

## Make Sure Excess Mitigation Can Be Used

### **Corps and Ecology policy on use of excess (advance) mitigation**

- Unless a mitigation plan specifically states excess mitigation was planned for future use (advance mitigation), the Corps and Ecology cannot approve its use by a different project. In some cases, excess mitigation can be coordinated and documented with the agencies before grading.
- The Corps and Ecology do not allow credit for wetland acreage that develops within the regulatory buffer. In most cases, buffer averaging can be used if approved by the agencies. The buffer averaging requires at least ½ of the required width be present and the other ½ can be averaged across the perimeter of the site.
- We can close mitigation sites if all the credit is not used and it is documented at the time of closeout. A monitoring report is valid for 3 years. Depending on how many years later we want to use the credit, additional monitoring and reporting may be required to confirm the value of the area. Please plan lead time for monitoring and reporting prior to requesting to use older credits.
- In contrast with advance mitigation, excess mitigation is not typically associated with a reduced ratio with time. Depending on the age of the excess mitigation, a reduced ratio may be considered by the agencies when they approve the credit for use.

### Two things you can do on the front end:

#### **1. When writing mitigation plans**, please be specific for both buffer and wetland:

- What area is required?
- What area is proposed (both as more than required and contingency) that can't be used by existing or planned projects?
- What area is not needed for concurrent compensation and is proposed for use by specific future projects (by name, if possible)?
- Do not tie project-specific acreage performance standards for wetland area to the excess area. The entire area will be monitored according to the performance standards so we know if it is suitable for the excess acreage to be used for another project, but they won't be tied to the permitted project.
  - "At a minimum, the established wetland will be xx acres (current project compensation area)". Any excess established wetland area is proposed for future mitigation by WSDOT projects.

For sites with enough area to provide excess mitigation (in addition to any proposed contingency area), consider proposing combined concurrent and advance mitigation. The 2012 Advance Permittee-Responsible Mitigation Interagency Regulatory Guide allows for this.

For the agencies to approve advance mitigation, the following required topics from the 2012 Advance Permittee-Responsible Mitigation Interagency Regulatory Guide may need to be added to a standard mitigation plan:

- a. Required: Describe how the mitigation site was selected using a watershed approach.

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- b. Required: Describe baseline conditions in detail so that functional lift can be determined.
- c. Required: Identify the approximate the area and mitigation type that could be left over. Here is some example language that could be used:
  - i. “The site is large enough to allow WSDOT to provide X acres of advance mitigation area that would be intended to compensate for future projects.”
  - ii. “The remaining X acres of restoration (establishment, re-establishment, rehabilitation, or enhancement) will be set aside for potential future mitigation projects within the basin upon Corps, Ecology, and X County approval”.
  - iii. The remaining x acre-credits is available as advanced mitigation to be applied to future projects in WRIA 05 upon regulatory agency approval. Providing mitigation in advance of project impacts may result in “lower mitigation ratios” for potential future projects in WRIA x upon regulatory agency approval (Joint Guidance, Ecology et al. 2006a).

If you wish to have approval before it is needed, and potentially with advantageous ratios, include the following topics:

- d. Provide a credit-generating schedule.
- e. Propose a boundary of the geographic area to be used for future impact locations.
- f. Propose ratios for credit use based on impact type and functions.
- g. Propose a list of potential projects that would use the credit.

### 2. Please document changes to impact and as-built area in a timely manner (increased time decreases the chances for approval):

- a. **If a planned impact does not occur.** The agencies may be willing to let us use the corresponding mitigation area for a different project, or appropriately adjust WSDOT bank ledgers. If the non-impact area was in the 1/100<sup>th</sup> acre range, please carefully evaluate the amount of effort for all involved staff to the value of the savings. Request written approval or acknowledgement from the agencies for these changes. There are a number of options that have been successfully used:
  - i. Submit a mitigation plan addendum
  - ii. Request a permit modification, and ask that it specifies the unused mitigation area can be used for other projects.
  - iii. Update the ledger and send an e-mail or cover letter and request agency response.
  - iv. Update the JARPA drawings or as-built
  - v. Convert the unused mitigation area to advance mitigation.
- b. **If the as-built mitigation site is larger than proposed**

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- i. The agencies may be willing to consider adjusting the buffer outward (if the parcel is large enough) to allow for additional wetland establishment area for the concurrent project, if needed (not other projects).