



STATE OF WASHINGTON

RECREATION AND CONSERVATION OFFICE

June 2008

Item #7: Revenue Generation from Mitigation Banks

Prepared By: Jim Fox, Special Assistant to the Director

Presented By: Jim Fox, Special Assistant to the Director

**Approved by the
Director:**

Proposed Action: Decision

Summary

Mitigation banking projects are eligible to receive grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program (WWRP). The Recreation and Conservation Funding Board (Board) has proposed several options for the use of income (or the value of exchanged credits) that is generated from sale or exchange of mitigation credits from a WWRP-funded project. Some of these options may violate federal restrictions on the use of the tax-exempt bond funds, which are the source of funds for WWRP.

Staff Recommendation

Staff recommends that the Board restrict grant recipients' use of mitigation credit sale income (or the value of exchanged credits) to acquiring additional conservation land. The acquisition would have to meet the requirements of the appropriate WWRP funding category and be approved by the Board.

Resolution #2008-026 is offered for Board consideration.

Background

Funding for the Washington Wildlife and Recreation Program (WWRP) comes from the legislature's appropriation of federal tax-exempt bond revenues. Because the bonds are



tax-exempt, a number of federal regulations govern how the appropriation may or may not be used. The state Treasurer's Office and the Treasurer's bond counsel have indicated that mitigation credits sold by WWRP-funded mitigation banks could, in some circumstances, benefit private business use. That benefit is not allowed under federal regulations.

The Treasurer's Office bond counsel also reviewed RCO-proposed policies regarding grant recipients' use of income from the sale or exchange of mitigation credits. If income from a credit sale is returned to RCO, that action changes the grant to a loan and may trigger additional federal regulations restricting the use of tax-exempt bonds to benefit private business use.

Analysis

At its March 27-28, 2008, meeting, the Board adopted Resolution 2008-022, restricting mitigation banking grants to state and local agencies and prohibiting sale of credits to private entities. Staff believes this decision alleviates the concern regarding the use of tax-exempt bond funds for private benefit. As a result, staff believes that three options for the use of income from mitigation credit sales are still viable. These options, which staff presented to the Board at the November 1-2, 2007, meeting, are as follows.

Option 1

Revenues from the sale of credits on the WWRP-funded portions of a mitigation bank would be returned to the Recreation and Conservation Office, where they would be applied to alternate projects within the appropriate WWRP category or account.

Pros	Cons
Ensures the funds are distributed to the most deserving projects, based on adopted evaluation criteria.	Funds would trickle in over a number of years, complicating budgeting and reappropriation processes.
Revenues may come in piece-meal and redistribution by the Board provides the greatest assurance they will be spent in a timely manner since the Board can offer the funds to partially funded projects already under agreement, or to alternates on an existing list.	For mitigation banking projects, this option effectively turns WWRP into an interest-free revolving loan fund instead of a grant program.
Eliminates the need for a cumbersome system to track how numerous entities (sponsors) are reinvesting the funds.	May result in unfair competition with entrepreneurial bankers who must make a profit on investments in land and restoration.

Option 2

Revenues from credit sales would be used by the grant sponsor to acquire and/or restore another mitigation banking site.

Pros	Cons
Eliminates the problems with returned revenues discussed in Option 1.	Would require unknown amounts of Recreation and Conservation Office staff time to track revenue and track reinvestment. Also requires approval by the Board, which may be complicated to achieve in a timely manner given the Board's quarterly schedule.
	Could lead to funds being reinvested in later banking sites/projects that are lower quality than one competing for new WWRP funds.

Option 3

Revenues would be used by the grant sponsor to acquire high-quality habitat land. This land would not be used in a mitigation bank, but could be contiguous to the mitigation bank that was originally funded with the WWRP grant, complement its ecosystem functions, or provide similar functions in the same watershed or service area.

Pros	Cons
Eliminates the problems with returned revenues discussed in Option 1.	Recreation and Conservation Office staff and the Board would have to verify that the proposed acquisition is of equal or greater quality than the original mitigation bank property after its successful restoration.
Requires acquisition of high quality habitat in perpetuity. Could be approached as if there were a "conversion" on the original property.	

In Options 2 and 3, the reinvestment of revenue by the project sponsor would require Board approval. Requests would reflect the goals of the original grant proposal and the reinvestment strategy identified in the original application. The policies would require that proposed target acquisitions meet the eligibility criteria of the funding category (i.e., Critical Habitat, Urban Wildlife Habitat, or Riparian Protection). Sponsors would explain how their reinvestment request furthers the strategy identified in their original

application, and how the proposal meets the funding category's intent, goals, and statutory criteria.

Stakeholders commenting on these options prior to the November meeting generally favored Option 1, returning funds to the Board for redistribution, rather than allowing the sponsor to reinvest them.

Staff recommends that the Board adopt Option 3.

Next Steps

Staff will implement the Board's decision by amending Manual 10b, *WWRP: Habitat Conservation Account and Riparian Protection Account: Policies and Project Selection* accordingly and notifying applicants and other interested parties. The Board's decision will affect projects beginning with the applications for the 2008 grant cycle. Staff will develop policies and procedures to implement the Board's decision, and will bring them to the Board for approval at a later meeting.

Attachments

Resolution 2008-026

Resolution 2008-026

Use of Income From Sale or Exchange of Credits by Mitigation Banks Receiving Grants From the Washington Wildlife and Recreation Program

WHEREAS, RCW 79A.15.060(4) and RCW 79A.15.120(7) makes mitigation banking projects eligible to receive grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program (WWRP); and

WHEREAS, the source of funds in WWRP is from the state sale of tax-exempt bonds; and

WHEREAS, federal regulations on the use of tax-exempt bond funds prohibit these funds from benefitting private business use; and

WHEREAS, there are situations where repaying grant funds or the leasing of land acquired by the grant recipient in fee simple could violate these federal regulations;

WHEREAS, to be in compliance with federal regulations, the Recreation and Conservation Funding Board limited mitigation bank grants to state and local agencies and restricted credit sale or exchange of credits to state and local agencies; and

WHEREAS, restrictions on supplanting the obligation of a state or local agency to provide mitigation require that income from mitigation bank credit sale or exchange be returned to the Board or used for purposes of the WWRP; and

WHEREAS, the proposed policy has been made available for review and comment by individuals and organizations that have expressed an interest in WWRP; and

WHEREAS, adoption of this resolution furthers the Board's objective to ensure that "funded projects and programs are managed in conformance with existing authorities" by establishing practices and manual language that adhere to federal regulations;

NOW, THEREFORE BE IT RESOLVED, that recipients of WWRP grants for mitigation banks must use income from mitigation credit sale (or the value of exchanged credits) to acquire additional conservation land. The acquisition would have to meet the requirements of the appropriate WWRP funding category, and comply with Board policies; and

BE IT FURTHER RESOLVED, that this policy shall take effect for the 2008 WWRP grant cycle. RCO staff is directed to take the necessary steps for implementing this policy by amending Manual 10b, *WWRP Habitat Conservation Account and Riparian*

Protection Account: Policies and Project Selection and notifying applicants and other interested parties accordingly.

Resolution moved by: _____

Resolution seconded by: _____

Adopted/Defeated/Deferred (underline one)

Date: _____