

Critical Areas Ordinance Code Examples

~ Off-site Mitigation Language ~

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Following is Ecology's guidance on off-site mitigation, for reference, as well as some examples of good off-site mitigation language currently found in local critical areas ordinance codes. These examples come from locales all over the state, including: Forks, Vancouver, Aberdeen, Pullman, and Whatcom and Spokane Counties. For further information regarding critical areas ordinances, please contact Donna Bunten, WA State Dept. of Ecology, at dbun461@ecy.wa.gov or (360) 407-7172.

Ecology Guidance

Wetlands in Washington State, Volume 2: Managing and Protecting Wetlands (Publication # 05-06-008, April 2005), Appendix 8-B, page 14.

Type and Location of Compensatory Mitigation. Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

1. There are no reasonable on-site or in sub-drainage basin opportunities (e.g., on-site options would require elimination of high-functioning upland habitat), or on-site and in sub-drainage basin opportunities do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts. Considerations should include: anticipated replacement ratios for wetland mitigation, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands when restored, proposed flood storage capacity, and potential to mitigate riparian fish and wildlife impacts (such as connectivity);
2. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
3. Off-site locations shall be in the same sub-drainage basin unless:
 - a. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the [city/county] and strongly justify location of mitigation at another site; or
 - b. Credits from a state-certified wetland mitigation bank are used as compensation and the use of credits is consistent with the terms of the bank's certification.
4. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape). Therefore, compensatory mitigation should not result in the creation, restoration, or enhancement of an atypical wetland. An atypical wetland refers to a compensation wetland (e.g., created or enhanced) that does not match the type of existing wetland that would be found in the geomorphic setting of the site (i.e., the water source(s) and hydroperiod proposed for the mitigation site are not typical for the geomorphic setting). Likewise, it should not provide exaggerated morphology or require a

berm or other engineered structures to hold back water. For example, excavating a permanently inundated pond in an existing seasonally saturated or inundated wetland is one example of an enhancement project that could result in an atypical wetland. Another example would be excavating depressions in an existing wetland on a slope, which required the construction of berms to hold the water.

Forks Municipal Code 14.15.175(5)

(5) **Type and Location of Compensatory Mitigation.** Unless it is demonstrated that a higher level of ecological functioning would result from an alternate approach, compensatory mitigation for ecological functions shall be either in-kind and on-site, or in-kind and within the same stream reach, sub-basin, or drift cell (if estuarine wetlands are impacted). Compensatory mitigation actions shall be conducted within the same sub-drainage basin and on the site of the alteration except when all of the following apply:

- A. There are no reasonable on-site or in sub-drainage basin opportunities (e.g., on-site options would require elimination of high-functioning upland habitat), or on-site and in sub-drainage basin opportunities do not have a high likelihood of success based on a determination of the capacity of the site to compensate for the impacts.
- B. Off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland; and
- C. Off-site locations shall be in the same sub-drainage basin unless:
 - i. Established watershed goals for water quality, flood storage or conveyance, habitat, or other wetland functions have been established by the City and strongly justify location of mitigation at another site; or
 - ii. Credits from a state-certified wetland mitigation bank are used as compensation and the use of credits is consistent with the terms of the bank's certification.
- D. The design for the compensatory mitigation project needs to be appropriate for its location (i.e., position in the landscape).

Aberdeen Municipal Code 14.100.070.B

B. Mitigation shall be in-kind and on-site, when possible, and sufficient to maintain the functions and values of the critical area, and to prevent risk from a hazard posed by a critical area.

C. The Director may approve off-site mitigation if the applicant demonstrates that no viable onsite mitigation opportunities exist. Compensatory mitigation proposed off-site shall be provided in the location that will provide the greatest ecological benefit and have the greatest likelihood of success. Preference will be given to off-site mitigation as close as possible to the impact area and within the same watershed subbasin as the permitted alteration provided that off-site mitigation may occur within the watershed of a stream or river flowing into the Grays Harbor estuary and within WRIA 22 upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative subbasin of the watershed would have greater ecological benefit. Off-site mitigation sites preference shall be given to sites and restoration activities identified in an adopted shoreline restoration plan pursuant to Chapter 173-26 WAC, a watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a

watershed restoration project pursuant to RCW 89.08.460, a salmonid recovery plan, the salmon recovery board habitat project list, or identified by the Washington Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement pursuant to RCW 77.55.290.

D. The city may approve mitigation banking as a form of compensatory mitigation for wetlands and fish and wildlife habitat conservation area impacts when the provisions of this Chapter require mitigation and when it is clearly demonstrated that the use of a mitigation bank will provide equivalent or greater replacement of critical area functions and values when compared to conventional on-site mitigation provided that all of the following criteria are met:

1. Mitigation banks shall only be used when they provide significant ecological benefits including long-term conservation of critical areas, important species, habitats and/or habitat linkages, and when they are consistent with the city's Comprehensive Plan and create a viable alternative to the piecemeal mitigation for individual project impacts to achieve ecosystem-based conservation goals.
2. The mitigation bank shall be established in accordance with the Washington State Draft Mitigation Banking Rule, Chapter 173-700 WAC or as revised, and Chapter 90.84 RCW and the federal mitigation banking guidelines as outlined in the Federal Register, Volume 60, No. 228, November 28, 1995. These guidelines establish the procedural and technical criteria that banks must meet to obtain state and federal certification.
3. Preference shall be given to mitigation banks that implement restoration actions that have been identified in an adopted shoreline restoration plan, watershed planning document prepared and adopted pursuant to Chapter 90.82 RCW, a salmonid recovery plan or project that has been identified on the Salmon Recovery Board habitat project list or by the Washington Department of Fish and Wildlife as essential for fish and wildlife habitat enhancement.

Vancouver Municipal Code 20.740.140.C.2.c

c. Type and location of mitigation. Compensatory mitigation for ecological functions shall be in-kind. Compensatory mitigation shall be on-site or within the impacted wetland's: (1) contributing area; (2) stream reach; (3) sub-watershed; or (4) watershed. (Sub-watersheds and watersheds are identified on the Clark County Digital Atlas.) The mitigation site shall be where the greatest level of wetland functions can be achieved. Mitigation actions may be conducted in a different watershed when:

1. Based on a determination of the natural capacity of the potential mitigation sites to mitigate for the impacts, there are no reasonable on-site or in-watershed opportunities or those opportunities do not have a high likelihood of success. Consideration shall include: anticipated wetland mitigation replacement ratios, buffer conditions and proposed widths, hydrogeomorphic classes of on-site wetlands when restored, proposed flood storage capacity, and potential to impact riparian fish and wildlife habitat including connectivity;
or
2. Watershed goals for water quality, flood or conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation at another site;
or

3. Credits from a certified wetland mitigation bank are used as mitigation and the use of credits is consistent with the terms of the bank's certification.

Pullman Municipal Code 16.50.280(5)

(5) Location of Mitigation.

(a) Mitigation actions shall be conducted on the same site as the alteration except when the following apply:

(i) there are no reasonable on-site opportunities or on-site opportunities do not have a high likelihood of success due to development pressures, adjacent land uses, or on-site buffers or connectivity are inadequate;

(ii) off-site mitigation has a greater likelihood of providing equal or improved wetland functions than the impacted wetland.

(b) If the planning director authorizes off-site mitigation, the location of this mitigation shall be in the same drainage basin and the same Water Resource Inventory Area (WRIA) as the site of the alteration unless:

(i) established regional or watershed goals for water quality, flood or conveyance, habitat, or other wetland functions have been established and strongly justify location of mitigation at another site; or

(ii) credits from a state certified wetland mitigation bank are used as mitigation and the use of these credits justifies location of mitigation at another site.

(c) Off-site locations for mitigation should be within the city limits if feasible opportunities for appropriate mitigation are available.

Whatcom County Code 16.16.680.F

Compensatory mitigation shall be provided on-site or off-site in the location that will provide the greatest ecological benefit and have the greatest likelihood of success, provided that mitigation occurs as close as possible to the impact area and within the same watershed as the permitted alteration. This provision may be waived upon demonstration through a watershed- or landscape-based analysis that mitigation within an alternative sub-basin of the same basin would have the greatest ecological benefit and the greatest likelihood of success provided that limiting functions shall not be removed from sensitive watersheds identified in WCC Title 20. Mitigation shall occur within WRIA 1 or 3.

Spokane County Code 11.20.050.D.9

9. On-Site/Off-site Mitigation. On-site mitigation shall be provided except where the applicant can demonstrate that:

a. On-site mitigation is not scientifically feasible due to problems with hydrology, vegetation, soils, or factors such as other potentially adverse impacts to and from surrounding land uses; or

- b. Existing functional values at the site of the proposed off-site mitigation area are significantly greater than lost wetland functional values; or
- c. Goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation measures at another site.

10. Mitigation Outside of Primary Drainage Basin. Wetland creation or restoration shall occur within the same primary drainage basin as the wetland loss occurred, unless the applicant can demonstrate that the hydrology and ecosystem will not be substantially damaged by the loss within that primary drainage basin; and

- a. In-basin mitigation is not scientifically feasible due to problems with hydrology, vegetation, soils, or other factors such as other potentially adverse impacts to and from surrounding land uses; or
- b. Existing functional values in a different primary drainage basin are significantly greater than lost wetland functional values; or
- c. Established goals for flood storage, flood conveyance, habitat or other wetland functions have been established and strongly justify location of mitigation measures in a different primary drainage basin.

11. Mitigation Banking.

Mitigation banking shall be consistent with RCW 90.84. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

- a. The bank is certified under Chapter 173-700 WAC;
- b. The Director determines that the wetland mitigation bank provides appropriate compensation for the authorized impacts; and
- c. The proposed use of credits is consistent with the terms and conditions of the bank's certification. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, the service area of the bank may include portions of more than one adjacent drainage basin for specific wetland functions.