



Special Public Notice

Issuance of Guidance on Wetland Mitigation in Washington State

Washington State Department of Ecology, P.O. Box 47600, Olympia WA 98504-7600

U.S. Army Corps of Engineers, Seattle District, P.O. Box 3755, Seattle, WA 98124-3755

U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, WA 98101-1128

30-Day Notice

Issue Date: April 19, 2004

Expiration Date: May 18, 2004

Interested parties are hereby notified of the issuance of *Guidance on Wetland Mitigation in Washington State*, which applies to activities that affect the aquatic environment in the State of Washington and Seattle District of the U.S. Army Corps of Engineers (Corps). The Seattle District includes the entire state of Washington with the exception of those Washington ports located on the Columbia River from the Port of Ilwaco to the Port of Klickitat, which are within the jurisdiction of the Portland District of the U.S. Army Corps of Engineers.

This guidance, consisting of two parts, is located at the following Internet site:

<http://www.ecy.wa.gov/programs/sea/wet-updatedocs.htm>

You may also obtain a printed copy of this guidance from:

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Department of Ecology Publications Distributions Office
PO Box 47600, Olympia WA 98504-7600
(360) 407-7472
E-mail: jewi461@ecy.wa.gov

Please request one or both of the following publications:

Guidance on Wetland Mitigation in Washington State (Part 1 - Laws, Rules, Policies, and Guidance Related to Wetland Mitigation), Publication Number 04-06-013a

Guidance on Wetland Mitigation in Washington State (Part 2 - Guidelines for Developing Wetland Mitigation Plans and Proposals), Publication Number 04-06-013b

Background/Preamble

Corps and U.S. Environmental Protection Agency (EPA) regulations (33 CFR 320-331 and 40 CFR 230) and Washington State Department of Ecology (Ecology) regulations (90.48 RCW and Chapter 173-201A WAC) authorize these agencies to require compensatory mitigation for unavoidable impacts to wetlands and other waterbodies meeting the definition of “waters of the United States” or “waters of the State.” The Corps, EPA, and Ecology are aware of the challenges associated with past compensatory mitigation projects and are committed to improving the quality and success of future compensatory mitigation. *Guidance on Wetland Mitigation in Washington State* is designed to assist the regulated public in meeting the mitigation requirements associated with Federal and State permits and help ensure that future compensatory mitigation successfully replaces lost aquatic functions.

In 1994, the Corps, Ecology, EPA, Washington Department of Fish and Wildlife, and U.S. Fish and Wildlife Service jointly published *Guidelines for Developing Freshwater Mitigation Plans and Proposals* (March 1994, Ecology Publication #94-29). Subsequently, Ecology published *How Ecology Regulates Wetlands* (April 1998, Publication No. 97-112). However, by 2002, it had become clear that these documents no longer fully reflected current policy. In response, Ecology, EPA, and the Corps began a process to update and improve that guidance. As part of the process, we held two public meetings (March 11, 2003 in Seattle and April 8, 2003 in Moses Lake) and met with the Washington State Department of Transportation’s compensatory mitigation technical group to gather suggestions and new information for the updated guidance. In addition, we drew on the experience of natural resource agency staffs and evaluated information from Ecology’s *Washington State Wetland Mitigation Evaluation Study* (Publication Numbers 00-06-016 and 02-06-009), Ecology’s *Best Available Science for Freshwater Wetlands* project, the National Research Council’s *Compensating for Wetland Losses under the Clean Water Act*, and other research. Ecology has also received many comments over the Internet and by e-mail. The result is the substantially revised and expanded guidance that is the subject of this notice.

This two-part guidance document does not itself institute any new wetland mitigation requirement but, rather, compiles current scientific information and incorporates the many changes in mitigation policy that have occurred in recent years. It also provides insight into how the regulatory agencies implement their programs and make permit decisions with regard to mitigation. Part 1 of the document describes the laws, rules, policies, and guidance pertinent to wetland mitigation, provides an overview of wetland regulatory programs in Washington State, and discusses the basic elements of the mitigation process, particularly compensatory mitigation. Part 2 provides technical assistance for developing wetland mitigation plans and proposals. Please note that, while this guidance focuses on freshwater wetlands, it can also be applied to other aquatic resources such as estuarine and tidal wetlands, streams, and open waters, and their associated buffers. Also, it is important to realize that, while the technical sections of this guidance are intended to aid permit applicants and consultants in designing, constructing, and maintaining compensatory mitigation projects, project-specific mitigation requirements can supercede this general guidance.

This guidance has also been prepared as part of the National Wetlands Mitigation Action Plan, which is being implemented to advance the success of compensatory mitigation nationwide and to improve the consistency of mitigation policy and requirements among the regulatory agencies. As such, this guidance is consistent with the plan’s *Model Compensatory Mitigation Plan Checklist*, national guidance on *Incorporating the National Research Council’s Mitigation Guidelines Into the Clean Water Act Section 404 Program*, and the Corps’ Regulatory Guidance Letter 02-02, *Guidance on Compensatory Mitigation Projects for Aquatic Resource Impacts Under the Corps Regulatory Program Pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899*.

Discussion of Early Comments

The comments received by Ecology over the Internet, by e-mail, and during the public meetings have largely been incorporated into this guidance. Many of the comments were simply a request to include a certain mitigation-related issue in the guidance. We grouped the comments into three general categories: policy, technical, and tools. In the following paragraphs, we list the general mitigation issues mentioned by commenters for each category and then briefly discuss those comments/requests that could not be incorporated into this guidance.

Policy Issues

Policy issues brought up by commenters included off-site vs. on-site mitigation; in-kind vs. out-of-kind mitigation; mitigation ratios; buffer requirements; scaling of impacts; resource trade-offs; wetland functions; watershed planning; mitigation banking; in-lieu fee mitigation; regulatory agency roles and processes; level of documentation required, including alternatives analysis; use of preservation; success/failure of enhancement; regulatory agency follow-up on mitigation projects; no net loss of area vs. function; innovative approaches to compensatory mitigation; mitigation sequencing; excess mitigation; compliance and enforcement; use of Ecology's wetland rating system in designing mitigation projects; and mitigation credit for public access and/or education.

Some policy issues raised by commenters could not be included in this guidance because the resulting guidance on those issues would either be overly complex, confusing to most readers, too specific to be of general interest, or outside of the intended scope of the guidance. For instance, the issues of public involvement at the local level and consistency of guidance with existing local requirements are not included because local requirements and processes vary so widely across the state. Guidance on these requirements would likely be complex and confusing. Comments on the relationship among zoning, economics, and sequencing; incentives for compensatory mitigation; addressing mitigation for forest practices; and establishing compensatory mitigation requirements for stream impacts are all beyond the practical scope of this guidance.

Technical Issues

Technical issues brought up by commenters included contingency plans; buffers; storm water; site selection; performance standards; monitoring methods; invasive species; maintenance standards; guidance on establishing goals and objectives; wildlife use; financial assurances; long-term protection; and phased planting. All have been included in the revised guidance. Technical issues not addressed in this guidance include specific information on planting densities for a mitigation site and determining isolated wetlands. An appropriate planting density depends on species, location, plant size, and planting technique, which varies too widely to be included in state-wide guidance. Technical guidance on determining whether or not a wetland is isolated was not included in the guidance because jurisdictional determinations for purposes of Clean Water Act regulation are the responsibility of the Corps and EPA. However, Part 1 does discuss isolated wetlands and other waterbodies from a policy perspective.

Tools

Tools requested by commenters have been included as much as possible in the guidance. They include mitigation plan checklists; a site selection checklist; a noxious plant list; lists of online resources; and a mitigation plan template. These and other tools are generally found in Part 2. Some requested tools could not be included in the guidance, generally because they would be too complex or beyond the scope of general guidance. They include plant lists for different landscape settings; specific costs of mitigation; bid specifications; comprehensive description of monitoring methods; redox or pH measurement methods; site preparation methods; and electronic public access to mitigation reports. Some of these tools could become available in the future.

Commenting on this document

We encourage you to participate in the development and continued improvement of this guidance by providing your written comments to Ecology. There are three ways to submit your comments:

1. The Corps, Ecology, and EPA will jointly hold four public meetings at three locations to accept written or oral comments and answer questions about this guidance:

- April 26, 2004: **Lacey**
6:00 – 8:30 pm
Washington State Department of Ecology
Auditorium (located downstairs from the main entrance)
300 Desmond Drive
Lacey, WA 98503
- April 27, 2004: **Seattle** (Note: a valid photo ID is required to enter building)
1:00 – 4:00 pm (afternoon session)
6:00 – 8:30 pm (evening session)
U.S. Army Corps of Engineers*
Galaxy Room (located near the main entrance)
4735 E. Marginal Way South (Federal Center South)
Seattle, WA 98124-3755
- April 28, 2004: **Kelso**
1:00 – 4:00 pm
Red Lion Inn
510 Kelso Drive
Kelso, WA 98626-3109

2. Written comments on this guidance may be mailed to Dana L. Mock at the following address:

Dana L. Mock
Washington State Department of Ecology
P.O. Box 47600
Olympia WA 98504-7600

3. Written comments on this guidance may be e-mailed to Dana L. Mock, Washington State Department of Ecology, at: dmoc461@ecy.wa.gov.