a critical areas ordinance that requires mitigation for impacts to all Category I and II wetlands. As a result, the county now requires compensatory mitigation for most new or expanding cranberry projects. The Pacific County Board of County Commissioners have recently proposed (October 1998) a minor amendment to the ordinance which would exempt conversion of Category II wetlands (along with Category III and IV wetlands) to cranberry bogs from compensatory mitigation requirements.
- Continued increases in wetland impacts are on-going, and larger cranberry projects, with substantively greater impacts, are being proposed for conversion of existing wetlands to cranberry cultivation.
- Cranberry expansion and creation of new cranberry operations are encroaching on higher functioning wetland systems without adequate compensatory mitigation.
- Indirect and cumulative impacts from cranberry expansion into wetland areas are a concern for all agencies because of:
  - 1) the potential loss of wildlife habitat for some species and;
  - 2) an inadequacy of supporting data to address this potential impact, as well as other, unknown impacts. Approximately 175 acres of wetlands have been converted to cranberry bogs without adequate compensatory mitigation as a result of Corps permit actions since 1992. This conversion has precipitated concerns stated in 1 and 2 above. Typically, mitigation has included conversion of uplands to cranberry bog or in limited circumstances, preservation of existing highly functioning wetlands. These mitigation approaches do not adequately address, at a minimum, the loss of some types of wildlife habitat.
- Although more and better BMP's have been voluntarily adopted by cranberry growers, concerns remain about the cranberry industry's reliance on fertilizers, herbicides, and pesticides and their potential adverse impacts on wetland functions. The cranberry industry should be commended for pursuing less environmentally damaging alternatives, like biodegradable products and the development of biological control for some insect pests.

#### **PROPOSED CRANBERRY/WETLAND STUDY**

As a result of the concerns listed above, a committee comprised of representatives from the cranberry industry, Corps, USFWS, U.S. Environmental Protection Agency, Region 10 (EPA), WDFW, Ecology, and Pacific County was formed. Meetings have occurred regularly for more than a year to address the impact and compensatory mitigation issues which have surfaced since NWP 34 implementation.

This committee has recently applied for Federal and private grants to study and assess the impacts of conversion of native wetlands to agricultural cranberry bogs. To date the committee received only enough funding to do part of the study. The study will apply functional assessment methods being developed by the Washington Wetland Functions

Assessment Project to cranberry bogs and undeveloped wetlands in southwest Washington (the number and locations yet to be determined). The study will include a sample from a cross-section of cranberry and non-cranberry wetlands: 1) cranberry bogs with different management regimes (i.e. dry vs. wet harvest), 2) cranberry bogs in different growing areas (i.e., Long Beach and Grayland), and 3) uncultivated (non-cranberry) depressional wetlands that represent the range in variability in depressional wetlands typically converted to cranberry bogs.

This study is anticipated to take a minimum of one year. The purpose of the study is to assess the potential impacts on wildlife habitat, water quality, and hydrological functions from conversion of wetlands to cranberry bogs. This data will then be used to assist regulatory agencies in making informed decisions concerning the need for, and the amount of, appropriate compensatory mitigation for cranberry projects.

### **COMPENSATORY MITIGATION**

**In the meantime, the following interim guidelines for compensatory mitigation for cranberry project proposals have been developed for use until more information has been generated from the above referenced study. Each project, whether it is being processed as a NWP 34 or an Individual Permit, will be reviewed on a case-by-case basis. The appropriateness of the applied compensatory mitigation ratios presented below will be determined during agency review of the proposal.**

The ratios listed below are expressed as each acre of conversion from wetland to cranberry bog which will require some form of compensatory mitigation (acres of mitigation required per acre of impact). For example, 1 acre of wetland impact/conversion will require enhancing between the range of 1.5 up to 6 acres of other, degraded, wetlands, depending on the functions and values of the impacted/converted wetland and the enhancement proposed.

All compensatory mitigation scenarios will require monitoring reports. It should be noted that the ratios presented below are, on average, lower than the ratios required for other wetland impacting projects, such as building a large shopping center in a wetland. The reasoning behind this is the acknowledgment that cranberry bogs are, in most circumstances, wetlands themselves which may provide some important wetland functions (such as flood storage and water fowl habitat). These ratios are presented as a range since best professional judgment by the resource agencies and the Corps on the degree of mitigation needed will be the basis of the Corps permit decision. The intent of doing the wetland study cited above is to improve our knowledge of the resources impacted both adversely and beneficially so that the interim guidelines can be adjusted, if necessary, to assure no net loss in acreage or function.

### COMPENSATION RATIO GUIDELINES (AREA)

| <u>MITIGATION TYPE</u> | <u>BEDS (wetland conversion)</u> | <u>DIKES (wetland fill)</u> |
|------------------------|----------------------------------|-----------------------------|
| Restoration            | 1:1-3:1                          | 1:1-4:1                     |
| Preservation           | 2:1-4:1                          | ≥7:1                        |
| Enhancement            | 1.5:1-6:1                        | 3:1-8:1                     |
| Creation               | 1:1-3:1                          | 2:1-4:1                     |

The following information should be used when reviewing the range of ratios presented above:

- **Mitigation ratios would be doubled if an after-the-fact Corps permit is issued for unauthorized work in waters of the U.S., including wetlands.**
- Restoration was viewed by the committee as a preferred type of compensatory mitigation.
- Preservation of threatened, high-quality wetlands was viewed as a high priority type of compensation. Preservation will be limited to 50% of the compensatory mitigation acreage except in those cases where the wetlands to be preserved are mature forested wetlands, or other high-quality wetlands which the Seattle District Corps or Ecology has determined to be at risk from degradation due to human activities that might not otherwise be expected to be restricted. In all cases, preserved wetlands must be subject to a deed restriction or conservation easement which ensures protection in perpetuity.
- Enhancement of degraded wetlands was viewed as acceptable, but lower priority type of compensatory mitigation than restoration.
- Creation was viewed as an acceptable, but very low priority type of mitigation.
- Conversion of uplands to cranberry bogs is considered as a part of mitigation sequencing - i.e. avoidance or minimization of impacts to wetlands. It is not considered as sufficient mitigation for final permit requirements and therefore, cannot be used to further reduce compensatory mitigation ratios. However, conversion of uplands to cranberry bogs can be used to achieve the "no net loss of wetlands" requirement for NWP 34. In order to comply with this NWP 34 condition, the uplands converted to cranberry bogs must be within the same watershed and in close proximity (determined on a case-by-case basis) to the existing cranberry operation.
- The ratios are guidelines. There may be circumstances where higher or lower ratios might be appropriate. The appropriate ratio is to be determined by best professional judgment or an approved functional assessment procedure. This will be dependent upon the functions and values of the wetland being impacted by fill or by the conversion to cranberry beds, the compensatory mitigation provided by the applicant, and the difficulty of replacing these functions and values.

- Special circumstances may warrant higher or lower ratios. A minimum acreage (area-based) replacement ratio of 1:1 typically will be required except in certain situations. The applicant may propose replacement of wetland functions and values in lieu of area-based mitigation in the form of equivalent functions and values with the following caveats:
  - The wetland being altered is not a Category I wetland under Ecology's rating system;
  - Documentation must be provided from a qualified wetland biologist that describes how the proposed mitigation will replace or improve upon the specific functions and values provided by the altered wetland. This documentation shall include a detailed assessment of the functions and values to be degraded or lost at the impact site and those to be provided by the proposed mitigation action and shall demonstrate (at a minimum) the degree of uncertainty as to the probable success of the proposed mitigation; the period of time between the alteration of the wetland and replacement of lost functions and values and; projected gains or losses in functions and values;
  - This documentation must be coordinated with agencies with expertise and demonstrate that no loss of wetland functions and acreage result from a reduced ratio.
- Mitigation performed in advance of the wetland impacts (i.e. mitigation banking or advanced compensation), demonstrating through monitoring that full wetland function and acreage is replaced, would be required at a 1:1 ratio.
- Ratios would likely be (down) adjusted if a fully functioning compensatory mitigation bank or advanced compensatory mitigation was created for cranberry projects.

The ratios listed in this guidance may need adjustment once the study has been completed and the data analyzed. The study could potentially demonstrate less, rather than more, need for compensatory mitigation. This is an interim measure to ensure no net loss of wetland functions and acreage from cranberry expansion and/or newly created bogs. This policy is consistent with the Memorandum of Agreement, dated February 6, 1990, between the EPA and the Corps concerning the determination of mitigation under the Clean Water Act Section 404(b)(1) Guidelines.

#### **CLARIFICATION AND INTERPRETATION OF NWP 34**

On February 11, 1997, NWP 34 was reissued for another 5-year time period. In June, 1998, cranberry growers requested that the Seattle District Corps clarify NWP 34 use on two specific topics:

- 1) Can existing cranberry operations use NWP 34 for up to 10 acres each time NWP 34 is reissued? In other words, can the people who used NWP 34 between 1992 - 1997 request another 10 acres of cranberry expansion between 1997 - 2002?

2) Does "existing operation" refer only to cranberry operations that were existing prior to November 1991 when the Corps' NWP 34 regulations were first published?

The Seattle District Corps obtained answers to the foregoing questions from Corps Headquarters. Headquarters responded in July 1998 and stated that the answer to question 1) is "yes" and the answer to question 2) is "no".

For question 2) a "no" answer means that cranberry operations that were either placed in uplands or received some other permit authorization (other than NWP 34) since November 1991 can now utilize NWP 34 for up to 10 acres of additional expansion each time NWP 34 is reissued.

Since this is a different interpretation of NWP 34 than what was previously given by Headquarters and is different than the way the Seattle District has been utilizing NWP 34, this special public notice is being used to inform cranberry growers in Washington State of this newest interpretation of NWP 34. The Corps can take discretionary authority to require the individual permit process for high functioning wetlands and/or special circumstances. Evaluation of impacts and compensatory mitigation requirements are the same for both permit processes. The Individual permit process requires an alternatives analysis, whereas the NWP process requires avoidance and minimization of impacts only.

We want to acknowledge that cranberry growers provide important economic activity in areas of the state which exceed average levels of unemployment. The purpose of this guidance is to provide cranberry growers with clear, meaningful, and consistent regulatory guidance. The regulatory and resource agencies have been diligently working with the cranberry industry to find an appropriate resolution to all concerns raised so that growers can maintain economic viability and the Corps' objective of no-net loss of wetland functions and acreage can be achieved.

The Seattle District, Regulatory Branch, should be contacted prior to beginning construction in any waters of the United States, including wetlands, for site specific jurisdictional determinations and permit requirements. Permit applications can be obtained from the Regulatory Branch at Post Office Box 3755, Seattle, Washington, 98124-2255. Questions regarding this publication may be directed to Ms. Gail Terzi of the Seattle District Regulatory Branch at (206) 764-6903 or Mr. Bill Leonard of Ecology at (360) 407-7273.