



## Aquatic Resource Mitigation Program



*MDT restored wetlands in 2010 such as this within the Schrieber Meadows wetland located near Libby.*

*The Montana Department of Transportation (MDT) is required to mitigate impacts to aquatic resources resulting from construction and improvements to Montana's highway system.*

*When transportation projects such as road reconstruction and bridge replacements impact aquatic resources, MDT is required to replace these resources.*

*Mitigation sites are developed to replicate the various habitat types and replace functions and values such as flood attenuation, short- or long-term water storage, wildlife habitat, sediment and nutrient retention and groundwater recharge.*

## Commonly Asked Questions and Answers

**Who pays for mitigation?** MDT pays for all aspects of developing mitigation projects on private property, including purchase of the conservation easement or property in fee title, design, construction and future maintenance.

**How does MDT find potential mitigation sites?** Sites are located in a variety of ways. MDT is contacted by landowners, resource agencies and other organizations to develop wetlands and/or restore streams. The Department may also locate sites within MDT right-of-way along project corridors. Selected sites are then evaluated for a number of important mitigation requirements, and wetland/stream delineations are conducted to determine the potential for developing credits for U.S. Army Corps of Engineers approval. This evaluation period generally takes 90 to 120 days, depending on the property size.

**What is the minimum size property MDT will accept?** MDT attempts to maximize the wetland/stream credits it can develop at each site in order to create reserve credits for transportation projects that impact wetlands and streams. MDT prefers sites of approximately 30-40 acres, but other size parcels may be considered.

**What kind of property is MDT interested in?** MDT looks for property that contains drained or degraded wetlands and/or channelized stream corridors. Sites with high groundwater tables and ditches or tile drains that have been installed to "dry out" the site for agricultural production are of interest due to the high potential for aquatic restoration.

**How long does it take to develop a mitigation project?** MDT wetland projects generally average three to four years from start to finish, depending on the time it takes to: conduct feasibility studies, negotiate a conservation easement or fee title purchase, design the type of mitigation project appropriate to the site, secure water rights and meet U.S. Army Corps of Engineers mitigation requirements.

**What is the difference between a conservation easement and fee title?** A **conservation easement** is an encumbrance placed on the land in perpetuity and remains in the name of the landowner. The use of the land is limited to the extent of the terms and conditions set out in the easement. The landowner may have limited use of the land in order to protect the

developing mitigation site. The value of an easement may be less than the fee value of the land.

**Fee title** is a site acquired in fee and the title of the land transfers to the state. The state owns and maintains the site. Compensation is based on fair market value of the land.

A landowner may donate an easement or fee interest for land to be developed as a mitigation site. There is no compensation for donated land, although there may be tax advantages to the landowner.

## Other Programs of Interest

### Agricultural Conservation Easement Program USDA, NRCS

(406) 587-6873

This program provides landowners opportunity to receive financial incentives to restore, protect and enhance wetlands and other aquatic resources in exchange for retiring marginal lands from agriculture.

### Partners for Wildlife Program U.S. Fish & Wildlife Service

(406) 793-7400

This program provides funding and technical assistance to private landowners interested in fish and wildlife habitat improvement projects on their property.

## Contact

For more information about MDT's Aquatic Resource Mitigation Program, contact the Environmental Services Bureau at 406-444-7228 or go to <http://www.mdt.mt.gov/publications/datastats/wetlands.shtml> .

MDT attempts to provide accommodations for any known disability that may interfere with a person participating in any service, program or activity of the department. Alternative accessible formats of this information will be provided upon request. For further information, call (406) 444-3423, TTY (800) 335-7592, or the Montana Relay at 711.

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## MDT- Completed Mitigation Sites

Over the past several years, MDT has developed over 1,350 acres of wetlands and restored approximately 14.9 miles of streams across the state in an effort to meet U.S. Army Corps of Engineer compensatory mitigation requirements on private, tribal, state, federal and MDT-owned properties. Some sites can be as small as five acres, while others are as large as 200 acres.

One of the recent MDT projects is the restoration of both wetlands and streams within the Schrieber Meadows and Schrieber Lakes area located south of Libby along US Highway 2 in Lincoln County. MDT acquired these properties in 2007 and 2010 in an effort to secure an area for mitigating wetland and stream impacts along US Highway 2 and within the Kootenai River Watershed.

MDT worked cooperatively with the US Forest Service (USFS) – Kootenai National Forest to extend a portion of the Schrieber Meadows project onto USFS property. Approximately 16 acres of USFS property are included under easement in the Schrieber Meadows site. Both MDT sites total approximately 197 acres and will provide MDT with an estimated 30.6 acres of wetland credit and 72,293 stream credits to assist with mitigating MDT project impacts in northwestern Montana.



*In 2014, MDT restored a large portion of the Schrieber Lake site, including segments of both Schrieber Creek and Coyote Creek*

## Development of Mitigation Sites on Private Property

MDT is required to meet federal regulations that protect the aquatic resource from destruction and detrimental development. Requirements include the following:

### Conservation Easements

The U.S. Army Corps of Engineers requires that a permanent or perpetual conservation easement and/or a deed restriction be utilized for all mitigation sites developed on private property. This ensures permanent protection of the mitigation site. MDT surveys the conservation easement boundaries and registers the easement with a Certificate of Survey in the local County Clerk and Recorder's office.

### Fee Title

MDT can acquire the mitigation site in fee title from an interested landowner. After an appraisal is completed to determine fair market value of the property, the acquisition is negotiated.

### Water Rights

Wetlands and streams require water to survive. A water right is required to protect the hydrology of the mitigation site. MDT will secure the appropriate water rights for the site through applications from the Montana Department of Natural Resources and Conservation or Tribal governments.

### Fencing

MDT requires that each mitigation site be permanently fenced. This protects the aquatic resource from free-ranging livestock and motor vehicles during the site development, and then allows for future identification and management of the site.

### Grazing/Management

To meet U.S. Army Corps of Engineers requirements, all mitigation sites must be monitored for a minimum of five years during development. During the monitoring period, grazing is prohibited. Once the monitoring period is complete and the site has been approved by the Corps, MDT will work with the landowner to develop a grazing management plan that will preserve the established aquatic resources and vegetation communities within the site.



*In 2005, MDT reclaimed an old gravel pit to create the Wagner Marsh wetland mitigation site near Billings.*

## Wetland Regulations

MDT is required to mitigate all unavoidable aquatic resource impacts in accordance with the following regulations:

### Section 404 of the Clean Water Act

This federal law requires that wetland impacts greater than 1/10 of an acre, associated with permitted activities under nationwide and individual permits, be mitigated at a minimum of an acre for an acre or functional units.

### Montana Stream Mitigation Procedure

This procedure describes the methods for quantifying impacts and the acceptable compensatory mitigation for projects adversely affecting streams and rivers.

### 23 CFR 777 – Mitigation of Impacts to Wetlands and Natural Habitats

This Federal Highway Administration (FHWA) regulation revised the rules concerning eligibility for Federal-aid transportation funding of activities to mitigate impacts to wetlands and natural habitats due to highway projects funded under the provisions of Title 23, US Code. It also updated FHWA wetland regulation to conform to the wetland and natural habitat mitigation provisions contained in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and the Transportation Equity Act for the 21st Century (TEA-21).