

Chapter 90.84 RCW

WETLANDS MITIGATION BANKING

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90.84.005

Findings—Purpose—Intent.

(1) The legislature finds that wetlands mitigation banks are an important tool for providing compensatory mitigation for unavoidable impacts to wetlands. The legislature further finds that the benefits of mitigation banks include: (a) Maintenance of the ecological functioning of a watershed by consolidating compensatory mitigation into a single large parcel rather than smaller individual parcels; (b) increased potential for the establishment and long-term management of successful mitigation by bringing together financial resources, planning, and scientific expertise not practicable for many project-specific mitigation proposals; (c) increased certainty over the success of mitigation and reduction of temporal losses of wetlands since mitigation banks are typically implemented and functioning in advance of project impacts; (d) potential enhanced protection and preservation of the state's highest value and highest functioning wetlands; (e) a reduction in permit processing times and increased opportunity for more cost-effective compensatory mitigation for development projects; and (f) the ability to provide compensatory mitigation in an efficient, predictable, and economically and environmentally responsible manner. Therefore, the legislature declares that it is the policy of the state to authorize wetland mitigation banking.

(2) The purpose of this chapter is to support the establishment of mitigation banks by: (a) Authorizing state agencies and local governments, as well as private entities, to achieve the goals of this chapter; and (b) providing a predictable, efficient, regulatory framework, including timely review of mitigation bank proposals. The legislature intends that, in the development and adoption of rules for banks, the department establish and use a collaborative process involving interested public and private entities.

[1998 c 248 § 1.]

90.84.010

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Banking instrument" means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank that describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

(2) "Bank sponsor" means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

(3) "Credit" means a unit of trade representing the increase in the ecological value of the site, as measured by acreage, functions, and/or values, or by some other assessment method.

(4) "Department" means the department of ecology.

(5) "Wetlands mitigation bank" or "bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

(6) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

(7) "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(8) "Service area" means the designated geographic area in which a bank can reasonably be expected to provide appropriate compensation for unavoidable impacts to wetlands.

(9) "Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

[1998 c 248 § 3.]

90.84.020

Wetlands or wetlands banks—Authority for regulating.

This chapter does not create any new authority for regulating wetlands or wetlands banks beyond what is specifically provided for in this chapter. No authority is granted to the department under this chapter to adopt rules or guidance that apply to wetland projects other than banks under this chapter.

[1998 c 248 § 2.]

90.84.030

Rules—Submission of proposed rules to legislative committees.

(1) Subject to the requirements of this chapter, the department, through a collaborative process, shall adopt rules for:

(a) Certification, operation, and monitoring of wetlands mitigation banks. The rules shall include procedures to assure that:

(i) Priority is given to banks providing for the restoration of degraded or former wetlands;

(ii) Banks involving the creation and enhancement of wetlands are certified only where there are adequate assurances of success and that the bank will result in an overall environmental benefit; and

(iii) Banks involving the preservation of wetlands or associated uplands are certified only when the preservation is in conjunction with the restoration, enhancement, or creation of a wetland, or in other exceptional circumstances as determined by the department consistent with this chapter;

(b) Determination and release of credits from banks. Procedures regarding credits shall authorize the use and sale of credits to offset adverse impacts and the phased release of credits as different levels of the performance standards are met;

- (c) Public involvement in the certification of banks, using existing statutory authority;
- (d) Coordination of governmental agencies, including early notification of the local government where the bank is located;
- (e) Establishment of criteria for determining service areas for each bank in accordance with subsection (2) of this section;
- (f) Performance standards; and
- (g) Long-term management, financial assurances, and remediation for certified banks.

(2) The criteria for determining service areas under subsection (1)(e) of this section shall include a requirement that restricts the maximum extent of the service area of a wetlands mitigation bank to the water resource inventory area (WRIA) as established under chapter 173-500 WAC in which the bank is located except where a service area may include parts of other WRIs if it is ecologically defensible and appropriate.

(3) Before adopting rules under this chapter, the department shall submit the proposed rules to the appropriate standing committees of the legislature. By January 30, 1999, the department shall submit a report to the appropriate standing committees of the legislature on its progress in developing rules under this chapter.

[2008 c 80 § 1; 1998 c 248 § 4.]

90.84.040

Certification of banks—Approval of use of credits by state and local governments.

(1) The department may certify only those banks that meet the requirements of this chapter. Certification shall be accomplished through a banking instrument. The local jurisdiction in which the bank is located shall be signatory to the banking instrument.

(2) For a bank for which an application for a banking instrument was filed January 1, 2008, or thereafter, the department may not certify a bank without local approval of the bank. The local jurisdiction in which the bank is located has final approval over the certification of the mitigation bank. If the local government approves the bank, it shall be a signatory to the banking instrument.

(3) State agencies and local governments may approve use of credits from a bank for any mitigation required under a permit issued or approved by that state agency or local government to compensate for the proposed impacts of a specific public or private project.

[2008 c 80 § 2; 1998 c 248 § 5.]

90.84.050

Approval of use of credits by the department—Requirements.

Prior to authorizing use of credits from a bank as a means of mitigation under a permit issued or approved by the department, the department must assure that all appropriate and practicable steps have been undertaken to first avoid and then minimize adverse impacts to wetlands. In determining appropriate steps to avoid and minimize adverse impacts to wetlands, the department shall take into consideration the functions and values of the wetland, including fish habitat, groundwater quality, and protection of adjacent properties. The department may approve use of credits from a bank when:

- (1) The credits represent the creation, restoration, or enhancement of wetlands of like kind and in close proximity when estuarine wetlands are being mitigated;
- (2) There is no practicable opportunity for on-site compensation; or
- (3) Use of credits from a bank is environmentally preferable to on-site compensation.

[1998 c 248 § 6.]

90.84.060**Interpretation of chapter and rules.**

The interpretation of this chapter and rules adopted under this chapter must be consistent with applicable federal guidance for the establishment, use, and operation of wetlands mitigation banks as it existed on June 11, 1998, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

[1998 c 248 § 7.]

90.84.070**Application to public and private mitigation banks.**

This chapter applies to public and private mitigation banks.

[1998 c 248 § 8.]