



December 12, 2017

Re: Aquatic Resources Mitigation Program and Stakeholders Meeting

Dear Meeting Participants:

On behalf of the U.S. Army Corps of Engineers and my colleagues Bill Ryan at the Oregon Department of State Lands and Michael Szerlog at the U.S. Environmental Protection Agency, I am extending my appreciation to you for attending the November 9, 2017, Stakeholders' Meeting. The meeting included agency presentations and group question and answer sessions about the Aquatic Resource Mitigation Framework (Framework).

The Framework has been in development over the last several years. The project goal is to update mitigation requirements for Oregon to cover all aquatic resources using function-based assessments and accounting methods, and a watershed-based approach. The agencies have been working collaboratively to create consistency and compliance with both federal compensatory mitigation standards and state mitigation policy.

Our agencies are committed to meeting the Framework goal by replacing the current acreage-based mitigation ratios with a function-based approach. We are developing the science-based tools for functional assessments for both wetlands and streams, which will help inform this new method of calculation.

As educators, mitigation bank sponsors, consultants, scientists, and representatives of various agricultural, local government, and environmental organizations, you brought your experiences, expertise, and valuable input to assist the agencies in further developing the Framework. We thank you, and we hope that we were able to adequately address your questions and concerns.

During the meeting, we heard from you that:

- You understand the rationale for the new Framework and believe that it is more science-based than the previous program.
- You need to know that changes being made in Oregon are being made by other states in response to the Final Federal Mitigation Rule.
- You want to increase your understanding of the Stream Function Assessment Methodology (SFAM).
- You want to understand if and how the Framework, including the assessment tools, can be used to address issues involving endangered species, stormwater regulations and potential future carbon sequestration regulations.
- You would like more detail on proposed adjustments for mitigation accounting.

Highlights of the November 9 meeting are attached. All materials from the meeting can be accessed at <http://www.oregon.gov/dsl/WW/Pages/Aquatic-Resources-Mitigation-Framework.aspx>. (Scroll down the page and click on November 9, 2017 Stakeholders link under

Outreach.) The agencies will use this website to continue to keep you informed of developments regarding the Framework.

The agencies anticipate full implementation of the Framework in February 2019. This will allow DSL to complete rulemaking and result in a coordinated rollout of the Framework to the public. Stakeholder input is vital to the success of transitioning to a new approach for replacing lost wetland and waterway functions and values.

In the meantime, the Corps and DSL will continue to utilize best available information to determine the amount of mitigation required for a particular impact. These amounts may differ for a particular permit as a result of differences in our regulatory programs and existing policies. In particular, the Corps is seeing trends in impacts to Aquatic Resources of Special Concern and anticipates adjusting the amount of mitigation required. This and other adjustments may utilize portions of the draft Aquatic Resources Mitigation Framework, since it is being based on best available information.

We look forward to your future participation in and feedback for development of the Oregon Aquatic Resources Mitigation Framework.

Respectfully,

Shawn H. Zinszer  
Chief, Regulatory Branch  
U.S. Army Corps of Engineers Portland District

Enclosure

Cc via email: US EPA, Michael Szerlog  
Oregon DSL, Bill Ryan

Improving Oregon’s Approach to Compensatory Mitigation by Developing the  
Aquatic Resources Mitigation Framework

November 9, 2017, 1:00 PM- 4:00 PM

Gail Achterman Conference Room, Oregon Department of Transportation (ODOT), Room 103  
355 Capitol St NE, Salem, OR 97303

## Takeaways for Attendees

12-11-17

### Why is Oregon improving its current compensatory mitigation program by developing the Aquatic Resources Mitigation Framework?

Oregon has managed a co-regulatory program with the federal government through the Clean Water Act Section 404 and the Oregon Removal Fill Law. In 2008, the Federal Government adopted the Federal Compensatory Mitigation Rule. Now Oregon Department of State Lands, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers are working together to bring Oregon’s compensatory mitigation approach into line with the federal rule, and ensure consistency and better coordination between the federal and state programs.

### What are the major changes in Oregon’s compensatory mitigation approach?

Currently	Under the new program
Compensatory mitigation for Oregon wetlands is currently acreage-based.	Compensatory mitigation for wetlands will be based on area, functions and values.
No stream function assessment method is currently approved for use in Oregon, and there is no consistent policy for mitigating stream impacts.	The Stream Function Assessment Method will be approved for use on streams statewide. Compensatory mitigation for streams will be based on linear feet, functions and values. Consistent and predictable policy will guide stream mitigation decisions.
The amount of compensatory mitigation required does not reflect the quality of the site being impacted and the degree of replacement that can be achieved at the mitigation site.	The amount of compensatory mitigation required will reflect the expected ability of the proposed mitigation site to replace impacted functions and values and the timeframe in which replacement will occur. Mitigation requirements also may be influenced by the level of long-term protection and stewardship provided at the mitigation site as well as any provision for buffers.

## How will the new framework be implemented?

- DSL will revise its Administrative Rules to implement the new framework
- The framework will meet the objectives and falls within the parameters of the 2008 USACE/USEPA Final Compensatory Mitigation Rule; therefore no new federal authority is required.

## What is the proposed state (DSL) rulemaking schedule?

DSL's proposed state rulemaking schedule includes:

- Draft state rule revisions for rulemaking (December 2017 – April 2018)
- Rules Advisory Committee (May-August 2018)
- Public hearings (September-October 2018)
- Public comment period (October-November 2018)
- Rule becomes effective (February 1, 2019)

## How can I contribute to the implementation of this new program in Oregon?

- **Send in comments**
  - E-mail your comments to the dedicated DSL email address:  
[AquaticResourceMitigationProject@dsl.state.or.us](mailto:AquaticResourceMitigationProject@dsl.state.or.us)
  - Mail your comments to:  
Tom Taylor, Mitigation Program Manager  
US Army Corps of Engineers  
CENWP-OD-G  
PO Box 2946  
Portland, OR 97204
- **Reach out to the agencies through their point person:**
  - **U.S. Army Corps of Engineers, Portland District:**  
Tom Taylor  
Mitigation Program Manager  
[thomas.j.taylor@acoef.army.mil](mailto:thomas.j.taylor@acoef.army.mil)  
503-808-4386
  - **Oregon Department of State Lands:**  
Dana Hicks  
Mitigation Policy Specialist  
[dana.hicks@state.or.us](mailto:dana.hicks@state.or.us)  
503-986-5229
  - **U.S. Environmental Protection Agency, Region 10:**  
Tracie Nadeau  
Regional Mitigation Lead  
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503-326-3685

- **Inquire about the Rules Advisory Committee:** To maximize the opportunity for broad input, DSL invites and encourages stakeholder representatives to inquire about serving on the Rules Advisory Committee (RAC). The RAC will be convening in the first or second quarter of 2018. Contact: [eric.metz@dsl.state.or.us](mailto:eric.metz@dsl.state.or.us)
- **Participate in DSL rulemaking:** DSL will post information about rulemaking (Division 85) at <http://www.oregon.gov/dsl/Laws/Pages/Rulemaking.aspx>. RAC meetings and public hearings will be held at multiple locations in Oregon.
- **Attend a future training on the new framework:** The agencies will hold periodic trainings on the new framework and function assessment tools beginning in June 2018. DSL will post training opportunities at <http://www.oregon.gov/dsl/WW/Pages/Aquatic-Resources-Mitigation-Framework.aspx>.
- **Partner with DSL/Corps for ongoing training on the new framework:** The agencies are looking for partners who can help provide ongoing training on the new framework and function assessment tools. If you or your organization is interested, please contact Dana Hicks, [dana.hicks@state.or.us](mailto:dana.hicks@state.or.us).