

Wetland Compliance Factsheet

Mitigation vs. Restoration

What can I do to regain eligibility if I'm found out of compliance; or, how can I convert my wetland and still remain eligible?

The Food Security Act of 1985, as amended, states that "a person shall be ineligible for all or a portion of USDA program benefits if... the person produces an agricultural commodity on wetland that was **converted** after December 23, 1985; or after November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for the purpose, or **to have the effect, of making the production of an agricultural commodity possible.**" (U.S. Code of Federal Regulations; Title 7 – Agriculture; Subtitle A – Office of the Secretary of Agriculture; Part 12 – Highly Erodible Land and Wetland Compliance; Subpart A – General Provisions; Section 12.4 (b) and (c)).

Participants who have converted wetlands as stated above, have three options:

1. Forego all USDA benefits;
2. Restore the converted wetland back to its original state on the same site to regain program eligibility;
3. Mitigate the lost functions and values on another site to regain program eligibility.

How far away from the converted wetland can a mitigation site be?

Mitigation sites need to be in relative proximity to the converted site so that the region as a whole still benefits from the mitigation. NRCS will make the final decision.

What is...

Mitigation?

Mitigation is regaining the lost functions and values of the converted wetland on a suitable site, but not the original site. For example, if a wooded wetland on a muck soil is converted, the mitigation should result in a muck wooded wetland on the chosen mitigation site. In addition, a **permanent conservation easement** will be secured on the mitigated site to ensure it remains as wetland into perpetuity.

Restoration?

Restoration is basically undoing what was done to convert the wetland on the exact same site. For example, if trees were cut and drainage tile was added, the restoration plan may involve plugging or removing the drainage tile, and establishing suitable tree species. A permanent conservation easement is not required for restoration.

Who decides the restoration or mitigation locations, plans, etc.?

NRCS decides the actions needed to restore the converted wetland and/or the actions needed for mitigation. NRCS will evaluate the proposed mitigation sites identified by the participant and will make the final determination on the suitability of the proposed site.

How big does the restoration or mitigation site need to be?

Restoration sites will be the same size as the original converted wetland, typically a ratio of 1:1.

Mitigation requirements are typically larger than the original converted wetland due to the time it takes to replace the lost functions and values. The required ratio depends on the conditions of the original wetland, and the likelihood of replacing the lost functions and wetland values on the new site. Ratios are typically 1:1.5 and larger.



For more information

www.in.nrcs.usda.gov



What does it mean to have an easement recorded on the mitigated wetland?

A Warranty Easement deed will be recorded on mitigated wetlands. The Warranty Easement deed will convey most of the development and user rights of the land to the U. S. Government, to be monitored by the NRCS. The land will continue to remain in title with the current landowner, but all rights for cropping, developing, and conversion are lost. The land must remain as a wetland, per the mitigation plan. The land may be sold, but the easement remains on the land. The site may be used for quiet enjoyment and other undeveloped recreation uses, such as hunting, bird watching, hiking, etc. The landowner controls who may have access the land. NRCS or its agent will access the site for monitoring purposes annually. The landowner may request that the easement be removed when the original wetland is restored to historic conditions, per NRCS evaluation and approval.

Do I have to currently own the restoration or mitigation sites?

No, but the landowner must agree to the restoration or mitigation, and they must be involved in the process since they are required to sign the restoration/mitigation plan and agree to maintain the site. For mitigation, they must also sign all of the easement deeds restricting the use of their land. If the mitigation is later damaged or converted, the participant (not necessarily the third-party landowner) will be considered in violation.

When in the process can I begin the conversion of the existing wetland; or, when can I regain my eligibility if I mitigate?

To maintain or regain eligibility both the newly established or restored wetland must be determined by NRCS to meet restoration standards AND in the case of mitigation, an easement recorded on the new wetland.

How long does the process take?

It depends on the type of wetland that is planned, the availability of a suitable location, the success of the establishment, the presence of clear title on the land, receiving Office of General Counsel approval, and the recording of the easement. The processes will likely range 18 to 24 months or more. It may take a year or more to determine if the establishment of vegetation, particularly trees, is successfully meeting NRCS restoration standards. NRCS will not issue closing instructions for the easement until the new wetland meets standards to ensure that an easement is not placed on land that does not meet wetland conditions. This can mean an additional four weeks to several months **after** the site is determined to satisfy the terms of the mitigation plan.

What levels of assistance will NRCS provide?

NRCS will develop the restoration or mitigation plan, evaluate sites that are identified by the participant, and verify whether the work meets standards. NRCS will also provide counsel and coordination of the easement process. All other costs are the responsibility of the participant, including engineering assistance and title work.



Approximately how much will restoration or mitigation cost?

Activity	Estimated Cost	Restoration	Mitigation
Wetland Establishment/Restoration	\$750-\$2,000/acre	Yes	Yes
Legal Land Survey	\$1,000-\$3,000	No	Yes
Title Search and Insurance	\$500-\$1,000	No	Yes
Additional Title Updates	\$375 each time	No	Yes
Closing Fees	\$375-\$1,000	No	Yes
Environmental Records Search	\$750-\$1,000	No	Yes
Estimated Total:		\$1,500-\$4,000	\$3,750-\$10,375+

