Washington State Department of Transportation
Wetland Mitigation Banking Brochure

Washington State Department Of Transportation's (WSDOT) mission is to provide safe, efficient and environmentally responsible transportation facilities and services. To accomplish this, significant efforts are made to avoid and minimize any impacts to wetlands and other natural resources. When impacts are unavoidable, mitigation is used to offset the adverse effects of the activity. It is WSDOT's objective to provide environmental mitigation which offers the best ecological benefit and the most effective use of mitigation dollars.

Wetland Protection

Federal, state and local authorities regulate wetlands because of their ecological and social significance. As a development agency, the Department must obtain permits from federal, state and local agencies when projects will have unavoidable adverse impacts to sensitive areas, such as wetlands or stream corridors. Generally, proposals to drain, fill, or otherwise modify wetlands require a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act. Some limited activities in wetlands do not require individual Clean Water Act permits, but are permitted under a series of Nationwide permits. Nationwide permits cover activities which have been determined to have "minimal or insignificant" impacts on wetland resources. Section 404 nationwide and individual permits require a Section 401 certification from the Department of Ecology (ECY) to ensure that the project meets state water quality standards. ECY and local jurisdictions have some authority to regulate wetlands under the Shoreline Management Act and local governments in Washington State also regulate wetlands under the Growth Management Act.

When a transportation project will unavoidably and adversely impact wetland resources, the WSDOT is required under federal, state and local laws to provide mitigation for those impacts. Mitigation consists of compensating for the wetland impacts by restoring, enhancing, creating or on occasion preserving wetlands. While some minor impacts are not required to be mitigated under federal laws, WSDOT still provides mitigation in order to meet the Governor's Executive Order 90-04 for no-net-loss of wetlands as well as to satisfy the department's internal wetland action plan Directive #31-12. Wetland mitigation banking is one process for providing wetland mitigation **in advance** of wetland impacts, rather than simulaneously.

Sequencing

404b(1) Guidelines - The U.S. Environmental Protection Agency Rules under which the U.S. Army Corps of Engineers must decide whether or not to issue a permit to place fill in a wetland. Before compensatory wetland mitigation is approved an applicant has to demonstrate that they have gone through mitigation sequencing. In the following order of decreasing preference, mitigation sequencing is: a. Avoid the impact altogether by not taking a certain action or part of an action, b. Minimize impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts, c. Rectify the impact by repairing, rehabilitating, or restoring the affected environment, d. Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action, e. Compensate for the impact by replacing, enhancing, or providing substitute resources or

environments, and f. Mitigation monitoring to evaluate the development of a constructed resource to determine its rate of maturity in replacing the function and value of the impacted resource and taking appropriate corrective measures. Mitigation bank credits may only be purchased after mitigation sequencing has occurred and for those impacts that are unavoidable.

How Wetland Banking Works

Banking may be thought of as a type of "savings account" for wetlands. The bank owner, or sponsor, creates functioning wetlands, to be used later as compensatory mitigation for unavoidable wetland impacts associated with development. "Credits" can be roughly defined as the net increase in ecological functioning of a bank site. If approved by the regulatory agencies, these credits can be used ("withdrawn") to offset wetland impacts at a development site. When all the credits have been used, the bank cannot be used as mitigation for any more impacts, and a new wetland bank must be created. The wetland bank that has been created must be protected permanently (in perpetuity).

The area where a bank's credits may be used is called it's service area. Bank credits can only be utilized if the wetland impacts occur in the same geographic area, which is usually defined by watershed boundaries, or sub-basins within a watershed. Bank credits can only be used for unavoidable impacts.

Types of Banks:

Single Owner/ Single User Banks: In this type of bank, a large company or public agency constructs a wetland bank to provide mitigation for wetland impacts from it's own projects. They are the bank sponsor and owner, and the credits approved by the regulatory agency are for their own use.

Entrepreneurial Banks: These banks are constructed by private individuals or corporations using private funds. After approval, the bank sponsor may sell, for profit, credits to private or public sector clients for mitigation on projects that have qualified for legal wetland alteration permits, and for which the permits allow use of the mitigation bank for the project and mitigation debt.

Joint Use Banks: Typically, a group of developers agree to fund a mitigation project that can compensate for future wetland or endangered species habitat losses. Government agencies can also form partnerships for joint banking ventures. For example, WSDOT and a county public works department may jointly fund and construct a bank that both agencies can use.

Government Banks: This type of bank is constructed by a government agency using public funds. The credits are then sold to private developers to offset their wetland impacts. The bank must be approved by the regulatory agencies before it can be used as wetland mitigation.

Bank Policies

At the federal level, an Interagency Working Group on Federal Wetlands Policy has issued guidance on mitigation banks. In Washington state, the state and local governments may approve mitigation banks under their general authority to regulate wetlands, but there is no specific statutory authorization for banks at this time. A number of Washington cities and counties have adopted or are considering local ordinances on mitigation banks. WSDOT has developed the Washington State Department of Transportation Wetland Compensation Bank Program Memorandum of Agreement in cooperation with federal and state agencies which gives guidance on banking.

Recent state legislation (ESSHB 2339, 1998) established legislative support for the use of compensatory wetland mitigation banking. The legislation directs and gives authority to the Department of Ecology to develop rules for wetland mitigation banks and a certification program.

Benefits of Banking

- Banking produces a wetland of higher ecological value because a bank can be located based on watershed needs and priorities.
- Banks allow higher assurance of successful mitigation since credits are withdrawn after the site demonstrates ecological function.
- Regulatory agencies have an opportunity for both early and long-term oversight of the mitigation. They can concentrate their limited enforcement staff and budget in a more focused way to assure adequate mitigation serving both the public and environment effectively.
- Banks offer greater potential in many cases for providing meaningful habitat blocks for wildlife since mitigation bank sites are often larger in size than project specific mitigation sites and sometimes can be sited to connect larger units of important habitat or wildlife corridors.
- The bank sponsor is responsible for ensuring the success of the mitigation bank. It is more efficient for both the bank sponsor and the regulatory agencies to monitor one larger bank site than many smaller, individual mitigation sites.
- Banks offer greater potential for educational/recreational use since mitigation bank sites are often larger in size than project-specific mitigation sites.
- Banks are cost-efficient and environmentally beneficial because they provide a streamlined mechanism for effective mitigation for small wetland impacts.
- Potential for partnerships.

Drawbacks of Banking

- A long process is required to develop the necessary agreements. Multiple regulatory approvals are needed before a bank can be developed.
- Approval for the use of bank credits as mitigation is determined individually by the regulatory agencies on a project by project basis.
- Not all wetland impacts are appropriate to mitigate at the bank location, and additional on-site mitigation may be required. Impacts to site specific functions such as fish resources or flood storage must be mitigated on site or in close proximity to impact areas.

- Mitigation banking is a long-term investment. A high initial cash outlay is usually necessary to construct bank sites. There must be a commitment and willingness to wait while the bank site matures.

Banking Misconceptions

Mitigation bank credits will be sold before they are mature or before the site has been deemed ecologically successful. This is why federal guidance and state agreements require phased release of credits. Phased release of credits means that bank credits cannot be fully utilized until the bank has achieved its performance standards for wetland function and acreage.

A banking site alone will mitigate for impacts. In many cases it is likely that a mitigation bank site will be used along with in-kind/on-site mitigation such as fish habitat restoration, and flood storage replacement.

Using bank sites will make it easier to get approval to impact the environment. Wetland impacts will increase if banks are created. To undertake development of any sort where wetlands will be impacted will still require approval through the permitting process. Mitigation sequencing will continue to apply when there are potential wetland impacts. Banking will not lessen the need for mitigation, but it may provide for more ecologically successful mitigation sites.

Process to Develop a bank

Identify geographic areas where impacts are likely to occur (projected mitigation needs).
Identify the geographic limits where the bank can be used for mitigation (service area).
Locate a suitable site for bank construction within the service area.
Obtain regulatory concurrence.
Develop a bank agreement with regulatory agencies.
Build the bank.
Monitor for ecological success.
Withdraw credits as allowed to mitigate for wetland impacts in the service area.
Protect in perpetuity (even after all credits are withdrawn).

For more information contact:

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