



**STATE OF WASHINGTON**  
**RECREATION AND CONSERVATION OFFICE**

March 2008

**Item #26:** Washington Wildlife and Recreation Program  
Policies Related to Mitigation Bank Projects

**Prepared By:** Leslie Ryan Connelly, Outdoor Grants Manager

**Presented By:** Leslie Ryan Connelly, Outdoor Grants Manager

**Approved by the  
Director:**

---

**Proposed Action:** Decision

**Summary**

The Recreation and Conservation Office (RCO) staff is proposing changes to the policies regarding Washington Wildlife and Recreation Program (WWRP) mitigation bank projects.

At its January 15, 2008 meeting, the Recreation and Conservation Funding Board (Board) decided to discontinue the pilot program used during the 2006 grants cycle. They directed staff to conduct additional research, solicit additional public comment, and prepare a recommendation for policy changes. This memorandum summarizes the proposals, which affect project eligibility, application requirements, and the evaluation process. Staff has asked for comments from interested parties, and will provide copies of the comments to the Board before its March 2008 meeting. If approved, the proposed policy changes will apply in 2008.

**Staff Recommendation**

RCO staff recommends adoption of the policies in Attachment A. Upon approval, staff will incorporate the policies into Manual #10b, *WWRP: Habitat Conservation Account and Riparian Protection Account: Policies and Project Selection*.

Resolution 2008-022 is provided for Board consideration.



## **Background**

A 2005 amendment to the WWRP statutes made mitigation bank projects eligible for funding in the Riparian Protection Account and the urban wildlife habitat and critical habitat categories of the Habitat Conservation Account. The 2006 grants cycle was the first year in which these projects were considered for funding.

To learn how to evaluate proposals, implement projects, and encourage creative approaches to mitigation and conservation banking, the Board conducted a pilot program for the 2006 grant cycle. The RCO issued a Request for Grant Proposals and used a two-step evaluation process. The Board funded two of three proposals for mitigation bank projects.

At its January 15, 2008 meeting, the Board approved discontinuation of the 2006 pilot program for the following reasons:

- The lengthy amount of time needed to permit, design, and implement a mitigation bank.
- The Board's desire to fund projects based on how well they meet the adopted evaluation criteria, without special consideration for certain types of applications.
- Lack of early results from the 2006 pilot.
- Ongoing state-level discussion of policies regarding mitigation and conservation banks.

To prepare for the 2008 grant cycle, RCO staff prepared a recommended set of policies and requested that interested parties comment on the proposal by March 13, 2008. Staff will summarize the comments received by the deadline and provide them to the Board for consideration before the March 2008 meeting.

In addition, RCO staff is consulting with the Office of the State Treasurer on the use of tax-exempt state bond funds and income generation related to the sale of mitigation bank credits from WWRP-funded projects. Staff will share any new information with the Board at the March meeting.

## **Analysis**

The RCO staff policy recommendation addresses project eligibility, applicant eligibility, and evaluation of mitigation bank projects. Table 1 illustrates the advantages and disadvantages of the staff recommendation.

### Project Eligibility

The proposal seeks to reduce the length of time WWRP funds are obligated for mitigation bank projects. The current process for securing approval of a mitigation bank can take more than four years. Restoration work and the sale of mitigation bank credits occur after approval, so mitigation bank projects may take more than eight years to

complete. To reduce the time funds are obligated, staff proposes that the sponsor obtain regulatory approval of the proposed mitigation bank before the final award of WWRP funds. Thus, a WWRP-assisted mitigation bank project would start after the appropriate permitting agencies have evaluated and approved the mitigation-banking framework.

#### Applicant Eligibility

The proposal limits eligible applicants to state and local agencies to ensure that tax-exempt state bond funds are used for public purposes only. While nongovernmental lead entity organizations are eligible applicants in the Riparian Protection Account, staff proposes to restrict such organizations from applying for mitigation bank projects to ensure WWRP funds comply with state and federal constraints.

#### Project Evaluation

Finally, the proposal addresses the evaluation process for new projects. Mitigation bank projects would be evaluated in the same ways as other projects submitted in each category. No additional application materials or responses to evaluation questions would be required. Staff recommends this approach because the mitigation bank elements of a project already will be subject to review by the appropriate permitting authorities. The evaluation of applications can be based on the existing evaluation criteria in each category without additional review of the mitigation bank framework.

#### Table 1: Pros and Cons of Proposed Changes

<b>Element</b>	<b>Advantages</b>	<b>Disadvantages</b>
Applicant Eligibility	Helps ensure grant funds comply with state and federal constraints on use of tax-exempt bond revenues.	Restricts some eligible applicants (i.e., private lead entity organizations) from applying for mitigation bank grant funds.
Project Eligibility	Reduces the time for expending WWRP funds because the bank must have been approved by the permitting authorities before funding approval.	Applicants may not have the necessary funds to design and permit a mitigation bank prior to receiving a grant.
Project Eligibility	Ensures that the appropriate regulatory authorities review and approve the mitigation bank proposal before Board funding.	Unresolved income generation policies may make it difficult for applicants to decide whether to apply for WWRP funds.
Project Evaluation	The WWRP review teams will have the benefit of scoring a project based upon its approval by the regulatory agencies rather than evaluating the mitigation bank proposal themselves.	By their nature, mitigation bank projects may not compete well without special consideration.
Project Eligibility	Applicants may apply eligible pre-agreement design and permitting expenses toward the sponsor match if they are awarded WWRP grant funds.	Restricts credit sales to public entities, limiting possible revenue generating opportunities and mitigation opportunities for private developers.
	Alerts potential applicants that future income generation policies are forthcoming.	

### **Next Steps**

If the Board adopts these policies, staff will update Manual #10b, *WWRP: Habitat Conservation Account and Riparian Protection Account: Policies and Project Selection* and notify potential applicants and other interested parties. Adopted changes will apply to the 2008 grants cycle.

Staff will continue discussion with the Office of the State Treasurer in an effort to develop policies related to income generation from mitigation bank projects.

### **Attachments**

Resolution 2008-022

- A. Summary of Proposed Changes to Washington Wildlife and Recreation Program (WWRP) Mitigation Bank Project Policies

**RESOLUTION 2008-022**  
**Washington Wildlife and Recreation Program**  
**Mitigation Bank Project Policies**

**WHEREAS**, Chapter 79A.15 RCW established the Washington Wildlife and Recreation Program (WWRP) and authorized the Recreation and Conservation Funding Board (Board) to adopt policies and rules for the program; and

**WHEREAS**, RCW 79A.15.060 and .120 allows funding of mitigation bank projects in the Riparian Protection Account and the critical habitat and urban wildlife habitat categories of the Habitat Conservation Account of the WWRP; and

**WHEREAS**, the Board wants to develop policies regarding the application and evaluation of mitigation bank projects; and

**WHEREAS**, the proposed policies were made available for review and comment by individuals and organizations that have expressed an interest in WWRP; and

**WHEREAS**, final adoption of the policy revisions will be incorporated into Manual 10b, *WWRP Habitat Conservation Account and Riparian Protection Account: Policies and Project Selection*; and

**WHEREAS**, adoption of this resolution furthers the Recreation and Conservation Office 2007-2011 Strategic Plan objective to provide leadership through policy development by considering new and updated policy recommendations (Goal 1, Strategy 1.1);

**NOW, THEREFORE BE IT RESOLVED**, that the Board adopts the policies for mitigation bank projects as summarized in Attachment A; and

**BE IT FURTHER RESOLVED**, that the Recreation and Conservation Office staff be directed to take the necessary steps for implementation of this revision beginning with the 2008 grant cycle.

*Resolution moved by:* \_\_\_\_\_

*Resolution seconded by:* \_\_\_\_\_

*Adopted/Defeated/Deferred (underline one)*

*Date:* March 27, 2008

## **Attachment A: Summary of Proposed Changes to Washington Wildlife and Recreation Program (WWRP) Mitigation Bank Policies**

### **Mitigation Bank Projects**

Mitigation bank projects are eligible for funding only in the Riparian Protection Account and the urban wildlife habitat and critical habitat categories of the Habitat Conservation Account. Applicants compete with all other projects submitted for consideration within the appropriate grant account and category, and use the same evaluation criteria and process.

### **Eligible Applicants**

Only state and local agencies are eligible to submit mitigation bank projects.

### **Eligible Projects**

The Washington Department of Ecology's Mitigation Bank Review Team or other regulatory body overseeing mitigation or conservation banks must approve the mitigation bank. An applicant may apply for funds before securing approval, but approval must be in place before the Board's final funding decision. Applicants must submit the approved or pending Mitigation Bank Instrument (MBI) with their application. Those applying for development or restoration funds may include design and permit expenses incurred per existing RCFB policy on reimbursement of eligible pre-agreement costs (see Manual #4, *Development Projects*).

WWRP funds that are used for mitigation bank projects can be used only for public purposes. Private entities may not purchase mitigation bank credits from a WWRP-assisted mitigation bank.

### **Eligible Project Types**

Applicants may seek funds to:

- Acquire land for use as a mitigation bank site (acquisition project type)
- Perform restoration on land already in the applicant's ownership or control (development/restoration project type), or
- Acquire and develop or restore land (combination project type).

Projects in the Riparian Protection Account must include an acquisition component. Development may include any of the allowable public access elements in the category.

### **Post-approval Obligations**

All mitigation bank projects funded through WWRP must comply with adopted income generation policies. Applicants are encouraged to contact RCO staff for more information about proposed income generation policies before submitting a grant application for a mitigation bank.

## **Public Comments Received and Staff Responses (MARCH 20, 2008)**

### **Kate Thompson, Wetland Banking Specialist, Department of Ecology**

The Department of Ecology (Ecology) submits the following comments on the proposed text for adoption in Manual #10b, *WWRP: Habitat Conservation Account and Riparian Protection Account: Policies and Project Selection*.

The new language requires grant applicants to have an approved wetland mitigation bank instrument from Ecology's Mitigation Bank Review Team before final grant funding is approved. As noted in the Pros and Cons table on Page 4, this requirement will affect local and state agencies that "may not have the necessary funds to design and permit a mitigation bank prior to receiving a grant" and would make it difficult for agencies that would need the grant "to decide on whether to apply for WWRP funds." Ecology agrees with these statements.

Before a mitigation bank is certified by Ecology, the applicant must demonstrate they have the necessary financial resources to implement the provisions of the Mitigation Bank Instrument (MBI) - the binding contract for certification. For example these include the construction of the bank, posting financial assurances, and monitoring and maintenance of the bank. These financial resources need to be independent of grant funding approval if the grants cannot be obtained prior to bank certification. Ecology must feel confident in an applicant's ability to implement the MBI. A likely effect of this language is that local and state agencies that need the grant funding would not be able to apply for certification due to the uncertainty on receiving funding.

Ecology supports the ability of local governments to have access to mitigation banks as one option for mitigating impacts within their jurisdiction. The ability of local governments to apply for and receive these grants could provide much needed starting capital for them to set up a banking program. Without these grants, some local governments may not have that option.

Thank you for the opportunity to comment

---

### **Jim Sayce, Liaison, Lewis and Clark National Historic Park, Washington State Historical Society**

*(Comments in italics)*

#### **Mitigation Banking Projects**

Mitigation banking projects are only eligible for funding in the Riparian Protection Account and the urban wildlife habitat and critical habitat categories of the Habitat Conservation Account. Applicants compete within the appropriate grant account and category using the same evaluation criteria and process as all other projects submitted for consideration.

*Let us assume the premise that land is more scarce in urban areas, thus an applicant seeking funds to improve a public access park is less inclined to mitigate on-site (land is constrained) and more inclined to mitigate off-site (there's an easy to use "bank" and*

*land may be less costly). This has the potential to move restoration projects out of the public eye in general and lower the education value that on-site mitigation can provide. Mitigation banking tends to be out of site and out of mind.*

*On one hand it certainly facilitates project development by making it easier to full restoration/habitat conservation goals and no net loss of habitat. It makes it so easy that project managers don't have to deal or grapple with on-site impacts in the traditional sense.*

### **Eligible Applicants**

Only state and local agencies are eligible to submit mitigation banking projects.

*I assume this means a city, county, port, conservation district? But not a private land trust. Land trusts are more at the cutting edge of habitat conservation/preservation than agencies (in general).*

### **Eligible Projects**

Applicants must have an approved mitigation bank instrument from the Department of Ecology's Mitigation Bank Review Team or other regulatory body overseeing mitigation or conservation banks. An applicant may apply for funds before securing an approved mitigation bank instrument but the approval must be secure prior to the RCFB final funding approval. Applicants may count design and permit expenses incurred before project funding as sponsor match per existing RCFB policy on reimbursement of eligible pre-agreement costs for development or restoration projects (see Manual #4, Development Projects).

WWRP funds used for mitigation banking can only be used for public purposes. Private entities may not purchase mitigation bank credits from a WWRP-assisted mitigation bank or WWRP assisted purchase of credits.

*I worry about the lack of competition in that there may only be one bank available within a particular watershed area and that public projects may find it easier to develop than private projects without easy access to banking.*

### **Eligible Project Types**

Applicants may seek funds to:

- Acquire land for use as a mitigation bank site (acquisition project type)
- Perform restoration on land already in the applicant's ownership or control for the purpose of selling credits (development/restoration project type), or
- Acquire and restore land (combination project type).

### **Post-approval Obligations**

The RCFB is considering policy regarding income generation from WWRP assisted mitigation bank projects. All mitigation bank projects funded through WWRP will be required to comply with adopted policies once approved. Applicants are encouraged to contact their RCO grant manager for more information about proposed income generation policies before submitting a grant application for a mitigation bank.

WWRP.

*I think it wise for an attorney general's opinion on this. The buying and selling of mitigation banking credits by state or local agencies to only state or local agencies strikes me as non-competitive and strange waters. If non-profits get involved, that's even stranger. I don't think the State wants to be party to a system that is funded by taxpayers and ultimately only benefits state agencies (as opposed to the entire State), even if the ultimate benefit is to fish, water, habitat, etc. The proximate benefit is enhancing permit approval and if state and local agencies permits are expedited and private permits are not, something is wrong with the system.*

---

**Kristin Swenddal, Assistant Division Manager; Program Development/Aquatic Resources Division, Department of Natural Resources**

The Department of Natural Resources would like to comment on the proposed changes to use of WWRP funds.

1. While the Department of Natural Resources recognizes that statute allows the use of WWRP funds for mitigation purposes, DNR does not believe the use of WWRP grant funds for mitigation work is appropriate. Mitigation is designed to compensate for development impacts to natural resources, habitat and processes. We believe that WWRP funds should be used for restoration, enhancement or preservation efforts but not to fund mitigation; mitigation is designed to offset intentional and deliberate impacts. Restoration improves the environmental baseline where as mitigation is a tool to reduce resource losses, but in general does not result in large resource gains.
2. DNR supports the proposed changes to narrow the scope for eligibility of WWRP contracts, to allow only public entities to qualify for WWRP grants when mitigation is involved.