Habitat Conservation Bank
Enabling Amendments to
Critical Areas Ordinance
Preliminary Staff Report

Date: March 18, 2015
Public Hearing Date: April 15, 2015 (Tentative)
Prepared by: Jeremy Davis,
Senior Planner
Proponent/Applicant: Thurston County
Action Requested: Amend Chapter 24.25 to add a new section to allow Conservation Banks and In-Lieu Fee mitigation as an option.

☐ Map Changes ☒ Text Changes ☐ Both ☐ Affects Comprehensive Plans/documents ☒ Affected Jurisdictions

ISSUE:
The Critical Areas Ordinance does not currently permit the use of mitigation banks for Fish and Wildlife Habitat Conservation Areas (FWHCA). Thurston County is currently in the process of developing a Prairie Habitat Conservation Plan (Prairie HCP). The plan will require mitigation for permitted impacts to prairie habitat and species, which may include off-site mitigation.

BACKGROUND:
The Thurston County Critical Areas Ordinance (CAO) was updated in July 2012 for nonagricultural uses (Title 24 TCC). Chapter 17.15 TCC is now only used for agricultural uses and lands, with the exception of new buildings. The CAO included the ability to mitigate for wetlands in a variety of ways, including offsite mitigation (Chapter 24.30.078 TCC). The CAO did not include the same kind of mitigation for Fish and Wildlife Habitat Conservation Areas.

DEPARTMENT ANALYSIS:
The CAO does not currently permit the use of off-site mitigation for FWHCA including mitigation for endangered and threatened species. The proposed text amendment located in “Attachment A” mirrors the enabling language for wetland mitigation approaches in the CAO (Section 24.30.078 TCC) which is located in “Attachment B” for your reference. Specific provisions have been added to address federally listed endangered and threatened species. The mitigation option would be open for use as mitigation for all FWHCA.
The off-site mitigation would be in the following general categories:

- Permittee-Responsible Mitigation: In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation.
- Cooperative Mitigation Projects: In this situation, a single applicant or other organization with demonstrated capability may undertake a mitigation project with their own funding and funding from other applicants.
- In-Lieu Fee Mitigation: In-lieu fee mitigation is an alternative mitigation program for unavoidable impacts to fish and wildlife habitat conservation areas. An approved 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, a governmental or non-profit natural resource management entity.
- Fish and Wildlife Mitigation Banks: In this situation, an applicant purchases credits from a fish and wildlife conservation area mitigation bank that has already been approved for selling credits. Conservation banks will need to be approved for mitigating the impacts for which the applicant would like to mitigate. The proposed bank must also be legally able to provide mitigation in the geographic location in which the applicant is proposing impacts. Conservation banks that are used for mitigating federally listed species will require federal approval.
- Credit/Debit Method: This is a methodology for calculating the debits incurred by a proposed development and the credits that will need to be purchased for mitigation. The credits would be sold from a mitigation bank developed to mitigate the impact for which the debit is incurred.

The development of conservation banks is a complex process involving many steps. Generally, the steps include searching out appropriate properties, determining the value of the property for conservation, purchasing, developing a conservation bank enabling instrument and site management plan, and determining credit prices. The Planning Commission will be briefed at a later date on conservation bank development.

The Prairie HCP will likely make use of off-site mitigation. The U.S. Fish and Wildlife Service has indicated that mitigating on-site is not always the best method. In certain circumstances, it may be better to use off-site mitigation. This is especially true in situations where on-site mitigation leads to small fragmented habitat set asides, or where the property in question is too small on-site mitigation, such as a standard single-family home lot in an Urban Growth Area. Appropriate off-site mitigation would protect and preserve large habitat areas.

**Best Available Science:**

The draft code only enables possible use of the mitigation techniques. Specific mitigation will be done on a site-by-site basis. The development of habitat conservation banks under the proposed text amendment will require the use of best available science and expert review. The use of the mitigation techniques for federally listed endangered and threatened species will require the technique to follow a habitat conservation plan approved under the federal Endangered Species Act, and/or require the approval of the U.S. Fish and Wildlife Service.
OPTIONS:

1) Amend Chapter 24.25 TCC to allow for the use of off-site mitigation.

2) Do not amend Chapter 24.25 TCC to allow for the use of off-site mitigation.

SEPA:
A SEPA determination is not necessary for this amendment.

NOTIFICATION:
Written notice of the public hearing will be published in The Olympian at least twenty (20) days prior to the public hearing.

DEPARTMENT COMMENTS:
None at this time.

STAFF RECOMMENDATION:
Staff recommends the Planning Commission set a public hearing to take testimony on the proposed amendment.

ATTACHMENTS:

Attachment A: Proposed amendments to the Critical Areas Ordinance
Attachment B: Chapter 24.30.078 Wetland mitigation – Approaches
24.25.077A Fish and wildlife habitat conservation area mitigation—Approaches and ratios.

24.25.077B. Fish and Wildlife Habitat Conservation Area Mitigation Types.

24.25.077A Fish and wildlife habitat conservation area mitigation—Approaches and ratios.

Alternative mitigation as defined in this title (Chapter 24.03 TCC) may be a used when adequate on-site mitigation is not possible, or off-site mitigation may better protect fish and wildlife species and their habitats of primary association. Prior to using any off-site mitigation, an applicant shall follow the mitigation sequencing in Section 24.01.037, or in a federally approved habitat conservation plan pertaining to the impacted habitat.

A. Compensatory mitigation for lost or diminished fish and wildlife conservation area functions shall rely on an approach listed below in order of preference. A lower preference approach to mitigation shall only be used if the applicant's qualified habitat biologist demonstrates to the approval authority's satisfaction that all higher ranked approaches to mitigation are not viable, consistent with the criteria in this section. Selection of a lower preference mitigation approach may require third party review (Section 24.05.022 TCC). Compensatory mitigation for specific habitat types and species that are covered in an approved habitat conservation plan under the federal endangered species act shall follow the compensatory mitigation measures specified in the habitat conservation plan. Compensatory mitigation may include one of the following methods, or another method approved with a federal habitat conservation plan.

1. Permittee-Responsible Mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation.
a. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same habitat or species use area.

b. Permittee responsible mitigation for impacts to plant and animal species and their habitat of primary association, that have been included in a habitat conservation plan approved under the federal endangered species act, shall follow the mitigation requirements in the habitat conservation plan.

2. Cooperative Mitigation Projects. The approval authority may encourage, facilitate and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a mitigation project with funding from other applicants if:

a. Construction of one or several fish and wildlife conservation areas is preferable to several small fish and wildlife conservation areas; and

b. Persons proposing cooperative compensation projects submit a joint permit application; demonstrate the organizational and fiscal capability to act cooperatively; and demonstrate that land acquisition, construction, long-term monitoring and management can and will be provided consistent with the provisions of this section.

c. Cooperative mitigation projects proposed for impacts to plant and animal species and their habitat of primary association that have been included in a habitat conservation plan approved under the federal endangered species act shall follow the mitigation requirements in the habitat conservation plan.

3. Fish and Wildlife Mitigation Banks for Unavoidable and Permitted Impacts. An applicant may use credits from a fish and wildlife conservation area mitigation bank if:

a. The approval authority determines that it would provide appropriate compensation for the proposed impacts; and

b. The proposed mitigation for impacts to plant and animal species and their habitat of primary association that have been included in a habitat conservation plan approved under the federal endangered species act follows the mitigation requirements in the habitat conservation plan; and

c. The impact will occur within the established service area for the conservation bank; and

d. The proposed use of credits is consistent with the terms and conditions of the conservation bank instrument; and

e. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument; and

f. Replacement ratios for a project using bank credits to mitigate for a species listed under the endangered species act, or a species or habitat included in a federally approved habitat conservation plan, shall be consistent with replacement ratios in the habitat conservation plan, or with ratios otherwise approved by the U.S. Fish and Wildlife Service; and
g. Credits from an approved fish and wildlife conservation area mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument.

4. In-Lieu Fee Mitigation. In-lieu fee mitigation is an alternative mitigation program for unavoidable impacts to fish and wildlife habitat conservation areas. An approved 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, a governmental or non-profit natural resource management entity. In-lieu fee mitigation for plant and animal species and their habitat of primary association that have been included in a habitat conservation plan approved under the federal endangered species act shall follow the requirements in the habitat conservation plan for the use of in-lieu fee mitigation. Credits from an approved in-lieu fee program may be used when paragraphs (a)—(f) below apply:

a. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

b. The mitigation will occur on a site identified using the site selection and prioritization process in an approved in-lieu-fee program instrument, habitat conservation plan, or in consultation with the appropriate state or federal agency.

c. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument, habitat conservation plan, or approval of the proposed use of credits by the appropriate state or federal agency.

d. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale, or as required in the in-lieu fee program instrument, habitat conservation plan, or a time approved in consultation with the appropriate state or federal agency. If the mitigation is for impacts to plant and animal species and their habitat of primary association that have been included in a habitat conservation plan approved under the federal endangered species act, or are otherwise listed under the federal endangered species act, the time for biological improvements shall be determined in consultation with the appropriate federal agency.

e. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified biologist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program, habitat conservation plan, or methodology approved by the appropriate state or federal agency.

f. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument, habitat conservation plan, or in a manner approved by the appropriate state or federal agency.

B. The ratio of impacted fish and wildlife conservation area acreage to mitigation acreage shall be determined through a critical area review permit, except for species listed under the endangered species act. Mitigation ratios for federally listed species shall be
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developed in consultation with the appropriate federal agency. Mitigation ratios may be established through a habitat conservation plan approved by the federal government under the endangered species act.

1. The approval authority shall consider, at a minimum, the following when establishing the mitigation ratio:
   a. The category and quality of the impacted fish and wildlife conservation area(s) and buffer(s) and, if the mitigation is proposed to occur at existing fish and wildlife conservation area(s) off-site, the quality of any fish and wildlife conservation area(s) at the mitigation site;
   b. The direct and indirect impacts to the affected fish and wildlife conservation area and buffers.
   c. The degree to which the proposed alteration would destroy or reduce fish and wildlife conservation areas and/or buffer functions at the impacted site, including disruption of groundwater or surface water flows.
   d. The probable success of the proposed mitigation in fully replacing all lost and diminished fish and wildlife conservation area and buffer functions based on:
      i. The project team’s demonstrated success in designing, constructing, and monitoring the proposed type of mitigation in fish and wildlife conservation area(s) of the same type (e.g., prairie, endangered species type, slope, riverine, or marine);
      ii. Documentation indicating that the hydrologic and soil conditions at the mitigation site are supportive of the proposed mitigation and that the site is free of invasive plants and noxious weeds or will be made free of such plants;
      iii. If the mitigation was conducted in advance of the impact, whether it is successful in achieving the performance standards specified in the mitigation plan;
      iv. The long-term functions and values of the proposed mitigation;
      v. The timing of the proposed mitigation relative to the proposed fish and wildlife conservation area and buffer impacts and the time frame within which the fish and wildlife conservation area and buffer functions will be fully replaced;
      vi. The quality and completeness of the applicant’s proposed mitigation plan (see TCC 24.35.380); and
      vii. Other relevant factors as determined by the approval authority in consultation with the appropriate state or federal agency.

C. Credit/Debit Method. To aid in the implementation of off-site mitigation, the county may develop a program which allows mitigation based on a "credit/debit" method.

D. Federally Listed Endangered Species Credit/Debit Method. If the county has a federally approved habitat conservation plan approved under the federal endangered species act for a plant or animal species, the credit/debit method for the species will be established through the habitat conservation plan. For other federally listed endangered and threatened species not included in a habitat conservation plan, the county shall seek
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approval of the appropriate federal agency prior to approving the use of a credit/debit methodology for mitigation.

24.25.077B. Fish and Wildlife Habitat Conservation Area Mitigation Types.

Fish and Wildlife Habitat Conservation Area mitigation types for lost or diminished habitat functions and values shall rely on a type listed below in order of preference. However, the order specified in a federally approved habitat conservation plan approved under the federal endangered species act for plant or animal species shall be followed if mitigating for a species or habitat covered by the plan. A lower preference form of mitigation shall only be used if the applicant’s qualified biologist demonstrates to the approval authority’s satisfaction that all higher ranked types of mitigation are not viable.

A. Restoration. Rectifying the impact by restoring the affected fish and wildlife habitat conservation area and associated buffer. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded fish and wildlife habitat conservation area or its buffer. For the purpose of tracking net gains in fish and wildlife habitat conservation area acres, restoration is divided into:

1. Re-establishment. Re-establishing a fish and wildlife habitat conservation area and buffer on a site formerly occupied by a similar fish and wildlife habitat conservation area. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former fish and wildlife habitat conservation area or buffer. Re-establishment results in a gain in habitat acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

2. Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded fish and wildlife habitat conservation area. Rehabilitation results in a gain in fish and wildlife habitat conservation area function but does not result in a gain in fish and wildlife habitat conservation area acres. Activities could involve removing invasive species, replanting a prairie with native vegetation, or breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

B. Establishment (Creation). The manipulation of the physical, chemical, or biological characteristics present to develop a fish and wildlife habitat conservation area where a fish and wildlife habitat conservation area did not previously exist. Establishment results in a gain in like habitat acres. Activities typically may include removing invasive plants, adding native plant species, reintroducing species, and other activities designed to establish habitat.

1. If a site is not available for fish and wildlife habitat conservation area restoration to compensate for expected habitat and/or buffer impacts, the approval authority may authorize creation of a fish and wildlife habitat conservation area and buffer upon demonstration by the applicant’s qualified biologist that:

a. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed fish and wildlife habitat conservation area and that creation of a fish and wildlife habitat
conservation area at the site will not likely cause harm to other critical areas and buffers;

b. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

c. Adjacent land uses and site conditions do not jeopardize the viability of the proposed fish and wildlife habitat conservation area and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

d. The proposed fish and wildlife habitat conservation area and buffer will eventually be self-sustaining with little or no long-term maintenance, or an endowment will be established that will provide long-term funding for ensuring continuance of the proposed fish and wildlife habitat conservation area.

C. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a fish and wildlife habitat conservation area site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or improvements to wildlife habitat. Enhancement results in a change in some fish and wildlife habitat conservation area functions and values, and can lead to a decline in other habitat functions. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations, or some combination of these activities. Habitat enhancement is not eligible as a sole method of mitigation. Applicants proposing to enhance fish and wildlife habitat conservation areas or associated buffers shall demonstrate how the proposed enhancement will increase the habitat area's functions, how this increase in function will adequately compensate for the impacts, and how all other existing habitat functions at the mitigation site will be protected.

D. Protection/Maintenance (Preservation) Removing a threat to, or preventing the decline of, fish and wildlife habitat conservation area conditions by an action in or near an off-site fish and wildlife habitat conservation area. This includes the purchase of land or easements, or securing habitat areas. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of new fish and wildlife habitat conservation area acres. Permanent protection of a fish and wildlife habitat conservation area and associated buffers at risk of degradation, will be used if:

1. The approval authority determines that the proposed preservation is the best mitigation option;

2. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

3. The area proposed for preservation is of high quality. The following features may be indicative of high quality sites:

   i. The fish and wildlife habitat conservation area needs little if any modification to be considered native habitat;
ii. Rare habitat type (for example, prairie, wet prairie, mature oak savannas or habitat, riparian area along a stream supporting anadromous fish or Oregon spotted frog);

iii. The presence of habitat for priority or locally important wildlife species (see Chapter 24.25.065 TCC); or

iv. Priority sites in an adopted watershed or habitat conservation plan.

4. Permanent preservation of the fish and wildlife habitat conservation area and buffer will be provided through a conservation easement or tract held by a land trust, consistent with Chapter 24.65 TCC.
The sections below are for informational purposes only. No changes are currently proposed for these sections.

24.30.075 Wetland mitigation—Types
Mitigation for lost or diminished wetland and buffer functions shall rely on a type listed below in order of preference. A lower preference form of mitigation shall only be used if the applicant's qualified wetland scientist demonstrates to the approval authority's satisfaction that all higher ranked types of mitigation are not viable, consistent with the criteria in this section.

A. Restoration. Rectifying the impact by restoring the affected wetland and associated buffer. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland or its buffer. For the purpose of tracking net gains in wetland acres, restoration is divided into:

1. Re-establishment. Re-establishing a wetland and buffer on a site formerly occupied by a wetland. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former wetland or buffer. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

2. Rehabilitation. The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a degraded wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

B. Establishment (Creation). The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

1. If a site is not available for wetland restoration to compensate for expected wetland and/or buffer impacts, the approval authority may authorize creation of a wetland and buffer upon demonstration by the applicant's qualified wetland scientist that:

   a. The hydrology and soil conditions at the proposed mitigation site are conducive for sustaining the proposed wetland and that creation of a wetland at the site will not likely cause hydrologic problems elsewhere;
b. The proposed mitigation site does not contain invasive plants or noxious weeds or that such vegetation will be completely eradicated at the site;

c. Adjacent land uses and site conditions do not jeopardize the viability of the proposed wetland and buffer (e.g., due to the presence of invasive plants or noxious weeds, stormwater runoff, noise, light, or other impacts); and

d. The proposed wetland and buffer will eventually be self-sustaining with little or no long-term maintenance.

C. Enhancement. The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities. Habitat enhancement is not eligible as a sole method of mitigation. Applicants proposing to enhance wetlands or associated buffers shall demonstrate how the proposed enhancement will increase the wetland's/buffer's water quality functions, how this increase in function will adequately compensate for the impacts, and how all other existing wetland functions at the mitigation site will be protected.

D. Protection/Maintenance (Preservation) Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences. This term also includes activities commonly associated with the term "preservation." Preservation does not result in a gain of wetland acres. Permanent protection of a Category I or II wetland and associated buffers at risk of degradation, will be used if:

1. The approval authority determines that the proposed preservation is the best mitigation option;

2. The proposed preservation site is under threat of undesirable ecological change due to permitted, planned, or likely actions that will not be adequately mitigated under existing regulations;

3. The area proposed for preservation is of high quality. The following features may be indicative of high quality sites:

   a. Category I or II wetland rating using the wetland rating system for western Washington;

   b. Rare wetland type (for example, bogs, mature forested wetlands, estuarine wetlands);
c. The presence of habitat for priority or locally important wildlife species (see Chapter 24.25.065 TCC); or
d. Priority sites in an adopted watershed plan.

4. Permanent preservation of the wetland and buffer will be provided through a conservation easement or tract held by a land trust, consistent with Chapter 24.65 TCC and TCC 24.30.340—24.30.410.

5. Ratios for preservation in combination with other forms of mitigation generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being impacted and the quality of the wetlands being preserved. Ratios for preservation as the sole means of mitigation generally start at 20:1.

24.30.078 Wetland mitigation—Approaches.

Compensatory mitigation for lost or diminished wetland and buffer functions shall rely on an approach listed below in order of preference. A lower preference approach to mitigation shall only be used if the applicant's qualified wetland scientist demonstrates to the approval authority's satisfaction that all higher ranked approaches to mitigation are not viable, consistent with the criteria in this section.

A. Permittee-Responsible Mitigation. In this situation, the permittee performs the mitigation after the permit is issued and is ultimately responsible for implementation and success of the mitigation. Permittee-responsible mitigation may occur at the site of the permitted impacts or at an off-site location within the same watershed.

B. Cooperative Mitigation Projects. The approval authority may encourage, facilitate and approve cooperative projects wherein a single applicant or other organization with demonstrated capability may undertake a mitigation project with funding from other applicants if:

1. Construction of one or several larger wetlands is preferable to several small wetlands; and

2. Persons proposing cooperative compensation projects submit a joint permit application; demonstrate the organizational and fiscal capability to act cooperatively; and demonstrate that land acquisition, construction, long-term monitoring and management can and will be provided consistent with the provisions of this section.

C. Wetland Mitigation Banks for Unavoidable Impacts to Wetlands. An applicant may use credits from a wetland mitigation bank certified under Chapter 173-700 WAC if:

1. The approval authority determines that it would provide appropriate compensation for the proposed impacts; and

2. The mitigation will occur within the service area where the wetland or buffer impact would occur; and
3. The proposed use of credits is consistent with the terms and conditions of the certified bank instrument; and

4. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the certified bank instrument; and

5. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the certified bank instrument.

D. In-Lieu Fee Mitigation. Is an alternative mitigation program for unavoidable impacts to wetlands. An approved 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, a governmental or non-profit natural resource management entity. Credits from an approved in-lieu fee program may be used when paragraphs (1)—(6) below apply:

1. The approval authority determines that it would provide environmentally appropriate compensation for the proposed impacts.

2. The mitigation will occur on a site identified using the site selection and prioritization process in the approved in-lieu-fee program instrument.

3. The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.

4. Land acquisition and initial physical and biological improvements of the mitigation site must be completed within three years of the credit sale.

5. Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland scientist using the method consistent with the credit assessment method specified in the approved instrument for the in-lieu-fee program.

6. Credits from an approved in-lieu-fee program may be used to compensate for impacts located within the service area specified in the approved in-lieu-fee instrument.