

**Oregon Department of State Lands**

***Report on Off-Site Compensatory Mitigation  
Fiscal Year 2015***

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**Aquatic Resource Management Division  
December 1, 2015**



## **Introduction**

The Department of State Lands (DSL) protects the state's waterways and wetlands through administration of Oregon's Removal-Fill Law, enacted in 1967. The Removal-Fill Law was passed to conserve, restore and protect water resources for their contribution to aquatic life and habitats, fisheries, aquatic-based economies, tourism, public recreation, navigation, water quality, floodwater storage and other natural resource functions. The Department's Aquatic Resources Management program is charged with implementing the Removal-Fill Law.

This document has been prepared by the Oregon Department of State Lands (DSL) to fulfill the annual report requirement in the state's Removal-Fill Law related to off-site compensatory mitigation through payments (ORS 196.643) and covers fiscal year 2015. A fiscal year for Oregon state government is July 1<sup>st</sup> through June 30<sup>th</sup>. Permit data collected for this report were drawn from DSL's Land Administration System (LAS) unless specified otherwise. Mitigation bank prices were obtained through quotes from mitigation bankers. Additional information and supporting data is available upon request from DSL.

OAR 141-085-0006(3) defines compensatory mitigation as follows:

*“Compensatory mitigation” means activities conducted by a permittee or third party to create, restore, enhance or preserve the functions and values of the waters of this state to compensate for the removal-fill related adverse impacts of project development to waters of this state or to resolve violations of ORS 196.600 to 196.905. Compensatory mitigation for removal-fill activities does not affect permit requirements of other state departments.*

Off-site mitigation is any mitigation that does not occur on the same property as where the impact occurred. Applicants may have several off-site mitigation options to choose from: they may conduct their own (permittee-responsible) mitigation, some applicants have the option of purchasing wetland credits from a mitigation bank or a known in-lieu fee project, or they may pay into the DSL Removal-Fill Mitigation Fund.

### **A. Off-Site Mitigation Cost and Expense Trends**

ORS 196.643 provides for mitigation payments into the Oregon Removal-Fill Mitigation Fund (hereafter “Fund”) in order to provide off-site mitigation. Payments to the Fund can be made if credits are not available from an approved mitigation bank. Payment to the Fund during FY 2015 averaged \$77,090 per acre of impact and included 20 sales totaling 4.03 acre credits<sup>1</sup>.

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<sup>1</sup> An additional payment of \$17,616.65 was deposited to the Fund; however the deposit was calculated based on anticipated costs associated with the future removal of temporary pilings in Kellogg Lake.

This cost is slightly higher than in FY 2014 (\$75,000). Prices ranged from \$70,940 to \$90,097 per credit.

The higher average cost for payments to the Fund in FY 2015 is primarily because the calculus for payments changed on November 30, 2014 following approval of HB 2032 during the 2013 Legislative Session and rulemaking. As a result of HB 2032, ORS 196.643 allows DSL to set the price of a credit to equal the actual cost of generating the credit, including costs such as land acquisition, design, construction, maintenance, and long-term management. When a mitigation project and project cost have not been identified at the time of payment, the payment will be based on regional estimates of costs and expenses set annually by the Department.

FY 2015 mitigation bank prices ranged from \$56,192 to \$225,000 per acre of impact, with a weighted average of \$81,600 per credit for 71 credits sold. Mitigation bankers report to us that land costs for agricultural land are rising, so credits prices are likewise expected to rise in the future.

The trend of off-site mitigation costs is shown in Table 1. The average price of active offsite mitigation credits reached a high of \$84,500 in 2008 then declined during the economic downturn, and is now beginning to rise again. There are no cost data available from permittee-responsible mitigation; it is not reported to the agency.

#### **B. Efforts to Reduce Costs and Expenses of Off-Site Mitigation**

The Department promotes mitigation banking and in-lieu fee programs because it is ecologically valuable to consolidate mitigation while more efficiently replacing lost wetlands. Permit applicants also prefer mitigation through payment to mitigation banks and in-lieu fee programs because costs are more certain relative to conducting their own mitigation project and it allows them to quickly satisfy their mitigation obligation.

##### *Mitigation Banking*

At the close of FY 2015 there were 28 approved wetland mitigation banks in Oregon. DSL allows competition between mitigation banks, resulting in lower prices than in areas where no competition exists. In order to encourage more mitigation banks, DSL continues to improve and develop new templates that prospective bankers can use to expedite the bank establishment process.

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Therefore, this deposit is not included in the average payment into the Fund during FY2015 because it is not based on area.

**Table 1. Average cost of offsite mitigation credits by fiscal year**

<b>Effective Date</b>	<b>Average Rate</b>
January 1, 2004	\$50,000
January 1, 2005	\$50,000
May 1, 2006	\$60,000
May 1, 2007	\$75,000
July 1, 2008	\$84,500
July 1, 2009	\$83,000
July 1, 2010	\$80,200
July 1, 2011	\$69,400
July 1, 2012	\$74,000
July 1, 2013	\$75,000
July 1, 2014*	\$75,000
July 1, 2015	Bank average \$81,600 Mitigation Fund average \$77,090

\*The method of calculating fees was being revised through rulemaking activities during 2014. Therefore, the average rate from FY 2013 was used in FY 2014.

*Payments to the Oregon Removal-Fill Fund*

Payments are accepted into the Oregon Removal-Fill Mitigation Fund as a form of compensatory wetland mitigation for unavoidable adverse effects on waters of this state. The funds are used by the agency to construct mitigation sites and compensate for lost functions and values. There are two in-lieu fee programs available. The Payment In-Lieu (PIL) program allows payment for compensatory mitigation for small impacts to waters of the state when other methods of providing compensatory wetland mitigation are not available. The In-Lieu Fee (ILF) program was approved by the U.S. Army Corps of Engineers in 2009, and provides compensatory mitigation for both waters of the state **and** waters of the United States; i.e., the credits may be used to satisfy mitigation requirements for both Oregon removal-fill permits and federal 404 permits. There are currently 6 areas of the state covered by DSL's In-Lieu Fee program and projects have a good cost to benefit ratio. DSL will continue to seek project development in areas of the state not serviced by mitigation banks.

### **C. Effectiveness of ORWAP**

Permit applications must include an assessment of the aquatic resources proposed for impact so that the functions and values that will be lost can be replaced through mitigation. *OAR 141-085-0510(40)* defines functions and values as follows:

*“Functions and Values” are those ecological characteristics or processes associated with a water of the state and the social benefits derived from those characteristics. The ecological characteristics are “functions”, whereas the associated societal benefits are “values.”*

The Oregon Rapid Wetland Assessment Protocol (ORWAP 2.0.2) is one of the DSL-approved methods for evaluating the functions and values of wetlands. ORWAP is required when impacts are greater than 0.2 acres and a reference-based method in the appropriate Hydrogeomorphic Method (HGM) guidebook for Oregon wetlands is not available. ORWAP can inform many aspects of the Removal-Fill program, including:

- Identifying alternatives for avoidance and minimization of higher quality wetlands within the proposed project site,
- Assessment of the net lift in functions and values that could be achieved at a compensatory mitigation site through restoration actions,
- Evaluation of whether replacement of functions and values to be lost at the proposed impact site is likely to be achieved at the compensatory mitigation site,
- Informing performance standards, which are the means by which the success of a mitigation effort is measured, and
- Verifying that replacement of functions and values was achieved through a post-project ORWAP assessment.

DSL continued to improve the function assessment tool in FY 2015 via a project funded by an EPA grant. The tool is now substantially faster to apply because the indicator questions were shortened and clarified, and online tools were consolidated into a single website. These steps should reduce the cost to applicants because it will take less time for consultants to conduct the assessments.

### **D. Efforts to Improve Efficiencies Related to Off-Site Compensatory Mitigation**

#### *Aquatic resource mitigation program*

DSL is currently updating our mitigation program to increase program effectiveness in replacing lost aquatic habitat functions (wetland as well as stream functions) through compensatory mitigation. The update will better align our program with the federal Final Compensatory Mitigation Rule (2008) and functional replacement requirements of the Oregon Removal-Fill Law. It will also incorporate suggested changes and strategies outlined in documents including, but not limited to, The Oregon Sustainability Board’s Senate Bill 513 Ecosystem Services and Markets Report (2010). DSL is working with representatives of the U.S. Environmental

Protection Agency (EPA), U.S. Army Corps of Engineers (Corps), and a non-profit, Willamette Partnership, to develop a more science-based approach to mitigation that will help link both wetland and stream mitigation in a common framework. The goals of the framework include science-based identification and quantification of lost aquatic functions, increased predictability regarding mitigation requirements, and better focus of mitigation investments where they will be most effective. The framework will maintain consistency between state and federal standards.

The Department and partners are developing a policy to support inter-agency implementation of this integrated mitigation strategy across the state. Implementation of the modified strategy is anticipated to begin in 2017. Throughout these development efforts, staff have been, and will continue, to engage applicants, mitigation bankers, other resource agencies, as well as scientific and technical experts.

### *Assessment Tools*

A key element of the new aquatic resource mitigation program is the development of function-based assessment tools to better assess compensatory mitigation requirements. This includes upgrades to the Oregon Rapid Wetland Assessment Protocol (ORWAP) to improve its use for ecosystem credit accounting, as well as development of an assessment method for streams. ORWAP 3.1 updates include more efficient organization of questions, improvements to web-based tools used to answer assessment questions, and scaling output scores on a 0 to 10 scale that reflects low to high function and value.

### *Guidance and Training*

The Department has two mitigation specialists who help to develop new policy and planning efforts related to compensatory mitigation. They and other staff develop guidance on mitigation through the Removal-Fill Guidelines and associated materials, such as the Stream Mitigation Guidance <http://www.oregon.gov/dsl/PERMITS/Pages/rfq.aspx>, provide training for the public and for regulatory staff, and interact with other agencies statewide and nationally. These efforts help provide a more effective and predictable mitigation program in Oregon.