



STATE OF WASHINGTON

OFFICE OF THE INTERAGENCY COMMITTEE
1111 Washington Street SE
PO Box 40917
Olympia, WA 98504-0917

January 17, 2006

TO: IAC Committee Members and Designees
FROM: Laura Eckert Johnson, Director 
PREPARED BY: Jim Fox, Special Assistant to the Director 
SUBJECT: **Item #12. 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.

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 aquatic and upland habitat in order to compensate for future adverse impacts to similar habitat (often called conservation or habitat banking). The Committee decided that the term "mitigation banking" should be interpreted broadly and include wetland mitigation and conservation banking.

At the November 15, 2005, IAC meeting, the Committee discussed several approaches to funding mitigation banking projects in the upcoming WWRP grant cycle. Rather than opening the door to all mitigation/conservation banking projects in the three WWRP funding categories, the Committee decided to issue a "request for proposals" and provide one or more grants to pilot (demonstration) projects that would satisfy the intent and requirements of the WWRP and stimulate creative approaches to establishing mitigation banks that are capable of compensating for negative impacts to a variety of habitats and species.



The proposed RFP accompanies this memo. The RFP establishes some basic requirements that projects:

- Be consistent with the intent of the WWRP and the evaluation criteria for the funding category under which the proposal is being submitted.
- Not supplant mitigation obligations of development projects
- Be consistent with state laws regarding lending of state credit, use of capital funds, and use of funds from general obligation bonds.

Other than these requirements, the RFP is intended to stimulate creative proposals and foster a variety of partnerships.

Staff Recommendation

Staff recommends that the IAC approve the proposed RFP and authorize the staff to post it on the IAC website and circulate it to the IAC distribution list of several thousand individuals and organizations interested in the WWRP, including counties, cities, conservation districts, land trusts, and state agencies. In addition, staff would ask WSDOT, WDFW, and WDOE to distribute the RFP to their mailing lists of parties interested in mitigation banking. IAC staff will hold a special workshop in March for potential applicants.

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Washington Wildlife and Recreation Program Request for Mitigation Banking Grant Proposals

Introduction

The Interagency Committee for Outdoor Recreation (IAC) is seeking grant proposals for the Washington Wildlife and Recreation Program (WWRP) to fund mitigation banking projects in one or more of three categories: urban wildlife habitat, critical habitat, and the new riparian habitat program. This grant program is proceeding as a pilot program, and one or more proposals will be chosen to help illustrate how to fund mitigation banking projects in a way that is consistent with the existing requirements of the WWRP *and* makes a positive contribution to the evolution of mitigation banking policy and practice in Washington State.

Please review all sections of this document (and supporting documents) carefully for specific eligibility and evaluation information. Generally, proposals must identify an acquisition of real property that exhibits actual or potential attributes that satisfy the existing evaluation criteria for the respective grant category (urban wildlife habitat, critical habitat, or riparian habitat). WWRP grant funds must be used to acquire real interest in property. Restoration and/or enhancement are eligible expenses *only* when associated with the acquisition of property interest within the new *riparian habitat program*. In addition, the proposal must identify a mitigation banking framework to apply to the site that satisfies the requirements described in this request document.

Background

Engrossed Substitute Senate Bill (ESSB) 5396¹, passed during the 2005 Legislative Session, amended the WWRP statutes to allow the 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. In either case, the mitigation is created in advance of the impact.

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

¹ <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Session%20Law%202005/5396-S.SL.pdf>

impacts to one or more species, which is typically done by providing functional habitat elsewhere for those species.

The emphasis on preservation of high quality habitat and listed species in the WWRP 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 statute², policies for habitat conservation and non-aquatic resources can only be found in the form of federal guidelines³. In this RFP, the term “mitigation banking” is interpreted broadly to include wetland mitigation banking and conservation banking projects.

Intent

The IAC intends to explore the new mitigation banking provision in a way that both satisfies the intent and requirements of the WWRP *and* stimulates creative approaches to establishing mitigation banks that are capable of compensating for negative impacts to a variety of habitats and species.

Eligibility

Entities eligible to receive WWRP grants include:

- Cities
- Counties
- Park and Recreation Districts
- State Agencies⁴
- Native American Tribes
- School Districts
- Lead Entities (Riparian Habitat Program only)

Certain other special purpose districts such as port, irrigation, water, and public utility districts are eligible if legally authorized to acquire and develop public open space, habitat, or recreation facilities.

Other requirements (e.g., matching funds, general project guidelines, etc.) can be found in the “Washington Wildlife and Recreation Program: Policies and Project Selection” (Manual #10)⁵. Unless otherwise specified in this document, the provisions in Manual #10 apply. Manual #10 can be accessed via the following internet link:

http://www.iac.wa.gov/Documents/Manuals&Forms/Manual_10.pdf

² RCW 90.84, enacted in 1998.

³ *Guidance for the Establishment, Use, and Operation of Conservation Banks*, Federal Register Federal Register, November 29, 1995 (Volume 60, Number 228), Page 58605-58614.

⁴ The State Parks and Recreation Commission, and the Departments of Fish and Wildlife, Natural Resources and General Administration.

⁵ This manual will be renamed as Manual #10 HCA in mid or late February and will have a new link.

WWRP Context

The WWRP statutes direct that, “It is the policy of the state to acquire as soon as possible the most significant lands for wildlife conservation... purposes before they are converted to other uses...”⁶. Mitigation banking presents an innovative way to fund such acquisition, as well as the maintenance, monitoring, and adaptive management that can help sustain the long-term species and habitat values of these lands.

The IAC is soliciting mitigation banking proposals that are eligible for the *urban wildlife habitat* category, the *critical habitat* category, or the new *riparian habitat* category. In other words, the species or habitat for which you would like to create a bank must be eligible for funding in one of these three categories. The actual *or potential* attributes of a site identified in a mitigation banking proposal must satisfy the guidance and evaluation criteria for the category under which it is being submitted⁷.

“*Urban Wildlife Habitat* means lands that provide habitat important to wildlife in proximity to a metropolitan area.” RCW 79A.15.010

“*Critical Habitat* means lands important for the protection, management, or public enjoyment of certain wildlife species or groups of species, including, but not limited to, wintering range for deer, elk, and other species, waterfowl and upland bird habitat, fish habitat, and habitat for endangered, threatened, or sensitive species.” RCW 79A.15.010

“*Riparian Habitat* is defined as land adjacent to water bodies, as well as submerged land such as streambeds, which can provide functional habitat for salmonids and other fish and wildlife species. Riparian habitat includes, but is not limited to, shorelines and nearshore marine habitat, estuaries, lakes, wetlands, streams, and rivers.” RCW 79A.15.010

Mitigation Banking Context

Given the lack of state policy guidance for mitigation banking beyond wetlands, a complementary goal of this pilot program is to stimulate creative approaches to establishing banks that are capable of compensating for negative impacts to a variety of habitats and species. Such creative approaches can demonstrate positive contributions to developing a coordinated public policy direction regarding mitigation banking and other aspects of environmental management.

Some of these positive contributions will follow from the kind of mitigation bank framework being proposed. Many of the elements of such a framework will be conceptual at the time of the proposal, but applicants should be able to provide general descriptions of:

- A restoration and/or enhancement plan for the site that includes the anticipated species and habitat benefits;
- How the bank site and restoration/enhancement plan is consistent with any applicable natural resource preservation, restoration and recovery plans (e.g., salmon recovery plans, watershed planning unit plans, subbasin plans, etc.);

⁶ RCW79A.15.005

⁷ Please consult the specific guidance and evaluation documents cited in the “Eligibility” and “Proposal Contents” sections.

- How these species and habitat benefits (or credits) are relevant to anticipated future development in the area;
- How these species and habitat benefits (or credits) will be valued, marketed or transferred;
- A service area within which a development project would be eligible to purchase bank credits;
- How any profits generated from the sale of bank credits will be managed and allocated; and
- A monitoring, stewardship, and adaptive management plan.

Proposals can make additional, innovative contributions to our knowledge of effective environmental management by demonstrating how to:

- Integrate or coordinate mitigation banking programs and policies across traditional separations, such as:
 - Multiple natural resources: wetlands, endangered species, aquatic habitat, and forests;
 - Administrative boundaries: regulatory and planning; and
 - Organizational boundaries: public, private, and non-profit.
- Strategically apply (and, where possible, design) land use plans and recovery/restoration plans to direct development and restoration activities across the landscape in *complementary* ways. For instance, mitigation banking can be used to strategically acquire or otherwise protect lands in a way that sustains habitat connectivity and value even while facilitating sustainable economic growth.
- Combine funds from a variety of sources to produce additive results *and* maintain accountability to each fund source (e.g., WWRP grant for land acquisition, mitigation obligation for restoration, and taxes from a special purpose district for maintenance and monitoring).
- Provide a net gain for the environment by showing how a mitigation bank site(s) can target the highest priority sites in the service area:
 - Restore and preserve ecosystem functions and processes,
 - Improve the function of adjacent lands, or
 - Provide a connection between otherwise fragmented habitats.
- Provide a net gain for the community by:
 - Showing how a mitigation bank can support other public benefits, such as recreation, open space, and education;
 - Fostering creative partnerships among local and state governments, tribes, non-profit organizations and private firms; or
 - Providing incentives for developers to use the mitigation bank.
- Provide incentives for private sector bankers to partner with public entities in establishing mitigation banks.

Examples

There are innumerable ways to design a mitigation bank framework that meets the requirements described in this document and demonstrates some of the innovative environmental management concepts described above. The broad examples listed below were generated during the initial research for this pilot program, and describe only some of the possibilities.

- WWRP funds are used to acquire high quality lands adjacent to a mitigation bank, thereby improving the overall function of the surrounding landscape
- WWRP funds are used to acquire land, while another entity restores or enhances the property. Mitigation credits could be sold for the following:
 - Both the land preservation and the restoration/enhancement, in which case a portion of the profits equivalent to the initial WWRP investment must be:
 - Returned to the IAC and the WWRP program;
 - Invested locally in another mitigation bank; or
 - Invested in a high-quality parcel that would be preserved in perpetuity.

Remaining profits would accrue to whichever entity funded the restoration/enhancement.

- Restoration only, in which case any profits would accrue as usual to the entity that performed the restoration. Extra credit could be given for reinvesting profits in a robust stewardship plan, or other public benefit.
- Programmatic Mitigation Areas: WWRP funds are used to acquire land, while individual developers fund restoration on the property as mitigation credits are needed. The mitigation must be in place before the development project creates environmental impacts.
- Advanced Compensatory Mitigation: WWRP funds are used to acquire land, and the restoration/enhancement on the property is funded by a particular development project. The location of the parcel and the restoration/enhancement are designed to compensate for a specified development project and set of environmental impacts.

Proposal Contents

WWRP Components

The proposal should address the criteria described in the evaluation document of the funding category for which you are applying.

Urban Wildlife Habitat evaluation criteria can be accessed at the following internet link:

http://www.iac.wa.gov/Documents/Manuals&Forms/Manual_10-WWRP-UWH_eval.pdf

Critical Habitat evaluation criteria can be accessed at the following internet link:

http://www.iac.wa.gov/Documents/Manuals&Forms/Manual_10-WWRP-CH_eval.pdf

Riparian Habitat program materials can be accessed at the following internet link:

http://www.iac.wa.gov/iac/grants/riparian_habitat.htm

Mitigation Banking Components

As mentioned above, some of the following elements may be conceptual at the time of the proposal, but applicants should be able to provide general descriptions of:

- A restoration and/or enhancement plan for the site that includes the anticipated gains in species and habitat benefits;
- How the bank site and restoration/enhancement plan is consistent with any applicable natural resource preservation, restoration and recovery plans (e.g., salmon recovery plans, watershed planning unit plans, subbasin plans, etc.);
- A plan for the bank credits that specifies how you will work with the appropriate regulatory entities to value the gains in species and habitat benefits (or credits), what regulatory framework will accept or recognize the credits, who will be eligible to purchase credits, and how/by whom the credits will be managed;
- A service area within which a development project would be eligible to purchase bank credits;
- How any profits generated from the sale of bank credits will be marketed, managed, and allocated;
- A monitoring, stewardship, and adaptive management plan, including funding for these activities;
- Opportunities for public involvement in this proposed pilot project; and
- The kinds of partnerships that will be utilized to establish and manage the mitigation bank.

Implementation Timeline

Please propose a detailed timeline for implementing the proposal. Use the timeline at the end of this document as a general guide. The proposed project must be complete by June 2009.

Extra Credit Components

The proposal can demonstrate additional value by demonstrating how it addresses one or more of the innovative environmental management issues described above:

- Integrating or coordinating mitigation banking programs and policies across traditional separations, including natural resource, administrative, and organizational boundaries;
- Strategically applying (and, where possible, designing) land use plans and recovery/restoration plans to direct development and restoration activities across the landscape in complementary ways;
- Pooling funds from a variety of sources to produce additive results and maintain accountability to each fund source;
- Provide a net gain for the environment;

- Provide a net gain for the community; and/or
- Provide incentives for private sector bankers to partner with public entities in establishing mitigation banks.

Evaluation

The IAC will use the following evaluation criteria to score mitigation banking proposals.

WWRP Criteria

The proposal will be scored using the evaluation criteria of the funding category for which you are applying. Please see the internet links listed above in the "Proposal Contents" section.

Mitigation Banking Criteria

The proposal will also be scored based upon the following questions:

1. Is the proposal consistent with regulations on capital bond dollars, the lending of state credit, and the prudent use of public/tax dollars?
2. For each of the following mitigation banking framework components, what is the:
 - Likelihood of success,
 - Ability to do the work described, and
 - (for a and b) Cost efficiency.
 - a. Restoration and/or enhancement plan for the site
 - b. Monitoring, stewardship, and adaptive management plan
 - c. Value the gains in species and habitat benefits (or credits) and establish eligible user groups
3. How is this proposal integrated or consistent with existing restoration/recovery plans?
4. What is the nature of partnerships/cooperative relationships related to creating and/or implementing this proposal?
5. How inclusive and effective is the proposal's public participation model?
6. What is the specific timeline for the project, including making final decisions on mitigation bank framework components?
7. Does the project address any of the "extra credit" criteria?

Timeline

Activity	Date
Informational meeting in Olympia for prospective applicants.	March (date to be announced)
Mitigation Banking Proposals	May 01, 2006
Pilot Project(s) Selected by IAC	September, 2006 (date to be announced)
Project(s) submitted to the Governor and Legislature for approval in the 2007-09 Capital Budget.	Fall 2006 and Winter 2007
Grant Contract(s) Signed	July 01, 2007 (when state funds are available)
Grant recipients will meet with an Interagency Steering Committee (no more than monthly) to share informal progress reports and to discuss and resolve emergent issues.	
First Progress Report to the IAC <ul style="list-style-type: none"> ▪ Contents to be decided based upon the applicant's proposed implementation schedule 	February, 2008 (mtg. date to be announced)
Second Progress Report to the IAC <ul style="list-style-type: none"> ▪ Contents to be decided based upon the applicant's proposed implementation schedule 	Fall, 2008 (mtg. date to be announced)
Final Report Contents of this report have yet to be determined, but are likely to include the following: <ul style="list-style-type: none"> ▪ How well they coordinated among WDFW, WDOE, local governments, and others; ▪ How their mitigation banking project could be applied or replicated elsewhere in the state; ▪ Whether additional state policies, improved regulatory agency coordination, or other factors would improve the implementation of mitigation banks; and ▪ How their mitigation banking project could/did improve mitigation effectiveness and/or result in more efficient permit delivery. 	June 30, 2009
Final Billing	June 30, 2009

For additional information contact:

Jim Fox

jimf@iac.wa.gov

(360) 902-3021

An informational meeting for prospective applicants will be held in Olympia in March. To receive notification of this meeting and informational updates on this program, contact:

Amie Fowler

amief@iac.wa.gov

(360) 902-3012