



DEPARTMENT OF
ECOLOGY
State of Washington

As required by
the Washington State Administrative Procedures Act
Chapter 34.05 RCW

CONCISE EXPLANATORY STATEMENT
AND
RESPONSIVENESS SUMMARY
FOR THE ADOPTION OF
Chapter 173-700 WAC, *Wetland Mitigation Banks*

August 2009
Publication: 09-06-022

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FOR THE ADOPTION OF
CHAPTER 173-700 WAC, Wetland Mitigation Banks

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Section 1

Introduction

CONCISE EXPLANATORY STATEMENT

1. *Introduction*

Ecology is adopting these rules under the authority granted in RCW 90.84 *Wetlands Mitigation Banking* passed by the State Legislature during the 1998 session. These rules are necessary in order to fulfill the requirements set in these statutes and successfully implement the new law.

Due to the low success rate of compensatory mitigation; the Washington State Legislature initiated a review of the implementation of wetland protection rules during their 1998 session. As a result, state lawmakers adopted RCW 90.84, *Wetlands Mitigation Banking*. The law expressed the Legislature's support of banking as an important option for providing compensatory mitigation. The law affirms the state's authority to regulate banking. The law set minimum guidelines for establishing banks and directed Ecology to develop a statewide wetland mitigation banking certification rule.

Process used to develop rule language

Ecology used two distinct collaborative processes (a negotiated rule and pilot rule) with extensive public involvement and outreach during the rule development process. Ecology convened a negotiated rule team in 1998 to draft rule language. Draft rule language was proposed for Chapter 173-700 WAC in 2001. A pilot program testing the draft rule language was conducted from 2004 to 2009. Ecology has now finalized the rule language based on the lessons learned through the pilot program and comments received.

Purpose

The purpose of this rule is to establish the statewide certification process for wetland mitigation banks; and to ensure that these banks are ecologically sustainable and provide adequate compensation for unavoidable impacts to wetlands. Ecology believes that wetland mitigation banks provide a good option to mitigate wetland losses. Some of the many benefits of banking include:

- Reducing the time lag between the lost or reduced functions and values from a wetland impact project and the compensation for those impacts (temporal loss).
- Ensuring that sites are planned to be consistent with local watershed planning efforts.
- Combining mitigation needs of small projects into one larger wetland complex.
- Providing mechanisms for long-term protection, management, and maintenance.

Scheduled Adoption and Effective Dates:

Adoption Date: September 3, 2009

Effective Date: October 4, 2009

