

WSDOT Programmatic Long-term Management Plan for Compensatory Mitigation Sites

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1. Purpose and Responsibilities

This plan provides a framework for the long-term protection, management, and maintenance of WSDOT-owned compensatory mitigation sites. This is an internal guidance policy to meet federal and state requirements for long-term management and defines site eligibility, management phases, financial assurances, management requirements, inspection schedule, and contingencies. This programmatic long-term management (LTM) plan is intended to meet the requirements stated in the 2008 Federal Mitigation Rule (Compensatory Mitigation, 2008) under Clean Water Act Section 404 and 401 Regulatory Program, state Water Pollution Control Act (RCW 90.48), and WSDOT Secretary's Executive Order E 1102.00 (WSDOT, 2019) for WSDOT-owned compensatory mitigation sites. In addition, the state and federal policies for No Net Loss of wetland acreage and functions requires the permanent protection of compensatory mitigation sites and long-term management of the sites to ensure that this policy is being met.

The inspection and management elements outlined in this programmatic LTM plan are intended to be a standard for all eligible compensatory mitigation sites. Additional elements for LTM may be identified in a site's mitigation plan to address unique site-specific conditions and would supplement the list of LTM management elements outlined in this programmatic LTM plan.

1.1 Site Eligibility

This programmatic LTM plan applies to permittee-responsible compensatory mitigation sites that are required to be protected in perpetuity, including those created for advance or concurrent mitigation. In addition, sites that are permitted under a U.S. Corps of Engineers (Corps) permit are required to be managed under an approved LTM plan. Sites that are permitted under a Department of Ecology (Ecology) Administrative Order may also be required to be managed under an approved LTM plan.

Sites that are not protected in perpetuity may include mitigation areas that were either on-site re-vegetation of temporarily impacted wetlands or had their permanent protection waived by the regulatory agencies due to special circumstances. This LTM plan is not intended to be used for sites that are not protected in perpetuity.

Sites that were permitted before the 2008 Federal Rule went into effect on June 9, 2008, do not require a LTM plan and are not covered under this programmatic LTM plan. The date listed on the permit received from the Corps, or Ecology Administrative Order when there is no Corps permit, associated with the compensatory mitigation site will be used to determine a site's inclusion under this plan.

Sites permitted before this cutoff date do not require a LTM plan. However, permanent protection of those sites must continue in perpetuity when stated in the permit conditions from the Corps and/or Ecology.

Sites included under this programmatic LTM plan will meet all four of the following criteria:

- ✓ Permittee-responsible compensatory mitigation
- ✓ Mitigation site has an associated Corps permit or Ecology Administrative Order
- ✓ Required to be protected in perpetuity
- ✓ Permitted on or after June 9, 2008

Even if a mitigation site does not fall under this LTM plan, all WSDOT properties are required to adhere to the Washington State Noxious Weed Law, R.C.W. 17.10 (Noxious Weeds, 2023). R.C.W. 17.10.140 states the following:

“...every owner must perform or cause to be performed those acts as may be necessary to: a) eradicate all class A noxious weeds; b) control and prevent the spread of all class B noxious weeds designated for control in that region within and from the owner’s property; and c) control and prevent the spread of all class B and class C noxious weeds listed on the county weed list as locally mandated control priorities within and from the owner’s property” (Noxious Weeds, 2023).

WSDOT-owned mitigation banks are not covered by this plan because each bank is required to have bank-specific LTM plans approved by the Interagency Review Team.

1.2 Management Phases

The LTM phase begins after the permit conditions associated with compensatory mitigation have been met for the mitigation site or sites associated with that permit. Permitting agencies such as USACE and the WA State Department of Ecology will issue documentation that the site’s permit conditions have been met, monitoring is no longer required, and that the site may transfer to the Long-term Management phase. LTM for these sites will continue in perpetuity.

The Establishment or Monitoring phase is applicable to all permittee-responsible mitigation sites. However, the LTM phase is only applicable to sites that require permanent protection based on the criteria outlined in the previous section. These phases are defined as:

Establishment/Monitoring Phase starts when the site is first built and planted. This is considered Year-0 for the establishment or monitoring phase. Monitoring typically begins at Year-1, following one growing season from when plants are installed, and lasts for up to 10 years depending on the permit conditions. When all final year performance standards have been met or the designated monitoring period has been reached, WSDOT requests concurrence from the agencies that the site has met the permit conditions for monitoring.

Long-term Management Phase begins at completion of the establishment/monitoring phase, which is considered concluded when the regulatory agencies provide documentation that the mitigation requirements of the permit have been fulfilled. The year that WSDOT receives a concurrence letter from the agencies that the site’s permit conditions or monitoring requirements have been met is considered Year-0 for the LTM phase. LTM continues in perpetuity. If the mitigation site is transferred to another entity, then that entity will be responsible for continuing the LTM phase and permanent protection as per Environmental Mitigation – Exchange Agreements, RCW 47.12.370.

2. Financial Assurances

Financial assurance is a required element for all mitigation plans under the 2008 Federal Rule (Compensatory Mitigation, 2008). This rule states in § 332.7 (d)(2), “A *long-term management plan* should include a description of long-term management needs, annual cost estimates for these needs, and

identify the funding mechanism that will be used to meet those needs.” In addition, the rule states in § 332.7 (d)(4), “For permittee-responsible mitigation, any long-term financing mechanisms must be approved in advance of the activity causing the authorized impacts.”

This LTM plan provides a description of the management needs for mitigation sites. Refer to the site’s mitigation plan for a description of the annual cost estimates for these LTM management needs and the funding mechanism.

WSDOT anticipates that annual maintenance costs for mitigation sites in the LTM phase will be higher in urban areas than in areas outside of urban areas. The difference in costs between urban and non-urban sites is largely driven by human disturbances that increase the frequency and duration of maintenance needs associated with illegal waste disposal, fence and sign repairs, encampments, and higher likelihood of noxious weed introduction.

3. Management Requirements

Site management in the LTM phase will be limited to protecting site integrity and management of risk to adjacent properties and infrastructure, as well as adherence to the current Washington State Noxious Weed Law. Performance standards that applied to the establishment/monitoring phase of the site do not apply to the LTM phase because the permit conditions were met when the site entered the LTM phase. As such, each site will be required to maintain the following elements, unless specifically excluded by the approved mitigation plan or condition outlined in an agency letter:

- Fencing will be maintained in good working condition to prevent public access to the site
- Signs will be present and visible denoting the area as a protected habitat
- Illegal waste disposal will be removed from the site
- Encampments will be monitored and managed on a case-by-case basis to reduce human impacts to wetland functions to the extent practical, and any encampment cleanup actions will follow the processes outlined in the WSDOT Safety Procedures and Guidelines Manual (WSDOT, 2024) and the WSDOT Guidelines to Address Illegal Encampments within State Right of Way (WSDOT, 2008)
- Vegetation will be allowed to develop naturally and no clearing or harvesting of vegetation will be allowed (unless specifically allowed and approved by the regulatory agencies for cultural reasons)
- Noxious weeds will be managed according to the current Washington State Noxious Weed Law (R.C.W. 17.10)

In addition to the list above, WSDOT may also elect to manage site conditions to reduce risk of damage to adjacent properties and infrastructure. Addressing these site management needs may or may not be considered adaptive management and outside the scope of normal LTM tasks depending on the severity of the issue. These voluntary management elements may include:

- Addressing problematic erosion that is either affecting or may likely affect adjacent properties and infrastructure
- Addressing problematic flooding that is either affecting or may likely affect adjacent properties and infrastructure
- Removing risk trees that may cause damage to adjacent properties and infrastructure
- Managing vegetation around the site and in designated perimeter buffers to deter public access

Refer to Appendix A for a checklist of these management elements for LTM inspections.

For the purposes of this LTM plan, “natural” development of a site includes vegetation structural changes that may develop on the site over time and that are not the result of direct, on-site, human action. This includes any changes in cover and species composition of native and non-native species that may occur because of natural processes, which includes changes driven by climate change, exotic pests, and/or wildlife such as beaver. Changes in hydrology due to off-site development or climate change are outside the scope of LTM and would not require adaptive management unless conducted voluntarily by site managers. Likewise, beaver activity is considered natural development and will not be managed unless they pose a threat to adjacent properties or infrastructure.

4. Inspection Schedule

Sites that are in the LTM phase require periodic inspections for the required elements listed in the Management Requirements section. These LTM inspections will be conducted in Years 2, 5, 10, and every 5 years thereafter, in perpetuity, as measured from the date that the concurrence letter is received from the regulatory agencies. Records of LTM inspections will be maintained for 20 years and will be made available for regulatory agencies and the public on the WSDOT webpage. The regulatory agencies may also request records of LTM management actions taken during that time.

An “increased inspection” schedule will be implemented when the site’s conditions trigger a threshold outlined in the Contingencies section. The increased inspection schedule requires LTM inspections every 2 years until the problematic site condition has been sufficiently resolved. If resolved, the site would resume the normal inspection schedule based on the original Year-0 for the LTM phase.

5. Contingencies

Certain site conditions may require increased management and trigger an increased inspection schedule to adequately address site conditions. The contingency measures outlined in Table 1 are considered normal LTM management actions. Any management actions that exceed the normal scope of LTM would be considered adaptive management and not covered by this programmatic LTM plan.

Table 1. Contingency Measures for Required LTM Elements

Required Management Elements	Contingency Actions	Requires Increased Inspection Schedule
Fencing	<ul style="list-style-type: none">Repair or replace fencing and access gates.	No
Signs	<ul style="list-style-type: none">Repair or replace damaged or missing signs.	No
Trash/Dumping	<ul style="list-style-type: none">Remove any illegal dumping.Remove any significant buildup of regular trash accumulation.	No
Encampments	<ul style="list-style-type: none">Monitor human impacts to wetland functions and	Yes, increased

	<p>determine if camp removal is necessary based on the following parameters:</p> <ul style="list-style-type: none"> ○ The extent and intensity of current and future human impacts to the site ○ The potential impacts to site functions if cleanup actions are taken <ul style="list-style-type: none"> • If determined necessary, encampment removal will follow the guidelines stated in the WSDOT Safety Procedures and Guidelines Manual (WSDOT, 2024) and the WSDOT Guidelines to Address Illegal Encampments within State Right of Way (WSDOT, 2008). These actions may include clearing shrubs in encampment areas during cleanup. • Monitor the site for returning encampments. 	inspections until encampments are not detected for 2 years.
Vegetation Clearing/Harvesting	<ul style="list-style-type: none"> • If minor (i.e. an area less than 5% of the site and would naturally return to its previous condition within 2 years), then document the clearing and continue to monitor. No adaptive management required. • If major (i.e. an area greater than 5% of the site or the area would take longer than 2 years to return to its previous condition), then report the violation to the regulatory agencies and determine if adaptive management is needed. 	No
Noxious Weeds	<ul style="list-style-type: none"> • Treat weeds required for control according to the Washington State Noxious Weed Law. • Monitor the site for return or spread of managed noxious weeds. 	Yes, increased inspections until the site meets the requirements of the noxious weed law.

Additional contingency measures may be implemented, as needed, to address voluntary management elements. These potential management actions may include but are not limited to those outlined in Table 2. If a contingency measure triggers the need for an adaptive management plan, then coordinate with the regulatory agencies at that time.

Table 2. Contingency Measures for Voluntary LTM Elements

Voluntary Management Elements	Potential Contingency Actions	May Require Adaptive Management Plan
Problematic Erosion	<ul style="list-style-type: none"> • Most erosion concerns occur along the edges of riparian areas and wetlands. Contingency actions may include soil movement, bank reinforcement, and/or re-planting. These contingency actions will 	Yes, and possibly permits

	likely require coordination with regulatory agencies and an Adaptive Management Plan.	
Problematic Flooding	<ul style="list-style-type: none"> On-site flooding is often caused by beaver activity. Contingency actions associated with beaver may include dam notching, debris removal, pond levelers, and/or other flow control structures. Most of these contingency measures require permits and consultation with regulatory agencies. Whenever possible, beavers will be left on-site to allow for natural development of the site. 	Yes, and possibly permits
Risk Trees	<ul style="list-style-type: none"> Risk or hazard trees will be taken down per safety requirements to prevent damage to adjacent properties and infrastructure as well as on-site infrastructure, such as fencing and gates. Whenever possible, downed trees will be left on site in whole or in part. Trees that are at risk of falling but that do not pose a risk to adjacent properties and on-site and off-site infrastructure will be allowed to naturally fall with no management actions. 	No
Perimeter Vegetation	<ul style="list-style-type: none"> Installation of perimeter vegetation may include shrubs or other deterrent vegetation to reduce the potential for public access. Vegetation selection will be consistent with the local landscape and include native species only. Regular management actions for newly planted vegetation may include weed management, mulching, irrigation, and monitoring for survival. 	No

If adaptive management actions will have an impact to wetlands, temporary or permanent, or a significant impact to site conditions, then WSDOT will consult with the regulatory agencies to determine if mitigation measures are necessary, including acquiring any necessary permits, which would include the preparation of an Adaptive Management Plan.

6. References

Compensatory Mitigation for Losses of Aquatic Resources, Final Rule, 73 F.R. 19594 (proposed April 10, 2008) (to be codified at 40 C.F.R Part 230 and 33 C.F.R Parts 325 and 332).

<https://www.ecfr.gov/current/title-33/chapter-II/part-332>

Noxious Weeds, Control boards, Chapter 17.10 R.C.W. (2023). Certified on September 1, 2023.

<https://app.leg.wa.gov/rcw/default.aspx?cite=17.10>

Environmental Mitigation – Exchange Agreements, Chapter 47.12.370, R.C.W. (2021) Effective 2021.

<https://app.leg.wa.gov/RCW/default.aspx?cite=47.12.370>

Washington State Department of Transportation (WSDOT). (2008). WSDOT Guidelines to Address Illegal Encampments within State Right of Way. August 22, 2008.

WSDOT, Secretary's Executive Order Number: E 1102.00, Wetlands Protection and Preservation. Signed on March 22, 2019. https://wsdot.wa.gov/sites/default/files/2024-07/WSDOT-ExecutiveOrder-1102_0.pdf

WSDOT. (2024). Safety Procedures and Guidelines Manual. Human Resources Division, Safety and Health Services Office. <https://www.wsdot.wa.gov/publications/manuals/fulltext/M75-01/Safety.pdf>

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. (2021). Wetland Mitigation in Washington State– Part 1: Agency Policies and Guidance (Version 2). Washington State Department of Ecology Publication #21-06-003.

Appendix A:

Long-term Management Inspection Checklist

Long-term Management Site Inspection Checklist

Date of visit:			
Inspected by:			
Site LLID*:			
State Route:		Site Name:	

* Unique site identification number assigned by WSDOT HQ Wetlands Program.

Required Management Elements

Fencing in need of repair? Yes / No

Notes:

Signs in need of repair or replacement? Yes / No

Notes:

Illegal waste disposal present? Yes / No

Notes:

Encampments present? Yes / No

Notes:

Any human-caused vegetation disturbance present? Yes / No

If yes, is the disturbance minor or major?¹ Minor / Major

Notes:

Class A or B noxious weeds present? Yes / No

Notes:

¹ Minor if disturbance is less than 5% of the total site area AND will return to natural conditions within 2 years. Major if disturbance is greater than 5% of the total site area OR it will take longer than 2 years to return to natural conditions.

Long-term Management Site Inspection Checklist

Site LLID:		Date of visit:	
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Voluntary Management Elements

Problematic erosion affecting adjacent infrastructure present? Yes / No

Notes:

Problematic flooding affecting adjacent infrastructure present? Yes / No

Notes:

Risk trees present? Yes / No

Notes:

Additional Notes on Site Conditions: