Aquatic Resource Mitigation Program Improvements

The State of Oregon and the federal government regulate filling and removing material from wetlands and waterways. These aquatic resources are vital to the health of our environment, and perform important functions such as controlling floodwater, filtering pollution and providing natural habitats for plants and animals.

Because of these important functions, when a project includes dredging, filling or in some other way altering a wetland or waterway, there are requirements to balance any necessary alterations with protecting the aquatic resource, including:

1. **Avoid** altering the resource if possible
2. **Minimize** changes that can’t be avoided
3. **Fulfill compensatory mitigation** requirements for unavoidable changes

*Compensatory mitigation* means restoring, enhancing, preserving or in other ways offsetting the lost functions.

In 2008, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers adopted a new mitigation rule: Compensatory Mitigation for Losses of Aquatic Resources – Final Rule (Final Compensatory Mitigation Rule). The rule encourages compensatory mitigation in a watershed context (see “Key Objectives” below), and promotes the use of environmental function or condition assessments to determine appropriate mitigation.

Since the 1960s, the Oregon Removal-Fill Law has required permittees to mitigate for lost functions and values of aquatic resources. Compensatory mitigation requirements for wetlands historically have been based on acreage, not wetland functions and values.

Both the US Army Corps of Engineers (Corps) and the Oregon Department of State Lands (DSL) issue permits for impacts to aquatic resources throughout the state. Along with the EPA, the regulatory agencies have been developing a new mitigation program that meets the goals of the Final Compensatory Mitigation Rule. This approach will improve environmental outcomes by focusing on the replacement of lost wetland and waterway functions and considering what is important in the watershed.

**Key Objectives of the New Mitigation Approach**

- Establish policies that promote a watershed approach to mitigation: Mitigation decisions support the sustainability or improvement of wetland functions in that watershed. Watershed-level needs and priorities are addressed through mitigation efforts.
- Replace acreage-based mitigation with a function-based accounting method: Using science-based assessment tools, the new approach seeks to ensure that the functions and values of the impacted resource are replaced through mitigation.
- Develop stream mitigation policies that parallel the wetland mitigation program: Mitigating impacts to streams has previously been determined on a case-by-
The new mitigation approach will use a common framework to consistently apply policies for both streams and wetlands.

- Coordinate permitting processes between state and federal regulatory programs: The Corps and DSL are working to coordinate mitigation standards between permitting programs and to improve regulatory transparency, consistency and timeliness.

**What’s Next?**

The agencies will continue to engage key groups – mitigation bankers, regulatory and natural resource agencies, technical experts, consultants and the regulated public – in the design and implementation of the Aquatic Resource Mitigation Program. Policy-makers and other stakeholders also will be kept informed on program improvements. DSL will begin rulemaking in 2017. Final rules are expected to take effect in late 2017.

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