



Rulemaking Advisory Committee

Permitting and Mitigation in
Oregon's Wetlands and Waters
(Division 85)

July 9, 2025

Amazon Prairie – Mitigation Site / Melody Rudenko, DSL



Meeting Agenda

Amazon Prairie – Mitigation Site / Melody Rudenko, DSL

9:00 AM	Introductions, Agenda Review, Zoom Protocols
9:15 AM	Presentation – Intro to Compensatory Mitigation Concepts in Removal Fill Law/Rule
10:15 AM	Break
10:30 AM	Discussion – Proposed Rule Updates
11:45 AM	Interested Party Comments
11:55 AM	Next Steps
12:00 PM	<i>Meeting ends</i>

Meeting Goals: Discussion of the proposed draft rule changes relating to compensatory mitigation.

Zoom Protocols



Each person who wishes to speak will be asked to raise their hand.

- To raise your hand, click the reactions near the bottom of your screen and click “raise hand” or by pressing star 9 if you are on the phone.
- Will seek a balance of speaking time during discussions
- *For technical support, please message us in the chat.*
- Please keep your mic muted unless it is your turn to speak. Use of video is encouraged.
- Closed captions are available.
- Please use the chat for questions and comments
- We ask that all participants be respectful of each other and DSL representatives.

Compensatory Mitigation – Regulatory History and Proposed Rule Changes



Overview



- 1) **DSL's Key Statutory Directives for CM**
- 2) **RF Program Development**
- 3) **Intro to DSL Mitigation Concepts**
 - What is Mitigation?
 - CM Methods
 - CM Options in Oregon
- 4) **Proposed Rule Updates for:**
 - ✓ General CM concepts
 - ✓ Mitigation Banking and In-Lieu Fee Programs

DSL's CM Directives (from Statute)



(From Oregon's Wetland Conservation Policy)

➤ ORS 196.668 - Legislative Findings Regarding Wetlands
(enacted 1989)

Legislative recognition of some of the most **important aspects** of wetlands:

- Flood and storm protection
- Essential habitats for a major portion of Oregon's wildlife
- Sediment and pollution retention
- Environmental and ecological research
- Public recreation

Legislative acknowledgement of **threats** to wetlands:

- Most have been lost or altered
- Development pressure continues
- Conflicts remain between wetland protection and other resource values

DSL's CM Directives (from Statute)



(From Oregon's Wetland Conservation Policy)

➤ ORS 196.672 - Oregon's Wetland Policy (enacted 1989)

It is the policy of the State of Oregon to:

- 1) Promote the **protection, conservation and best use of wetland resources, their functions and values**, through the integration and close coordination of:
 - ✓ Statewide planning goals,
 - ✓ Local comprehensive plans, and
 - ✓ State & federal regulatory programs
- 2) **Maintain a stable resource base** of wetlands through the mitigation of losses of wetland resources...
- 5) Establish the opportunity to **increase wetland resources by encouraging wetland restoration and creation** where appropriate.

DSL's CM Directives (from Statute)



ORS 196.795 - 990 (Oregon's Removal-Fill Law) (enacted 1967)

...Rules governing the application for and issuance of permits to remove material from the beds or banks of any waters of this state or to fill any waters of this state ...



DSL's Removal Fill Program

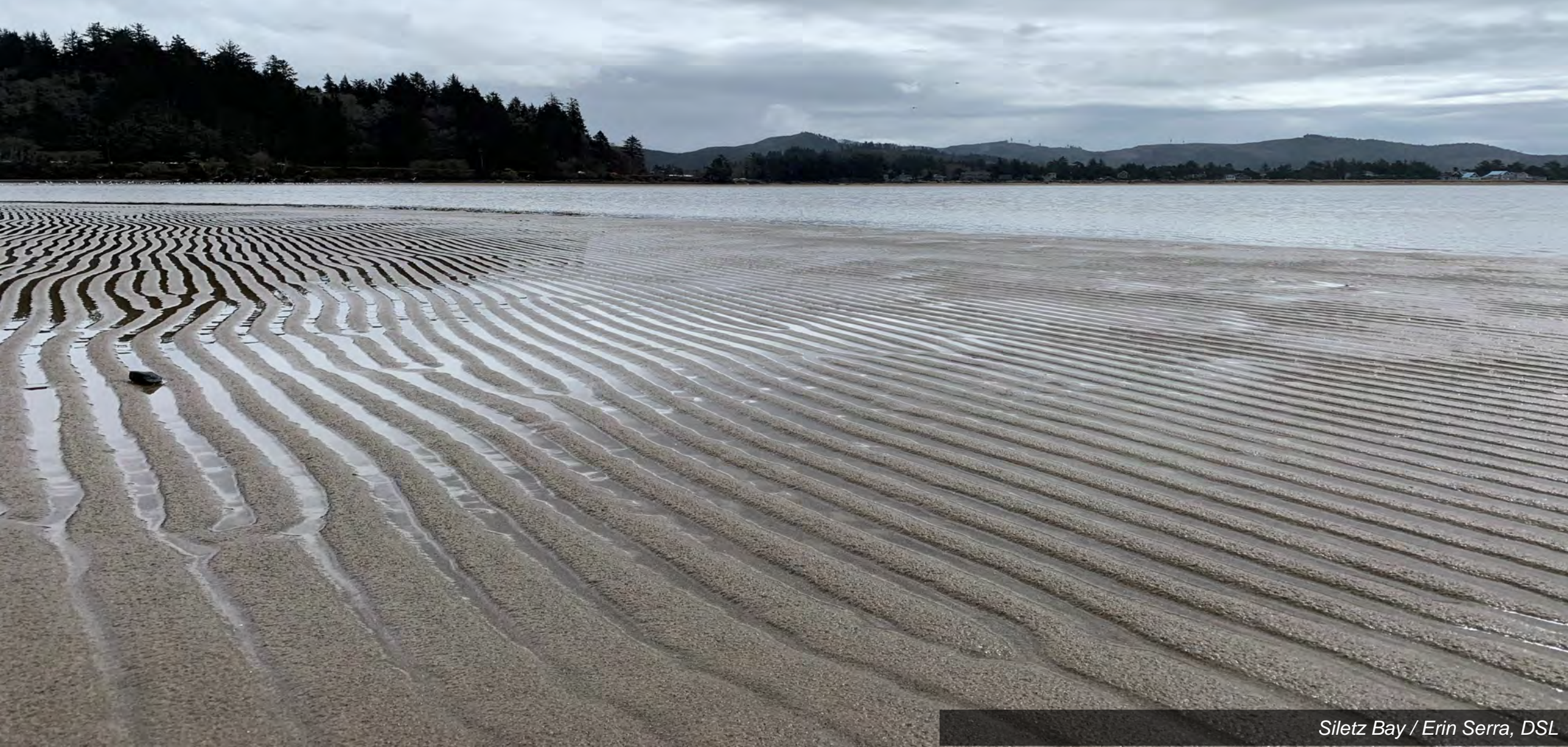


Organized through Div 85 of state rules (OAR 141)

The RF (or permitting) Program at DSL provides a regulatory structure that interprets and implements some of Oregon's key statutory aquatic resource policy directives.



General State Mitigation Concepts



What is **Mitigation**?

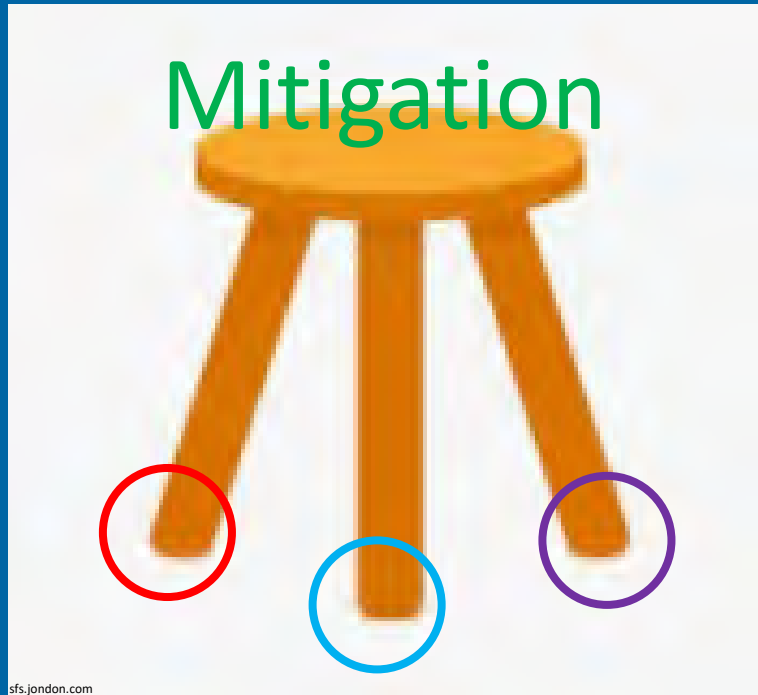
"Mitigation" (per Div 85 rules) means the reduction of adverse effects of a proposed project by considering, in the following order:

- (a) **Avoiding** the effect altogether by not taking a certain action or parts of an action;
- (b) **Minimizing** effects by limiting the degree or magnitude of the action and its implementation;
- (c) **Rectifying** the effect by repairing, rehabilitating or restoring the affected environment;
- (d) **Reducing** or **eliminating** the effect over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
- (e) **Compensating** for the effect by creating, restoring, enhancing or preserving substitute functions and values for the waters of this state.



Wetland boardwalk at Wildwood Recreation Area -
Grey Wolf, DSL

What is Mitigation?



Terminology Review: Mitigation

- Reduction of a proposed projects adverse effect to aquatic resources.
- Mitigation steps:
 - 1- Avoidance ←
 - 2- Minimization ←
 - 3- Rehabilitation/rectification ←
 - 4- Compensatory mitigation ←

What is Mitigation?

If any one leg of the stool is broken or does not work, Mitigation (reduction of negative effects on wetland and waters) is not successfully achieved.



How does **Mitigation** fit into the Removal-Fill Permitting Process at DSL?

- When applying for a permit to impact waters of this state, an applicant is required to “mitigate” for these impacts.
- Through its permitting and enforcement programs, DSL will seek to **offset losses** of the **functions** and **values** of the waters of this state. (OAR 141-085-0506 (7) *Compensatory Mitigation*)



Blue vervain growing at a Mitigation Bank -
Grey Wolf, DSL

Compensatory Mitigation **Methods**

- Enhancement
- Restoration
- Creation
- Preservation



*Forested wetland – Warrenton, OR
Grey Wolf, DSL*

- **Restoration** - re-establishment of a former water of this state and will most often refer to wetlands.
- CM plans using restoration must provide documentation demonstrating that the site was formerly a wetland or tidal water.



- **Enhancement** - Enhancement means to improve the condition and increase the functions and values of an existing degraded wetland or other water of this state.
- When evaluating a potential CM site, first determine whether the wetlands are degraded.
 - By definition, "Degraded" refers to a water of this state with diminished functions and values.
 - For wetlands, degradation must include **hydrologic manipulation** (such as diking, draining and filling) that demonstrably and permanently interferes with the normal functioning of wetland processes.
 - To qualify for enhancement, the cause of degradation must be identified, and the mitigation strategy must reverse the cause of degradation.



- **Creation** - convert an upland area that has never been a water of this state to a water of this state.



Preservation –

- Preservation as CM relies on preventing the decline of, and threat to, the **exceptional ecological features** of existing water of this state.
- Preservation represents a **net loss of area and functions** of waters of this state in the near term in exchange for long term protection and maintenance through implementation of appropriate legal and physical mechanisms.
- Preservation is the preferred CM option when the aquatic resource type is **exceptionally difficult** to replace (example- ARSC's). Examples are bogs, fens, **vernal pools**, and tidal spruce wetlands.
- Applicants must demonstrate that the aquatic resource proposed for preservation is **under threat of destruction or adverse modification** (including zoning that allows for a land use that could result in significant modification or adverse effect to existing functions and values).
- Additional criteria in RF Guide.



A photograph of a waterfall cascading over rocks in a dense forest. The water is white and frothy as it falls, surrounded by tall evergreen trees. The scene is captured from a low angle, looking up at the falls.

Compensatory Mitigation Options

- 1) Permittee Responsible Mitigation
- 2) Mitigation Bank (3rd party)
- 3) Advanced Mitigation (only approvable in certain scenarios)
- 4) In Lieu Fee (3rd party)
- 5) Payment In-Lieu (3rd party) – Mitigation option of last resort

Compensatory Mitigation Options

Permittee Responsible Mitigation:

- Constructed by the permittee
- Connected to specific permit/impact
- Constructed at same time as impacts (concurrent)
- Monitored for a period of time after construction (often 5-10 years)
- May be located at impact site or may be off-site



Compensatory Mitigation Options

Mitigation Bank:

- A business venture (initiated by a bank sponsor) that improves aquatic resources and sells the net benefits as mitigation credits
- Credits are purchased by permit applicants to compensate for project impacts. The sponsor sets the price of the credits
- The mitigation banker is responsible for site performance (not the permittee).
- Credits become available for sale (“released”) over time after achieving performance measures
- The mitigation bank site will need long term site protection and stewardship



Overview of Mitigation Banks

Service Areas:

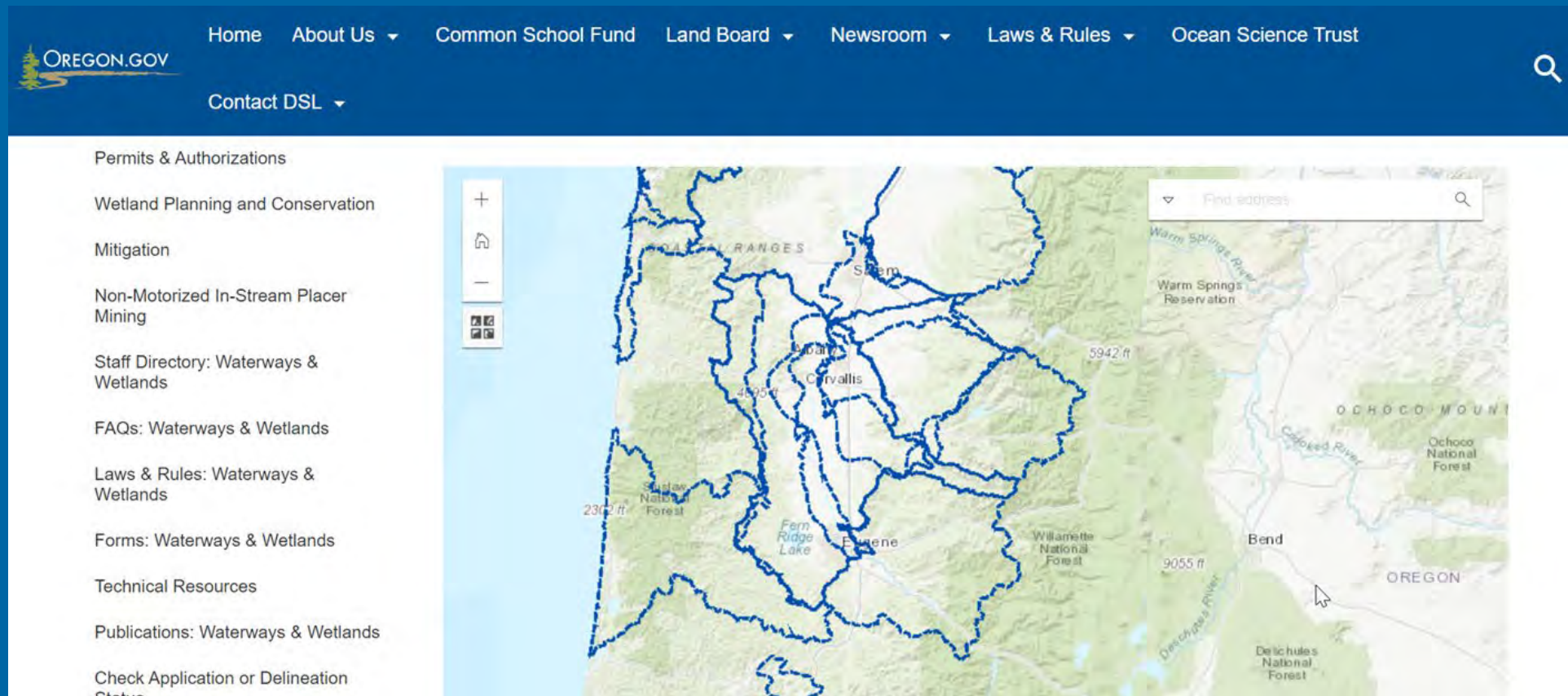
- The geographic area within which credits can be sold.
- Applies to both mitigation bank and In-Lieu Fee credits
- Align generally with 4th order (8-digit) watershed boundaries
- May include elevation limits



Overview of Mitigation Banks

- DSL Mitigation Banks & ILF Map:

<https://www.oregon.gov/dsl/wetlands-waters/Pages/mitigation-banks.aspx>



Compensatory Mitigation Options

In-Lieu Fee Mitigation:

- Mitigation bank project sponsored by a 501 c3, government entity; not for profit
- DSL is a sponsor for Oregon (the only at this point)
- Advance credit release can be approved. This can help provide seed money for future project construction.
- Credits are purchased by permit applicants to compensate for project impacts
- The ILF sponsor is responsible for site performance
- The ILF site will need long term site protection and stewardship



Compensatory Mitigation Options

Payment In-Lieu Mitigation (PIL):

- Payments from permit applicant go to the Removal-Fill Mitigation Fund
- DSL is responsible for fulfilling the mitigation obligation (therefore maximizing the principal objectives)
- DSL tracks funds by basin and type of aquatic resource and funds projects to match basin losses
- Does not satisfy federal mitigation obligation (not Corps approved)
- PIL is the CM method of last resort (should only be used when no other CM option is practicably available).
 - Temporal lag
 - Type/Kind Matching
- Cannot be used to mitigate for ARSC's



Compensatory Mitigation Options

Advance Mitigation:

- Use of credits from a previously developed, permittee-responsible CM site.
- DSL must have pre-approved the credits for use by the applicant or one additional named party.
- Information requirements for applicant request of AM are in rule.
- Unused credits may be converted to mitigation bank credits at discretion of DSL



Proposed Rule Updates for General CM Concepts





Skunk Cabbage– Charleston, OR
Grey Wolf, DSL

-0510 (Definitions)

- (18) - **removed**; term is no longer used in rule

~~(18) "Compensatory Non-Wetland Mitigation (CNWM)" means activities conducted by a permittee or third party to replace non-wetland water functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.~~

- (19) - **simplified** and **renumbered** (to 17)

~~(19) "Compensatory Wetland Mitigation (CWM)" means activities conducted by a permittee or third party to create, restore or enhance wetland and tidal waters functions and values through enhancement, creation, restoration or preservation to compensate for the adverse effects of project development or to resolve violations of ORS 196.600 to 196.905.~~

(17) "Compensatory Wetland Mitigation (CWM)" means compensatory mitigation involving wetlands.

- (16) - **added**

~~(26)~~ (16) "Compensatory Stream Mitigation (CSM)" means compensatory mitigation involving rivers or streams.

- (67) – **deleted**; not used in Div 85

~~(67) "Non-Wetland Waters" means waters of this state other than wetlands, including bays, intermittent streams, perennial streams, lakes and all other regulated waters.~~

-0680 (Compensatory Mitigation (CM); Applicability and the Principal Objectives)

- (F) - added

(2) Principal Objectives for CM. For projects where impacts to waters of this state cannot be avoided, CM will be required to compensate for the reasonably expected adverse impacts in fulfillment of the following principal objectives.

(a) The principal objectives of CM are to:

(A) Replace functions and values lost at the removal-fill site;

(B) Provide local replacement for locally important functions and values, where appropriate;

(C) Enhance, restore, create, or preserve waters of this state that are self-sustaining and minimize long-term maintenance needs;

(D) Ensure the siting of CM in ecologically suitable locations considering: local watershed needs and priorities; appropriate landscape position for the waters types, functions and values sought; connectivity to other habitats and protected resources; and the absence of contaminants or conflicting adjacent land uses or development trends that would compromise functions and values; ~~and~~

(E) Minimize temporal loss of waters of this state and their functions and values; ~~and~~

(F) Increase wetland resources through restoration and creation.



Tree Frog— Marion Mitigation Bank, OR
Grey Wolf, DSL

-0692 (Mitigation Accounting)

- (4)(c) – **added**: “...by a public entity or one of Oregon’s federally recognized Tribes...”

(4) Adjustments to the Minimum Requirements. The amount of CM will increase based on the following factors but will not reduce the amount of mitigation below the minimum requirements:

(c) Strengthened administrative protection and long-term stewardship. Provisions for the CM site that are above and beyond the minimum requirements of the Department will reduce the amount of CM required up to ~~twenty~~20 percent. Strengthened long-term stewardship must include appropriate funding to implement an approved stewardship plan. Minimum administrative protection requirements for CWM are ~~public~~-ownership by a public entity or one of Oregon’s federally recognized Tribes with a management plan; or a deed restriction. There are no minimum administrative protection requirements for other types of CM so any provisions will be considered by the Department for this adjustment.



White Camas – Butler Mitigation Bank, OR
Grey Wolf, DSL



-0695 (Administrative Protection of CM Sites)

- 3 - reworded

~~(3) Publicly Owned CM Sites. For publicly owned CWM sites, administrative~~ (3) CM Sites Owned by a Public Entity or One of Oregon's Federally Recognized Tribes. Administrative protection may be provided through an adopted management plan. Such plan will provide for appropriate protection of the CM site as determined by the Department. A site protection instrument may be used but is not required.

-0694 (Special Requirements for CM)

- (1)(g) - added

(1) Special Requirements for Enhancement as CM. CM enhancement must conform to the following additional requirements. Enhancement must:

(a) Be conducted only on degraded waters of this state;

(b) Result in a demonstrable net gain in functions and values at the CM site as compared to those functions and values lost or diminished as a result of the project and those functions and values that already exist at the CM site;

(c) Not replace or diminish existing functions and values with different functions and values unless the applicant justifies, in writing, that it is ecologically preferable to do so;

(d) Not consist solely of the conversion of one HGM or Cowardin class to another;

(e) Identify the causes of degradation at the CM site and the means by which the CM plan will reverse, minimize, or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species; and

(g) Not reduce Oregon's resource base of wetlands in locations with disproportionate wetland loss.



-0710 (Monitoring Requirements for CM)

- (5)- added language

(5) Additional Monitoring. The Department may require modifications to the CM plan, as well as require additional monitoring, if the Department determines that the CM fails to meet performance standards, replacement acreage requirements, or replace functions and values, or if the CM is not self-sustaining.



Mallard family – Fairview Wetlands, OR
Grey Wolf, DSL



0750

Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund

Photo: Grey Wolf

How a payment is calculated for PIL

Mathematical formulas that estimate the cost of compensatory mitigation which considers items such as

- Cost of land
- Cost of restoration, and other associated cost for a CM site
- Average mitigation ratio

Limitations for Fund Expenditures

PIL Calculator

	A	B	C	D	E	F
1	Payment Calculator for DSL-provided Wetland Mitigation and for Estimating Financial Securities for Permittee-Responsible Mitigation					
2	Effective June 1, 2021					
3	Step 1: Check your impact site location on the Mitigation Banks Map . If there is a mitigation provider with appropriate wetland credits serving your area please contact the provider to determine eligibility, credit availability, price, and terms.					
4	Step 2: If there is no mitigation provider with appropriate wetland credits for your project location, proceed with the payment calculator below. Fill in impact area, land value, and zoning for the development site per the instructions below to determine the payment for mitigation credits. The payment calculator may also be used to estimate financial securities for permittee-responsible mitigation. Please be aware payment in lieu does not satisfy mitigation requirements for the US Army Corps of Engineers.					
5	Instructions: Insert the requested information in yellow highlighted cells.					
6	Payment required is calculated in the green highlighted cell.					
7						
8						
9						
10	Enter the DSL Application Number:		Enter the DSL-assigned application number, if known (APP000000).			
11	Area to be mitigated (acres)		Insert the acreage of the wetland loss that must be mitigated. Enter to the nearest 0.01-acre for impacts greater than 0.01 of an acre or to the nearest 0.001-acre for impacts less than 0.01 of an acre.			
12	Tax lot acreage (impact site)		Insert the total acreage of the tax lot where impact is located			
13	Real market land value of tax lot		Insert the real market land value for the tax lot; do not include the value of structures or improvements. Refer to the most recent property tax statement from the county assessor or from a recent land appraisal. The proportional cost of the area to be mitigated is used in the			
14	Zoning Adjustment Factor		Insert the correct adjustment from table 1 based on the zoning of the tax lot being impacted			
15	Restoration cost (per acre)		Insert the restoration cost from table 2 for the basin where the impact is located			
16						
17	PAYMENT REQUIRED:		Payment = (RMV * R + LT * A) * mm or calculated to not exceed maximum cost			
18						
19						
20						
21						
22						
23						
24	Table 1: Zoning Adjustment Factor					
25	Description of Zoning		Proportion of RMY to be included			
26	Residential zoned properties with improvements such as utilities and subdivision infrastructure		0.5			
27	Properties zoned commercial, industrial, or zoned residential without improvements		0.8			
28	Properties zoned for agriculture, forestry, conservation use, and public reserve		1			

PIL Calculator

Table 2: Restoration Cost by Basin

Basin (6 digit hydrologic unit code)*	Wetlands (per acre)
Black Rock Desert (160402)	\$27,996
Deschutes River Basin (170703)	\$39,832
John Day River Basin (170702)	\$27,996
Klamath River Basin (180102)	\$35,899
Lower Columbia (170800)	\$28,796
Lower Snake (170601)	\$30,754
Middle Columbia River Basin (170701)	\$39,524
Middle Snake-Boise (170501)	\$27,996
Middle Snake-Powder (170502)	\$27,996
Northern Oregon Coastal (171002)	\$24,670
Oregon Closed Basins (171200)	\$27,996
Southern Oregon Coastal (171003)	\$20,979
Upper Sacramento (180200)	\$27,996
Willamette River Basin (170900)	\$24,886

*A pdf map of 6-digit hydrologic unit codes can be found at:

http://www.oregon.gov/dsl/w/w/Documents/6digit_HUCmap_nrcs142p2_043094.pdf

You may also find the basin name using the Oregon Explorer Mitigation Planning Map Viewer. Select the 3rd Level 6 Digit Hydrologic Unit layer

(in the Hydrology Group under the Watershed Boundary Dataset). Select the Identify icon under the Find menu, then click on your location to display the basin information.

https://tools.oregonexplorer.info/OE_HtmlViewer/index.html?viewer=mitigation

Instructions to retrieve the tax lot information where impacts are proposed:

For a listing of county assessor websites visit the Oregon Department of Revenue:

<http://www.oregon.gov/DOR/programs/property/Pages/county-contact.aspx>

Online records can be usually be searched by site address, owners name, account, or tax lot.

If an impact will occur across multiple tax lots, contact DSL for assistance.

For impacts on unassessed lands such as right of ways, use the real market value for adjacent tax lots to determine real market land value.

Payment Formula Explanation:

The current formula for payments into the Fund is $\text{Payment} = [\text{RMV} + \text{R} + \text{LT} + \text{A}] \times \text{MM}$, where:

RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning (see table 1).

R = Restoration Costs calculated as the sum of all anticipated costs per unit area. Anticipated costs include, but are not limited to project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners (see table 2).

LT = Long-Term Management Costs calculated as 30% of the Restoration Costs (R).

A = Administrative Costs calculated as 10% of the sum of R, RMV and LT.



0750

Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund

Photo: Grey Wolf

- Improve and simplify the math
- Allow more flexibility needed to refine cost estimates of CM to offset unavoidable impacts

0750

Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund

Text with proposed changes

141-085-0750

Payments to and Expenditures from the Oregon Removal-Fill Mitigation Fund

The Department will use the Oregon Removal-Fill Mitigation Fund to hold and disperse money collected from the Payment In-Lieu (PIL) and In-Lieu Fee (ILF) Mitigation programs sponsored by the Department.

(1) Payments. The Department will calculate payments for PIL and ILF based on:

(a) Actual costs and expenses of the off-site compensatory mitigation divided by the number of credits anticipated from the mitigation if these are known at the time of the payment, or

(b) Estimated costs and expenses for off-site compensatory mitigation for the region of the state where the Department, to the greatest extent practicable, determines the off-site compensatory mitigation may be conducted.

(c) Estimated costs and expenses for off-site compensatory mitigation will be assessed based on the formula: $\text{Payment} = [A + R + \text{RMV} + \text{LT}] \div \underline{x} \text{ mm}$, where:

(A) A = Administrative Costs calculated as ~~10%~~ a percentage of the sum of R, RMV, and LT;

(B) R = Restoration Costs calculated as the sum of all anticipated costs ~~per unit area~~. Anticipated costs include, but are not limited to, project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners;

(C) RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning;

(D) LT = Long-Term Management Costs calculated as 30% percent of the Restoration Costs (R),

(E) mm = Mitigation Multiplier representing the number of credits typically generated per unit ~~area~~ of mitigation conducted.

0750

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(C) RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning;

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(B) R = Restoration Costs calculated as the sum of all anticipated costs ~~per unit area~~. Anticipated costs include, but are not limited to, project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners;

(C) RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning;

(D) LT = Long-Term Management Costs calculated as 30% percent of the Restoration Costs (R),

(E) mm = Mitigation Multiplier representing the number of credits typically generated per unit ~~area~~ of mitigation conducted.



Change 'mm' to a multiplier:

Current equation requires changing the 'mm' to a decimal in our PIL/ILF Calculator'. Additional wording required to explain transforming the ratio to a decimal. Somewhat confusing and unnecessary.

Changing to a 'mm' to a multiplier simplifies the math and provides better transparency.

(c) Estimated costs and expenses for off-site compensatory mitigation will be assessed based on the formula: $\text{Payment} = [A + R + \text{RMV} + \text{LT}] \div \underline{x}$ mm, where:

(A) A = Administrative Costs calculated as ~~10%~~ a percentage of the sum of R, RMV, and LT;

(B) R = Restoration Costs calculated as the sum of all anticipated costs ~~per unit area~~. Anticipated costs include, but are not limited to, project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners;

(C) RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning;

(D) LT = Long-Term Management Costs calculated as 30% percent of the Restoration Costs (R),

(E) mm = Mitigation Multiplier representing the number of credits typically generated per unit ~~area~~ of mitigation conducted.

Change to undefined percentage:

DSL would like to explore further best methods to assess administrative cost. This provide more flexibility for those outcomes.

(c) Estimated costs and expenses for off-site compensatory mitigation will be assessed based on the formula: $\text{Payment} = [A + R + \text{RMV} + \text{LT}] \div \underline{x}$ mm, where:

(A) A = Administrative Costs calculated as ~~10%~~ a percentage of the sum of R, RMV, and LT;

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Remove 'per unit area' language:

Other variables in the Payment formula are not based on 'per unit area'. Units should be consistent for variables within an algebraic equation.

Removing this language retains variable unit consistency

Also provides more flexibility for evaluating cost of restoration

(c) Estimated costs and expenses for off-site compensatory mitigation will be assessed based on the formula: $\text{Payment} = [A + R + \text{RMV} + \text{LT}] \div \text{mm}$, where:

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(B) R = Restoration Costs calculated as the sum of all anticipated costs ~~per unit area~~. Anticipated costs include, but are not limited to, project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners;

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(E) mm = Mitigation Multiplier representing the number of credits typically generated per unit ~~area~~ of mitigation conducted.



Remove symbol and write out 'percent'

(c) Estimated costs and expenses for off-site compensatory mitigation will be assessed based on the formula: $\text{Payment} = [A + R + \text{RMV} + \text{LT}] \div \underline{x}$ mm, where:

(A) A = Administrative Costs calculated as ~~10%~~ a percentage of the sum of R, RMV, and LT;

(B) R = Restoration Costs calculated as the sum of all anticipated costs ~~per unit area~~. Anticipated costs include, but are not limited to, project design and engineering, construction, planting, and seven years of monitoring and maintenance. These costs will be based on a biennial survey of regional project data submitted to the Oregon Watershed Restoration Inventory, The Conservation Registry, projects funded by the Department, and/or surveys of restoration consulting firms and practitioners;

(C) RMV = Real Market Land Value of the proportion of the tax lot acreage to be mitigated for, adjusted based on zoning;

(D) LT = Long-Term Management Costs calculated as 30% percent of the Restoration Costs (R),

(E) mm = Mitigation Multiplier representing the number of credits typically generated per unit ~~area~~ of mitigation conducted.



Remove 'area'

As with changes in (B), this keeps variable unit consistent within the equation

(2) Limitations on Oregon Removal-Fill Mitigation Fund Expenditures. The Department will expend funds from the Oregon Removal-Fill Mitigation Fund to:

(a) Restore, enhance, create, or preserve water resources of this state (including acquisition of land or easements as necessary to conduct restoration, enhancement, creation, or preservation projects) as compensatory mitigation to compensate, replace, or preserve functions and values lost or diminished as result of an approved project;

(b) Purchase credits from an approved mitigation bank for the purpose of fulfilling the mitigation requirements of an approved project;

(c) Monitor the compensatory mitigation;

(d) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful; and

(e) Administer the program ~~and fund a staff position.~~

(3) Geographic Limitations of Funds Expenditures. The Department will expend funds collected under the PIL option within the basin where the removal-fill site occurs, unless the Department determines that this option is not feasible.



Remove 'and fund a staff position'

This allows flexibility in how the program is administer.

Proposed Rule Updates for CM Banking and ILF Programs



Beaver Slide, Fairview Mitigation Wetland / Katrina Scotto di Carlo, DSL

-0510 (Definitions)

- (45) – **reworded**

~~(4745)~~ **"In-Lieu Fee (ILF) Program" or "In-Lieu Fee Mitigation (ILF)"** means a ~~compensatory~~ mitigation program used to compensate for reasonably expected adverse impacts of project development on waters of this state with fees paid by bank in which the applicant to an ILF sponsor, as approved by the is a governmental or non-profit natural resources management entity and where advanced credits can be released upon approval of an in-lieu fee instrument, before Department approval of a mitigation site. In ILF mitigation, a single ILF instrument may provide for future authorization of additional mitigation sites.

- (58) – **added sentence**

~~(6058)~~ **"Mitigation Bank" or "Bank"** means a site created, restored, enhanced, or preserved in accordance with ORS 196.600 to 196.655 to compensate for unavoidable adverse impacts to waters of this state due to activities which otherwise comply with the requirements of ORS 196.600 to 196.905921. A mitigation bank is used to compensate for reasonably expected adverse impacts of project development on waters of this state with fees paid by the applicant to a sponsor.

- (59) – **added sentence**

~~(6159)~~ **"Mitigation Bank Instrument (MBI)"** means the legally binding and enforceable agreement between the Department and a ~~mitigation bank~~ sponsor that formally establishes the mitigation bank and stipulates the terms and conditions of the mitigation bank's construction, operation, and long-term management. An MBI may be specific to an individual site, an umbrella mitigation bank, or an in-lieu fee mitigation program.



Emergent and Scrub Shrub wetland– Hillsboro, OR
Grey Wolf, DSL

-0510 (Definitions)

- (71) – **reworded**

(77) "Prospectus" means less than one cubic yard of material at any one individual site; and, cumulatively, not more than five cubic yards of material from within the bed preliminary proposal prepared by a mitigation bank, umbrella mitigation bank, or in-lieu fee program sponsor describing a proposed bank, umbrella mitigation bank, or wet perimeter of any single ESH stream in a single year in-lieu fee program.

- (93) – **added**

{96(93)} "Sponsor" means a person or single legal entity that has the authority and responsibility to fully execute the terms and conditions of a mitigation bank, umbrella mitigation bank or in-lieu fee program.

- (102) – **added**

(102) "Umbrella Mitigation Bank (UMB)" is a type of mitigation bank where a single mitigation bank instrument may provide for future authorization of additional mitigation bank sites.



Deschutes River walk– near Bend, OR
Grey Wolf, DSL



-0720 (Mitigation Banking Purpose, Applicability, and Policies)

- (1) – **reworded**

(1) Purpose and Applicability. Mitigation banking involves the payment of funds to an approved sponsor to satisfy compensatory mitigation requirements for impacts to waters of this state. These rules describe the requirements to establish and operate mitigation banks, which can be used to compensate for impacts to waters of this state. ~~These rules pertain to include individual~~ mitigation banks ~~that compensate for impacts to all types of waters,~~ umbrella mitigation banks, and in-lieu fee programs. The Department may limit the number and type of this state in-lieu fee sponsors.

- (4)(c) - **added**

(4) Compensation for Expected or Historical Losses to Aquatic Resources. Mitigation banks must be located and designed to compensate for expected or historical losses to aquatic resources by:

- (a) Maintaining regional functions and values of aquatic resources in their service area;
- (b) Matching the demand for credits with losses to the water resources of this state; **and**

(c) Increasing wetland resources through restoration and creation in areas where cumulative loss of wetlands has occurred; and



-0725 (Process for Establishing Mitigation Banks)

- (3) – added clarifying language

(3) Submittal of the Prospectus for Individual Mitigation Banks After discussion of the mitigation concept with the Department, a mitigation bank sponsor must submit a Mitigation Bank Prospectus. A Mitigation Bank Prospectus must include:

- (a) Site information including location, size, ownership, soil mapping, and recent air photo;
- (b) The objectives of the proposed mitigation bank;
- (c) How the mitigation bank will be established and operated, in general terms;
- (d) The proposed service area;
- (e) A market or other analysis that demonstrates the general need for the mitigation bank;
- (f) A description of the technical feasibility of the proposed mitigation bank;
- (g) The proposed ownership arrangements and long-term management strategy for the mitigation bank;
- (h) How the mitigation bank addresses each of the principal objectives for CM listed in OAR 141-085-0680; and
- (i) Names and addresses of all landowners within 500 feet of the bank.

-0725 (Process for Establishing Mitigation Banks)

- (4) – added

(4) Submittal of the Prospectus for Umbrella Mitigation Banks. After discussion of the umbrella banking concept with the Department, a sponsor must submit an umbrella mitigation bank prospectus. An umbrella mitigation prospectus must include:

(a) The objectives of the proposed umbrella bank;

(b) How the umbrella bank will be established and operated, in general terms;

(c) The overview of the service area planning framework and site selection criteria for future bank sites under the umbrella;

(d) A market or other analysis that demonstrates the general need for the umbrella bank;

(e) The proposed ownership arrangements and long-term management strategy for the umbrella bank;

(f) How the umbrella bank addresses the principal objectives for CM listed in OAR 141-085-0680; and

(g) For any bank sites proposed to be included in the initial approval of the umbrella bank, all site-specific information requirements in subsections (3)(a) through (i) of this rule, must be provided in the umbrella bank prospectus.



Tarweed— Mary's River Mitigation Bank, OR
Grey Wolf, DSL

-0725 (Process for Establishing Mitigation Banks)

- (5) – added

(5) Submittal of the Prospectus for In-Lieu-Fee Program. After discussion of the In-lieu fee program concept with the Department, a sponsor must submit an in-lieu-fee program Prospectus. An in-lieu-fee program prospectus must include:

(a) The objectives of the proposed ILF program;

(b) How the ILF program will be established and operated, in general terms;

(c) The proposed service area(s) for advance credit sales along with an overview of the planning framework for identifying and securing future mitigation sites within the service area(s);

(d) A market or other analysis that demonstrates the general need for the ILF program;

(e) The proposed ownership arrangements and long-term management strategy for the ILF program;

(f) How the ILF program addresses the principal objectives for CM listed in OAR 141-085-0680; and

(g) For any sites proposed to be included in the initial approval of the ILF program, all site-specific information requirements in subsections (3)(a) through (j) of this rule, must be provided in the ILF program prospectus.



Skunk Cabbage - Charleston, OR
Grey Wolf, DSL



-0725 (Process for Establishing Mitigation Banks)

- (12) – wording update

~~(1012)~~ Mitigation Bank Instrument (MBI). After consideration of the public comments and input from the IRT, the ~~bank sponsor must develop a Draft Mitigation Bank Instrument (MBI) for submittal to the Department. If the sponsor intends that the MBI serve as the permit application, the sponsor must notify the Department of this intention at the time of submittal of the first draft MBI. If an MBI is used in place of a permit application, in addition to all requirements below, it must meet the requirements for fees, content, and review procedures as specified in OAR 141-085-0545 through 141-085-0565. The~~

~~draft MBI~~ sponsor must develop a draft MBI for submittal to the Department. All draft MBIs must contain:

- 12(M) - added

~~(11(M))~~ An MBI specific to an ILF program must also include:

- ~~(i) A planning framework for identifying and securing mitigation sites within the defined service area;~~
- ~~(ii) Proposed advance credit release and justification; and~~
- ~~(iii) Timelines to implement compensatory mitigation projects to satisfy advance credit sales.~~

~~(c) Future mitigation sites can be added to the MBI for an umbrella mitigation bank or ILF program through an instrument amendment process. A site-specific mitigation plan (and other site-specific information) is required to be submitted at the time of amendment to the instrument.~~

-0730 (Establishment of Mitigation Credits)

- (2) – removing

~~(2) Bonus Credits. Bonus credits may be recognized, at the discretion of the Department in consultation with the IRT, to cover the reasonable costs of the addition of long-term stewardship provisions to existing banks that were approved without such measures;~~

- (4) - removing

~~(4) Wetland Credits for Non-Wetland Areas. The Department may recognize wetland credits for improvement of non-wetlands such as in-stream channel habitat, riparian floodplains, non-wetland inclusions in wetland/upland mosaics, and other ecosystem components that provide ecological benefits to a larger wetland bank;~~



-0735 (Release, Use and Sale of Mitigation Credits)

- (6) – added

(6) Sponsors of ILF programs must establish a program account at a financial institution that is a member of the Federal Deposit Insurance Corporation, or equivalent. All interest and earnings accruing to the program account must remain in the account for use by the ILF program and may only be used for the selection, design, acquisition, implementation, and management of in-lieu fee projects, except for a small percentage as approved in the MBI that may be used for administrative costs.





-0740 (Authorization for Mitigation Banks)

- (1) Authorization Requirement. ~~Bank sponsors~~[Sponsors](#) must obtain a removal-fill permit for any removal-fill necessary to create a proposed bank in jurisdictional areas. ~~At the discretion of the Department, the MBI may serve as the application if complete pursuant to OAR 141-085-0550, and may also serve as the Department's authorization. If the Department accepts the MBI as the application for a removal-fill permit, the bank sponsor must pay the applicable fee for a removal-fill application..~~
- (2) Baseline Conditions Must Be Approved Prior to Construction. When removal-fill permits are not required to establish a mitigation bank [site](#), the Department will approve baseline conditions prior to construction.
- (3) MBI Constitutes a Department Order. If a removal-fill permit is not required to construct a mitigation [banksite](#), the Department will consider the fully executed MBI an enforceable order.
- (4) Draft MBI May Be Circulated for Public Notice. For mitigation [banks](#)[bank sites](#) that do not require a permit for construction, ~~or for such banks that the Department elects to allow the MBI to serve as the permit application,~~ a 15-calendar day public notice will be provided to the public of the Department's intent to approve the bank. The Department may elect to circulate a public notice of the MBI according to OAR 141-085-0560. ~~If an MBI is used in place of a removal-fill permit application, it must meet the requirements for fees, content, and review procedures as specified in OAR 141-085-0545 through 141-085-0565.~~

Foxglove - Claremont Road Mitigation Bank, OR
Grey Wolf, DSL

Interested Party Comments

Please raise your hand
to speak.

Please keep comments
limited to 3 minutes.



Interested Party Comments



Use the "Raise Hand" feature to provide community input. Time is limited and we may not be able to hear from all of you today.

- To raise your hand, click the reactions near the bottom of your screen and click "raise hand" or by pressing star 9 if you are on the phone.
- You will be called in the order in which hands are raised.
- Please keep your mic muted unless it is your turn to speak.

When it's your turn to speak:

- When your turn is coming up, the moderator will call on you to begin speaking.
- Please say your name, where you're from, and any organization you're representing.
- Please keep your remarks to three minutes and be respectful of each other and agency representatives. We will help track your time.



What's Next?

Middle Fork – Willamette River / Dan Cary, DSL (retired)

- The next RAC meeting is August 6.
 - Meeting Materials will be sent by July 30, with a list of the topics to be discussed.
 - Office hours for RAC members will be held at 10 a.m. on Monday, August 4. These office hours will be for technical questions and answers for RAC members.
- In the next week, a meeting summary will be sent to RAC members and today's meeting recording will be posted.
- All meeting materials will be posted to DSL's Rulemaking website:
www.oregon.gov/dsl/Pages/rulemaking.aspx



Thank You!

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Oregon Department of State Lands

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Oregon.gov/DSL



Middle Fork – Willamette River / Dan Cary, DSL (retired)