



STATE OF WASHINGTON

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TO: IAC Committee Members and Designees
FROM: Laura Eckert Johnson, Director 
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SUBJECT: Funding Mitigation Banking Projects in WWRP

ESSB5396 amended the Washington Wildlife and Recreation Program (WWRP) statutes to allow IAC to fund mitigation banking projects in the *urban wildlife habitat* and *critical habitat* categories and also in the new *Riparian Habitat Program* established by the bill.

Mitigation banking is a relatively new approach to providing an environmentally sensible way to offset adverse environmental impacts resulting from development actions. It has mainly been used to provide for mitigation of impacts to wetlands. It is used when mitigation is required as a result of a local, state or federal permitting process and on-site mitigation is not practicable or use of a mitigation bank is environmentally preferable. A mitigation bank that provides compensation for adverse impacts to habitat, especially that of a threatened or endangered species, is often referred to as a conservation bank.

Mitigation banks provide compensation for adverse impacts to natural resources in advance of the impact. In wetland mitigation banking, the goal is to replace the function and values of the wetland that will be adversely affected by a proposed development project. This is typically done by creating new wetlands or restoring or enhancing degraded wetlands.

In conservation banking the goal is to offset adverse impacts to one or more species, which is typically done by providing or protecting functional habitat elsewhere for those species.

This emphasis on preservation of high quality habitat and listed species suggests that the "conservation bank" approach would be more appropriate for mitigation banking projects funded by WWRP, especially in the *critical habitat* and *urban wildlife* habitat categories. However, very little policy development for conservation banking has been done in Washington State. Unlike wetland mitigation banking, where definitions, requirements and criteria for certification can be found in statute¹, mitigation banking policies for habitat conservation and non-aquatic resources can only be found in the form of federal guidelines².

At the September 15-16, 2005, IAC meeting, the Committee discussed whether the IAC should limit grants for mitigation banking projects to certified wetland banks, with a focus on acquiring land for the purpose of creating, restoring, and enhancing lost wetland functions and preserving wetlands, or whether the IAC should also provide grants for preservation of high quality habitat (aquatic and upland) in order to compensate for future adverse impacts to similar habitat. The Committee decided that the term "mitigation banking" should be interpreted broadly and include wetland mitigation banking and conservation banking.

To explore the need for grants for mitigation and conservation banking projects, IAC staff has been meeting with representatives of the Departments of Ecology, Fish and Wildlife and Transportation, and the Washington Public Ports Association, Association of Washington Cities (AWC), Washington State Association of Counties (WSAC), and also officials from several counties. As a result of these conversations, staff recommends the IAC consider two approaches:

1. **Allow any projects seeking grants in the *urban wildlife habitat*, *critical habitat*, and *riparian habitat* categories to be used for mitigation and conservation banking.** Projects would compete head-to-head with non-mitigation-banking projects rather than be evaluated separately and would be evaluated using the same criteria.
2. **Provide a special grant to one or more pilot projects** rather than opening the door to all mitigation/conservation banking projects in the three funding categories. The Departments of Ecology, Fish and Wildlife and Transportation and the Biodiversity Council (administered by IAC) are all seeking demonstration projects to explore approaches to mitigation optimization, mitigation banking, and providing non-regulatory conservation incentives. AWC, WSAC, and several counties are also exploring pilot mitigation banking projects. IAC could:
 - a. Work with state and local agencies to develop a partnership to do one or more pilot (demonstration) mitigation banking projects for the purpose of developing and refining state mitigation/conservation banking policies.
 - b. Issue a Request for Proposals for one or more pilot (demonstration) projects that would achieve the goals in (a).

¹ RCW 90.84, enacted in 1998.

² *Guidance for the Establishment, Use, and Operation of Conservation Banks*, U.S. Department of the Interior, Fish and Wildlife Service.

IAC will have to resolve two major issues in the event that a mitigation/conservation banking project is funded:

- ▷ When the project sponsor sells credits resulting from the project, or later uses the credits to offset mitigation obligations of the sponsor, should this be treated as a conversion? Should funds be returned to IAC, or should we allow the sponsor to reinvest the revenues (or comparable value) in additional mitigation/conservation banking projects?
- ▷ If a mitigation/conservation bank is designed for projects needing only local permits (as opposed to state or federal permits), there are no mandatory guidelines in place regulating the design and operation of the bank. Should IAC develop guidelines for these types of local banks?

At the time of the IAC meeting, staff will be prepared with a more specific recommendation as how to proceed.