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**STATE OF WASHINGTON**

**RECREATION AND CONSERVATION OFFICE**

September 2008

**Item #10a:** **Proposed Request Legislation: Mitigation Banking Project Eligibility in WWRP**

**Prepared By:** Heath Packard, Policy and Planning Specialist

**Presented By:** Heath Packard, Policy and Planning Specialist

**Approved by the Director:**

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**Proposed Action: Decision**

**Summary**

Staff has drafted a bill to eliminate statutory references to mitigation banking project eligibility for grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program. Staff also conducted stakeholder outreach regarding this proposal.

To advance this agency request legislation, staff must submit the proposal to the Governor by September 29. The Governor will approve or decline the request by December 1. If approved, staff will work to secure legislative support and pursue passage of this legislation in the 2009 legislative session.

**Staff Recommendation**

Staff recommends that the Board approve request legislation to remove mitigation banking project eligibility for grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program (WWRP).



Staff further recommends that the Board consider recognizing the importance of mitigation banking and direct staff to continue to support Washington's efforts to improve the current mitigation banking approaches.

## **Background**

Adopted in 2005, RCW 79A.15.060(4) and RCW 79A.15.120(7) (Attachment A) explicitly make mitigation banking projects eligible to receive grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the WWRP. While mitigation banking projects were eligible to receive grants under the WWRP before 2005, these laws effectively made such projects a program priority.

In 2006 the Board conducted a pilot program to give special consideration of mitigation banking projects in order to explore issues regarding eligibility, evaluation, types of banks, and use of revenues from credit sales. However, despite high initial interest on the part of potential applicants, only four applications were received in that grant cycle. Two were funded, one was withdrawn, and one was funded as a habitat project rather than a mitigation bank project.<sup>1</sup> There are no applications for mitigation banking projects in the current WWRP funding cycle.

Based on the experience from the 2006 pilot and subsequent discussions, the Board and staff concluded that for financial, legal, philosophical, and other practical reasons, mitigation banking projects are not well aligned with WWRP. Staff presented the following findings at the June 2008 meeting:

- By design, mitigation banks create mitigation "credits" based on a valuation of the restored wetlands or habitat and associated functions at the banking site. These credits may be purchased by developers to meet mitigation requirements for proposed developments in the bank's service area. To compete effectively in the mitigation banking market, many banks need to market credits to both public and private entities.
- Federal regulations regarding tax-exempt bond funds restrict the use of public dollars for private gain. Because WWRP projects are funded by tax-exempt bonds, any mitigation bank created through a WWRP grant must be established by a public entity and that entity can sell or exchange credits only with other public entities. This creates a market disadvantage for WWRP-funded banks because they cannot sell credits to private developers. Because of the interconnected nature of habitat/wetland sites and the functions restored by the bank, it is impractical to provide independent accounting for public and private dollars within one mitigation banking project.

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<sup>1</sup> Mitigation bank projects previously funded by WWRP will not be affected by this proposed statutory change.

- Currently, Washington's regulatory approval process for wetland mitigation banks can take years. This adds a significant amount of time to project completion. It also creates a need for the legislature to re-appropriate WWRP funding and increases the Board and staff resources necessary to administer the program.
- In addition, the philosophies and policies of WWRP and mitigation banking do not align well. WWRP is intended to preserve intact, functional habitat. Mitigation banks, by definition, target restoration of degraded habitat. WWRP is intended to provide a net gain in the amount of habitat land protected in perpetuity. Mitigation banks aim to achieve a "no net loss" of habitat and ecological function by restoring, enhancing, creating, and preserving wetlands as offsets to future wetland impacts associated with development. Because of this basic philosophical difference, it is difficult for mitigation banking projects to rank well within the WWRP's competitive grants process. The WWRP is dominated by applications aimed at protecting and preserving intact, functional habitat.

The Board asked staff to draft a bill (Attachment B) to remove statutory references to mitigation banking eligibility from the WWRP statutes. In addition, the Board asked staff to reach out to stakeholders and assess support and opposition to the proposed legislation.

## **Analysis**

### Effect on WWRP Grants

The current statute can give the impression that mitigation banking projects will rank well in the WWRP evaluation process and be funded by the Board. In a time when other public efforts are devoted to helping mitigation banking succeed, it could be counter-productive to retain this statutory reference and perpetuate the false impression that mitigation banking projects are competitive in WWRP.

Removing the statutory references to mitigation banking in the WWRP will not result in a prohibition on mitigation banking project eligibility for WWRP grants. Even after this change, mitigation banking projects would be eligible to receive WWRP grants. However, such projects would have to compete with all other WWRP projects, which are likely to score better given the existing criteria and would have to comply with RCO restrictions regarding sale or exchange of mitigation credits and use of resulting revenues.

The statutory changes will not affect the mitigation banking projects previously funded through the WWRP mitigation banking pilot program.

### Stakeholder Input

Staff contacted stakeholders potentially affected by this proposal, including state agencies, local governments, land trusts, and others. Staff also solicited public comments on the proposal. The call for comments was published on the RCO website

and in the newsletters for the Association of Washington Cities and Washington State Association of Counties.

Twenty-four individuals representing 13 agencies, organizations, or interest groups responded. All stakeholder and public comments (Attachment C) reflect supportive or neutral positions on this proposal. One respondent initially opposed the proposal, but now supports it, following a conversation with staff (see last row in Attachment C). Several stakeholders expressed gratitude for the Board's support of other efforts to make mitigation more effective.

### **Next Steps**

If the Board approves the proposed legislative request bill language, staff will submit the proposal to the Governor by September 29, 2008. If the Governor approves the request, staff will:

1. Develop a legislative strategy
2. Secure legislative sponsors for the bill (December 2008),
3. Have the bill introduced in both the state House and Senate (Jan 2009),
4. Request bill hearings in both chambers, provide testimony at hearings, and work to secure passage of the legislation (Jan and Feb 2009);
5. Request the Governor's signature if passed by Legislature (April 2009), and
6. Update WWRP manuals to reflect statute changes (November 2009).

In addition, staff is sharing its mitigation banking pilot experiences with various policy forums to improve the state policy frameworks. Mitigation banking has a unique role that may complement other land acquisition projects funded by WWRP.

### **Attachments**

Resolution # 2008-044

- A. Statutes authorizing WWRP grants to mitigation banking projects
- B. Proposed bill to remove statutory reference to mitigation banking project eligibility for WWRP grants.
- C. Agency, stakeholder and public comments/positions on proposal to eliminate statutory mitigation banking project eligibility for WWRP grants.

**RESOLUTION #2008-044**

**Request legislation to eliminate statutory references to mitigation banking project eligibility in the Washington Wildlife and Recreation Program and recognize the importance of mitigation banking**

**WHEREAS** the Legislature, in 2005, made mitigation banking projects explicitly eligible for grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program (WWRP); and

**WHEREAS** through its 2006 mitigation banking pilot program, the Board attempted to provide a useful structure for supporting mitigation banking through the WWRP; and

**WHEREAS** mitigation banking does not align well with the WWRP because of federal restrictions on tax-exempt bond funds benefiting private entities; and

**WHEREAS** mitigation banking does not align well with the WWRP because mitigation banking aims to restore degraded habitat as an offset to impacts from development while the WWRP aims to protect functional habitat in perpetuity; and

**WHEREAS** only four applications for mitigation banking projects have been received since the pilot program began; and

**WHEREAS** removing mitigation banking from WWRP due to the reasons above supports the Board's strategy to evaluate strategic investment policies so that projects selected for funding meet the state's recreation and conservation needs;

**NOW, THEREFORE BE IT RESOLVED**, that the Board does hereby direct its staff to request the governor's approval for RCO legislation to eliminate statutory reference to mitigation banking project eligibility for grants in the Urban Wildlife Habitat, Critical Habitat, and Riparian Protection categories of the Washington Wildlife and Recreation Program (WWRP).

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

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

*Adopted/Defeated/Deferred (underline one)*

*Date:* \_\_\_\_\_

## **Attachment A**

### Statutes Authorizing WWRP Grants to Mitigation Banking Projects

#### RCW 79A.15.060

#### **Habitat conservation account — Acquisition policies and priorities.**

(4) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

#### RCW 79A.15.120

#### **Riparian protection account — Use of funds.**

(7) Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.

## Attachment B

Proposed bill to eliminate statutory mitigation banking project eligibility for Washington Wildlife and Recreation Program grants.

Amending RCW 79A.15.060 and 79A.25.120

[~~strike through~~ indicate proposed deletions, underline indicates proposed additions]

Sec. 1) RCW 79A.15.060 and 2007 c 241 s 31 are each amended to read as follows:

(1) The board may adopt rules establishing acquisition policies and priorities for distributions from the habitat conservation account.

(2) Except as provided in RCW 79A.15.030(7), moneys appropriated for this chapter may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(3) Moneys appropriated for this chapter may be used by grant recipients for costs incidental to acquisition, including, but not limited to, surveying expenses, fencing, and signing.

~~(4) ((Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of critical habitat and urban wildlife habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (5) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where critical habitat or urban wildlife habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~(5))~~ The board may not approve a local project where the local agency share is less than the amount to be awarded from the habitat conservation account.

~~((6))~~ (5) In determining acquisition priorities with respect to the habitat conservation account, the board shall consider, at a minimum, the following criteria:

- (a) For critical habitat and natural areas proposals:
  - (i) Community support for the project;
  - (ii) The project proposal's ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;
  - (iii) Recommendations as part of a watershed plan or habitat conservation plan, or a coordinated regionwide prioritization effort,

and for projects primarily intended to benefit salmon, limiting factors, or critical pathways analysis;

- (iv) Immediacy of threat to the site;
- (v) Uniqueness of the site;
- (vi) Diversity of species using the site;
- (vii) Quality of the habitat;
- (viii) Long-term viability of the site;
- (ix) Presence of endangered, threatened, or sensitive species;
- (x) Enhancement of existing public property;
- (xi) Consistency with a local land use plan, or a regional or statewide recreational or resource plan, including projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130;
- (xii) Educational and scientific value of the site;
- (xiii) Integration with recovery efforts for endangered, threatened, or sensitive species;
- (xiv) For critical habitat proposals by local agencies, the statewide significance of the site.

(b) For urban wildlife habitat proposals, in addition to the criteria of (a) of this subsection:

- (i) Population of, and distance from, the nearest urban area;
- (ii) Proximity to other wildlife habitat;
- (iii) Potential for public use; and
- (iv) Potential for use by special needs populations.

~~((7))~~ (6) Before November 1st of each even-numbered year, the board shall recommend to the governor a prioritized list of all state agency and local projects to be funded under RCW 79A.15.040(1) (a), (b), and (c). The governor may remove projects from the list recommended by the board and shall submit this amended list in the capital budget request to the legislature. The list shall include, but not be limited to, a description of each project and any particular match requirement, and describe for each project any anticipated restrictions upon recreational activities allowed prior to the project.

Sec. 2) RCW 79A.15.120 and 2007 c 241 s 37 are each amended to read as follows:

(1) The riparian protection account is established in the state treasury. The board must administer the account in accordance with chapter 79A.25 RCW and this chapter, and hold it separate and apart from all other money, funds, and accounts of the board.

(2) Moneys appropriated for this chapter to the riparian protection account must be distributed for the acquisition or enhancement or restoration of riparian habitat. All enhancement or restoration projects, except those qualifying under subsection ~~((10))~~ (9)(a) of this section, must include the acquisition of a real property interest in order to be eligible.

(3) State and local agencies and lead entities under chapter 77.85 RCW may apply for acquisition and enhancement or restoration

funds for riparian habitat projects under subsection (1) of this section. Other state agencies not defined in RCW 79A.15.010, such as the department of transportation and the department of corrections, may enter into interagency agreements with state agencies to apply in partnership for funds under this section.

(4) The board may adopt rules establishing acquisition policies and priorities for distributions from the riparian protection account.

(5) Except as provided in RCW 79A.15.030(7), moneys appropriated for this section may not be used by the board to fund staff positions or other overhead expenses, or by a state, regional, or local agency to fund operation or maintenance of areas acquired under this chapter.

(6) Moneys appropriated for this section may be used by grant recipients for costs incidental to restoration and acquisition, including, but not limited to, surveying expenses, fencing, and signing.

~~(7) ((Moneys appropriated for this section may be used to fund mitigation banking projects involving the restoration, creation, enhancement, or preservation of riparian habitat, provided that the parties seeking to use the mitigation bank meet the matching requirements of subsection (8) of this section. The moneys from this section may not be used to supplant an obligation of a state or local agency to provide mitigation. For the purposes of this section, a mitigation bank means a site or sites where riparian habitat is restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized project impacts to similar resources.~~

~~————(8))~~ The board may not approve a local project where the local agency share is less than the amount to be awarded from the riparian protection account. In-kind contributions, including contributions of a real property interest in land may be used to satisfy the local agency's share.

~~((+9))~~ (8) State agencies receiving grants for acquisition of land under this section must pay an amount in lieu of real property taxes equal to the amount of tax that would be due if the land were taxable as open space land under chapter 84.34 RCW except taxes levied for any state purpose, plus an additional amount for control of noxious weeds equal to that which would be paid if such lands were privately owned. The county assessor and county legislative authority shall assist in determining the appropriate calculation of the amount of tax that would be due.

~~((+10))~~ (9) In determining acquisition priorities with respect to the riparian protection account, the board must consider, at a minimum, the following criteria:

(a) Whether the project continues the conservation reserve enhancement program. Applications that extend the duration of leases of riparian areas that are currently enrolled in the conservation

reserve enhancement program shall be eligible. Such applications are eligible for a conservation lease extension of at least twenty-five years of duration;

(b) Whether the projects are identified or recommended in a watershed planning process under chapter 247, Laws of 1998, salmon recovery planning under chapter 77.85 RCW, or other local plans, such as habitat conservation plans, and these must be highly considered in the process;

(c) Whether there is community support for the project;

(d) Whether the proposal includes an ongoing stewardship program that includes control of noxious weeds, detrimental invasive species, and that identifies the source of the funds from which the stewardship program will be funded;

(e) Whether there is an immediate threat to the site;

(f) Whether the quality of the habitat is improved or, for projects including restoration or enhancement, the potential for restoring quality habitat including linkage of the site to other high quality habitat;

(g) Whether the project is consistent with a local land use plan, or a regional or statewide recreational or resource plan. The projects that assist in the implementation of local shoreline master plans updated according to RCW 90.58.080 or local comprehensive plans updated according to RCW 36.70A.130 must be highly considered in the process;

(h) Whether the site has educational or scientific value; and

(i) Whether the site has passive recreational values for walking trails, wildlife viewing, or the observation of natural settings.

~~((11))~~ (10) Before November 1st of each even-numbered year, the board will recommend to the governor a prioritized list of projects to be funded under this section. The governor may remove projects from the list recommended by the board and will submit this amended list in the capital budget request to the legislature. The list must include, but not be limited to, a description of each project and any particular match requirement.

Respondent	Comment
Tim Smith <i>WA Dept. of Fish and Wildlife</i>	<p>(email distributed to following members of WDFW)            Friends - RCO has proposed a statute change to remove mitigation banking as an eligible project under the WWRP. To me, mitigation banking and the WWRP is an awkward mix, at best. WWRP protects habitat; mitigation banking off-sets habitat degradation. Mitigation banking would be a better fit for a restoration program such as SRFB or ESRP.</p> <p>Please provide comment if you have a different opinion. I intend to forward to Heath a statement that WDFW supports the proposed change, absent compelling arguments to the contrary.</p>
Margen L. Carlson <i>WA Dept. of Fish &amp; Wildlife</i>	<p>Thanks for the opportunity to comment. I agree with you that mitigation banking was an awkward fit with the WWRP program. I worked with Jim Fox to set up the first round of mitigation banking in the WWRP program, and we had a difficult time designing eligibility and procedures that effectively included/evaluated both mitigation banking proposals and traditional restoration/conservation proposals.</p> <p>That being said, I think there are compelling reasons to provide incentives for folks (esp. local governments) to propose and implement creative mitigation solutions - particularly for resources other than wetlands. I know we could really use such incentives for prairie habitats, and perhaps even near shore habitats in light of sea level rise.</p> <p>I look forward to WDFW's role in developing incentive programs in other places!</p>
Greg Heuckle <i>WA Dept. of Fish &amp; Wildlife</i>	<p>I have no compelling arguments to the contrary. In fact, I think this is entirely appropriate!</p>
Randy Carman <i>WA Dept. of Fish &amp; Wildlife</i>	<p>Tim - Thanks for asking for comments. I agree with your assessment (and Margen and Greg's), particularly after reading RCO's synopsis of the issue. Mitigation banking does not appear to be in line with the overall concept of WWRP, and further entails legal and other inconsistencies as well.</p>
Pene Speaks <i>WA Dept. of Natural Resources</i>	<p>Particularly for the mitigation banking proposal, I've been chatting with RCO and WWRC folks about that part of the statute for some time. I'd be very supportive of removing those kinds of projects from eligibility.</p>

Respondent	Comment
<p>Gordon White, Josh Baldi,                      and Lauren Driscoll  <i>Washington Department of Ecology</i></p>	<p>Thank you for providing us with the opportunity to comment. As discussed with your office, Ecology is in agreement with eliminating mitigation banks as eligible funding projects for your Washington Wildlife and Recreation Program (WWRP) for the variety of reasons stated in your letter dated July 23, 2008.</p> <p>Ecology is strongly committed to improving mitigation effectiveness and its permitting processes. Because of the history in Washington State of lack of project success and inefficiencies in permitting, making mitigation work is one of our agency's current top five strategic priorities. We understand that the WWRP's primary objectives, protecting and preserving habitat, does not fit well with the purpose of mitigation banking, restoring habitat and selling generated credits as compensation to a variety of entities impacting habitat. Thus, we acknowledge that continuing to include mitigation banks as eligible in the WWRP does not support the RCO's objectives nor further the goal of improving the effectiveness of mitigation.</p> <p>Ecology believes wetland banking can be best addressed by completing our rulemaking for WAC 173-700, which focuses on procedures for certifying and implementing banks. We welcome any observations RCO may have on the rule given your foray into banking.</p> <p>The RCO continues to be an active contributor to Ecology's efforts to improve mitigation. We greatly appreciate your involvement in the Mitigation That Works Forum, and encourage you to contribute comments and lessons learned to the Forum's final recommendations report. We thank you for your efforts in trying to support mitigation banking and we look forward to continuing to work with you on how to improve mitigation.</p>
<p>Ron Shultz  <i>WA Conservation Commission</i></p>	<p><u>(Paraphrased from phone conversation)</u> This is the right course of action. Mitigation banking is a bad fit for WWRP. There is better return on the state's investments if WWRP monies go to habitat projects. We are particularly concerned about state funding going toward mitigation projects that would convert farm land to wetlands. Therefore we see mitigation banking eligibility of mitigation banks as a potential conflict with WWRP agriculture preservation program. Mitigation banking is a business proposition and it shouldn't require public capitalization if it is viable in the market. The Conservation Commission supports RCO's request.</p>

Respondent	Comment
<p>Megan White, Ken Risenhoover, and Gretchen Lux <i>Washington Dept. of Transportation</i></p>	<p>The Washington Department of Transportation (WSDOT) considers mitigation banking to be an important tool for addressing unavoidable impacts to wetland resources and associated wildlife. However, WSDOT recognizes that the regulatory requirements of mitigation banking and the corresponding administration requirements may make mitigation banking not a good fit for the Washington Wildlife and Recreation grants program (WWRP). We also understand that supporting a mitigation banking funding option is an administrative burden to the agency. Given these issues, the WSDOT has no objections to the proposed statutory amendment eliminating mitigation banking project eligibility for grants in WWRP.</p>
<p>Muffy Walker <i>US Army Corps of Engineers</i></p>	<p>The Corps has reviewed your proposed changes and does not see any conflicts with the Corps' current mitigation rule. We agree that having banks consisting primarily of just preservation does not necessarily match with the purpose of mitigation banking as related to the Corps' Regulatory Program. However, as outlined in our mitigation rule, we are emphasizing the need to look at mitigation, including mitigation banks, on a watershed basis and do see the potential for working together to site banks and WWRP proposals in close proximity to maximize the benefit to both projects and the environment. We look forward to working with RCO in the future on this issue, especially where RCO may fund the purchase of contiguous parcels to either proposed bank sites or individual compensatory mitigation sites.</p>
<p>Mike Ryherd, Marcia Frommhold, Bill Robinson, Joanna Grist <i>Washington Wildlife and Recreation Coalition</i></p>	<p>The WWRC Executive Committee concurs in the RCO staff recommendations to seek statutory changes during the 2009 legislative session to the WWRP statutes that would remove the provisions for (1) bonus points for urban proximity when scoring park projects, and (2) to entirely remove mitigation banking as an allowed use of WWRP funding within the Urban Wildlife Habitat, Critical Habitat and Riparian Protection categories."</p>
<p>Eric Johnson <i>Washington Ports Association</i></p>	<p><u>(Paraphrased from phone conversation and personal meeting)</u>                      So long as this does not preclude WWRP grants supporting projects immediately adjacent to mitigation sites, this is not something we are going to challenge. I have encouraged our constituents to find ways to buffer mitigation sites from development to help ensure their success and we see the WWRP as a good tool to do this.</p>
<p>Michelle Conner <i>Cascade Land Conservancy</i></p>	<p><u>(Paraphrased from phone conversation)</u>                      The Conservancy is very supportive of WWRP and what the RCO deems best for the program and its relationship to Mitigation Banking. We support this proposal and hope it can inform our ongoing explorations of important tools like mitigation and the transfer of development rights.</p>
<p>Rashi Gupta and Eric Johnson <i>Washington State Association of Counties</i></p>	<p>Don't see any major problems with this proposal.</p>

Respondent	Comment
Dave Williams and Ashley Probart <i>Association of Washington                      Cities</i>	Thanks for asking for my/AWC's input on changes to WWRP's mitigation banking eligibility. From what you sent me, it seems to make sense (given the demand for these funds for things OTHER than mitigation banking) to eliminate that as a fundable activity. We may need to revisit that in the future as folks figure out how best to promote, fund and ACCOMPLISH viable mitigation banking.
Kyle A. Loring <i>Friends of the San Juans</i>	<p>Friends of the San Juans ("Friends") submits these comments to support the Recreation and Conservation Office ("RCO") proposal to remove mitigation banking from the list of items that are eligible for funding under the Washington Wildlife and Recreation Program ("WWRP"). Friends commends this effort to harmonize the implementation of the WWRP with the conservationist intent that the Legislature expressed in enacting Chapter 79A.15 RCW. In promulgating the statute to address the acquisition of lands for conservation, the Legislature expressly found that there is a need to reserve certain areas of the state for the benefit of present and future generations, and thus stated a policy to acquire as soon as possible the most significant lands for wildlife conservation and outdoor recreation purposes before conversion to other uses. RCW 79A.15.005.</p> <p>As the RCO recognizes in proposing to eliminate wildlife conservation funding for mitigation banking projects, such projects are inconsistent with the policy above because they function as compensation for environmental impacts, rather than serving to preserve the most significant lands for wildlife conservation and outdoor recreation. As even the most environmentally-sensitive lands in our state succumb to development pressures, Friends applauds the RCO's efforts to eliminate funding for mitigation banking projects that would facilitate such development. These funds should instead support the acquisition of land to be set aside not as compensation for impacts, but as land worthy of protection in its own right.</p>
Ann Boeholt, Wetland Ecologist <i>Pierce County Surface                      Water Management</i>	<p>We have reviewed the summary, background and proposed rule changes that would strike mitigation banking from RCW 79A.15.060 and RCW 79A.15.120, rendering mitigation banking ineligible for grant funding under the Washington Wildlife and Recreation Program. Pierce County Surface Water Management opposes the proposed rule amendment for the reasons outlined below.</p> <p>More Mitigation Banks are Needed Within Washington. In the recently enacted Final Federal Rule on Compensatory Mitigation for Losses of Aquatic Resources (33 CFR Parts 325 and 332), an expressed preference for the use of mitigation bank credits over other forms of compensatory mitigation is pronounced (Section 332.3(b)(2)). There will be an increasing demand for wetland mitigation banks within Washington state that are sited in advance of wetland impacts, within a watershed planning framework. This demand will come from both public and private sectors. Meanwhile, the Department of Ecology recently released a revised pre-file draft wetland mitigation banking rule for public comment.</p> <p>Mitigation banking within Washington is moving forward. The need for mitigation banking is great, as demonstrated by the Corps of Engineers recitation of the poor success rates of permittee-responsible wetland mitigation</p>

Respondent	Comment
	<p>nationwide. Mitigation banking is one means to more effectively control compensatory mitigation, since the majority of mitigation credits can only be released once success has been verified.</p> <p>Yet, there are only two private mitigation banks currently certified within the State and only a handful of WSDOT-owned mitigation banks used as mitigation for State transportation projects.</p> <p>Incentives are Needed to Encourage Development of Mitigation Banks in Washington.                      Successful mitigation banks require a significant upfront capital investment and involve a great deal of risk (as there typically is no guarantee that available credits will ever be purchased). An upfront investment is especially difficult to come by when using public funds, for public-only mitigation banks.</p> <p>It is our opinion that more programs, not less, are needed to encourage public agencies to develop well designed mitigation bank projects within Washington. We note that zero WWRP applications in the current (2008) grant funding cycle were for mitigation banks. This is not ample justification for removing mitigation banking from the program. Not only would retention of mitigation banking within the WWRP not be counterproductive to the encouragement of mitigation banking in Washington, but removal of mitigation banking proposals from the program could be seen as contrary to State and Federal mandates that highlight mitigation banking as the most desirable form of compensatory mitigation.</p> <p>Mitigation Banking Projects Would Be Competitive.                      The mere fact that a bank is eligible for funding doesn't mean that it would be funded, as it would still need to compete with the other applications. Mitigation banking projects are not exempt from the review criteria; mitigation banking projects will typically successfully meet these criteria.</p> <p>Mitigation Banking Increases Wetland Functions and Area.                      In those instances where mitigation banks do not debit all of their available credits, the creation of such banks is a viable way of increasing the acreage and function of wetlands within Washington. Therefore funding mitigation banks through WWRP grants is a viable way of increasing the acreage and function of wetlands within Washington.</p> <p>Mitigation Banks do not just restore degraded habitats. Many mitigation banks include a preservation component, and when preservation is included as a component the credit conversion rate is 5:1 or greater (meaning that at least 5 acres are preserved for every acre of credit earned) and each acre of credit may be worth up to 1 acre of replacement habitat, but quite often it will be worth less (meaning that much more than 5 acres could be needed to replace lost habitat elsewhere). When preservation is included as a component of a mitigation banking project, there is a net gain in the amount of habitat land protected in perpetuity. A preservation component improves the viability of a mitigation banking site, rendering all other parts of the site more viable; improving habitat</p>

Respondent	Comment
	<p>connectivities, buffers, structural and habitat diversity, etc. Even if WWRP grants were only used to fund the addition of non-credit generating preservation areas adjacent to mitigation banking projects, this would help to enhance and encourage mitigation banking within Washington.</p> <p>50/50 cost share                      Finally, under the RCO grants, applications must pony up a 50/50 cost share. Significant responsibility and interest in project success still lies with the local government (or other public entity). Projects submitted for grant funding will be well conceived.</p> <hr/> <p><b>RCO STAFF RESPONSE:</b>                      Thank you for your thoughtful comments. Thank you also for your time yesterday to discuss these ideas on the phone.</p> <p>I understand from the conclusion of our conversation yesterday that Pierce County Surface Water Management is comfortable with the proposal to remove statutory reference to mitigation banking eligibility under the Washington Wildlife and Recreation Program (WWRP). This shift in your position is due to primarily to the clarification of these key points:</p> <ol style="list-style-type: none"> <li>1) Even after the adoption of this proposed change, mitigation banking projects would still be eligible to apply for WWRP grants, but they would have to compete against the other proposals in that WWRP category;</li> <li>2) We agree that it is possible that a future mitigation banking project could be competitive in the WWRP process;</li> <li>3) We agree that the success of mitigation banking is important enough that it would be irresponsible for us to leave the statute as it is because it may provide a false hope of guaranteed public capitalization for a mitigation banking start-up that may actually not be competitive in the WWRP grant process.</li> </ol> <p>As we discussed, most of your comments and analysis are good. I think we also agreed that the Recreation and Conservation Office's (RCO) analysis is equally as compelling and that the conclusion to remove the statutory reference to mitigation banking eligibility is a prudent course of action at this time.</p> <p>I apologize that the memo we distributed gave the inaccurate impression that we we're seeking to actually prohibit mitigation banking from the WWRP. This is not the case as we have discussed and mentioned above. Your comments have provided invaluable perspective to RCO staff in improving our analysis and articulation of this proposal.</p> <p>The RCO recognizes the importance of mitigation and is highly committed to supporting mitigation banking and mitigation that works in Washington State. Thank you again for your time and consideration.</p>