
PROSPECTUS
for
King County
Mitigation Reserves
Program

SUBMITTED BY:

**King County Department of
Natural Resources and Parks**

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TABLE OF CONTENTS

1.0	INTRODUCTION.....	3
2.0	OBJECTIVES.....	4
3.0	TERMINOLOGY.....	5
4.0	HISTORY.....	7
5.0	PROGRAM OVERVIEW.....	8
5.1	MITIGATION SEQUENCING.....	8
5.2	DETERMINATION OF DEBITS/CREDITS.....	9
5.3	TYPES OF CREDITS.....	9
5.4	CREDIT PRICING.....	9
5.4.1	LAND COST SURCHARGE.....	10
6.0	PROGRAM ACCOUNT.....	11
6.1	DISBURSEMENT OF FUNDS FROM THE PROGRAM ACCOUNT.....	11
6.2	LEDGER.....	12
6.3	ADVANCE CREDITS.....	12
6.4	CREDIT FULFILLMENT SCHEDULE.....	12
6.5	OPERATING UNDER POSITIVE OR NEGATIVE LEDGER BALANCE.....	13
	COMPENSATION PLANNING FRAMEWORK.....	14
7.0	SERVICE AREAS.....	14
8.0	MRP MITIGATION RECEIVING SITES.....	15
8.1	ENROLLED ROSTER SITES (THE ROSTER).....	15
8.1.1	KING COUNTY ROSTER SITES.....	15
8.1.2	NON-KING COUNTY-OWNED ROSTER SITES.....	16
8.1.3	ROSTER SITE SELECTION CRITERIA.....	17
8.2	CANDIDATE RECEIVING SITES.....	18
8.2.1	CRITERIA FOR BECOMING A CANDIDATE SITE.....	18
8.2.2	PRE-ENROLLMENT OF CANDIDATE SITES.....	20
9.0	MITIGATION SITE SELECTION PROCESS.....	21
9.1	CREDIT ALLOCATION TEAM.....	21
9.2	CHOOSING THE BEST SITE FROM THE ROSTER.....	21
9.3	CHOOSING A CANDIDATE RECEIVING SITE.....	22
9.3.1	ENROLLING A CANDIDATE SITE ONTO THE ROSTER.....	23
9.4	MITIGATION ON PRIVATELY-OWNED RECEIVING SITES.....	25
9.4.1	DETERMINATION OF CREDITS.....	27
10.0	IMPLEMENTATION GROUPS.....	27
11.0	PRESERVATION AS A MITIGATION STRATEGY.....	27
12.0	MRP DATABASE.....	29
13.0	CREDIT FULFILLMENT.....	30
14.0	MITIGATION ASSESSMENT METHOD.....	31
15.0	MITIGATION SITE MAINTENANCE.....	31
16.0	ECOLOGICAL PERFORMANCE STANDARDS.....	31
17.0	MONITORING.....	32
18.0	ADAPTIVE MANAGEMENT AND CONTINGENCIES PLANNING.....	32
19.0	SITE PROTECTION INSTRUMENT AND LONG-TERM STEWARDSHIP.....	33
20.0	INTER-AGENCY REVIEW TEAM INVOLVEMENT.....	33
21.0	IMPLEMENTATION OF APPROVED PLANS.....	34
22.0	MRP INTERACTION WITH OTHER JURISDICTIONS.....	34
23.0	ENFORCEMENT.....	37
24.0	MRP'S RELATIONSHIP TO OTHER OFF-SITE MITIGATION OPTIONS.....	37
25.0	DEFAULT AND CLOSURE PROVISIONS.....	38
26.0	ACCEPTANCE OF RESPONSIBILITY.....	38

KING COUNTY MITIGATION RESERVES PROGRAM IN-LIEU FEE PROGRAM PROSPECTUS & COMPENSATION PLANNING FRAMEWORK

1.0 INTRODUCTION

This document sets forth a proposal for a King County-sponsored “in-lieu fee” mitigation program: the King County Mitigation Reserves Program (MRP). The proposed program structure and processes for completing mitigation projects are based in large part on guidance outlined in a Federal Rule issued in April 2008 by the U.S. Army Corps of Engineers (Corps) and U.S. Environmental Protection Agency (EPA) [33 CFR Part 332 and 40 CFR Part 230]. The federal rule defines an *in-lieu fee program* as “a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements... Similar to a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor”.

The proposed King County Mitigation Reserves Program addresses historic inadequacies associated with compensatory mitigation by creating a comprehensive, equitable and consistent in-lieu fee program that includes all elements and phases necessary to ensure mitigation success among small and large projects, including: rigorous baseline condition analysis, thorough assessment of impacts; seamless and transparent fee transaction processes; ecologically-based site selection criteria that address critical watershed needs; professional project design and implementation; and long-term commitment to adaptive management and project success.

The two King County agencies responsible for implementing the MRP are the Department of Natural Resources and Parks (KCDNRP) and the Department of Development and Environmental Services (KCDDDES). King County DNRP has decades of experience in managing all aspects of King County’s abundant natural resources, from completing comprehensive watershed analyses, to designing, implementing, and maintaining and monitoring restoration and enhancement projects to improve aquatic resources across the county. King County DDES has a successful track record in working with permit applicants – large and small, public and private – to avoid and minimize environmental impacts, and to identify suitable mitigation options. These two King County agencies have worked together to successfully implement mitigation projects through King County’s pilot Mitigation Reserves Program, and will build on these successes to implement the new MRP.

In addition to KCDNRP and KCDDDES, a third entity will play a significant role in the KC Mitigation Reserves Program: representatives from a group of agencies comprising an “Interagency Review Team” (IRT). The U.S. Army Corps of Engineers (Corps) and the

Washington Department of Ecology (Ecology) will co-chair the IRT, and other member agencies will include tribes, and federal, state, and local agencies. Once the program is certified and operational, the IRT will play an integral role in reviewing and approving proposed mitigation “receiving sites” and mitigation plans; in some cases IRT member agencies will also play a role in reviewing permits for impact projects, as well. Agencies and tribes represented on the IRT will likely change through time depending on the nature of the impacts and location of the proposed mitigation receiving sites.

This document, the Prospectus, provides an overview of the proposed program. Following review by the IRT and a public notice period, MRP staff will develop and submit a program Instrument, which will provide much greater detail about how the program will operate and the process by which mitigation projects are identified, implemented, and adaptively managed through time. After the program Instrument is certified by the IRT the MRP can begin selling “credits” and implementing compensatory mitigation projects. Based on comments received during review by the IRT and the public, the proposed program elements and processes outlined in this Prospectus may be amended prior to submittal of the final program Instrument.

2.0 OBJECTIVES

Specific objectives of the MRP include:

- A. Provide high quality mitigation for unavoidable aquatic resource impacts on development sites that lack ecologically viable on-site options for mitigation.
- B. Create and maintain a roster of strategically selected and widely distributed sites that reflect a variety of habitat types, high potential for ecological ‘lift’, and valuable ecosystem services.
- C. Provide public benefit by applying mitigation resources toward the improvement of ecologically impaired publicly-owned natural areas.
- D. Leverage public and private assets to enhance ecological and economic value of publicly-owned natural capital.
- E. Utilize scale efficiencies by combining the impacts from individual smaller projects within a service area into mitigation at larger reserves with greater ecological value.
- F. More efficiently meet regulatory requirements by streamlining the compensatory mitigation process, thereby reducing conflict between conservation objectives and development interests.
- G. Develop an ecologically-based site selection process to identify the most appropriate off-site mitigation options that result in greater ecological benefit to a basin or watershed than could be achieved through on-site mitigation options that are impractical or of low ecological value.

- H. Base the mitigation receiving site selection process on the best available analyses and research for a particular basin or watershed.
- I. Procedurally decouple development projects from mitigation projects in order to put mitigation project planning and implementation into the hands of those with the appropriate experience and mandate to do so.
- J. Generate revenue to support ongoing development of public sector capabilities, innovations and expertise in conservation planning and project implementation.
- K. Promote an ecologically necessary complement to mitigation banking, which generally provide a narrower range of habitat located at single sites within expansive service areas.
- L. Provide an effective and transparent accounting structure for collecting in-lieu fees, disbursing project funds, and compliance reporting.
- M. Work in an efficient and transparent manner with the Interagency Review Team to implement mitigation projects and enact amendments to the program Instrument.

3.0 TERMINOLOGY

There are terms used in the mitigation banking industry and in-lieu fee programs that may have different meanings than their colloquial usage would suggest. There are also differences in the legal definitions used by King County and the federal agencies. For all terms not described below, the definitions used by the Regulatory Program of the U.S. Army Corps of Engineers and U.S. Environmental Protection Agency [33 CFR Parts 320-331; 40 CFR Part 230] are adopted by King County for the MRP.

- A. “Regulating agencies” or “agencies with regulatory authority”. For credit transactions through the MRP, each permitted impact and mitigation receiving project will have one or more agencies with jurisdiction. For all cases where mitigation will be required, King County will have regulatory authority under the Critical Areas Ordinance (CAO) (King County Code 21A.24). In most cases involving wetland impacts, the Ecology will also have authority as provided under RCW 90.48; this authority may extend to buffer impacts, as well. In many cases federal agencies may also have regulatory authority (e.g. the Corps, EPA, USFWS, NOAA, etc.). However, recent legal rulings have made determining federal jurisdiction over wetlands more difficult (e.g. *Rapanos v. United States* resulted in making determinations of Corps jurisdiction over wetlands more difficult). In cases where the Corps does have jurisdiction, authority will likely extend to buffers, too.

Given the complex regulatory climate, and the predicted variability of permitted impacts and mitigation receiving projects, determinations of which local, state, and federal agencies have jurisdiction (i.e. regulatory authority) will be made on a case-by-case basis.

- B. "Wetlands", "aquatic areas" and "aquatic resources". The King County CAO regulates all wetlands that meet Washington State Wetland Identification and Delineation Manual (1997) standards. These wetlands include isolated wetlands that may not be regulated by the Corps and EPA. The CAO defines wetlands as:

Wetland: an area that is not an aquatic area and that is inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances supports, a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of this definition: A. Where the vegetation has been removed or substantially altered, "wetland" is determined by the presence or evidence of hydric soil, by other documentation such as aerial photographs of the previous existence of wetland vegetation or by any other manner authorized in the wetland delineation manual required by RCW 36.70A.175; and B. Except for artificial features intentionally made for the purpose of mitigation, "wetland" does not include an artificial feature made from a non-wetland area, which may include, but is not limited to: 1. A surface water conveyance for drainage or irrigation; 2. A grass-lined swale; 3. A canal; 4. A flow control facility; 5. A wastewater treatment facility; 6. A farm pond; 7. A wetpond; 8. Landscape amenities; or 9. A wetland created after July 1, 1990, that was unintentionally made as a result of construction of a road, street or highway (K.C.C. 21A.06.1391).

The definition provided by the CAO includes that a wetland is not an 'aquatic area'. The CAO separately defines 'aquatic area' as:

Aquatic area: any non-wetland water feature including all shorelines of the state, rivers, streams, marine waters, inland bodies of open water including lakes and ponds, reservoirs and conveyance systems and impoundments of these features if any portion of the feature is formed from a stream or wetland and if any stream or wetland contributing flows is not created solely as a consequence of stormwater pond construction. "Aquatic area" does not include water features that are entirely artificially collected or conveyed storm or wastewater systems or entirely artificial channels, ponds, pools or other similar constructed water features (K.C.C. 21A.06.072C).

The CAO distinction between "aquatic areas" and "wetlands" is apt to create confusion with respect to how the Corps and EPA use these terms. To wit, federal agencies use the term "aquatic resources", and occasionally "aquatic areas", to generically include both jurisdictional wetlands and such features as rivers, streams, marine waters, open water areas, and reservoirs. To avoid this confusion, the Prospectus and the Instrument for the MRP will use the term "aquatic resources" as it is connoted in the Federal Rules, i.e. to refer to both CAO wetlands and CAO aquatic areas as "aquatic resources".

On a case-by-case basis, King County will consult with the Corps and Ecology to make the required jurisdictional determinations as to whether an aquatic resource in question is a water of the U.S and/or State, and to determine which agencies have jurisdiction.

- C. "Functional lift". Functional lift is the increase in aquatic resource functions provided by mitigation work and usually expressed as an incremental increase in the functional index.

- D. "Credits" and "debits". The MRP is based on a system of "credits" and "debits" which are determined using a functional index tool. Credit means a unit of measure (e.g. a functional or areal measure or other suitable metric) representing the accrual or attainment of aquatic functions at a compensatory mitigation site. The measure of aquatic resource functions is based on the resources restored, established, enhanced, or preserved. Debit means a unit of measure (e.g., a functional or areal measure or other suitable metric) representing the loss of aquatic resource functions at an impact or project site. The measure of aquatic resource functions is based on the resources impacted by the authorized activity.
- E. "Receiving site" and "sending site". The term "receiving site" refers to the area where the compensatory mitigation project will be constructed, or simply "mitigation site". In the context of the MRP, it refers to a site on the MRP Roster of available natural lands where mitigation will be constructed. The "sending site", on the other hand, refers to the area where aquatic resource impacts are incurred, sometimes called the "impact site".

4.0 HISTORY

The Mitigation Reserves Program began with the formation of an King County Interdepartmental Guidance Panel that was mandated to complete three primary tasks: identify publicly owned natural lands that could be used to satisfy permit applicants needs for "offsite" mitigation; create a Technical Guidance Manual to outline a structure for applying mitigation resources to those lands; and, develop an in-lieu fee calculation method. The panel, whose membership consists primarily of restoration ecologists, regulatory specialists, project managers and section leaders, has met periodically since early 2005 and has substantially completed its original mandate.

Responsibility for administering the program has been shared between the Department of Development and Environmental Services and the Water and Land Resources Division (WLRD) of the King County Department of Natural Resources and Parks. Design, construction, maintenance and monitoring of mitigation projects has been carried out by the former Capital Projects Section of WLRD (now the Ecological Restoration and Engineering Services Unit) and the Parks Resource Program in the King County Parks and Recreation Division. Historically, the pilot MRP has not fully operated as a true "in-lieu fee program"; unlike true in-lieu fee programs, the MRP has not fully decoupled the impact site from the mitigation site and King County only partially relieved project applicants of their obligations for mitigation in some cases.

With the publication of the new Federal Rules for compensatory mitigation [33 CFR Part 332 and 40 CFR Part 230] in 2008, King County proposed restructuring the MRP to be consistent with the guidelines for in-lieu fee programs. This restructuring has principally involved changing the way in which impacts and mitigation are assessed from an area-based ratio method to a functional assessment method using credits and debits. It has also required changes to the way in which the program financial account and ledger are managed, as well as improvements in transparency, interdepartmental communication, fee calculation methods and mitigation site selection, and increased coordination with the IRT.

5.0 PROGRAM OVERVIEW

The MRP provides project applicants a compensatory mitigation option within the traditional mitigation sequence. Specifically, the program provides an applicant the opportunity to pay a fee to King County in-lieu of completing mitigation on their own, after higher priorities in the mitigation sequence have been exhausted. The following overview of the MRP outlines the administrative structure of the MRP. Sections 7.0 through 26.0 outline the compensation planning framework within which decisions are made with respect to how much mitigation is required, where it will be performed, and how mitigation projects will be managed over time.

5.1 MITIGATION SEQUENCING

"Mitigation sequencing" refers to the order in which different mitigation actions are considered. The MRP becomes an option in the sequence only where it could be demonstrated that greater ecological benefit in the basin or watershed can be achieved, and on-site mitigation alternatives are impracticable or of low ecological value. In King County, the priority in the mitigation sequence is as follows:

1. Avoid impact by not taking a certain action;
2. Minimize the impact by:
 - a. Limiting the degree or magnitude of the action with appropriate technology;
 - b. Taking affirmative steps, such as project redesign, relocation or timing;
3. Rectify the impact to critical areas by repairing, rehabilitating or restoring the affected critical area or its buffer;
4. Minimize or eliminate the hazard by restoring or stabilizing the hazard area through engineered or other methods;
5. Reduce or eliminate the impact or hazard over time by preservation or maintenance operations during the life of the development proposal or alteration;
6. Compensate for the adverse impact by enhancing critical areas and their buffers or creating substitute critical areas and their buffers; and
7. Monitor the impact, hazard or success of required mitigation and taking remedial action. K.C.C.21A.24.125.

Once MRP is determined to be a viable option in the mitigation sequence, the project applicant gains the opportunity to pay a fee in-lieu of completing the off-site mitigation themselves. The fees are determined based on true-cost accounting methods and consider all costs associated with a mitigation project, including land costs and long-term stewardship. Fees are assessed in the

currency of 'credits' which are determined through the application of an IRT-approved mitigation assessment method.

Prior to the collection of fees, the development project will undergo a thorough review to ensure that the mitigation sequence is adequately reflected in the proposal, i.e. that impacts have been avoided to the extent practicable and that unavoidable impacts have been minimized. Further, the project reviewer will have worked with the applicant to ascertain whether high value onsite mitigation is possible, or whether mitigation banking or in-lieu fee programs should be preferred.

5.2 DETERMINATION OF DEBITS/CREDITS

At the beginning of the MRP process, the development's impacts to the aquatic resource and/or regulatory buffer will be assessed using an IRT-approved mitigation assessment method ("the tool"), that considers the existing condition of the aquatic resource and/or buffer relative to potential project effects. The result of this exercise is the quantification of 'units' of functional loss, or 'debits', associated with the project. Once the number of debits has been determined, then credits can be purchased from the MRP to offset the debits.

5.3 TYPES OF CREDITS

The MRP will offer mitigation credits for multiple types of aquatic resources, including but not limited to wetland credits, stream credits, and buffer credits (for wetland or stream buffers). For each type of credit sold, there will be one or more regulatory agencies with jurisdiction, which will be determined on a case-by-case basis. For example, for "isolated" wetlands, King County would have regulatory authority under the Critical Areas Ordinance, and Ecology would also have authority as provided under RCW 90.48. Again, determinations of which agencies have jurisdiction will be made on a case by case basis. The type of credits sold will be tracked carefully in the MRP Ledger (section 6.2) – both by aquatic resource type, and also by which regulatory agency(ies) have authority. When mitigation plans are developed to fulfill credits, the Corps and Ecology, as co-chairs of the IRT, shall make every effort possible to ensure relevant agencies are represented on the IRT.

5.4 CREDIT PRICING

Pricing of MRP credits will be formulated to reflect true-cost accounting, including consideration of costs associated with construction, post-construction near-term and long-term maintenance, program administration, and contingencies. Additionally, a "Land Cost Surcharge" will be added to the base credit cost. The amount of the surcharge will be based on an analysis of average cost of recent King County natural lands acquisitions within different areas and zoning categories. The base credit price will reflect average costs within each component of a mitigation project based on analysis of recent projects completed by KCDNRP. After development of the mitigation

assessment method, the method will be used to retroactively estimate “lift” (i.e. credits) resulting from completed projects. Project cost and lift data will be used to calculate base credit prices. A detailed account of credit pricing methodology will be provided in the program Instrument.

5.4.1 LAND COST SURCHARGE

The purpose of the Land Cost Surcharge is to ensure that mitigation 'rights' on publicly-owned land are not given away to private interests without reasonable compensation. As such, a land cost surcharge is applied to the base credit price. In a credit- and function-based in-lieu fee system, there will be cases in which it will be difficult or impossible to assess the actual cost of the publicly-owned area that will eventually be used for an MRP project, because the applicant and King County staff may be 'blind' to the mitigation receiving site when credit fees are collected, and in some cases receiving sites will be acquired after an impact occurs to meet a specific functional need not offered by sites already on the “Roster” (section 8.0).

It is necessary to devise a system for calculating the Land Cost Surcharge that is equitable for all applicants – whether or not a receiving site has been determined when the applicant buys credits. To meet this need, King County will base the surcharge on the estimated costs of acquiring new lands for receiving sites. Anticipated land cost will be estimated by determining average land costs per acre for each of four zoning categories in three geographic areas of the county using purchase prices for King County land acquisitions data for the most recent five-year period.

This average cost per acre will be multiplied at a 1:1 ratio by the acreage of the impact to determine the Land Cost Surcharge charged to the applicant.

For example, to determine the base Land Cost Surcharge for a 1.2 acre impact in the Rural Area of North King County, the following equation would be used:

$$(1.2 \text{ acre impact}) \times (\text{Avg. acquisition } \$/\text{acre for Rural, North area}) = \text{Base Land Cost Surcharge}$$

The Base Land Cost Surcharge will be marked up by approximately 6% to accommodate real estate transaction costs. There may also be an additional percentage markup to accommodate appreciation in land values during the period from when the impact occurs to when the mitigation project is implemented. Land cost acquisition data and any final mark-up percentages will be outlined in detail in the program Instrument.

This average land cost per acre will be updated annually to ensure average land costs used to determine the Land Cost Surcharge reflect current market conditions.

This strategy supports 'no net loss' policies in the context of both aquatic resource functions and aquatic resource area. This is because the impacted functions are replaced at a roster site using the credit fees to implement a mitigation project, while land area is replaced through future acquisition made possible by the Land Cost Surcharge.

Table 1 shows the categories for which average land costs per acre will be calculated.

Table 1. Land Cost Surcharge categories*

Acquisition Land Type	North King County	South King County	Vashon/Maury Islands
Ag	Avg. \$/acre to acquire Ag land in north KC	Avg. \$/acre to acquire Ag land in south KC	Not applicable
Forest	Avg. \$/acre to acquire Forest land in north KC	Avg. \$/acre to acquire Forest land in south KC	Not applicable
Rural	Avg. \$/acre to acquire Ag land in north KC	Avg. \$/acre to acquire Rural land in south KC	Avg. \$/acre to acquire Rural land on Vashon/Maury
Urban	Avg. \$/acre to acquire Ag land in north KC	Avg. \$/acre to acquire Urban land in south KC	Not applicable

**In the program Instrument, this table will include average costs by zoning type and geographic area based on most current available King County acquisitions data.*

6.0 PROGRAM ACCOUNT

The MRP program account is within an established, interest-bearing King County fund established solely for the use of the MRP. All of King County's cash – both receipts and disbursements, including fees collected through MRP – flows through Key Bank which is a member of the FDIC. The Mitigation Reserves program fund is auditable by the State of Washington and is used exclusively for the MRP. All interests and earnings accruing to the program account remain in the account for use by the MRP strictly for the purposes of providing compensatory mitigation. The program account funds are used for site selection, design, permitting, construction, maintenance, monitoring, adaptive management (contingencies), long-term management, program administration, and land acquisition.

6.1 DISBURSEMENT OF FUNDS FROM THE PROGRAM ACCOUNT

Once credit fees are collected, the funds will be organized to reflect the project planning and implementation process. The planning and implementation process includes a variety of tasks associated with planning, construction and maintenance of a compensatory mitigation project. These tasks are described in the Compensation Planning Framework, sections 7.0 – 26.0.

To facilitate transparency in the disbursement process and to assist project managers with budget tracking, a system of account numbers will be set up based on tasks and subtasks. Staff involved in the process will charge their time against these account numbers and task numbers depending on the task on which they are working. It should be noted that the Land Cost Surcharge funds and long term management funds are not included as available charge numbers since those funds are kept aside and used exclusively for acquisition of property and implementation of long term management (e.g. years 6-26). These are referred to as “reserve” funds, which will be available for the MRP manager to disburse as appropriate. It should also be noted that unused contingency funds will be transferred into long term management category at the end of the monitoring period.

6.2 LEDGER

King County will maintain a report ledger to account for all credit transactions. The ledger will be used to track credits that are sold as well as fulfillment credits that are released as mitigation projects achieve success standards.

King County will compile an annual ledger report for the District Engineer of the Seattle District, U.S. Army Corps of Engineers and the Department of Ecology that will include the beginning and ending balance of available credits, permitted impacts for each resource type, all additions and subtractions of credits, and any other changes in credit availability, e.g. additional credits released or if credit sales are suspended.

In addition to tracking credits by aquatic resource type, credits and debits will also be categorized by jurisdictional authority, i.e. whether an impact site or mitigation project was under local, state and/or federal jurisdiction as determined on a case-by-case basis (see section 5.3).

In addition to tracking Credit transactions, the Ledger will also track mitigation fees collected for each credit transaction and expenditures of those fees for all aspects of implementing mitigation receiving projects (e.g. administrative costs, design, permitting, construction, maintenance and monitoring, etc.).

Additionally, permit fees collected by DDES at impact sites will be tracked, although using a separate accounting system than the MRP Ledger. Despite the separate accounting system, the MRP Manager will have detailed information available at all times for all permit fees related to any specific compensatory mitigation project through the MRP.

6.3 ADVANCE CREDITS

Advance credit means any credits that are available for sale prior to being fulfilled in accordance with an approved mitigation project plan. As a function of the federal certification process, King County will request advance credits within each service area. Specific requests for each service area will be included with the program Instrument.

6.4 CREDIT FULFILLMENT SCHEDULE

For credit transactions involving agencies other than King County (e.g. the Corps and/or Ecology), a compensatory mitigation project plan will be submitted to and approved by the IRT, and the construction of the project will be initiated within three (3) growing seasons of the impact that generated the credit sale(s). The submittal of the mitigation plan to the IRT will include a credit release schedule. Generally, credit release will be requested to conform to the target schedule identified in the program Instrument.

In some cases, mitigation projects may require substantial baseline data collection in order to reduce risk of project failure. In these instances, the collection of data will generally occur within one year of the impact that generated the credit sale, but actual construction may not occur within three growing seasons. These cases would be limited to those which require multiple years of baseline data collection and would be contingent on Corps, Ecology, IRT, and/or DDES approval as appropriate.

Section 13.0 provides outlines the credit fulfillment process in greater detail.

6.5 OPERATING UNDER POSITIVE OR NEGATIVE LEDGER BALANCE

As performance standards are met and credits released by the IRT, advanced credits will be fulfilled and new projects funded through ongoing credit transactions. It is expected that in some instances, revenue generated by credit sales will fund projects that may end up exceeding the underlying compensatory requirement (i.e. instances where the functional tool documents a net gain or surplus of credits), resulting in a positive ledger balance. In other instances, unforeseen circumstances or challenging site conditions may result in underachievement of the compensatory requirement, resulting in a negative ledger balance, in which case the MRP will be obligated to offset the loss with surplus credits generated in the service area through other projects or utilize contingency funds and adaptive management measures. On balance, the goal of the MRP is to allocate program funds towards a 'neutral' program account, neither progressing significantly into the black or red on the ledger. At a minimum, however, a fund balance will be maintained to permit ongoing monitoring, maintenance and long term stewardship activities, as well as to implement any necessary contingency measures. No money shall be removed from the fund for any use other than the Mitigation Reserves Program.

COMPENSATION PLANNING FRAMEWORK

Sections 7.0 through 26.0 comprise the Compensation Planning Framework, which describes the process by which mitigation projects are implemented, including all steps involved in the mitigation process, from site identification, to project planning and implementation, to long-term maintenance and monitoring.

7.0 SERVICE AREAS

Service areas for the MRP correspond generally to Watershed Resource Inventory Areas (WRIAs) with the exception that WRIAs 7 and 8 are divided into subwatersheds. Maps of the service area boundaries are attached.

With the exception of the White River watershed in WRIA 10 and the Skykomish subwatershed in WRIA 7, the MRP roster includes numerous sites within each service area, ensuring that there will be an adequate number of roster sites from which to choose for mitigating impacts to particular aquatic resource types. Service areas are as follows:

- Snoqualmie River Watershed (WRIA 7)
- Skykomish River watershed (WRIA 7)
- Cedar River - Lake Washington Watershed (WRIA 8)
- Sammamish Watershed (WRIA 8)
- Green/Duwamish Watershed (WRIA 9)
- Central Puget Sound watershed (WRIA 8, 9)
- White River Watershed (WRIA 10)

Detailed descriptions and basis for each service area will be provided in the program Instrument. Additionally, information regarding important basins within some of the watersheds will also be provided, particularly for those basins that either convey exceptional resource values and/or are under intense pressure from development or other threats. For impacts within these basins, the site selection process will direct that mitigation sites should be selected within the same sub-basin if at all possible. Site selection will place the highest priority for locating the mitigation in the same sub-basin. These priority basins include: Snoqualmie River Upper Basin, Snoqualmie River Lower Basin, Tolt River, Raging River, Cedar River, May Creek, Sammamish River, Issaquah Creek, Bear Creek, East Lake Sammamish basin, Green River, Soos Creek, and Newaukum Creek.

8.0 MRP MITIGATION RECEIVING SITES

The King County MRP will maintain two lists of potential mitigation receiving sites: (1) the “Roster”: a list of sites that have been reviewed and do not have any known insurmountable barriers preventing use as a mitigation receiving site, and (2) a list of “Candidate Receiving Sites”. If no sites enrolled on the Roster provide suitable mitigation opportunities for a given impact, Candidate Receiving Sites will provide a pool of potential receiving sites that may offer an opportunity to implement better mitigation. The Roster and the list of Candidate Receiving Sites are described below. The best possible receiving site will be selected to meet mitigation needs.

8.1 ENROLLED ROSTER SITES (THE ROSTER)

A site is “enrolled” on the Roster when all of the following three conditions are met:

1. The site is owned in-fee by King County or permanently protected by a conservation easement or other similarly protective covenant or deed restriction to which King County is the grantee;
2. The site has been determined to be eligible to receive mitigation (i.e. there are no known restrictions related to funding sources or site location, zoning, deed restrictions, etc. A final review will need to occur prior to project implementation), and
3. The site has been determined to have restoration or enhancement potential or conservation values worthy of protecting (either through a formal planning process or based on professional judgment of resource management staff).

Just because a site is enrolled on the Roster doesn’t guarantee a mitigation project will occur at the site (although for mitigation through the MRP to occur at a receiving site, the site must be enrolled on the Roster).

8.1.1 KING COUNTY ROSTER SITES

King County Roster sites are properties meeting the criteria above to which King County owns the title in-fee or for which King County is the grantee of a conservation easement. Sites owned in-fee by King County that are not protected by a conservation easement will need to be protected with conservation easements prior to implementing mitigation.

Maps and lists of all King County Roster sites within each service area are attached to this prospectus.

The King County Roster sites range in size from less than an acre to several hundreds of acres and are relatively evenly distributed throughout the service areas, with the exception of the White River and Skykomish River Service Areas, which currently have very few roster sites. These

properties were selected from hundreds of county-owned properties based on their potential for ecological lift on the site, low-risk of project failure, and potential for the project to benefit ecological processes and functions in a watershed, i.e. to meet ecological needs and address limiting factors identified in watershed analyses and technical plans. These roster sites have also been screened to ensure the source of funds used to acquire the property (in fee or easement) allows use of the site to generate mitigation credit. Sites with existing conservation easements will not be available to generate credit through preservation as defined in the Federal Rule [33 CFR Part 332.3(h)] (see section 11.0).

Selection of roster sites occurred in the context of existing or potential natural resource values of the sites and the ability of the sites to improve “habitat limiting factors” identified in WRIA plans, wetland conservation goals and ongoing salmonid recovery efforts. It should be noted that most of the properties on the Roster were originally acquired by King County because of their significance as ecological and natural resource lands, many of which were subject to pressure from development.

Additional detail about the King County Roster sites will be included with the program instrument, including, when known, information such as HGM class, watershed position, and other attributes of importance in a watershed context.

8.1.2 NON-KING COUNTY-OWNED ROSTER SITES

Roster sites in this category are either privately-owned or owned by a tribe or public agency other than King County. Prior to enrollment onto the Roster, non-King County-owned sites will undergo extensive review, including an assessment of mitigation potential at the site, and an assessment of likelihood of long-term success and sustainability of mitigation projects that may be implemented.

Sites in this category must be protected by a conservation easement – either purchased using funds derived from Land Cost Surcharge, or received as a donation to King County (i.e. King County is the grantee of the conservation easement). As with the King County Roster sites, these sites will have significant “conservation values” worth protecting, whether or not the site is ever used as a mitigation receiving site. These conservation values may include attributes such as wetland features providing habitat, hydrologic, or water quality functions, providing open space connections, or other attributes considered by resource managers to be ecologically important in a watershed context.

There are currently no Non-King County-owned Roster sites.

8.1.3 ROSTER SITE SELECTION CRITERIA

Specific site selection criteria have been adopted for the MRP Roster to be consistent with the Federal Rules. In determining ecological suitability of a roster site as a mitigation receiving site, the MRP will consider the following:

- A. Watershed scale characteristics that are important to ecological processes and habitat structure and function, including forest cover, habitat connectivity and diversity, precipitation type/amount, surface storage type/amount (streams and wetlands), areas of recharge and storage, groundwater flow patterns (including discharge areas) and the degree of impairment to these characteristics;
- B. Hydrologic conditions, soil characteristics, and other physical and chemical characteristics;
- C. The size and location of the compensatory mitigation site relative to hydrologic sources (including availability of water rights) and other ecological features;
- D. Compatibility with adjacent land uses and watershed management plans;
- E. Reasonably foreseeable effects the compensatory mitigation project will have on ecologically important aquatic or terrestrial resources (e.g., shallow sub-tidal habitat, mature forests), cultural sites, or habitat for federally or state listed threatened or endangered species;
- F. Sites that can benefit from reversion to previous land uses (i.e. forestry, agriculture);
- G. The extent to which the site has potential to contribute to the protection or restoration of watershed processes;
- H. The potential of the site to accommodate a restoration or enhancement project that will succeed in the watershed and ecosystem setting;
- I. Other relevant factors including but not limited to:
 1. Development trends;
 2. Anticipated land use changes;
 3. Habitat status and trends;
 4. The relative locations of the impact and mitigation sites in the stream network;
 5. Local or regional goals for the restoration or protection of particular habitat types or functions (e.g., re-establishment of habitat corridors or habitat for species of concern);
 6. Water quality goals;
 7. Floodplain management goals; and,

8. The relative potential for chemical contamination of the aquatic resources.

The MRP roster sites are selected for inclusion on the Roster pursuant to the above criteria. Selecting an actual site on which to perform a mitigation project considers the same (aforementioned) criteria and further considers the conditions that generated the mitigation need, such as the HGM class of the impact site, landscape position, elevation, ecosystem setting and functional condition. The process of selecting a preferred site on which to fulfill credit sales is initiated by the MRP manager and described below in section 9.0.

8.2 CANDIDATE RECEIVING SITES

Note: for this section, the term “landowner” could refer to an individual, tribe, government, or any other entity that owns the fee to a potential receiving site.

Many properties across King County will meet Candidate Receiving Site criteria outlined below. Candidate Receiving Sites are not yet enrolled on the Roster, so prior to implementing a mitigation project on one of the Candidate Sites, the site will need to be officially enrolled on the Roster according to the guidelines established in section 9.3.1 below. To be added to the list of Candidate Sites, landowners will need to “pre-enroll” by following the steps outlined in section 8.2.2.

There are several reasons to maintain a list of Candidate Sites:

- Since there is no way to predict exactly where impacts will occur, the pool of Candidate Receiving Sites can offer additional mitigation options to meet specific functional, HGM class, or geographic mitigation needs. For example, many sites on the King County Roster are associated with rivers and streams. The list of Candidate Sites could incorporate potential receiving sites in other HGM classes, e.g. slope or depressional wetlands in upper watershed strata;
- This category provides a “waiting room” for sites with high potential as a receiving site without requiring upfront site protection with a conservation easement. In other words the administrative duties associated with enrolling a site on the Roster (namely negotiating the conservation easement) can be put on hold until the site is determined to be a good match as a receiving site for one or more impacts;
- Offering to purchase conservation easements from private residents, tribes, or other agencies can provide an incentive for landowners to protect lands with high conservation value.

8.2.1 CRITERIA FOR BECOMING A CANDIDATE SITE

Candidate Sites can be publicly-owned, owned by a tribe, or privately-owned. For privately-owned sites, additional criteria apply, as outlined in section 9.4

All Candidate Sites must meet eligibility requirements to ensure time and resources devoted to identifying privately-owned receiving sites are directed towards private lands with significant potential to provide mitigation opportunities that are of ecological importance in a watershed context.

To be listed as Candidate Receiving Site, the site must:

- **Contain Critical Areas** as defined in KCC 21A.24. The intent is to enroll properties with potential for restoration and enhancement that will provide important long-term environmental benefits associated with protecting and enhancing a critical area. There may be cases in when sites without Critical Areas are enrolled onto the list of Candidate Sites, e.g. sites containing critical area buffers, or sites which no longer function as critical areas but could if restored.
- **Exhibit some measure of degradation from pristine conditions** and the potential for ecological improvement as a result of restoration or enhancement of the critical area resources. This shall be determined according to best professional judgment of qualified natural resources professional. There must be habitat that would benefit from restoration or enhancement. However, properties in pristine condition under threat of development could be protected with a conservation easement to generate preservation credit according the [33 CFR Part 332.3(h)] (see section 11.0).
- **Accommodate project implementation.** The restoration site must be situated such that a restoration project could be completed with a minimum of collateral environmental damage, and at a reasonable cost.

To reduce the risk associated with projects on private property, priority consideration shall be given to private lands with landowners who:

- **Exhibit ownership stability.** The degree of ownership stability shall be determined through discussions with the landowner; information used to determine ownership stability should include, but not be limited to, duration of residence at the property, intent to live at the property or retain ownership for at least five years, and the landowner's intended use of the property;
- **Commitment to Stewardship.** Participation in stewardship programs, e.g. Public Benefit Rating System, Transfer of Development Rights Program, other Current Use Taxation programs, forest stewardship plans, King Conservation District Farm plans, etc.

Sites meeting these criteria are eligible to pre-enroll as Candidate Receiving Sites prior to an impact occurring; or, private lands can be added to the list of Candidate Sites after an impact occurs if a particular property appears to have promising mitigation opportunities to mitigate for a specific impact.

These eligibility criteria for Candidate Sites will be reviewed periodically and may be adjusted as necessary by the King County CAO Policy Group.

8.2.2 PRE-ENROLLMENT OF CANDIDATE SITES

If a site meets the criteria outlined above, a landowner can choose to “pre-enroll” their property on the list of Candidate Receiving Sites. Pre-enrolled Candidate Sites will be considered as potential mitigation receiving sites during the mitigation site selection process (section 9.0).

This pre-enrollment process is necessary to increase confidence that Candidate Sites are likely to be available as a receiving site.

Willing landowners with properties meeting Candidate Site criteria may complete pre-enrollment steps at any time; it is not imperative that an impact requiring mitigation has occurred.

In some cases, King County may identify a particular private parcel or group of privately-owned parcels with high potential as mitigation receiving sites for an anticipated mitigation need, or that appear to meet criteria for meeting an existing mitigation need related to a permitted impact. In these cases, King County may contact individual property owners to encourage pre-enrollment as a Candidate Site. In cases where landowners will be contacted to determine if they are interested in enrolling their site on the list of Candidate Sites, King County DDES will coordinate contact with the landowner.

Pre-Enrollment Checklist

To pre-enroll as a Candidate Site, a landowner must complete a “Pre-enrollment Checklist for Candidate Receiving Sites”. The intent of this checklist is to ensure the site meets the basic Candidate site criteria (section 8.2.1) and the landowner fully understands the program and is willing to agree to the terms of the MRP project implementation, and long-term maintenance and monitoring on the property. This checklist will also provide information about geographic and ecological attributes of the property and landowner contact information. A copy of the checklist will be included with the program Instrument.

Even though a site is on the list of Candidate Receiving Sites, King County is under no obligation to assign a mitigation receiving site project, nor is the owner of the site obligated to accept a proposed project.

9.0 MITIGATION SITE SELECTION PROCESS

9.1 CREDIT ALLOCATION TEAM

The mitigation site selection process will be initiated by a Credit Allocation Team (CAT) that will meet as needed based on the volume of credits sales transacted in a given period.

Meetings of the CAT will be facilitated by the MRP Manager. Membership of the CAT will consist of the following:

- MRP Manager, WLRD
- Technical Advisor to MRP Manager (Sr. Ecologist from the Scientific and Technical Support Section of WLRD)
- Critical Areas Section Supervisor or appointed representative, DDES
- A basin steward from WLRD
- A land manager from the KC Parks and Recreation Division
- Representatives from pre-qualified ‘implementation groups’

The MRP Manager is the central point of contact for the MRP and responsible for administering day to day operations of the program. The MRP Manager’s technical advisor will support the MRP manager by reviewing the work products and technical information provided by the implementation groups.

In addition to scientific review provided by the technical advisor, there preferred sites identified by the CAT will be reviewed by a qualified restoration ecologist/engineer to assess site opportunities and feasibility of project implementation.

9.2 CHOOSING THE BEST SITE FROM THE ROSTER

The CAT shall first consider sites enrolled on the Roster, and then if necessary, consider Candidate Receiving Sites (see section 9.3).

In order to identify the best possible roster sites to mitigate a given impact, site selection criteria will require a spatial hierarchical approach that balances landscape position, ecosystem setting, and geographic proximity with basin and watershed priorities. Through this approach, a receiving site in the service area will be selected from the Roster based on

- 1) **Proximity** of the receiving site to the impact area

2) **Opportunities for lift** within the same landscape setting, HGM class, aquatic resource type and/or terrestrial community type, and other factors, such as those used to identify Roster sites (see section 8.1.3).

If the nearest sites do not provide the necessary functional lift, then the site selection process will expand outward, not to exceed the service area boundary, until several possible sites are found. Other site selection criteria, including the opportunity to provide greater watershed-based benefits with out-of-kind or novel mitigation types, will be superimposed on this process.

Resources that will be consulted to facilitate an effective site selection process include:

- Salmon Conservation Plans
- King County Basin Plans
- King County Flood Hazard Management Plan (2006)
- Ecoregion Assessments: Willamette Valley, Puget Trough, Georgia Basin (Nature Conservancy, 2008)
- King County Greenprint Maps
- Staff resources: King County Basin Stewards and WRIA teams

The first task that will be included in the scope for an implementing group will be to narrow the list of available Roster sites using the roster site map, database, site selection criteria, and above listed resources. When two or three promising sites have emerged, an ecologist will perform limited site reconnaissance to identify a ‘preferred’ site. The reconnaissance will include rating the aquatic resource using HGM criteria and the Wetland Rating System for Western Washington (2004) as appropriate. The initial site reconnaissance will also include:

- Collection of site specific information that will be used to create a conceptual project plan
- Application of an IRT-approved mitigation assessment tool based on existing conditions
- Coarse assessment of whether existing conditions are conducive to generating the necessary number of credits.

9.3 CHOOSING A CANDIDATE RECEIVING SITE

When none of the sites enrolled on the Roster meet site selection criteria outlined above, the Credit Allocation Team will review the list of Candidate Receiving Sites for a suitable receiving site according to the same criteria used for Roster sites.

If the preferred site is a Candidate Site in public or tribal ownership, negotiations for enrolling the site on the Roster should be made on a case-by-case basis with the tribe or public agency in question.

Even though a site is pre-enrolled as a Candidate Site, King County is under no obligation to assign a receiving project, nor is the owner of the enrolled site obligated to accept a proposed project, and some Candidate sites may never be enrolled onto the Roster.

In most cases, Candidate Site will only be enrolled onto the Roster after the Candidate Site has been identified as a preferred receiving site by the Credit Allocation Team during the site selection process. Exceptions could be made in cases where the Candidate Site is determined by resource managers to have conservation values worth protecting even if a mitigation project never occurs, or if the protecting the property generates preservation credit worth more than the cost of acquiring the conservation easement.

9.3.1 ENROLLING A CANDIDATE SITE ONTO THE ROSTER

If the Credit Allocation Team identifies a Candidate Site as the preferred receiving site, moving the site from Candidate status to the Roster will entail the following steps.

Preliminary Design Discussion

If a Candidate Site landowner has completed the Pre-enrollment Checklist, and the site is determined to provide an opportunity for ecologically-appropriate mitigation, King County will visit the site with the landowner to discuss design ideas for the site. This discussion will identify the possible range of project types and sizes of the mitigation project to set clear expectations for the landowner about the project; it will also provide an opportunity for the King County project manager to scope potential projects.

The King County staff member on the site visit will keep detailed notes about the project ideas discussed to ensure future design decisions are congruent with discussions in the field.

Landowner Signs Letter of Intent

After discussing and reviewing preliminary design ideas, the landowner can formally agree to allow design, construction, and post-project monitoring of a mitigation receiving project on their property by signing a Letter of Intent. This letter will assure King County that the property owner intends to allow use of their land as a mitigation receiving site, and will comply with the needs of the MRP to fulfill credits on their site according to the guidelines established in the preliminary design discussion. An example Letter of Intent will be included with the program Instrument.

After receiving a signed Letter of Intent, King County DDES will lead a process to work with the landowner to complete final necessary steps prior to signing a conservation easement and starting construction of the project. At minimum, these steps will include:

1. Title review;

2. If deemed necessary following title review, subordination of existing liens or mortgages on the property to place King County, as the Grantee of the easement, in first-lien position;
3. Final conservation easement negotiations;
4. Appraisal to determine value of conservation easement;

Site Protection with a Conservation Easement

Conservation easements placed on mitigation receiving sites will grant King County the right to construct a mitigation project on the land, access the mitigation site for maintenance and monitoring, and to enforce the terms of the easement in perpetuity. Each easement will be negotiated individually based on specific attributes of the property, but there will be a template easement to use as a starting point included with the program Instrument, and this template will be made available to landowners upon request.

Lands that are already encumbered with conservation easements may also be eligible to receive mitigation projects. In these cases, the existing easements will be reviewed to ensure they are consistent with the provisions of the model conservation easement used by the MRP. If they are not, the landowner and King County will negotiate changes to the existing conservation easement to incorporate any additional protections and allowances required for the site to conform to MRP receiving site criteria.

In the event that a landowner enrolls on the Roster by granting a conservation easement to King County and subsequently intentionally or unintentionally fails to abide by the terms of the conservation easement resulting in compromised functions of the applied mitigation, DDES may take any or all of the following actions:

- require the landowner to pay for restoration and/or enhancement necessary to return the site to conditions that meet the original mitigation project performance requirements and the terms of the conservation easement,
- file a civil suit against the landowner for failure to meet the terms of the conservation easement.

Following the signing and recording of the conservation easement, the MRP manager will coordinate initiation of project design and construction according to the steps in section 13.0, Credit Fulfillment.

Payment to Landowner

At the time the landowner grants the conservation easement to King County (when the signed and notarized easement is recorded at the King County Recorder's Office), King County will pay the landowner for the easement using funds collected through the Land Cost Surcharge from previous

credit sales in the service area. The amount of compensation will be based on a percentage of the appraised value of the underlying parcel; appraisals will also be paid for using funds collected through the Land Cost Surcharge. In cases where an existing easement needs to be modified, additional compensation may be provided to the landowner, especially in cases where the new easement restricts land uses that would have been allowed under the old easement, or grants access not accommodated in the original easement. In many cases, private landowners who accept a mitigation project and easement on their property will also be able to reduce their property tax liability by enrolling in one of King County's Current Use Taxation programs.

King County reserves the right to limit the percentage of available Land Cost Surcharge funds that can be used to enroll Candidate Sites onto the Roster prior to identification of a Candidate Site as a preferred receiving site.

Once a Candidate Site is enrolled onto the Roster, all other aspects of the mitigation planning and implementation process involving Candidate Sites are identical to the process for King County and Non-King County-owned Roster sites, i.e. King County is responsible for site selection, planning, construction, maintenance, monitoring, and adaptive management and long-term stewardship.

9.4 MITIGATION ON PRIVATELY-OWNED RECEIVING SITES

In cases where publicly-owned Candidate or Roster sites and privately-owned Candidate or Roster sites would provide equally suitable mitigation opportunities, the site selection decisions will be made on a case-by-case basis. Criteria used to guide these decisions will be outlined in detail in the program Instrument.

In many cases, private properties will be pre-enrolled on the list of Candidate Receiving Sites prior to identification of a specific mitigation need that could be fulfilled at the site. If the CAT identifies a privately-owned pre-enrolled Candidate Site as a preferred receiving site, the site will then be enrolled onto the Roster prior to initiating a mitigation project.

If a privately-owned property that is not pre-enrolled as a Candidate Site appears to meet a specific mitigation need related to a permitted impact, the process to enroll the site onto the Roster will be expedited to the maximum extent practical.

For mitigation projects on a privately-owned receiving sites, staff from King County DDES and WLRD will share responsibility for the recruitment, enrollment, mitigation project implementation, maintenance, and monitoring of projects. Specifically, the roles that each Agency is responsible for are as follows:

- DDES and WLRD will jointly coordinate identification and recruitment of particular private properties with potential to meet mitigation needs onto the list of Candidate Sites; contact with landowners will primarily be the responsibility of DDES;

- DDES and DNRP, as members of the CAT will determine if and when a privately-owned candidate site should be considered as a receiving site during the site selection process;
- DDES will be responsible for the actual enrollment of private land from the list of Candidate Sites onto the Roster, which includes negotiating the terms of a conservation easement with the landowner; all restoration work on private property will occur within designated critical areas per the King County CAO, or areas that, through restoration will become critical areas. To ensure mitigation projects continue to meet ecological requirements to mitigate for the permitted impacts, the terms of the easement will incorporate a requirement for prior approval by DDES and the implementing WLRD design/build team before a property owner performs any “allowed alterations” as defined in KCC 21A.24.045. This aligns DDES’s CAO code enforcement on private property with the long-term monitoring of conservation easements on private property.
- WLRD will review the terms of the easement before it is signed and recorded. WLRD – via the MRP Manager – will be responsible for ordering an appraisal that establishes the price of the conservation easement, and compensating the landowner for the conservation easement conveyed to the County;
- WLRD will design mitigation projects to be constructed on private property. DDES will work with landowners and WLRD design staff to ensure project plans will generally follow guidelines established during the preliminary design discussion, and outlined in the Letter of Intent;
- WLRD will be responsible for the construction of mitigation projects on the private property;
- WLRD will be responsible for short term maintenance and monitoring of the private property (e.g. 3-5 years) provided that the landowner has not altered the site in a manner inconsistent with the terms of the conservation easement; if the landowner has violated the terms of the easement, DDES shall be responsible for ensuring the landowner takes corrective action and DDES shall assume monitoring duties until the situation is corrected;
- DDES will be responsible for longer term monitoring of the private property to be consistent with the CAO (i.e. DDES current ongoing CAO code enforcement) in conjunction with the terms of the MRP conservation easement.

The practice of allowing mitigation to occur on private lands will be analyzed annually, and if this aspect of the program becomes problematic, the King County CAO policy group can decide to discontinue allowing private lands as mitigation receiving sites.

9.4.1 DETERMINATION OF CREDITS

When calculating ecological lift on privately-owned sites, the estimate of project 'risk' will be increased; this will reduce the number of potential credits that can be generated. This accounts for the inherently higher risk associated with a mitigation project implemented on private property than on publicly-owned land. Publicly-owned land is in the "public eye" and can be monitored more frequently, whether by King County staff, or the general public. Also, private property frequently changes hands and new owners have different understandings and expectations than the previous owners. As such, it is appropriate to increase the assessment of risk for projects on private sites through application of the IRT-approved mitigation assessment tool. The amount assessed for increased risk will be dependent on the particular circumstances involved and the judgment of the reviewer applying the mitigation assessment tool.

10.0 IMPLEMENTATION GROUPS

The four groups currently pre-qualified to implement mitigation projects in accordance with MRP standards (hereafter 'implementing groups') include: the Ecological Restoration and Engineering Services Unit (ERESU) and the River and Floodplain Management Section (RFMS), both in the Water and Land Resources Division; the Parks Resource Program (PRP) in the KC Parks and Recreation Division; and the Engineering Services Section (ESS) of the Roads Services Division. Each of these programs has proven success in completing state-of-the-art conservation projects and has substantial experience in local, state and federal permitting processes.

The MRP Manager is the 'client' in a consulting services model that will be used to facilitate project implementation. The MRP Manager will outline scope, budget and schedule expectations for the implementation groups, who are the 'consultant' in the model, and will assign work according to their expertise, availability, and potential scale or location efficiencies.

11.0 PRESERVATION AS A MITIGATION STRATEGY

Preservation of high value aquatic resources that are "under threat of destruction or adverse modifications" [33 CFR Part 332.3(h)], i.e. conversion to residential development, commercial development, silvicultural forest practices, or other activity that would significantly alter ecosystem functions and values, may be used as a compensatory mitigation strategy by the MRP. In general, these lands must be determined to be consistent with the preservation criteria in the Federal Rules [33 CFR Part 332.3(h)] and must meet the above referenced site selection criteria for MRP roster site selection. In cases where preservation is proposed, project planning and implementation funds from the credit sale may be used to secure the property to be preserved, in addition to funds collected through the Land Cost Surcharge for that credit sale.

To the extent appropriate and practicable, preservation shall be done in conjunction with aquatic resource restoration, establishment, and/or enhancement activities. In such cases, an IRT-

approved mitigation assessment method will be used to assess existing conditions relative to the potential effects of conversion of the aquatic resources and adjacent terrestrial areas that support them (if present).

When assessing preservation and establishing the 'lift' – credits that may be provided as determined through application of the mitigation assessment method – the “with mitigation” assessment shall consider the potential of the assessment area to perform current functions in the long-term, considering the protection mechanism proposed, and the “without preservation” assessment shall evaluate the assessment area’s functions considering the extent and likelihood of what activities would occur if it were not preserved, the temporary or permanent effects of those activities, and the protection provided by existing easements, restrictive covenants, or state, federal, and local rules, ordinances and regulations. The gain in ecological value will be determined by the difference between the “with mitigation” score and “without preservation” score multiplied by any preservation adjustment factor(s) included in the mitigation assessment methodology. The ecological value related to quantifying preservation credit derived should include the following considerations:

- A. The extent to which proposed management activities within the preserve area promote natural ecological conditions such as exclusion of invasive exotic species.
- B. The ecological and hydrological relationship between wetlands, aquatic areas, and uplands to be preserved.
- C. The scarcity of the habitat provided by the proposed preservation area and the degree to which listed species use the area.
- D. The proximity of the area to be preserved to areas of national, state, or regional ecological significance, such as national or state parks, Shorelines of Statewide Significance, and other regionally significant ecological resources or habitats, such as lands acquired or to be acquired through governmental or non-profit land acquisition programs for environmental conservation, and whether the areas to be preserved include corridors between these habitats.
- E. Specific ecosystem services or processes that are provided by the preservation area and their value.

Many of the sites on the Roster are already owned by King County, and some sites have conservation easements in place. In cases when there is an existing easement over the property, credits cannot be derived through preservation; i.e. sites with existing conservation easements cannot generate credits through preservation as defined in the Federal Rule [33 CFR Part 332.3(h)]. Preservation as a mitigation strategy will be implemented in cases where new roster sites are acquired to prevent adverse modifications related to likely future development; to the maximum extent possible preserved sites should also be utilized to achieve credits through ecological restoration or enhancement.

12.0 MRP DATABASE

The MRP database will support accounting functions, map production, compliance reporting, and efficient program implementation across King County departments. The database will include information about roster sites and any related credit fulfillment projects that have been undertaken on them. Information about impact sites that has been recorded during application of the mitigation assessment tool will also be tracked in the database. While the MRP requires 'decoupling' of impact sites from receiving sites, the database will nonetheless allow King County to analyze information about the nature and type of impacts by service area and compare it to the nature and type of mitigation performed.

Tracking impacts (and impact site attributes) and mitigation receiving sites (including mitigation project information) in the same database will facilitate analysis of impacts and mitigation within Service Areas to ensure adequate and appropriate mitigation is implemented for impacts in each Service Area. For both impact sites and receiving sites, the database includes fields for site location, Watershed Resource Inventory Area (WRIA), service area, habitat types, HGM class, Cowardin class, environmental functions, and opportunities for lift. The database will be regularly updated as additional sites are identified and are determined to be suitable according to program criteria.

The database will also include fields that identify restoration and enhancement projects that have occurred on roster sites in the past, or which are anticipated to occur outside of the MRP in the future. The purpose for including this information in the database is to identify potential scale efficiencies and partnerships that may be achieved by aligning funding, planning and construction resources. It is also to avoid conflicts between MRP activities and activities being undertaken by other programs that may have different objectives, and to clearly delineate project actions that are providing mitigation credit, and those being undertaken for purposes other than mitigation. The projects occurring on the roster sites outside of the MRP will generally fall into three categories:

- A. Known/prioritized habitat enhancement need, as identified within a WLRD study or the Parks Site Management Guidelines for King County Public Lands. This category captures public lands sites that have a known generalized restoration/enhancement need, though a specific restoration or enhancement project has yet to be developed.
- B. Proposed or ongoing multi-phased, large scale restoration project, as identified within Water and Land Resources Division (WLRD) capital improvement projects budget.
- C. Proposed, or ongoing multi-phased, small scale restoration or enhancement projects, as included within WLRD's Small Habitat Restoration Program (SHRP) annual project list or River and Floodplain Management Section annual project list, as long as additional mitigation would not inhibit these projects from achieving their primary goal of reducing flood hazards.

The program instrument will include sample reports from the database to demonstrate how the database will be used to track impact sites, Roster sites, and mitigation projects, as well as

examples of how it can be used to ensure mitigation needs are being met through time within each service area.

13.0 CREDIT FULFILLMENT

Credit fulfillment refers to the process by which actual mitigation projects are planned and constructed to offset credits that have been sold. The fulfillment process will generally follow the following sequence:

- A. Receiving site assessment and selection (by the Credit Allocation Team)
 1. Review mitigation needs based on type and location of impacts
 2. Select a 'preferred' mitigation receiving site according to process outlined in section 9.0 above.
 3. Submit preferred site to IRT for review, including information about other restoration or mitigation activities in the vicinity of the preferred site to ensure the area proposed for mitigation is clearly defined and distinct from other projects and land-uses at the site.
 4. Pending IRT approval to proceed, the design team from the implementation group will develop conceptual mitigation project plan and cost estimate, and plans will be reviewed and approved by a qualified restoration ecologist/engineer.
 5. Apply IRT-approved mitigation assessment tool to establish credit equivalency
- B. Design team staff will begin data collection and validation of assumptions to confirm suitability of preferred mitigation receiving site.
- C. Final project plans (to be completed by a design team staff member in consultation with the MRP Manager).
 1. Identify project goals and objectives, as well as preliminary performance measures and goals.
 2. Develop plans and specifications, including identification of necessary local, state, and federal permits for proposed project
 3. Present plans to IRT for review and amendments as necessary
 4. Outline credit release schedule
 5. Develop maintenance and monitoring plan with specific performance standards
 6. Develop adaptive management and contingencies plan
- D. Develop site protection instrument and long term stewardship plan

- E. Final IRT approval project plans and site protection instrument.
- F. Implement approved plans

Each step in the fulfillment process will be described in detail in the program instrument.

14.0 MITIGATION ASSESSMENT METHOD

During the initial and follow-up site visits to the preferred roster site for a given project, the King County regulatory reviewer will use an Inter-Agency Review Team-approved mitigation assessment method tool (“the tool”) to document existing conditions as well as potential lift associated with a conceptual project plan. The use of the tool is the critical step needed to establish the equivalency of credits and debits for a given project.

The tool will be designed to assess impact and mitigation, including the preservation, enhancement, restoration, and creation of wetlands, and it will provide a framework for standardized wetland assessment across community type and assessment area. The tool is currently being developed through a collaborative process including scientists and policy staff from King County, The Washington State Department of Ecology, and the US Army Corps of Engineers.

An IRT-approved tool will be included as an exhibit with the final program Instrument.

15.0 MITIGATION SITE MAINTENANCE

As necessary, project design staff will coordinate with land managers, noxious weed control program staff, ecologists, engineers, geotechnical staff, custodial agents, and maintenance personnel to outline maintenance protocols for the project. Active maintenance practices will generally follow a three (3) to five (5) or possibly 10 year program that may include repair/replacement of engineered structures, nuisance species control, and adaptive management measures, such as grade or hydrology modifications, species substitutions, replanting, replacement of habitat features, and temporary fencing. Projects requiring phased installation may specify maintenance and monitoring measures that promote the phased approach. Due to the variability of projects at mitigation receiving sites, implementation and maintenance plans for each mitigation project will be developed on a case-by-case basis (and reviewed and approved by the IRT). Site maintenance beyond the project performance period will be performed by the property owner.

16.0 ECOLOGICAL PERFORMANCE STANDARDS

Performance standards are observable or measurable physical (including hydrological), chemical and/or biological attributes that are used to determine if a compensatory mitigation project meets

its objectives. Performance standards included in MRP project plans submitted to the IRT will relate to the objectives of the compensatory mitigation project, so that the project can be evaluated to determine if it is developing into the desired resource type, providing the expected functions, and generating the anticipated functional lift.

Performance standards will be based on attributes that are measurable. Ecological performance standards will be based on the best available science that can be measured or assessed in a practicable manner. Performance standards may be based on variables or measures of functional capacity described in the mitigation assessment method, measurements of hydrology or other aquatic resource characteristics, and/or comparisons to reference aquatic resources of similar type and landscape position.

Reference sites may be used to develop performance standards for mitigation sites. Performance standards based on measurements of hydrology will take into consideration the hydrologic variability exhibited by reference aquatic resources, especially wetlands. Performance standards will take into account the expected stages of the aquatic resource development process, in order to allow early identification of potential problems and appropriate adaptive management.

While specific performance standards will depend in large part on the type, scale and scope of a proposed project (and will vary from site to site accordingly), King County MRP will propose general guidelines for performance standards in the program Instrument.

17.0 MONITORING

Monitoring will require qualitative and quantitative assessments of physical, chemical and biological characteristics of the project as appropriate, using appropriate analytical methods. The purpose of monitoring is to determine the level of compliance with established ecological performance standards specified in the approved plan, which are intended to measure whether the requisite ecological 'lift' is being created. The purpose of monitoring is also to identify problems requiring remedial action or adaptive management measures.

Monitored parameters will depend in large part on the type, scale and scope of a proposed project, but will generally include hydrologic conditions, vegetative cover, wildlife usage, soil stability, and presence/extent of noxious weeds and nuisance species.

Monitoring specifications will vary from receiving site to receiving site; general guidelines will be outlined in detail in the program Instrument.

18.0 ADAPTIVE MANAGEMENT AND CONTINGENCIES PLANNING

When fulfillment projects have been installed, they will be adaptively managed in response to the outcome of regular and routine maintenance and monitoring events. Should any monitoring report reveal the mitigation has failed in whole or in part, and should that failure be beyond the

scope of routine maintenance, a Contingency Plan will be submitted to the IRT by the MRP Manager. The Contingency Plan may range in complexity from a list of plants substituted, to cross-sections of proposed engineered structures. Once approved by the IRT, it may be implemented, and will replace the approved mitigation plan. If the failure is substantial, King County will, in consultation with the IRT, evaluate whether the maintenance and monitoring period for that project should be extended or alternate contingency measures implemented.

19.0 SITE PROTECTION INSTRUMENT AND LONG-TERM STEWARDSHIP

Following the project performance period, mitigation projects will be managed in accordance with long-term stewardship guidelines. MRP credit pricing will reflect costs associated with long-term management of mitigation sites. In addition to long-term monitoring and management provided by MRP, it should be noted that King County intends to protect ecological and natural resource lands in perpetuity as a consequence of the terms of their acquisition. Further, active land management for ecological and resource values are practiced on these lands pursuant to the Programmatic Plan for Management of King County-owned Ecological Lands (January 2004).

For projects on private lands, a conservation easement will be granted to King County. The easement will grant King County access for monitoring and enforcement, and stipulate long term protection obligations. An example conservation easement will be included with the program Instrument.

20.0 INTER-AGENCY REVIEW TEAM INVOLVEMENT

At multiple points in the process, the IRT will review and approve proposed mitigation processes and plans. Though the process may differ slightly for each mitigation project, at minimum, the IRT will:

1. Review and approve permitted impacts for which the Corps and Ecology, or other state/federal regulating agencies have authority, and the appropriateness of in-lieu-fee mitigation;
2. Review and approve “preferred receiving site” identified by the CAT; and
3. Review and approve proposed mitigation plans.

After these review and approval steps, King County will develop Final Construction Plans, Maintenance and Monitoring Plans, and credit release schedules and submit these to the IRT to be approved as amendments to the Instrument. The MRP manager, who will be the single point of contact for the IRT, will convey any requests for additional information and/or corrections from the IRT back to the appropriate implementation group representative after submittal.

21.0 IMPLEMENTATION OF APPROVED PLANS

Once the IRT has approved a project plan and credit release schedule, the assigned implementing group will initiate implementation of the mitigation project. In some instances, project work may be bid to private contractors, in which case the bidding process would occur in accordance with King County contracting rules and the design team will oversee contract development and perform construction management and oversight. The construction process will include routine inspections, special inspections, pre-construction site review meetings, post-construction meetings, and compliance reporting as necessary.

22.0 MRP INTERACTION WITH OTHER JURISDICTIONS

At times it may be preferable to work in partnership with other jurisdictions to implement the best mitigation. There will be three basic scenarios for mitigation involving other jurisdictions:

1. The impacts occur in unincorporated King County and are mitigated in another jurisdiction;
2. The impacts occur in another jurisdiction (incorporated city or another county), and the impacts are mitigated in unincorporated KC;
3. A jurisdiction chooses to use the KC MRP in cases where the impact and mitigation site are both within another jurisdiction.

The choice (or need) to mitigate an impact across jurisdictional lines should be approached on a case-by-case basis to determine feasibility and suitability, and all such agreements will be subject to approval of the IRT and other regulating agencies. Basic considerations and policy guidance are outlined below for each scenario.

Impacts in King County, mitigation in another jurisdiction

Process for mitigating an impact within King County in another jurisdiction:

1. Review available sites enrolled on KC Roster, as well Candidate Receiving Sites in unincorporated King County;
2. If a suitable option exists in King County, pursue that option;
3. If sites within another jurisdiction appear to be preferable, initiate discussions with the other jurisdiction and the IRT;
4. If the other jurisdiction is amenable to receiving a mitigation project, then the following steps (at minimum) should be taken :
 - a. Review jurisdictional code, to ensure there are no limitations on receiving mitigation;

- b. Identify potential sites meeting at least one (and preferably both) of the following criteria:
 - i. Determination that the site is of ecological importance in a watershed context;
 - ii. The site is in close proximity, provides similar functions as the impact site;
 - c. Examine deed and land-use restrictions to ensure potential receiving site(s) can be used for mitigation purposes;
 - d. Identify options for permanent protection (conservation easement or similar instrument);
5. If suitable sites are available, seek approval from DDES, the IRT, and federal/state regulating agencies;
 6. After receiving permission to proceed, approach the project as with any other mitigation project.

Other considerations:

- Mitigation in other jurisdictions should be reserved for projects with enough money to make inter-jurisdictional negotiations worthwhile; however, large impacts with substantial mitigation fees shall be mitigated in King County.
- There should be a 1-year time limit to identify and approve non-King County mitigation projects.
- An Inter-local Agreement, contract, Memorandum of Understanding, etc. will be necessary for each project (or for multiple impacts in a given time period).
- The impact(s) in other jurisdictions will need to be quantified using the King County mitigation assessment method.
- Details of project planning and implementation worked out on a case-by-case basis.
- The terms of the contract shall clearly state which party is responsible for meeting mitigation obligations (including maintenance and monitoring).

Impacts in another jurisdiction, mitigation in King County

- The other jurisdiction and/or the proponent for the project creating the impact shall initiate the process with King County;
- Code of the jurisdiction where the impact occurs must allow off-site compensatory mitigation for environmental impacts, in-lieu-fee mitigation, and for mitigation to occur outside jurisdiction;

- The impact shall be quantified using the IRT-approved mitigation assessment method; or there must be adequate information about the impact to apply the method retroactively to determine mitigation needs.

Impacts and Mitigation within another jurisdiction

In these cases, the other jurisdictions will essentially be contracting with the MRP to offer an in-lieu-fee mitigation “service”. King County will approach situations in which the MRP will become a mitigation ‘service’ for another jurisdiction case-by-case. This arrangement may be developed on a case-by-case, or single project basis, or could be an ongoing agreement according to an established contract or other agreement. Agreements for King County to handle all aspects of in-lieu-fee mitigation shall be limited to local governments within King County or other local, state, or federal agencies with projects within King County, and not available to other county governments or local jurisdictions in other counties.

Other considerations:

- Any individual project or longstanding agreement shall be approved in writing by:
 - The other jurisdiction,
 - King County DDES, and
 - The IRT and other regulatory agencies with authority.
- Roles and responsibilities shall be clearly stated in the terms of the contract, and shall be approved by regulating agencies;
- Site protection will be required – either a conservation easement or similarly protective covenants ensuring permanent protection of the proposed project in its mitigated condition.

Outreach and Education to other jurisdictions

As the program Instrument is being finalized, KC will present details of the program, and specifically the notion of cross-jurisdictional mitigation, to local governments and Tribes in King County.

Methods of disseminating information will include, but not be limited to:

- Direct communication with staff and officials at local governments, tribes, and other county governments,
- A web page,
- New releases, and/or
- Presentations at WRIA Forums

23.0 ENFORCEMENT

For projects that are regulated only pursuant to local regulations, DDES assumes enforcement responsibilities pursuant to K.C.C. 21A.50.020, which reads "[t]he director is authorized to enforce this title, any implementing administrative rules adopted under KCC Chapter 2.98 administration, and approval conditions attached to any land use approval, through revocation or modification of permits, or through the enforcement, penalty and abatement provisions of KCC Title 23, Code Compliance." As such, DDES is responsible for enforcing the provisions of the MRP in-lieu fee Instrument and compensation planning framework, including project performance standards and specifications thereto, for all applications of MRP involving aquatic and terrestrial resources regulated by the King County Critical Areas Ordinance, K.C.C.21A.24. For projects where credits have been sold to offset impacts to aquatic resources subject to regulation by the Washington State Department of Ecology, the Corps and/or EPA, all involved regulatory agencies assume enforcement responsibilities.

24.0 MRP'S RELATIONSHIP TO OTHER OFF-SITE MITIGATION OPTIONS

Project applicants who lack viable on-site mitigation options generally have three potential options. The most suitable option will be determined on a case-by-case basis by DDES for projects where King County has sole jurisdiction; in cases where state and/or federal agencies have jurisdiction DDES and the IRT shall jointly determined the most suitable off-site mitigation options. Options for satisfying off-site compensatory mitigation requirements will include, but not be limited to: purchasing credits at an approved mitigation bank; purchasing credits from a certified in-lieu fee program such as the MRP, or allowing a permittee to identify an offsite location and perform the mitigation themselves (usually through a third party consultant).

For projects that involve impacts within an area served by an approved mitigation bank, the MRP shall consider the mitigation bank a viable alternative when all of the following criteria have been met:

- A. the bank is within the same King County MRP service area, basin and landscape position as the impacted aquatic or terrestrial resource;
- B. the bank includes habitats within the same HGM class, aquatic area type and/or terrestrial community type as the impacted resource; and,
- C. suitable habitat for any impacted listed species is present at the bank site. If listed species are not present on the impact site, this criteria does not apply.

While the KC MRP shall allow mitigation to occur through an approved mitigation bank if the above criteria are met, the key factors in site determination should be related to ecological appropriateness in the context of functions lost at the impact site and ecological needs of the sub-basin or watershed, and the receiving site selection criteria outlined in section 9.0 of this

document shall continue to apply. Furthermore, for cases where the impact is permitted by state and/or federal agencies, the IRT will play a role in determining appropriate and available mitigation options.

For regionally significant projects that involve impacts to valuable ecological aquatic resources for which the King County MRP is unable to identify ecologically-appropriate mitigation opportunities, the KC MRP, in consultation with the IRT, may elect to identify another certified in-lieu-fee program as a preferred alternative, provided the impact occurs within the service area of the chosen in-lieu-fee program.

For projects where a permittee elects to perform off-site mitigation themselves, the off-site mitigation project, to the maximum extent practicable, shall be held to the applicable standards in the MRP instrument, including project planning, implementation, monitoring, maintenance, compliance reporting, and long-term management. King County shall encourage, but not require, applicants to use an in-lieu fee program or mitigation bank, rather than perform the mitigation themselves.

25.0 DEFAULT AND CLOSURE PROVISIONS

In the event that one or more components of an MRP fulfillment project do not achieve performance standards or comply with any other requirements of the program Instrument, remedial actions shall be taken. Remedial actions will include contingency and adaptive management measures and/or substitute proposals, developed using reserve funds in the MRP fund. Greater detail will be provided in the program Instrument.

26.0 ACCEPTANCE OF RESPONSIBILITY

King County, through the acceptance of credit fees from a project applicant, assumes all obligations to perform compensatory mitigation for that project in a manner compliant with 33 CFR Part 332, 40 CFR Part 230, King County Code Chapter 21A.24, and the terms and conditions of the program Instrument.