

Wetland, River and Shoreline Mitigation in King County

In March 2012, King County obtained regulatory approval under 2008 federal rules to continue operating the Mitigation Reserves Program, an *in-lieu fee* mitigation program which will allow King County permittees whose projects impact wetlands, rivers and streams to meet their mitigation requirements by paying a fee to King County in lieu of completing the mitigation themselves. This factsheet provides an overview of King County's *Mitigation Reserves Program*

What is mitigation?

When a proposed development project will create unavoidable impacts to a wetland, river or stream, the impacts must be "mitigated" through the completion of a project that results in commensurate improvement to aquatic resources. The projects and actions completed to offset development impacts are generally referred to as "mitigation" projects. This is also sometimes called "compensatory mitigation."

What types of projects can qualify as mitigation?

Generally speaking, mitigation projects will improve water quality, create or enhance habitat or improve surface water storage and flow conditions; some projects will include all of these elements. In all cases mitigation project areas must be permanently preserved to ensure continued ecological functions at the site. Sometimes the act of permanently preserving ecologically-important areas will qualify as mitigation.

Where can mitigation projects occur?

Often it is preferable to mitigate onsite as close as possible to the impact project. However, sometimes conditions at the site (or elements of the impact project itself) make onsite mitigation impractical or less likely to succeed. When onsite mitigation is not a feasible option, offsite mitigation may be approved by the regulators. Depending on the type of impact and the needs of the watershed, offsite mitigation may be required to occur in close proximity to the impact project. In all cases mitigation must occur in the same watershed as the impact.

Who can complete mitigation projects?

Land use regulations usually set guidelines for *how much* mitigation will be required for a particular impact, but don't set requirements about *who* completes the mitigation. Mitigation can be completed directly by the person or organization doing the development project (the permittee) or by a third party. In "permittee-responsible" mitigation, the permittee is responsible for all aspects of the mitigation project, including long-term management.

What are mitigation banks?

Mitigation banks are mitigation projects built in advance of impacts occurring—often without prior knowledge of when and where impacts will occur. The bank then sells mitigation "credits," which permittees use to satisfy their mitigation obligations. Mitigation banks are often established and run by private entrepreneurs.

What is *in-lieu fee* mitigation?

In-lieu fee mitigation occurs when a permittee pays a fee to an independent third party who then assumes all of the mitigation obligations and implements mitigation using the collected fees. In-lieu fee mitigation projects may occur after a permitted impact occurs.

Both mitigation banks and in-lieu fee mitigation enable pooling funds from multiple impacts to implement large mitigation projects with greater ecological significance and a greater chance of long-term success.

Who regulates mitigation?

City, county, state and federal regulatory agencies all have mitigation rules. In 2008, the federal government issued new rules regarding mitigation.

How much does in-lieu fee mitigation cost?

Mitigation costs will vary depending on the size of the impact project and severity of the impact. Generally speaking, permittee-responsible mitigation will have the lowest upfront costs, but will require long-term involvement with significant costs accruing through time. In-lieu fee mitigation is likely to cost more than mitigation banks due to risk and uncertainty associated with completing mitigation projects after impacts are permitted.

An Overview of King County's Mitigation Reserves Program

King County's Mitigation Reserves Program (MRP) is an in-lieu fee mitigation program which King County has successfully run since 2005. In the wake of 2008 federal mitigation rules [33 CFR Part 332], King County redeveloped the MRP to comply with the new regulations, becoming the first program in Washington authorized under the new rules.

How the Program Works

1. During the permitting process, regulatory agencies ensure impacts to aquatic resources are avoided and minimized to the maximum extent possible.
2. If a permitted project will create unavoidable impacts, regulatory agencies overseeing the project negotiate mitigation requirements with the permittee, including the type and location of mitigation. Available mitigation options may include permittee-implemented onsite or offsite mitigation, purchasing credits from a mitigation bank or purchasing credits from a certified in-lieu fee program.
3. If the regulators and the permittee determine the MRP is allowable and preferred, the permittee contacts the MRP to purchase mitigation "credits."
4. Once a permittee purchases mitigation credits, the permittee satisfies their mitigation obligation, and King County assumes in full the mitigation obligation.
5. King County uses collected mitigation fees to implement mitigation according to the federal rules. Throughout the mitigation planning and implementation process, King County coordinates with regulatory agencies and tribes on an Interagency Review Team (IRT).

Key features of the federally-compliant program:

- The program can be used to mitigate for impacts to wetlands, rivers, streams, lakes, marine shorelines and their buffers.
- Use of the program must be approved by project permit reviewers, and does not change mitigation sequencing requirements.
- Impacts and lift (i.e., debits and credits) will be assessed and quantified in terms of ecological function and area, rather than area alone.
- Mitigation decisions will be made according to a "watershed approach," ensuring mitigation fees are used to fund projects of importance to the overall watershed where impacts occur.
- Fees from smaller impacts can be pooled to create economy of scale at larger mitigation projects with greater ecological benefit than multiple smaller projects.
- Mitigation projects must begin within three growing-seasons of when impacts occur.
- Mitigation fees are based on full-cost accounting. Fees will be set based on costs associated with recent King County restoration projects and land acquisition costs.
- Federal rules require King County to coordinate with regulatory agencies throughout the mitigation process.
- The program can meet mitigation requirements within unincorporated King County and in cities when approved by city officials.

Learn More

For more in-depth information about King County's Mitigation Reserves Program:

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