Mitigation Options
A Comparison from the Consulting Perspective

2017 SWS-PNW Chapter Mini-Meeting
Kelso, WA
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Date 9/26/17
Overview

- Introduce three compensatory mitigation mechanisms
- Helping you & your client choose between mitigation options
- Questions for clients
- Thinking out of the box for a moment
Compensatory Mitigation Mechanisms

- Permittee-Responsible Compensatory Mitigation
  - By the project applicant for a permitted impact
    - Concurrent
    - Advance
    - Concurrent & Advance (documented excess)

- Mitigation Banks
  - Generally: third-party, off-site & for profit

- In-lieu Fee Mitigation
  - Generally: third-party, off-site & non-profit
Permittee-Responsible Compensatory Mitigation

- Most traditional and most common form of mitigation across the US
- On-site, adjacent or within the same watershed
- Non-transferable
- Advance = at your own risk
  - No guarantee future impacts will be authorized
  - No guarantee constructed mitigation will be considered adequate and/or suitable for a future project.
Mitigation Banks

- **Sponsor (administered / operated by):**
  - Large public/private developers (DOT/PUDs)
  - For profit by private entities

- **Funding**
  - Private or public funds in anticipation of large future developments
  - Private investment for initial financing

- **Must achieve milestones before selling credits (advance)**

- **Currency of the bank: mitigation credits**

- **Banks for:**
  - Wetland impacts (most common)
  - Stream impacts
  - Impacts to ESA species/habitats
In-lieu Fee Mitigation

- Administered:
  - state/local governments or non-profits

- Funding:
  - fees from permittees to initiate mitigation

- Initiate mitigation after fees paid
  - concurrent / time lag

- Similar standards to banking

- Compared to Permittee-Responsible: more consideration of watershed needs and appropriate locations and types
Preferred credit provider

“Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule establishes a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation.”
Mitigation Banking

Mitigation banks have four distinct components:

- **Bank Site**: area restored, established, enhanced, or preserved;
- **Service Area**: geographic area in which permitted impacts can be compensated for at a given bank.
- **Mitigation Bank Instrument (MBI)**: formal agreement between owners and regulators establishing liability, performance standards, management/monitoring requirements, and terms of credit approval;
- **Interagency Review Team (IRT)**: interagency team that provides regulatory review, approval, and oversight of the bank; and
Mitigation Bank Instrument (MBI) & Prospectus

- Prospectus is initial document to start banking process
- MBI is legal document defining Bank
  - Basic Agreement
  - General Bank Info (Existing Conditions, delineation)
  - Bank Development Plan & Design (Mitigation Work Plan including a functional assessment technique)
  - Bank Objectives and Performance Standards
  - Credit Generation and Award Schedule
  - Procedures for Bank Credit and Debit Use
  - Establishment Period Monitoring, Reporting, Maintenance
  - Long-Term Protection and Management
  - Financial Assurances
Mitigation Banking, Interagency Review Team

- Team of agency reps: review, evaluate, & negotiate bank proposals. Work with applicants to develop instrument.
- Washington State standing members (all banks) include Ecology, the Corps and EPA.
- Invited members (specific banks) include staff from municipalities, tribes, WDFW, WDNR, USFWS, and NOAA Fisheries.
- Some IRT members oversee establishment, use, and operation.
<table>
<thead>
<tr>
<th>Type</th>
<th>Sponsor: Can be any private, tribal, or public entity</th>
<th>When Can the Site be Used?</th>
<th>Is the Sale of Credits Allowed?</th>
<th>Who Can use the Site as Mitigation?</th>
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<tbody>
<tr>
<td>Mitigation Banking</td>
<td>Credits must be generated and released prior to impacts. One major advantage of banking is that a limited number of credits become available when the banking instrument is approved, the site is protected, and financial assurances are posted.</td>
<td>Yes</td>
<td>As approved by the permitting agencies, an applicant with impacts in bank service area</td>
<td></td>
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<td>In-Lieu Fee Program</td>
<td>Sponsor: Government (including tribal), or Non-profit natural resource entity</td>
<td>The fee must be applied to mitigation effort within 3 growing seasons from the first in-lieu fee payment within a designated service area</td>
<td>Yes</td>
<td>As approved by the permitting agencies, any applicant with impacts in an approved service area that pays the in-lieu fee to an approved program</td>
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<tr>
<td>Type</td>
<td>Who is Responsible for Site Development, Management, Performance &amp; Protection?</td>
<td>When Can the Site be Used?</td>
<td>Is the Sale of Credits Allowed?</td>
<td>Who Can use the Site as Mitigation?</td>
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<tr>
<td>Permittee-Responsible Advance</td>
<td>Permittee of the Advance Site</td>
<td>The site can be used as concurrent mitigation <em>within one year of impacts through the first two years after construction</em>. If used two or more years after mitigation construction, the ratio for use will decrease as additional credits generated will be valued as advance credits which generally increase in value as the effort matures and the performance standards are met.</td>
<td>No</td>
<td>The permittee that developed the advance site only</td>
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<tr>
<td>Permittee-Responsible Concurrent</td>
<td>Permittee</td>
<td><em>Mitigation effort</em> must be implemented concurrently or within one year of impacts.</td>
<td>No</td>
<td>The permittee for the impact project</td>
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Choosing between Mitigation Credit Options

- Availability of banks
  - 17 approved banks in 11 counties in WA
    - Not all will have credits left/available


- Costs/credit (& functions provided)
  - Small scale mitigation: $600,000
  - Large scale mitigation: $50,000
  - Mitigation bank: $300,000

- Local policies
  - Banking preferred, however some municipalities have “within watershed” regulations.
“Suddenly, a heated exchange took place between the king and moat contractor.”
Questions for Clients

- Do you have a significant amount of planned development in the next 5-10 years that will involve wetland fill or stream impacts?
- Do you have access to funding (internal or investors)?
- Do you own land or is there land for sale in the same watershed as the anticipated impact and can wetlandsstreams be re-established/restored?
- Do you want to sell credits or use them all yourself?
- Excess?
- Narrow sites
  - Paper buffers reduce usable mitigation space at narrow sites
  - Smaller, enhanced buffer/reduced ratio
Multiple sites in one bank/one project? Common features, a mile apart, same watershed (e.g., transportation)
Questions?