



March 10, 2010

TO: Statewide Environmental Managers

THRU: *Mega* Megan White, P. E., Director of Environmental Services

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SUBJECT: **Directional memo ESO 2010-02** Guidance on the Avoidance of
Agricultural Lands of Long-term Commercial Significance

Effective immediately, project teams are directed to use the attached guidance when selecting wetland mitigation sites to offset project impacts. This guidance is a direct response to Senate Substitute Bill 5864 passed by the Legislature in 2009.

This bill adds a new section to RCW 47.01 requiring the Department of Transportation to consider using public lands first when agricultural lands are considered in meeting environmental mitigation requirements under the state and national environmental policy acts, and to make every practical effort to avoid impacting agricultural lands of long-term commercial significance. The attached guidance sets a process for doing this and for developing documentation of steps taken to comply with these requirements. This guidance should be incorporated into the mitigation site selection process for all WSDOT wetland mitigation projects.

We are working to include this guidance in the WSDOT Environmental Procedures Manual (EPM) as well as posting additional resources on the wetland mitigation website. This directional memo shall guide WSDOT's effort until the EPM can be updated.

If you have any questions, or encounter difficulties in implementing this guidance, please contact Ken Risenhoover, Ecological Mitigation Program Manager, ESO.
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Attachment

Mitigation Planning: Considering Public Lands and Avoiding Impacts to Agricultural Lands of Long-term Commercial Significance (March, 2010)

This document provides a process for the development of documentation required when proposing the use of agricultural lands of long-term commercial significance for compensatory wetland mitigation. This guidance should be incorporated into the mitigation site selection process for WSDOT wetland mitigation projects. For more information, please contact Ken Risenhoover, Ecological Mitigation Program Manager, WSDOT Environmental Services Office (360) 705-7409.

Background

State and Federal Environmental Policy Acts require the Washington State Department of Transportation (WSDOT) to identify unavoidable impacts to wetlands by transportation projects. WSDOT is required to provide compensatory mitigation measures to offset these impacts. Compensatory mitigation typically consists of enhancing existing wetlands, restoring degraded wetlands, or creating new wetlands in non-wetland areas or some combination of the three.

Frequently, lands suitable and available for compensatory mitigation are, or have been, used for agriculture. Some of these lands are historic wetlands that have been modified for agricultural use or to increase productivity. Both state and federal regulatory agencies consider restoration of these former wetland areas a highly desirable compensatory mitigation strategy. However, there also are increasing concerns from the farming community about the loss of productive farmlands and the impacts on local and regional economies if these lands are converted to other land uses.

RCW 47.01.305 directs WSDOT to use public lands before using land designated as agricultural land of long-term commercial significance. If public lands are unavailable, RCW 47.01.305 directs WSDOT to make every effort to avoid using lands designated as agricultural lands of long-term commercial significance. RCW 47.01.305 does not restrict WSDOT from meeting its environmental mitigation requirements.

To comply with RCW 47.01.305, WSDOT has developed directions outlined here. The directions include how to document decisions.

WSDOT uses the definitions of agricultural lands found in the Growth Management Act (RCW 36.70A). Counties and Cities that are planning under the Growth Management Act (GMA) designate agricultural lands of long-term commercial significance. Counties not required to plan under GMA may identify agricultural lands of long-term commercial significance as part of the County's planning activities in accordance with RCW 36.70.

A Process for Implementing the Directives in RCW 47.01.305

Compliance with these new requirements should be addressed by a series of sequential steps integrated into existing procedures for locating suitable mitigation sites.

Documentation of compliance can be achieved by writing memos to the project file explaining the basis for your decisions as you progress through the steps of this process. The steps in this process are explained below and illustrated in the flow chart on page 6 (Figure 1).

1. ***Preliminary site selection criteria*** - Determine if the property under consideration meets the requirements identified in the WSDOT Guidance for Preliminary Wetland Mitigation Site Selection (WSDOT 2008).
2. ***Check agricultural designation*** - If the property does meet the requirements of the preliminary site selection guidance, determine if the county has designated the property as “agricultural land of long-term commercial significance”.

The GMA requires County jurisdictions to designate "agricultural lands of long-term commercial significance" consistent with Department of Commerce guidelines. Maps identifying these areas should be available from the participating counties. To help make this information available to WSDOT staff, the Environmental Information Program of ESO is adding this information to the *GIS Workbench*. Further information about the *GIS Workbench* can be found at:

<http://www.wsdot.wa.gov/Environment/GIS/workbench.htm>.

At present, the *GIS Workbench* contains designated agricultural lands of long-term commercial significance for Whatcom, Skagit, Snohomish and Pierce Counties. Information for other counties will be added as it becomes available. If a suitable site is found without affecting agricultural lands, the evaluation can be concluded here.

3. ***Check public land availability*** - If the property is designated as an Agricultural Land of Long-term Commercial Significance, determine if there are any available public lands (city, county, state or federal) proximal to the project area that could be suitable for use as compensatory mitigation. Once public lands have been identified, determine if they are located in the appropriate watershed, basin, and sub-basin to meet mitigation requirements.

Public lands are identified in the *GIS Workbench*. However, the scale of this information may limit its utility for documentation purposes. The Washington Department of Ecology maintains maps showing major public lands within each Water Resource Inventory Area (WRIA). They are available online at:

<http://www.ecy.wa.gov/services/gis/maps/wria/wria.htm>

If a suitable publicly-owned parcel is found, verify that mitigation is a compatible use with any management plan that might exist. Contact the appropriate agency responsible for management of the property to discuss mitigation compatibility and

opportunities for collaboration.

4. **Evaluate public land suitability** - Determine if the public land provides opportunities for wetland mitigation (wetland creation, restoration, and/or enhancement). If the site does not provide sufficient area to meet project needs, additional properties will be required.
5. **Consider possible 4(f) issues** - Evaluate the selected public lands for potential conflicts with Section 4(f) of the U.S. Department of Transportation Act of 1966.

Section 4(f) protects publicly-owned public parks, recreation areas, and wildlife/waterfowl refuges as well as historic sites of local, state or national significance, from conversion to transportation uses. The provision states that the U.S. Department of Transportation (USDOT) may approve a transportation project requiring the use of publicly-owned land of a park, recreation area, or wildlife and waterfowl refuge, or land from an historic site of national, state, or local significance **only if:**

- There is no feasible and prudent alternative to using that land, and
- The program or project includes all possible planning to minimize harm to the Section 4(f) property.

- OR -

- The proposed use is *de minimis*¹.

The USDOT established a review process for any Section 4(f) resource that may be impacted by a federally-aided transportation project or program. If the USDOT determines that its project will have a minimal – or “*de minimis*” – impact on a protected resource, then the Section 4(f) process is complete. If the 4(f) use is not *de minimis*, then the agency must evaluate whether there are “feasible and prudent” avoidance alternatives to use of the property. If there are no alternatives, then it must undertake all possible planning to minimize harm to the property.

Evaluation and documentation of Section 4(f) resources typically is addressed as part of the National Environmental Policy Act (NEPA) process for a transportation project; the analysis, results, and conclusions are typically incorporated into the NEPA documentation.

Section 457 of the WSDOT Environmental Procedures Manual outlines the procedures for Section 4(f) evaluation:

<http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/part4.pdf>

¹ The *de minimis* provision was added by congress in 2005 as part of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act (SAFETEA-LU).

The US Department of Transportation Federal Highways Administration provides a technical guidance advisory at:

<http://www.fhwa.dot.gov/legsregs/directives/techadv/t664008a.htm>

Assistance in evaluating potential Section 4(f) conflicts may be obtained from region staff, or from the SEPA/NEPA Program in ESO. Any significant Section 4(f) conflicts should be discussed with the USDOT (generally Federal Highway Administration or Federal Transit Administration).

6. ***Consider site values, costs and risks*** - Evaluate the public land using the WSDOT Wetland Mitigation Site Evaluation Matrix (see references). The Matrix is an evaluation process that helps identify potential ecological value, relative construction costs, and risks associated with a property. For clarification on using the Matrix, refer to *WSDOT Guidance on Wetland Mitigation Site Evaluation Matrix* (WSDOT 2008a).

If suitable public lands are either unavailable, unsuitable for compensatory mitigation, or do not provide sufficient mitigation area or function, then compliance with the requirements of RCW 47.01.305 has been satisfied.

7. ***Notification of agricultural land use*** – If your evaluation of alternatives has failed to identify suitable alternatives on public or other private lands, then it may be necessary for WSDOT to utilize agricultural lands for project mitigation needs. However, to facilitate proper coordination your proposal to purchase agricultural lands must be communicated in accordance with the directions in the Environmental Procedures Manual Chapter 450.03 (6).
8. ***Coordinate with the local agricultural community*** - If your alternatives analysis results in a decision to proceed using agricultural land, the proposed site should be evaluated using the WSDOT Wetland Mitigation Site Evaluation Matrix (WSDOT 2008a).

It also recommended that you consider contacting local representatives of the agriculture community (e.g., Conservation Commission, appropriate Conservation Districts, Irrigation Districts, etc.) to discuss your evaluation and decision. These groups may be helpful in locating potentially suitable mitigation sites on agricultural lands. Outreach such as this may help create good will and allow you to demonstrate the extent of efforts to avoid impacting agricultural lands of long-term economic significance. There also may be opportunities to collaborate on restoration projects that would provide mitigation for highway projects and farmland irrigation maintenance projects. The project file should contain documentation of any measures taken to avoid conflict with agricultural lands of long-term commercial significance

References

WSDOT. Wetland Mitigation Site Evaluation Matrix. Available on-line at: <http://www.wsdot.wa.gov/NR/rdonlyres/DCF63C40-E26F-40AA-B800-95DB866C2450/0/WetMitSiteEvalMatrix.pdf>. Accessed July 29, 2009.

WSDOT. 2008. WSDOT Guidance on Preliminary Wetland Mitigation Site Selection. February 12, 2008. Available on-line at: <http://www.wsdot.wa.gov/NR/rdonlyres/B67BAF0A-95E8-417A-9E73-0C5F186A0A78/0/WetMitPreSiteSelectGuid.pdf>. Accessed July 29, 2009.

WSDOT. 2008a. WSDOT Guidance on Wetland Mitigation Site Evaluation Matrix. February 12, 2008. Available on-line at: <http://www.wsdot.wa.gov/NR/rdonlyres/0FA8BC87-7B38-43A5-AEC6-EF6A56E36444/0/WetMitSiteEvalMatrixGuid.pdf>. Accessed July 29, 2009.

WSDOT. 2010. Environmental Procedures Manual – Chapter 450.03 (6). <http://www.wsdot.wa.gov/publications/manuals/fulltext/M31-11/epm.pdf>

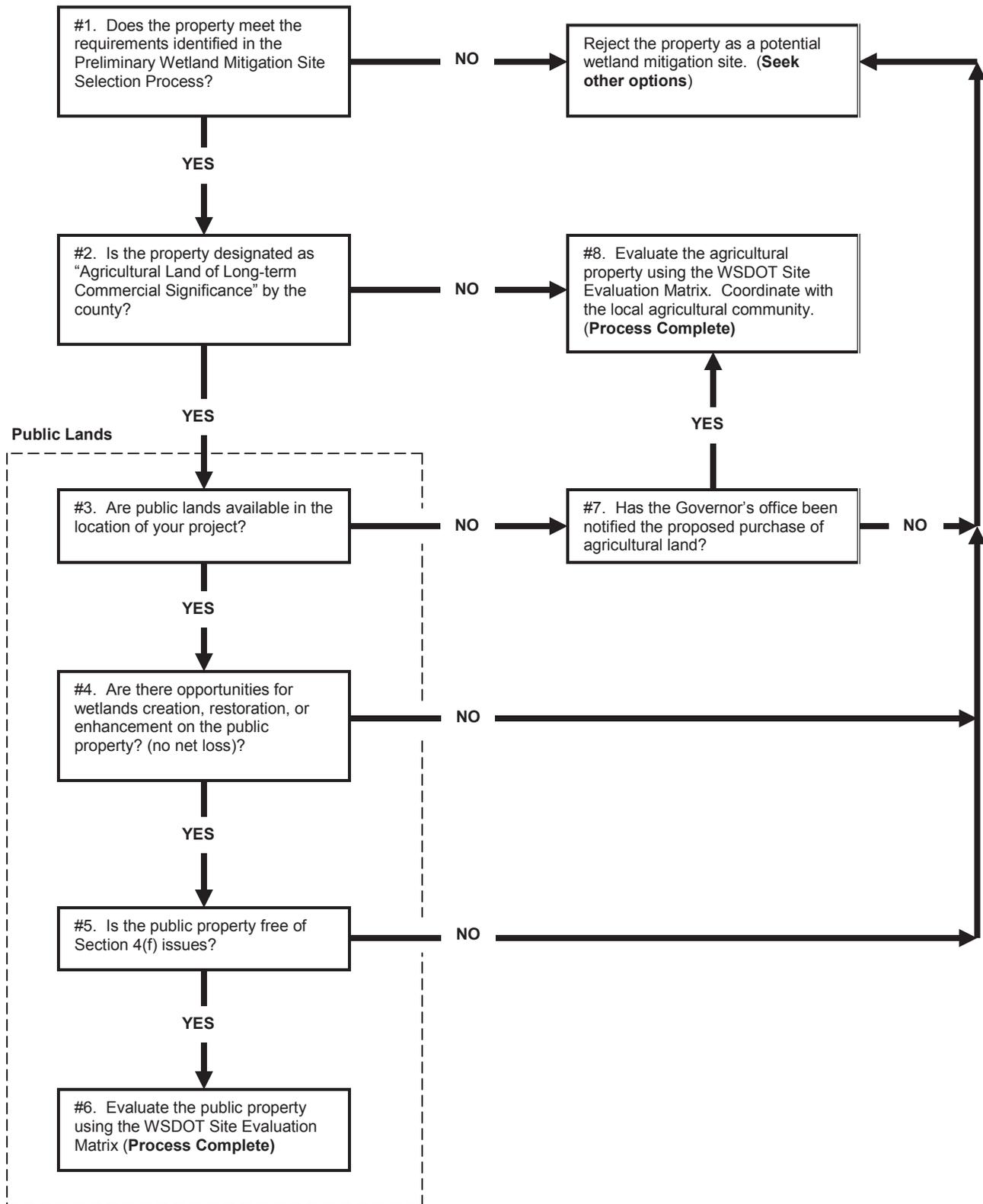


Figure 1. A process for development of documentation required when proposing the use of agricultural lands of long-term commercial significance for compensatory wetland mitigation.