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**THE WASHINGTON STATE
DEPARTMENT OF
TRANSPORTATION MEMORANDUM
OF AGREEMENT FOR WETLAND
COMPENSATION BANKING:
COUNTY AND TRIBAL
PARTICIPATION**

WA-RD 383.1

Final Report
August 1995



**Washington State
Department of Transportation**

Washington State Transportation Commission
Planning and Programming Service Center
in cooperation with the U.S. Department of Transportation
Federal Highway Administration

TECHNICAL REPORT STANDARD TITLE PAGE

1. REPORT NO. WA-RD 383.1	2. GOVERNMENT ACCESSION NO.	3. RECIPIENT'S CATALOG NO.	
4. TITLE AND SUBTITLE THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION MEMORANDUM OF AGREEMENT FOR WETLAND COMPENSATION BANKING: COUNTY AND TRIBAL PARTICIPATION		5. REPORT DATE August 1995	
		6. PERFORMING ORGANIZATION CODE	
7. AUTHOR(S) Marc J. Hershman, William J. Green		8. PERFORMING ORGANIZATION REPORT NO.	
		10. WORK UNIT NO.	
9. PERFORMING ORGANIZATION NAME AND ADDRESS Washington State Transportation Center (TRAC) University of Washington University District Building; 1107 NE 45th Street, Suite 535 Box 354802 Seattle, Washington 98105-4631		11. CONTRACT OR GRANT NO. Agreement T9903, Task 25	
		13. TYPE OF REPORT AND PERIOD COVERED Final research report	
12. SPONSORING AGENCY NAME AND ADDRESS Washington State Department of Transportation Transportation Building, MS 7370 Olympia, Washington 98504-7370		14. SPONSORING AGENCY CODE	
		15. SUPPLEMENTARY NOTES This study was conducted in cooperation with the U.S. Department of Transportation, Federal Highway Administration.	
16. ABSTRACT Wetlands compensation banking is an emerging tool for coordinating wetland compensatory requirements of the section 404 program of the Clean Water Act, as well as requirements of some state and local regulatory programs. The Washington State Department of Transportation (WSDOT) Wetland Compensation Bank Program (WCBP) Memorandum of Agreement (MOA), signed on September 15, 1994, by five federal agencies and three state agencies, coordinates state and federal actions when a compensation bank is implemented in connection with a highway development project. Local county, city, and tribal governments are included as participants in the MOA process. The goal of this report was to identify important issues WSDOT must consider when it implements the WCBP within county and tribal government jurisdictions. Thirteen county governments and four tribal governments were asked to answer questions about their government structure and policy framework, as well as a series of questions specific to the MOA process. Both county and tribal governments are generally impressed with the quality of the MOA and are very interested in participating in the process. A majority of governments would like to see an increased role for county and tribal governments, including a voting membership on the program's Oversight Committee, early participation in site selection, and possible joint ventures in developing and/or managing banks. The responses reflect an awareness by the counties and tribes that, although the MOA is an agreement between state and federal agencies, the implementation of the agreement on the ground and in the landscape will mainly impact local jurisdictions and their inhabitants.			
17. KEY WORDS wetlands, wetland compensation banking, wetland mitigation, county government, tribal government, local wetland plans, watershed plans, WSDOT program coordination, wetlands protection		18. DISTRIBUTION STATEMENT No restrictions. This document is available to the public through the National Technical Information Service, Springfield, VA 22616	
19. SECURITY CLASSIF. (of this report) None	20. SECURITY CLASSIF. (of this page) None	21. NO. OF PAGES 133	22. PRICE

Final Research Report
Research Project T9903, Task 25
Wetlands Banks/Legal Structures

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COMPENSATION BANKING:
COUNTY AND TRIBAL PARTICIPATION**

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Prepared for

Washington State Transportation Commission
Department of Transportation
and in cooperation with
U.S. Department of Transportation
Federal Highway Administration
August 1995

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LIST OF ABBREVIATIONS

ADID	Advanced Identification (EPA wetland inventory program)
CAO	Critical Areas Ordinance (county level ordinances)
COE	United States Army Corps of Engineers
CWA	Clean Water Act or Federal Water Pollution Control Act
DFW	Washington State Department of Fish and Wildlife
DNR	Washington State Department of Natural Resources
DOE	Washington State Department of Ecology
ELI	Environmental Law Institute
EPA	United States Environmental Protection Agency
FHWA	Federal Highway Administration
FWS	United States Fish and Wildlife Service
GMA	Washington State Growth Management Act
IWR	The Institute for Water Resources (within COE)
MOA	Memorandum of Agreement
MOU	Memorandum of Understanding
NEPA	National Environmental Policy Act
NMFS	National Marine Fisheries Service
NRCS	Natural Resource Conservation Service (Formerly the SCS)
SAMP	Special Area Management Plan
SAO	Sensitive Areas Ordinance (county level ordinances)
SCS	United States Soil Conservation Service (Now the NRCS)
SEPA	Washington State Environmental Policy Act
SMA	Washington State Shorelines Management Act
SMP	Shorelines Master Plan
SWIS	State Wetlands Integration Strategy (Washington)
TRAC	Washington State Transportation Center
WCBP	The WSDOT Wetland Compensation Bank Program
WSDOT	Washington State Department of Transportation

EXECUTIVE SUMMARY

INTRODUCTION

In a recent report to the U.S. Congress, the historical loss of wetlands in the lower 48 states between 1780 and 1980 was estimated to be 53 percent. The largest portion of the historical loss of wetlands in the U.S. has been due primarily to agricultural activity. However, urbanization, including transportation infrastructure, has also had a significant impact on the loss of wetlands. The annual rate of wetland loss appears to be decreasing in the United States, due in part to an increasing public awareness and appreciation of the functions and values that wetlands support, which have led to efforts by government and private citizens to protect and restore wetlands.

Both former president George Bush and President Bill Clinton have produced wetlands policy statements intended to confirm their commitment to protecting the nation's wetlands, to adopt a "no net loss" goal, and to encourage innovations in the regulatory framework. Former Washington State governor Booth Gardner issued Executive Orders 89-10 and 90-04, both titled "Protection of Wetlands," to confirm the state's commitment to wetland protection, to adopt the "no net loss" goal, and to clarify the role of state agencies in wetlands protection.

The Washington State Department of Transportation (WSDOT) responded to the governor's Executive Orders with Directive 31-12, which provides WSDOT staff with policy and guidance for the protection and preservation of wetlands. An action plan in Appendix A of the Directive outlines specific steps for implementing wetlands protection in accordance with the governor's Executive Orders. The action plan calls for the development of wetland mitigation banks as a way to address for the multiple small wetland impacts often associated with linear highway development projects.

There are no official definitions of wetlands banking because it has developed in an *ad hoc* fashion. An extensive study performed by the Environmental Law Institute (ELI) broadly defined wetlands banking as “a system in which the creation, enhancement, restoration, or preservation of wetlands is recognized by a regulatory agency as generating compensation credits allowing future development of other wetland sites.” (ELI, 1994)

PROJECT OBJECTIVE

In 1992, the Washington State Department of Transportation (WSDOT) entered into negotiations with five federal agencies and two state agencies to reach a Memorandum of Agreement (MOA) establishing the WSDOT Wetland Compensation Bank Program (WCBP). The MOA details the structure of the program, outlines a set of “tasks” for WSDOT to accomplish when initiating a bank project, and establishes “review” responsibilities for the agencies that are members of an Oversight Committee. The MOA is meant to facilitate the standard agency permit and review processes. It does not diminish any of the statutory or regulatory authorities of federal or state of Washington agencies, local governments, or Native American tribes.

County and tribal governments may participate in establishing wetland compensation banks under the WCBP MOA. However, federal and state agencies were constrained from including the 39 counties and 26 federally recognized tribes within the state of Washington during the original negotiations. In February of 1994 the WSDOT contracted with Professor Marc Hershman, director of the School of Marine Affairs at the University of Washington, to investigate the implementation of the WCBP within the legal and institutional framework of county and tribal governments. The objective of the study was to identify important issues WSDOT will confront when it implements the WCBP within county and tribal government jurisdictions.

PROCEDURES

The research team began work on this project in February of 1994. Our first task was to review the previous work on wetlands compensation banking. The second task, and the largest portion of the research, consisted of a series of interviews with county and tribal government representatives. The interviews were based on a questionnaire that included questions about the nature of county or tribal government and questions specifically related to the WCBP MOA. The respondents were given a few weeks before the interview to review the questionnaire and a draft of the WSDOT WCBP MOA. We produced interview reports based on notes taken during the interviews. The interview reports were sent back to the respondents, allowing them a second opportunity to respond to the questions and to correct any miscommunication in the first interviews. The transcripts were adjusted to reflect any changes in responses.

The findings of this research project are based on the interviews and literature review.

FINDINGS

Literature Review

The 1972 amendments to the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act (CWA), created the section 404 program, which is currently the mainstay of federal wetland regulation. Section 404 of the CWA requires permits for the “discharge of dredged or fill material” into “navigable waters,” including wetlands. The National Environmental Policy Act and the Fish and Wildlife Coordination Act require mitigation of adverse impacts to the environment due to a major “federal action(s),” including the issuance of a CWA section 404 permit. A 1990 MOA between the United States Army Corps of Engineers (COE) and United States Environmental Protection Agency (EPA) for determining mitigation under section 404 program of the CWA created the “mitigation sequence.” The mitigation sequence involves avoiding

adverse impacts to wetlands, then minimizing impacts, and, finally, compensating for unavoidable, adverse impacts to wetlands caused by a development project. Wetland compensation is the replacement of adversely impacted wetland functions and values by restoring or enhancing existing wetlands or creating new wetlands.

In 1987 the National Wetland Policy Forum established the “no net loss” goal in wetland policy. Former president George Bush endorsed the “no net loss” concept in 1990. President Bill Clinton has reaffirmed the concept in a 1993 policy statement and has encouraged the use of “wetland compensation banking” under the CWA §404 regulatory program.

The concept of compensation banking was first promoted by the U.S. Fish and Wildlife Service (FWS) in response to a number of requests to “bank” fish and wildlife habitat “credits” to offset future adverse impacts to those resources from development activity. The FWS defined banking as “habitat protection or improvement actions taken expressly for the purpose of compensating for unavoidable, necessary losses from specific future development actions.” (FWS, 1981 and 1983)

Wetlands compensation banking is a recent idea in the United States and is still in the early stages of development. A study by the Environmental Law Institute (ELI) determined that 46 wetland compensation banks are currently operating in 17 states in the United States. Twenty-two of the existing banks are operated by state departments of transportation to compensate for highway development impacts. The ELI study identified 64 additional proposed banks.

The “National Wetlands Mitigation Banking Study” being conducted by the U.S. Army Corps of Engineers found that wetland bank programs vary widely. The U.S. Army Corps of Engineers study divides banks into three general categories by structure: debit banks, zero-balance banks, and accounting systems. The study also distinguishes

between four types of ownership: single-client banks, joint project banks, public commercial banks, and private commercial banks.

Wetlands compensation banking is emerging as a promising tool to improve wetland protection in the United States. However, the concept is not free of criticism. A healthy debate has produced a detailed list of the advantages and disadvantages of the concept from which four general criteria for successfully implementing wetlands compensation banking have emerged. To be successful, a wetlands compensation bank project must (1) result in no net loss of ecological functions and values, and a net gain is preferable; (2) reduce the amount of administrative resources required to implement a bank; (3) utilize economies of scale to reduce the financial burden on a developer(s); and (4) maintain meaningful and effective public involvement in the permit process.

A recurring theme in most of the literature on wetlands compensation banking is that the future of banking will be closely linked to regional and local planning processes. These processes assume many forms and include advanced wetlands identification and planning, special area management plans, watershed planning, and growth management comprehensive planning. Another important consideration for implementation of wetlands compensation banking is a recent shift in decision making processes. Inter-agency and non-government decision making organizations with multi-disciplinary expertise are being used more often to confront complex natural resource problems.

Questionnaire Based Interviews: The County Perspective

Below is a summary of the information collected through the survey of counties.

County Government Structure

- All thirteen counties identified their planning department as the lead department to contact when the WSDOT WCBP MOA is implemented in county jurisdictions.
- The primary names given as personal contacts are planners.

- The main concern of the planning departments will be to coordinate long-term county planning goals with the implementation of the WCBP MOA.
- Ten counties include a senior staff member in the list of contacts, i.e., directors, managers, supervisors, and coordinators of departments and divisions.
- Larger counties offer many contacts in different departments and divisions.

County Government Policy and Regulations

- Only King and Clark counties mention wetland compensation banking within their ordinances, regulations, or planning documents.
- Pierce, King, and Whatcom counties stated that they plan to use the WSDOT WCBP MOA as a model document and may adopt the WCBP MOA as a local framework.
- Pierce County operates a small wetland compensation banking program.
- King County is forming a pilot banking project for the East Sammamish Plateau.
- Whatcom County is writing guidelines for wetland compensation banking.

County Planning Initiatives

- Eleven of thirteen counties are involved in either watershed or special area planning.
- These planning efforts place the counties in an excellent position to direct WSDOT towards the most appropriate areas for locating a WCBP site within their jurisdiction.
- Most of the counties also participate in regional organizations that include interagency planning and decision making efforts among federal, state, county, city, and tribal jurisdictions, as well as non-governmental interest groups.
- City governments are very interested in wetland compensation banking and in many cases more advanced in their exploration of banking than county governments.
- Any existing collaborative relationships for resource planning and decision making are an important element to implementing the WCBP MOA in overlapping jurisdictions.

County Participation on the Oversight Committee

- Twelve of thirteen counties expressed interest in being members of the Oversight Committee when WSDOT considers a banking project in their jurisdiction.
- There is strong sentiment that local government is in the best position to identify and protect local interests.

- The counties are most concerned about the issue of locating bank sites within their jurisdiction. They prefer that WSDOT consult with counties before proposing a candidate bank site and would like an active role in suggesting sites.
- Eight counties believe the county governments should be voting members of the Oversight Committee.
- Whatcom County questioned whether county government is capable of representing the diverse interests in the county. This point again emphasizes the importance of using regional planning and decision making organizations to coordinate multiple interests and to facilitate consensus for implementing the WCBP MOA.

County Assessment of the WCBP MOA Process

- WSDOT is far out in front on the wetland banking issue.
- Ten counties believe the WCBP MOA “looks good on paper.” The counties generally seem impressed with the sophistication and detail in the agreement. They are supportive of the WCBP MOA and will reserve final judgment until the agreement has been implemented.
- The counties will scrutinize the initial compensation banking in the state of Washington.
- Early successes in implementing the WCBP MOA will firmly establish the legitimacy of banking as a wetland protection tool and cast the WCBP MOA as the leading framework for implementing wetland compensation banking in the state of Washington.

County View of the Criteria for Locating a WCBP Site

- King and Pierce counties strictly adhere to compensation within the same watershed in which impacts occur.
- The less populated, rural counties are more flexible on this issue. Some of the counties actually think the criteria are too rigid.

County Position on WSDOT Ownership of WCBP Sites

- Ten counties are satisfied with WSDOT’s role as owner and operator of WCBP sites. These counties stated that WSDOT is a stable institution with the necessary financial resources and public mandate to operate the WCBP.
- The counties will also support a WSDOT decision to transfer the ownership and/or the operation of a WCBP site to another agency or to a non-profit conservation group.

General Impressions of the County Governments

- Opportunities abound to integrate the state and federal interests with the local programs when the agreement is implemented.

- Local jurisdictions feel that one of the keys in implementing the WSDOT WCBP MOA would be for them to create solutions to wetland resource problems within their jurisdictions and to use the WCBP as one of the components to implement those solutions.
- The responses reflect an awareness by the counties that, although the WSDOT WCBP MOA is an agreement between state and federal agencies, the implementation of the agreement on the ground and in the landscape will mainly impact local jurisdictions and their inhabitants.

Questionnaire Based Interviews: The Tribal Perspective

Below is a summary of the information collected through the survey of tribes.

Tribal Government Structure

- All the tribes offered natural resource protection departments as the lead for oversight and review of a WSDOT wetland compensation bank project.
- One of the central roles of tribal resource protection departments is to review and comment on development projects that may impact tribal resources.
- The Tulalip and Nisqually tribes include a cultural department, reflecting the close linkage between natural and cultural resources for Native Americans. WSDOT should be aware of the linkage and be prepared to communicate with the tribes on both a technical level and within a context of cultural values.

Tribal Government Policy and Activities

- The central issue for tribes is the protection of tribal natural resources in "Usual and Accustomed Areas."
- The tribes show flexibility in implementing natural resource policy.
- The tribes are interested in coordinating their efforts to restore or enhance natural resources with federal, state, county, and city efforts.
- The tribes are well organized to represent their interests in a coordinated framework with adjacent jurisdictions and interests.
- They will be active, interested, and, potentially, very helpful participants in the WSDOT WCBP.
- All four tribes actively review mitigation proposals, and they often review WSDOT projects.
- The tribes initiate and participate in watershed and special area planning. These planning processes target the most appropriate areas for restoration in the landscape, as well as reveal the tribal interest in protecting their resources outside reservation boundaries.
- One key to successful implementation of the WCBP MOA will be to involve the tribes early in the MOA process to ensure that these high priority tribal resource areas are considered in the process of locating bank sites.

Tribal Participation on the Oversight Committee

- All the tribes are interested in participating on the Oversight Committee.
- They vary on the specifics of the participation, but all recommended that WSDOT consult with a tribe before proposing a candidate WCBP site to the Oversight Committee that is located within that tribe's Usual and Accustomed Area.

Tribal Assessment of the WCBP MOA Process

- It appears that the tribes support the WCBP MOA process in general, and implementation of the agreement will be the most important test.
- The Nisqually Tribe made a strong recommendation that WSDOT consider decoupling wetland compensation bank projects from specific highway development projects. It favors a broad program in which WCBP sites would be developed in the anticipation of some future development. This is a more "classic" bank program than a large-scale compensation program or "zero balance" bank.

Tribal View of the Criteria for Locating a WCBP Site

- The tribes differ on locating compensation sites outside the watershed where the impacts occur. They have a preference for keeping compensation projects in the impacted watershed, but they expressed flexibility on the issue.
- The Yakima, Nisqually, and Tulalip tribes believe the agreement is too rigid in requiring compensation in the same river reach.
- The Muckleshoot Tribe is concerned that when two or more watersheds with multiple tribal jurisdictions are affected by a highway development project, adverse impacts may occur to one tribe's resources without compensation while another tribe would receive compensation. This would be unacceptable to the tribe.

Tribal Position on WSDOT Ownership of WCBP Sites

- Each tribe hesitated to support a transportation agency in the role of a resource protection agency. The tribes suggested that WSDOT transfer the WCBP sites to a state or federal natural resource agency such as the Washington State Department of Natural Resources, or the State Department of Fish and Wildlife, or the U.S. Fish and Wildlife Service.

General Impressions of the Tribal Governments

- The important message from the tribes was that WSDOT should coordinate with the tribes as early as possible and should clearly commit to protecting tribal resources when implementing the WCBP MOA.

CONCLUSIONS

- ◆ Most respondents from counties and tribes consider the WSDOT WCBP MOA to be the leading framework for implementing wetland compensation banking in Washington State.
- ◆ Most respondents from counties and tribes believe implementing the agreement remains the critical test of the MOA. Successful projects in the initial stages of implementation will yield broad support for future WSDOT projects.
- ◆ Most respondents from counties and tribes are interested in participating in Oversight Committee discussions. Eight counties believe they should be voting members of the Oversight Committee. Two tribes requested a vote on the Oversight Committee, while two think a vote is not necessary.
- ◆ There is nearly unanimous agreement that county and tribal participation on the Oversight Committee must commence before WSDOT proposes candidate WCBP sites.
- ◆ The primary concern of county government is to couple wetland compensation banking projects with ongoing planning initiatives such as growth management act comprehensive plans, shoreline master plans, watershed plans, and special area management plans.
- ◆ The primary concern of tribal government differs from counties. The tribes focus on protecting and enhancing tribal natural resources in “Usual and Accustomed Areas.” The counties focus on planning initiatives that integrate many issues such as transportation, population growth, and utilities, as well as natural resource management.
- ◆ Inter–agency and non–governmental decision making organizations, such as watershed councils, are playing an increasing role in regional planning processes. They coordinate diverse interests around resource management solutions that protect a broad array of public and private interests.
- ◆ Within the counties and tribes, there are varying policies on protecting watersheds when compensation is consolidated in one watershed for impacts that occur in

multiple watersheds. Most jurisdictions exhibit some flexibility on the issue; others are very rigid.

- ◆ Counties and tribes differ on the issue of long-term ownership and management of WCBP sites. Most counties are satisfied with WSDOT as owner and operator of WCBP sites in perpetuity, but they are amenable to a transfer of ownership to either a resource agency or a non-profit land trust. The tribes prefer that ownership be transferred to either a state or federal natural resource agency such as the Washington State Department of Natural Resources, the Washington State Department of Fish and Wildlife, or the U.S. Fish and Wildlife Service.

OPTIONS FOR IMPLEMENTATION

The findings and conclusions of this research suggest the following options for implementing the WCBP MOA within county and tribal jurisdictions.

- ◇ WSDOT could consult with the counties and tribes before WCBP candidate bank sites were identified and recommended to the Oversight Committee. This would satisfy a major concern of both the counties and the tribes and would fulfill a federal preference for integrating wetlands compensation banking with local planning initiatives.
- ◇ WSDOT could communicate its intention to recognize and protect tribal resources when implementing the WCBP MOA in accordance with the federal “trust responsibility” and the Washington State Centennial Accord. Direct dialogue with tribal governments or umbrella organizations that represent the tribal governments would satisfy many of the concerns of the tribes and would establish a respectful foundation for a working relationship between the tribes and WSDOT.
- ◇ WSDOT could consult with interagency and non-government decision making and planning organizations when identifying candidate WCBP sites. WSDOT would be more likely to create community support for bank related projects if it worked collaboratively with these groups.
- ◇ WSDOT should choose the initial banking projects very carefully. A successful series of “demonstration” projects would have a long-term positive impact on the WCBP.

- ◇ WSDOT could aim to maximize the ecological, administrative, and economic benefits of consolidating compensation within one bank in a single watershed when working on projects that impacted multiple watersheds. Most counties and tribes would choose a flexible approach that would maximize the ecological functions and values present in their community. If a jurisdiction maintained a rigid adherence to compensation within the same watershed where impacts occurred, then WSDOT would have to forge a separate policy agreement with that jurisdiction.
- ◇ WSDOT could seek an alternative owner(s) of WCBP sites once the performance standards had been met and all credits had been withdrawn from the bank. Either legislative action or a formal MOA with partner agencies would be required to clarify ownership responsibilities and long-term funding to support the maintenance, monitoring, and management of bank sites.
- ◇ WSDOT could carefully brief counties and tribes on the WCBP before proposing a project in their jurisdictions. The positive response to the *Wetland Compensation Banking Research Project* indicated that both the counties and the tribes would greatly appreciate early communication and a chance to state their concerns.
- ◇ WSDOT could coordinate the WCBP MOA with city governments. City governments are ahead of county governments in planning for and implementing wetlands compensation banking.

INTRODUCTION AND OBJECTIVE

In a recent report to the U.S. Congress, the historical loss of wetlands in the lower 48 states between 1780 and 1980 was estimated to be 53 percent (Dahl et. al., 1990). The National Wetland Trends Study, conducted by the U.S. Fish and Wildlife Service (Frayner et. al. 1983), estimated that between the mid-1950s and the mid-1970s total wetland area was reduced in the lower 48 states by more than 9.1 million acres, or an annual average rate of 460,000 acres per year. Another study estimated the loss of wetlands between the mid-1970s and the mid-1980s to be 2.6 million acres, or an annual rate of 261,000 acres per year (Dahl and Johnson, 1991). A large majority of wetland loss has been due to agricultural land use practices (National Research Council, 1992). Impacts due to transportation development projects have been a relatively small portion of overall wetland loss. However, transportation related impacts have been concentrated in urbanizing regions, where wetlands ecosystems are heavily impacted and wetlands functions and values are being depleted at a serious cost to the welfare of local communities (National Research Council, 1992). There have been many attempts to measure wetland area and loss in the U.S. (Roe and Ayers, 1954; Shaw and Fredine, 1956; Frayer et. al. 1983; Tiner, 1984; Dahl, 1990; and Dahl and Johnson, 1991). Three general statements can be made from reviewing these studies: (1) estimates of wetland area in the U.S. vary widely but are becoming more accurate; (2) most studies indicate a large area of wetland loss in the U.S.; and (3) the rate of wetland area loss has slowed since the mid-1970s (Mitsch and Gosselink, 1993).

The slowing rate of wetland loss is due in part to an increasing public awareness of the functions and values that wetlands support. The physical, chemical, and biological interactions within wetlands are collectively referred to as wetlands functions; the characteristics of wetlands that are considered beneficial to human society are wetlands

values (Reimold, 1994). Public awareness and appreciation of wetlands has led to government and private citizen efforts to protect wetlands (World Wildlife Fund, 1992).

Both former president George Bush and President Bill Clinton have produced wetlands policy statements intended to confirm their commitment to protecting the nation's wetlands, to adopt a "no net loss" goal, and to encourage innovations in the regulatory framework. Former Washington State governor Booth Gardner issued Executive Orders 89-10 and 90-04, both titled "Protection of Wetlands," to confirm the state's commitment to wetland protection, to adopt the "no net loss" goal, and to clarify the role of state agencies in wetlands protection.

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The Clinton Administration also endorsed the use of wetland compensation banking under the § 404 regulatory program in a 1993 policy statement (White House Office On Environmental Policy, 1993).

There are no official definitions of wetlands banking because it has developed in an *ad hoc* fashion. An extensive study performed by the Environmental Law Institute (ELI) broadly defined wetlands banking as "a system in which the creation, enhancement, restoration, or preservation of wetlands is recognized by a regulatory agency as generating compensation credits allowing future development of other wetland sites" (ELI, 1994).

In 1992, the Washington State Department of Transportation (WSDOT) entered into negotiations with five federal agencies and two state agencies to reach a

Memorandum of Agreement (MOA) establishing the WSDOT Wetland Compensation Bank Program (WCBP). The MOA details the structure of the program, outlines a set of “tasks” for WSDOT to accomplish when initiating a bank project, and establishes “review” responsibilities for the agencies that are members of an Oversight Committee. The MOA is meant to facilitate the standard agency permit and review processes. It does not diminish any of the statutory or regulatory authorities of federal or state of Washington agencies, local governments, or Native American tribes.

County and tribal governments may participate in establishing wetland compensation banks under the WCBP MOA. However, federal and state agencies were constrained from including 39 counties and 26 federally recognized tribes within the state of Washington during the original negotiations. In February of 1994 the WSDOT contracted with Professor Marc Hershman, director of the School of Marine Affairs at the University of Washington, to investigate the implementation of the WCBP within the legal and institutional framework of county and tribal governments. The objective of the study was to identify important issues WSDOT will confront when it implements the WCBP program within county and tribal government jurisdictions.

PROCEDURES

The Research Team began work on this project in February of 1994. The first task was to review the previous work on wetlands compensation banking. The second task, and the largest portion of the research, comprised a series of interviews with county and tribal government representatives. We contacted thirteen county governments and four tribal governments (Tables 1 and 2 list the county and tribal governments interviewed for the research). These early telephone discussions served to identify the most appropriate individual(s) to send a questionnaire. The questionnaires for the counties and for the tribes were different. Both questionnaires were divided into two parts: Part I included general questions exploring the structure and policy position of the governments, whereas Part II comprised a series of specific questions about the WSDOT Wetland Compensation Bank Program memorandum of agreement (WCBP MOA) (copies of the questionnaires are included in Appendix A). The respondents were given a few weeks to review the questionnaires and a draft of the WSDOT WCBP MOA.

Interviews were conducted in person and over the phone. The structure of the interviews included both time to record direct responses to the survey questions and an opportunity for free discussion of wetlands compensation banking; wetlands protection issues; federal, state, county, and tribal governments; and WSDOT activities. We produced interview reports based on notes taken during the interviews. (County interview reports appear in Appendix B, and the tribal interview reports appear in Appendix C.) The interview reports were returned to the respondents to allow them a second opportunity to respond to the questions and to correct any miscommunications in the first interviews. The transcripts were adjusted to reflect any changes in responses.

We based our conclusions and recommendations on a synthesis of the findings from the questionnaire/interview process and the information gained in the literature review.

Table 1. List of County and Tribal Governments Interviewed

Government	Date	Representative(s)
Benton County	October 4, 1994	Phil Meese, Long-range Planning Coordinator, Planning Department
Clark County	June 17, 1994	Phil Gaddis, Water Quality Division, Department of Community Development
Cowlitz County	June 13, 1994	Skip Urling, Planning Division Manager, Department of Building and Planning Sheldon Somers, Environmental Planner, Department of Building and Planning
King County	June 14, 1994	Tom Beavers, Resource Planner, Environmental Division, Department of Development and Environmental Services Klaus Richter, Senior Resource Planner, Environmental Division, Department of Development and Environmental Services Mason Bowles, Planner Land Use Services Division, Department of Development and Environmental Services
Kittitas County	September 20, 1994	Heather Douglas, Assistant Planner, Planning Department
Lewis County	October 19, 1994	Mike Zingle, Planning Manager, Community Development Division, Department of Public Services
Muckleshoot Tribe	November 3, 1994	Karen Walter, Watershed Coordinator, Environmental Division
Nisqually Tribe	September 22, 1994	George Walter, Environmental Program Supervisor Dave Trout, Director of Natural Resources
Pacific County	October 3, 1994	Bryan Harrison, Director, Department of Community Development
Pierce County	September 22, 1994	Dan Drentlaw, Resource Management Supervisor, Resource Management Division, Department of Planning and Land Use Services
Skagit County	October 31, 1994	Zoe Phahl, Shorelines Administrator, Current Planning Division, Department of Planning and Community Development
Snohomish County	September 21, 1994	Marilyn Freeman, Senior Planner, Planning Department Larry Adamson (written comments), Supervisor, Water Resource Division, Community Development Department
Spokane County	June 15, 1994	Paul Jensen, Senior Planner, Long Range Section, Planning Department
Thurston County	September 22, 1994	Paula Ehlers, Environmental Review Officer, Department of Development Services
Tulalip Tribe	October, 21, 1994	Daryl Williams, Environmental Officer, Department of Environment
Whatcom County	September 21, 1994	Terri Galvin, Senior Planner, Planning Division, Planning and Development Services
Yakima Tribe	September 20, 1994	Scott Nicolai, Environmental Planner, Fisheries Resource Program

FINDINGS

This chapter is divided into three sections: literature review, county interviews, and tribal interviews. The literature review summarizes the origins of wetland compensation banks, the various types of banks, the advantages and disadvantages of banks, and the current status of banks. Further information about banks gathered in the literature review appears in appendices D and E. The county and tribal interview results follow the same structure as the interviews. The responses to each question are presented in the order in which they were given, along with an analysis of specific responses and their importance. The county and tribal questionnaires are in Appendix A. Full county interview reports are in Appendix B. Full tribal interview reports are in Appendix C.

LITERATURE REVIEW

Origins of Banks

There is no comprehensive federal legislation to regulate wetlands in the United States. A legal framework to protect wetlands has instead evolved over time through many statutes, regulations, and court decisions. The Rivers and Harbors Act of 1899 (RHA; 33 USC § 401 *et seq.*) placed authority to regulate the dredging, filling, or obstruction of “navigable waters” with the U.S. Army Corps of Engineers (COE). Passage of the National Environmental Policy Act of 1969 (NEPA; 42 USC § 4321 *et seq.*) strengthened the COE’s authority to consider environmental factors in Rivers and Harbors Act permit decisions. The 1972 amendments to the Federal Water Pollution Control Act (33 USC §1251 *et seq.*), commonly referred to as the Clean Water Act (CWA), created the § 404 program (33 USC § 1344), which is currently the mainstay of federal wetland regulation. Section 404 of the CWA requires permits for the “discharge of dredged or fill material” into “navigable waters,” including wetlands (33 USC § 1344). The COE’s role in regulating dredge and fill activities under the Rivers and Harbors Act resulted in the COE being given oversight of the § 404 program, having guidance from

the U.S. Environmental Protection Agency (EPA). Numerous federal agencies are also involved in the § 404 program with authority to review COE and EPA decisions. The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the Natural Resource Conservation Service (formerly the Soil Conservation Service) are authorized to review the section 404 program decisions. The ad hoc nature of federal wetland regulation led one commentator to describe the process as “complicated, cumbersome, costly, and fraught with interagency conflict” (Dennison and Berry, 1993).

There is no mitigation requirement expressed in § 404 of the CWA. The mitigation requirement is found in other federal statutes such as the National Environmental Policy Act and the Fish and Wildlife Coordination Act (FWCA; 48 Stat. 401, as amended; 16 USC 661 *et seq.*). The Council on Environmental Quality issued regulations implementing NEPA and clarifying mitigation in 1978. The Council regulations defined the various mitigation alternatives within NEPA. These alternatives evolved into the current “mitigation sequence” established by the § 404 (b)(1) guidelines issued by the EPA and adopted by the COE in a 1990 memorandum of agreement. The mitigation sequence involves first avoiding and then minimizing adverse impacts to wetlands from a development project. After these two steps have been completed, unmitigated impacts to wetlands must be compensated. Wetland compensation is the replacement of wetland functions and values that are impacted by filling through the restoration or enhancement of existing wetlands or the creation of new wetlands. Preservation of existing wetlands is allowed as compensation in some circumstances.

In 1987 the National Wetland Policy Forum was convened by the Conservation Foundation at the request of the EPA to review wetland management in the United States. The forum set many goals for protecting the nation’s remaining wetlands and stated that one main objective of wetland policy should be “to achieve no overall net loss of the nation’s remaining wetlands base and to create and restore wetlands, where feasible, to increase the quantity and quality of the nation’s wetland resource base” (National

Wetland Policy Forum, 1988). The “no net loss” concept does not assume a halt in all wetland loss due to development. Implied in the “no net loss” concept is the compensation for wetland destruction through restoration, enhancement, preservation, and creation. The “no net loss” concept has become a critical component of wetland conservation in the United States in the 1990s (Mitsch and Gosselink, 1993).

Wetland compensation banking is emerging as a leading tool for implementing compensation requirements and for achieving the “no net loss” goal. Banking is an attempt to overcome the complexity of the legal framework for protecting wetlands, to satisfy mitigation requirements in the most efficient and successful manner, to achieve “no net loss” of wetlands, at least within the context of large projects, and to potentially reverse the historic loss of wetland area and actually increase wetland functions and values in the United States.

The concept of compensation banking was first promoted by the U.S. Fish and Wildlife Service (FWS) in response to a number of requests to “bank” fish and wildlife habitat “credits” to offset future adverse impacts to those resources from development activity (Short, 1988). The FWS defined banking as “habitat protection or improvement actions taken expressly for the purpose of compensating for unavoidable, necessary losses from specific future development actions” (FWS, 1981 and 1983). Soileau and colleagues (1985) have written a good general description of banking: “Mitigation banking is similar to maintaining a bank account. A developer undertakes measures to create, restore, or preserve fish and wildlife habitat in advance of an anticipated need for mitigation for project construction impacts. The benefits attributable to these measures are quantified, and the developer receives mitigation credits from the appropriate regulatory and/or planning agencies. These credits are placed in a mitigation bank account from which withdrawals can be made. When the developer proposes a project involving unavoidable losses of fish and wildlife resources, the losses (debits) are quantified using the same method that was used to determine credits, and a withdrawal

equal to that amount is deducted (debited) from the bank. This can be repeated as long as mitigation credits remain available in the bank.” Advance compensation is usually considered a feature of wetlands compensation banking (Short, 1988; Reppert, 1992; Castelle, 1992; USDD, 1995). Wetlands banking tends to be most desirable when development projects produce unavoidable, adverse impacts to many different wetlands areas, and the impacts are small, difficult to compensate and monitor individually, and often slipped through the permitting process in the past without any required compensation (Reppert, 1992). Banking allows the adverse impacts to be consolidated and compensated off-site in a larger ecological unit. This may result in more viable long-term hydrological and biological conditions, as well as produce economically efficient economies of scale (ELI, 1994).

Types of Banks

The “National Wetlands Mitigation Banking Study” authorized by § 307(d) of the Water Resources Development Act of 1990 and conducted by the Institute for Water Resources of the Corps of Engineers found that bank programs vary widely. The study divides banks into three general categories: debit banks, zero-balance banks, and accounting systems (Brumbaugh and Reppert, 1994). Debit banks fit the textbook definition of banking by producing wetland credits in advance and maintaining a positive balance of credits for the compensation of piecemeal wetland impacts in the future. Debit banks are frequently referred to as “classic” banks. Zero-balance banks provide for the piecemeal compensation of wetland losses on a more “pay-as-you-go basis” through the equally piecemeal production of credits. The advance production of large areas of wetlands does not take place, and credits are not “saved” for future impacts. Accounting systems simply maintain a running account of all wetland losses from development and wetland gains from restoration, creation, or enhancement. Accounting systems are normally used on a statewide basis (Brumbaugh and Reppert, 1994).

Wetlands banks can be initiated and operated by a range of entities, including public agencies, local governments, private profit and not-for-profit groups, development associations, and coalitions (Castelle, 1992). The Institute for Water Resources study recognized four types of banks from the owner/operator viewpoint: single-client banks, joint project banks, public commercial banks, and private commercial banks (Brumbaugh and Reppert, 1994). Single-client banks are owned, operated, and used by a single entity. State department of transportation banking programs are a good example of single-client banks. Joint project banks are usually initiated by two or more public agencies or combinations of public agencies and private groups for the purpose of pooling resources and compensating for each participant's adverse impacts. Public commercial banks or "general use" banks are organized by public agencies to compensate for impacts to wetlands due to a broad range of activities. These banks are usually coordinated with a regional planning effort, and the area is generally urban. Both public and private developers may use the bank and usually purchase credit in a fee-based scheme. Private commercial banks or "entrepreneurial banks" are sponsored by private investors for the purpose of selling compensatory credits on the open market for a profit (Shabman and Scoderi, 1994). Either public or private interests may purchase the credits (Brumbaugh and Reppert, 1994).

There is a gathering consensus of support for implementing wetlands compensation banks within the context of wetland management plans and local wetland planning processes (USDOE et. al, 1995; ELI, 1994; Brombaugh and Reppert, 1994; WSDOT, 1994; Apogee Research, Inc., 1994; Association of State Wetland Managers, 1992). Compensation banks "should be established within a context of regional hydrologic and ecological assessments and plans to determine the optimum location of such banks meet the needs of the hydrologic and ecological system, the needs of individual groups of landowners and segments of the public, and requirements of successful mitigation sites" (Kusler, 1992). These processes assume many forms and

include advance wetlands identification and planning, special area management plans, watershed planning, and growth management comprehensive planning.

A detailed discussion of wetland management and planning efforts is found in Appendix D.

The Advantages and Disadvantages of Banks

Wetlands compensation banking attracts both proponents and opponents. A healthy debate regarding the idea has taken place since its conception in the early 1980s. The controversy has given both sides reasons for hope and caution and provided some very clear forethought to the issue that is valuable to consider in any attempt to implement a banking program. Many authors have listed the advantages and disadvantages of wetlands banking (Short, 1988; Castelle, 1992; World Wildlife Fund, 1992; Kelley, 1992; Dennison and Berry, 1993; ELI, 1994; Reppert, 1994). We have combined these lists and separated them into ecological, government regulatory, and economic issues.

Ecological Issues

Advantages

- Compensation projects are located in the most appropriate site in the landscape from an ecological perspective.
- Comprehensive landscape, watershed, and special area planning processes are used to locate compensation sites.
- Planning can target the creation of certain functions and values as part of compensation projects.
- Planning can reconnect fragmented habitat as part of compensation projects.
- Consolidating many small, isolated impacts into one large compensation project can increase habitat values and create more connectivity between habitat.
- It is easier to place buffers around a large, consolidated project.

Disadvantages

- Wetland functions and values are particular to a site; hence, compensation for impacts to a riparian wetland will not have the same functions and values if it is located 2 miles from the river.

- The types of wetlands that are easiest and cheapest to restore, enhance, create, or preserve, such as scrub/shrub wetlands or marshes will become the most frequent choice to compensate for more challenging types of wetlands such as forested wetlands or fens and bogs.
- There may be a net loss in wetland functions and values if filling of wetlands is compensated for with risky restoration and creation projects.
- There may be a net loss of wetlands area if wetlands filling is compensated for only with enhancement or preservation of existing wetlands area.
- There may be a loss of small wetlands that have unique functions and values because of compensation projects that are consolidated into a single large wetland.
- Native wetlands species may be replaced with non–native species in a compensation project.

Government Regulatory Issues

Advantages

- Consolidated projects save agencies time and resources throughout all stages of the project, including permitting, planning, implementing, and monitoring.
- Regional and local planning efforts can be linked to compensation projects, and agencies can target specific desired functions and values for compensation projects.
- They provide more flexibility in finding solutions to problems.
- The conflict resolution and consensus decision making processes used in planning compensation projects improves relationships between agencies and interest groups and creates an atmosphere of cooperation.
- Advance compensation and issuance of credit after a project has been certified a success creates greater certainty for the agencies.
- Banks provide long–term legal protection of compensation sites, usually in perpetuity.
- Banks increase public awareness of compensation efforts, especially if the projects are large and located near or adjacent to existing public resources such as wildlife refuges or preserved river corridors.

Disadvantages

- Wetlands banks can be poorly structured and operated.

- The option of using an existing compensation bank may short-circuit the traditional mitigation sequence process and alternatives analysis.
- A perception may develop that permits to fill wetlands can be “purchased” using a compensation bank.
- Off-site, out-of-kind compensation is contrary to federal regulatory preferences.
- Planning a bank project can be complex, time consuming, and drain the scarce resources of understaffed agencies.
- There is a lack of technical expertise and scientific understanding on how to design compensation projects.
- The methodology for assessing functions and values is not adequate to deal with the complexities of a compensation bank project.
- Planning efforts are at various levels of completion and sophistication in different jurisdictions, making it difficult to always rely on these processes for locating compensation sites.
- Guidance for public involvement and public review of mitigation banking proposals is unclear.

Economic Issues

Advantages

- The permit process is expedited and consolidated, reducing the costs incurred by the developer and the agencies involved.
- The developer saves time and money by not having to design separate compensation projects for each specific adverse impact.
- Economies of scale should reduce the cost of compensation projects.
- The developer gains more certainty by negotiating compensation up front.

Disadvantages

- The complexity of compensation projects may make them very expensive and time consuming.
- The developer incurs substantial up-front costs well before gaining return from the development project.
- There may be long-term legal liabilities for adversely impacting an area while compensating for the impact somewhere else; future flood damages are a good example.

The debate over wetlands compensation banking will be clarified as more programs are implemented and studied. Many advantages quickly become disadvantages when projects are poorly implemented. Four general criteria for successfully implementing wetlands compensation banking emerge from the discussion of its advantages and disadvantages. To be successful, a wetlands compensation bank project must (1) result in no net loss of ecological functions and values, and a net gain is preferable; (2) reduce the amount of administrative resources required to implement a bank; (3) utilize economies of scale to reduce the financial burden on a developer(s); and (4) maintain meaningful and effective public involvement in the permit process.

Current Status of Banks

There are 46 wetland compensation banks located in 17 states in the United States. Over 50 percent of the banks are found in just two states, California, with 17 banks, and Florida, with eight banks. The intense development pressure in these states during the 1980s caused regulators to experiment with the banking concept. No other state has more than four banks (ELI, 1994). The size of banks ranges from the less than 1 acre at the Sea World Eelgrass Mitigation Bank in San Diego County, California, to the 9,523 acres within the Bonneville Bank in Utah sponsored by the Bureau of Reclamation (Short, 1988; ELI, 1994). Of the banks, 27 are well under 100 acres, 11 are between 100 and 500 acres, seven are over a 1000 acres, and one bank "varied" in size (ELI, 1994).

Twenty-two of the existing banks are operated by state departments of transportation to compensate for highway development impacts. Nearly 75 percent of the banks are state highway banks, port authority banks, or local government banks used to compensate for public development projects (ELI, 1994).

The Environmental Law Institute study identified 64 additional proposed banks (ELI, 1994). Seventeen of these potential banks are owned publicly and plan to offer credits for general commercial sale; 15 of the proposed banks are owned privately and intend to offer credits for general commercial sale. Hence, 50 percent of the proposed

banks will offer credits for sale on the open market. Only 9 percent of existing banks offer credits for general commercial sale. These proposed banks, if implemented, would alter the banking environment considerably. The remaining proposed banks are both publicly and privately owned, but will reserve credits only for the owners' use (ELI, 1994).

Wetlands compensation banking is a recent idea in the United States and is still in the early stages of development. Thus far its implementation has been *ad hoc*. The future of wetlands compensation banking rests on two broad developments: (1) the wetland regulatory framework must become consistent and cohesive in enforcing mitigation sequencing and must clearly define the role of banking in the regulatory process; and (2) the design of banks must be improved on the basis of lessons learned from the initial projects surveyed in various studies (Short, 1988; Kusler and Lassonde, 1992; ELI, 1994; Brumbaugh and Reppert, 1994).

A more detailed discussion of wetland compensation bank projects currently proposed in Washington state is found in Appendix E.

COUNTY INTERVIEWS

Part I: General Questions on the County Government Structure

Question #1 — Which agencies, departments, or divisions in the County government structure are or would be involved in oversight, review, or permit issuance for a wetland compensation bank initiated by WSDOT?

(13 responses)

Question #2 — Who are the key people in the County government structure that are or would be involved in oversight, review, or permit issuance for a wetland compensation bank initiated by WSDOT?

(13 responses)

(Questions #1 and #2 are considered together because the answers are closely related)

All thirteen respondents identified the planning department as the lead department. The official name of the departments differs in each county. Examples are the Department of Planning, the Department of Development Services, and the Department of Development and Environmental Services. Other departments mentioned include the public works department (6), a transportation department (1), a flood control advisory board (1), and a utility department (1).

The primary names given as contacts were usually planners. The larger counties offered more than one contact, with separate or divided responsibilities within various departments and divisions. The smaller counties offered a single contact within a lead department. Most counties (10 of 13) included a senior staff member in the list of contacts, i.e., directors, managers, supervisors, and coordinators of departments and divisions. The list of departments and the personnel provided as contacts by the counties in answering these questions appears in the full interview reports found in Appendix B.

Three important points emerged from the responses. First, when a wetlands compensation bank program is implemented within a county jurisdiction, the overriding

concern of the county will be the coordination of long-term planning goals between the WSDOT WCBP and county initiatives, including growth management act (GMA) comprehensive planning, critical area ordinance implementation, watershed and special area management, and other integrated natural resource planning processes.

Second, large counties offered names in numerous departments and divisions; small counties usually gave names in just one department. Thus, the sheer number of participants in the larger counties may make implementing a WCBP more complex and time consuming in these jurisdictions.

Third, other than the planning department, the departments most often mentioned were public works departments. Their construction projects often require compensation for unavoidable impacts to wetlands. These departments were mentioned as possible partners in joint wetland compensation banking ventures between the state and the county.

Question #3 — Does the County have any ordinances, development regulations, or policies that directly address wetland compensation banking?

(13 responses)

Only King and Clark counties mention wetland compensation banking directly within any ordinances, regulations, or planning documents. Of the eleven counties that have no mention of banking, only Spokane, Skagit, and Whatcom counties plan to mention banking in future documents. Four counties, Thurston, Benton, Lewis, and Snohomish, have no plan to formally adopt banking, but they do have some type of “alternatives” or “options” language in current ordinances or regulations that allows for activities such as wetland compensation banking. Pierce County currently operates its own wetland compensation banking program based on an agreement between the Department of Planning and Land Use Services and the Department of Public Works. Refer to Appendix E for a detailed discussion of the Pierce County program. Although the county has no official plan to write a general policy on banking, Pierce County

representatives predicted there will soon be formal efforts to prepare the county for expanded use of banking. Cowlitz County has no plan to adopt policies for banking and will deal with banking proposals on a case by case basis. Two counties, Kittitas and Pacific, anticipate no activity in the area of wetland compensation banking.

The responses indicated that the WSDOT WCBP MOA is ahead of the curve for activity in wetland compensation banking, and WSDOT is in position to lead the implementation of wetland compensation banking in the state of Washington. The extensive efforts to achieve an agreement among federal and state jurisdictions created a guidance document that is far more sophisticated than any other work on banking in the state. Many of the counties noted that they will look closely at the WSDOT agreement when they begin forming policies to guide their banking programs. In some cases the WSDOT agreement serves as an educational document for county planners that have only a limited introduction to the concept of wetland banking. King, Pierce, Spokane, and Whatcom counties mentioned that they may adopt the WSDOT agreement as a county ordinance with small changes. The counties hope that by adopting the WSDOT agreement they will also gain the support of the federal and state agencies that are signatories to the original agreement.

WSDOT's initial efforts to implement the WCBP MOA will be scrutinized by the counties. If WSDOT is successful in these initial efforts, the counties that are interested in either starting a bank program or working closely with WSDOT will likely adopt the basic elements of the WSDOT WCBP MOA. As the research team for this report traveled around the state and surveyed counties, two practices became evident: (1) county jurisdictions commonly model their planning documents and ordinances after the documents and ordinances of other jurisdictions; and (2) all but the smallest counties are writing or rewriting their GMA comprehensive plans, critical or sensitive area ordinances, and other wetland related regulations. WSDOT will gain a great advantage if county governments adopt the basic elements of the WCBP MOA.

The bottom line is that WSDOT is far out in front on the wetland banking issue and that early successes in implementing the WCBP MOA will firmly establish the legitimacy of banking as a wetland compensation tool. An unmistakable climate of mistrust surrounds WSDOT's implementation of this agreement because of the past activities of WSDOT in compensating for wetland impacts from highway development. Just as obvious is a nearly unanimous level of hopefulness among counties that if the WCBP MOA is implemented faithfully, it will make a positive contribution to the protection of wetlands.

Question #4 — Which existing County ordinances, development regulations, or policies are applicable to or may provide guidance to a wetland compensation banking process? Which of these may need amendments to accommodate wetland compensation banking?

(13 responses)

Nearly all the counties (11 of 13) already have one or more ordinances in place that provide guidance to a wetland compensation banking program. The most frequently mentioned program was the Shorelines Master Plan implemented by counties under the state Shorelines Management Act. GMA comprehensive plans were also mentioned frequently, followed by sensitive or critical area ordinances, wetland regulations, flood protection ordinances, building codes, zoning laws, and grading ordinances.

Only five counties foresee a need to amend their present ordinances to accommodate wetland compensation banking. The county representatives reflected a general flexibility towards banking within their present institutional frameworks. This outcome relates to the responses to Question #3, which revealed that the counties are not well prepared to provide any formal guidelines for banking within their jurisdictions but generally would like to see banking succeed. Most counties suggested that their ordinances are written with room to negotiate special projects on a case by case basis.

WSDOT is in position to establish the process laid out in the WCBP MOA as a model for local jurisdictions. The WSDOT agreement is far more detailed and

sophisticated than any local planning documents on the subject of wetland compensation banking. If the agreement is implemented successfully, the counties will most likely work within the framework created by the agreement.

Question #5 — Does the County have watershed or special area management programs that would be appropriate to link with a wetland compensation bank?

(13 responses)

Eleven of thirteen counties are involved in either watershed planning or special area planning. Only Clark and Cowlitz Counties are not currently involved in watershed or special area management. Six counties, King, Pierce, Snohomish, Skagit, Spokane, and Whatcom, are leading efforts to plan at the watershed scale within their jurisdictions. These counties are also members of non-governmental and intergovernmental special area planning organizations overseeing river basins and estuaries. Thurston and Kittitas counties are participating in regional, non-governmental watershed organizations. The Natural Resource Conservation Service (formerly the Soil Conservation Service) is leading efforts to plan at the watershed scale in Lewis County.

Two of the smaller counties in the survey are not involved in watershed planning, but they mention special area planning initiatives within their jurisdictions. Pacific County is a participant in the Seaview Intertidal Dune Planning effort. This is an initiative to balance development pressure with preservation of the dune systems. Benton County is active in the Lower Yakima River Greenway Project. The goal of this project is to piece together a greenway from the mouth of the Yakima River at the Columbia River to Benton City, a distance of 30 river miles. The Greenway emphasizes non-motorized transportation and critical habitat protection.

The counties will be in an excellent position to direct WSDOT towards the most appropriate parcels of land within their jurisdictions for wetland restoration work. The wide array of local landscape planning programs that counties cited in the interviews typifies the trend towards local control of land-use planning and resource management.

All the counties interviewed, large and small, are at some level active in landscape scale planning. Under the Washington State Growth Management Act, county governments assume a leading role in land-use planning and resource management. County zoning, comprehensive planning, watershed planning, shorelines management, surface water and flood management, and greenway and open space development programs create local control of the local landscape. Opportunities for WSDOT to integrate the WCBP into local initiatives will emerge as county planning programs mature. Refer to Appendix D for more details on watershed and special area management planning.

Question #6 — When projects cross into adjacent counties, cities, or tribes, how is that project coordinated among the separate jurisdictions?

(13 responses)

Most of the counties (12 of 13) reported good relationships and cooperation between adjacent jurisdictions. However, Pacific County is not well coordinated with adjacent counties for projects such as wetland mitigation banking. Most communication between county jurisdictions is through the State Environmental Policy Act (SEPA) framework. Nine of the thirteen respondents are involved in joint planning programs with adjacent counties. Many of these programs are watershed planning projects such as the Samish River Plan between Whatcom and Skagit counties and the Bear Creek Plan between Snohomish and King counties.

The quality of coordination between county jurisdictions and tribal jurisdictions varies. Pierce County reported excellent relations with the Nisqually Tribe within the Nisqually River Council. Skagit County works well with the Skagit River System Cooperative, a tribal watershed planning group. Whatcom, Snohomish, and Thurston counties have had mixed results with tribal jurisdictions. Kittitas, Benton, Lewis, and Pacific counties reported little or no coordination with tribal jurisdictions beyond required SEPA processes.

The counties reported good coordination among themselves when issues cross jurisdictional boundaries. The coordination of county and tribal interests is not as solid, but there are some successful examples. Any existing collaborative relationships for resource planning are elements important to implementing the WCBP MOA in areas of overlapping jurisdictions. WSDOT should work within these relationships when they exist. For example, the Nisqually River Council unites both tribal and county jurisdictions, as well as state jurisdictions and many private interests. These diverse groups have been working together for many years. The Nisqually River Council may be the best source to consult when a wetland compensation bank is located in the Nisqually River basin.

Many of the counties mentioned that city governments are very active in exploring the potential of wetland compensation banking. Alternative development sites are scarce within city boundaries, as are ecologically and economically feasible restoration sites. City governments may be farther ahead in developing banking policy and, therefore, may be more amenable to WSDOT WCBP projects.

Question #7 — Does the County view wetland mitigation projects due to impacts to wetlands during highway development activities different than wetland mitigation in conjunction with a residential, commercial, or industrial development project?

(13 responses)

Pierce, Pacific, Thurston, and Whatcom counties characterized a highway development project as in the “public interest,” as opposed to private development projects, which may convey public benefits but predominately serve private interests. Whatcom County added that the public benefit of a highway development project must be weighed against the negative impacts to wetlands and the responsibility of the state to protect “public trust doctrine” rights in aquatic resources.

Pierce and Cowlitz counties consider highway development projects unique because they are within existing right-of-ways and tend to be linear, with small,

dispersed impacts to wetland systems. These counties stated they are flexible when reviewing mitigation or compensation proposals for these types of projects. The philosophy of King, Skagit, Kittitas, Lewis, Spokane, and Clark counties is that there is no reason to review a highway project differently than they review any other development proposal. Snohomish and Benton counties expressed a wariness towards WSDOT highway projects because of WSDOT's past efforts to mitigate impacts to wetlands.

Because of the wide range of response to this question, it is difficult to derive any single conclusions.

Part II: Specific Questions on the WSDOT WCBP MOA

Question #1 — Is the role of the County on the Oversight Committee appropriate to protect County interests? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Parts A and C of the Agreement)

(13 responses)

Twelve of the thirteen respondents expressed interest in being members of the Oversight Committee when WSDOT considers a banking project in their jurisdiction. There is strong sentiment that local government is in the best position to identify and protect local interests. Eight counties, King, Snohomish, Pierce, Skagit, Thurston, Spokane, Benton, and Cowlitz, believe that counties should be voting members of the Oversight Committee if they sign the WCBP MOA. Eight counties, King, Pierce, Snohomish, Whatcom, Spokane, Kittitas, Thurston, and Cowlitz, emphasized the pivotal role they should play in locating a wetland bank within the proper legal and zoning framework, land-use perspective, and watershed planning context in their jurisdictions.

Clark County is not interested in participating because of its negative experiences in working with WSDOT on previous wetland mitigation projects. Clark County will review a banking proposal by WSDOT under current and future ordinances. The county seems to have little opposition to the banking concept. It is in the early stages of

planning a wetland bank site to compensate for residential development pressures near Burnt Bridge Creek.

Clearly, the counties would like an active role on the Oversight Committee. The counties are most concerned about the issue of locating bank sites within their jurisdiction. Multiple factors affect the decision to locate a bank site. Many of the factors, such as zoning ordinances, building codes, flood protection programs, comprehensive plans, shorelines management, sensitive area ordinances, and watershed plans, are under the control of the counties.

Whatcom County questioned whether the county government is capable of representing the diverse interests in the county. It recommended that WSDOT hold public meetings to discuss the implementation of a wetland compensation bank. Myriad private user groups such as homeowner associations, farmers' cooperatives, and wildlife enhancement organizations may not feel represented by the county government. There are certainly limits to WSDOT's ability to coordinate every interest that may be impacted by a wetland compensation project. However, the county reemphasized the importance of relying on non-governmental, multi-group arrangements such as watershed councils to coordinate local interests and to facilitate local decision making and consensus building when these arrangements are present.

Question #2 — Is the process for establishing the bank, locating a site, designing the development plan, and executing the development plan viable from the County's perspective? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Parts A - D of the Agreement)

(13 responses)

Ten counties responded that the agreement “looks good on paper.” The counties are impressed with the amount of detail in the agreement. As mentioned in the analysis of Part I, the counties would like the agreement to include closer coordination and consultation between WSDOT and the counties during the site location tasks. Seven counties mentioned specific uncertainties or small changes they would like addressed.

Otherwise, the county jurisdictions are very supportive of the agreement and tend to reserve final judgment until the agreement has been implemented. The following is a list of some specific comments made by the counties:

- Place greatest emphasis on the landscape perspective. In Section VI, Part A, of the Draft WSDOT WCBP MOA under “criteria for identification and selection of Candidate WCBP Sites,” #6 should be placed at the top of the list. (King)
- WSDOT projects should facilitate local projects, not just “comply” with local plans. (Benton)
- The county is concerned that the “art and science” of evaluating wetland credits and debits is uncertain and may misguide efforts to compensate off-site and out-of-kind as a watershed perspective warrants. (Lewis)
- Providing preservation credits surrounding a wetland restoration site is redundant. Sensitive or critical area ordinances currently protect 100-ft. buffers. Credit for preservation buffers greater than 100 ft. would be acceptable. (King)
- The evaluation of credits and debits must be linked to the area and the functions and values of the wetland impacted or restored, enhanced, created, or preserved. (King)
- Conflicting land-use designations may complicate restoration efforts. “Agricultural” is a protected land use in the county. It may be difficult to transfer land from one protected status to another. (Skagit)
- How will WSDOT manage natural changes in wetlands from the desired conditions stated in the development plan? (Cowlitz and King)
- How will WSDOT predict rising cost over the duration of these long-term projects? The county foresees future budget disputes or shortfalls. (Kittitas)
- A trust fund or posted bond may be necessary to guarantee the long-term funding for bank sites. (Cowlitz)
- The county feels the agreement over-estimates the success rate of ecological restoration. (Pierce)

The important message in these responses was that the counties are satisfied and even impressed with the substance of the agreement. Many of the specific comments related to uncertainties that the counties admit will not be answered until the agreement has been implemented. The exhaustive nature of the discussions that led to the WCBP MOA have reaped advantages for WSDOT at the county level. Most of the difficult decisions have been made. The counties are anxious to see the agreement implemented.

Question #3 — Are the criteria for acceptance of the use of a WCBP site satisfactory from a County perspective? Do linear highway projects create a unique situation in the context of watershed protection? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VII of the Agreement)

(13 responses)

Cowlitz, Clark, Pacific, Spokane, and Whatcom counties expressed flexibility on the criteria for use of wetland compensation bank sites. Four counties, Benton, Lewis, Snohomish, and Skagit, stated a preference for compensation within the same watershed in which the impacts will occur, but they allow for flexibility when an appropriate site is not available in the same watershed. Only two counties, King and Pierce, maintain a rigid adherence to compensation within the same watershed. Kittitas County does not see the watershed as a significant issue and would rather that the agreement concentrate on basing use of a bank site on an “ecological ranking system.”

WSDOT is very active in King and Pierce counties, where authorities are committed to rigid watershed protection. In high-growth counties, where development pressure is most intense, it may be efficient for WSDOT to maintain multiple bank sites. Otherwise, WSDOT will need to convince local authorities that they can maximize ecological benefits by locating compensation in a single watershed for adverse impacts that occur in more than one watershed.

In the smaller counties, where WSDOT is less active, flexibility to locate bank sites outside an impacted watershed and to limit the need for smaller bank sites in each watershed would be advantageous. Some of the counties actually find the agreement to be too rigid on this issue. Whatcom County said that bank sites should be concentrated in areas where they would be most successful and would make the greatest contribution to the landscape, watershed, and wildlife habitat. Many of these counties define the watershed at a large scale. In Whatcom County, the Nooksack River Basin covers 60 percent of the county land base. In Lewis County, two basins, the Cowlitz River and the Chehalis River, dominate the land base.

Question #4 — The WSDOT Wetland Compensation Agreement designates the WSDOT to manage, maintain, and protect the WCBP site in perpetuity. Is this acceptable? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Part D of the Agreement)

(13 responses)

Ten counties are satisfied with WSDOT's role as owner and operator of the WCBP sites. These counties mentioned the fact that WSDOT is a stable institution with the necessary financial resources and public mandate to operate a bank program successfully. King County is interested in either transferring total control to the county or entering a joint operating agreement with WSDOT. Whatcom County is interested in transferring control to the county or, most preferably, to a non-governmental land trust organization. Clark County is uncomfortable with WSDOT's role because of its negative experiences in working with WSDOT.

Though they do not think it is necessary, six counties, King, Pierce, Skagit, Whatcom, Lewis, and Pacific, would support a decision by WSDOT to either transfer ownership and/or management of bank sites to another government agency or to a non-governmental land trust organization. Five counties, King, Pierce, Spokane, Thurston, and Kittitas, are interested in joint ventures or co-management roles with WSDOT.

Only King County shows enthusiasm for operating the bank sites on its own or via a joint venture. King County is in the process of developing a detailed wetland banking policy based largely on the WSDOT WCBP MOA. King County may be the only county that currently possesses the political, technical, and financial capacity to operate a large, independent wetland banking program.

The issue of transferring ownership of bank sites to non-governmental land trust organizations was also discussed as an option. Most of the counties participate in planning organizations that include these land trusts. The main benefit from transferring the bank sites to a land trust is that local organizations would control local resources. A

few counties suggested that the owner of the bank site should have “local or at least regional roots.”

Question #5 — Please include any comments or ideas that may enlighten WSDOT in regards to implementing the WCBP MOA at the county level of government. Feel free to explore other sections of the Agreement if you desire!

(13 responses)

Five counties, King, Pierce, Spokane, Thurston, and Kittitas, stated an interest in joint ventures with WSDOT. Four counties, King, Pierce, Whatcom, and Spokane, mentioned that they will consider using the WSDOT WCBP MOA as a template for their own wetland compensation banking programs. Five counties, Whatcom, Benton, Skagit, Lewis, and Pacific, emphasized the need to involve local jurisdictions early in the process of establishing a bank site. These counties also suggested that private landowners and resource user groups that would be effected by a bank project should be involved in the process. Many of the counties believe that restoration projects should be framed within a context of the direct benefits and services they provide to the community, i.e., flood protection, water quality improvement, and recreational enjoyment. Three counties, Skagit, Benton, and Cowlitz, restated the important role the counties should play in identifying high priority restoration, enhancement, and preservation sites.

Pierce County mentioned a concern that wetland compensation banking may facilitate the filling of wetlands and short circuit the traditional mitigation sequence established in the 1990 MOA between the U.S. Corps of Engineers and the EPA creating §404(b)(1) guidelines for determination of mitigation under the Clean Water Act. Snohomish County is concerned that on-site drainage and water quality issues may be neglected when compensation occurs off-site, as in a banking context. Whatcom County warned against ignoring private property interests. It suggested that state and federal agencies may meet stiff resistance when trying to purchase land in rural settings. Benton County prefers preservation to restoration. The majority of wetlands in Benton County

are riparian wetlands. If the riparian zone is protected, restoration will normally occur through the natural processes of the river.

The comments reflected an awareness by the counties that, although the WSDOT WCBP MOA is an agreement between state and federal agencies, the implementation of the agreement will mainly impact local jurisdictions and their inhabitants. This is an important finding of the research. Opportunities abound to integrate state and federal interests with local concerns in the implementation of the agreement. As mentioned earlier, there may be little need to tailor the agreement to each jurisdiction. The exhaustive process that created the agreement produced enough detail and flexibility to encompass most situations.

A key to implementing this agreement will be to encourage local jurisdictions to create solutions to problems within their jurisdiction and to use the WCBP MOA to implement those solutions. For example, in Benton County the preference is for preservation of riparian corridors. Many of the jurisdictions and private interests that overlap that region would agree. The Yakima Tribe focuses its attention on the riparian corridors along the Yakima River and its tributaries. Agricultural interests may welcome the focus on riparian wetlands and a shift away from the depression wetlands that are predominately sustained by irrigation activity in the region.

Another example is in the Nisqually basin, where a large number of jurisdictions and private interests, including the state of Washington and the Nisqually River Land Trust, are gathered under the umbrella of the Nisqually River Council. Thurston and Pierce counties both usually support the initiatives of the Council. Local interests are often already in agreement over restoration priorities. WSDOT should consider these local priorities when implementing the WCBP. __

Summary of County Interview Responses

Table 2. Summary of County Interviews: Responses About Government Policy

	Lead Agency for Reviewing Wetland Banking	Single or Multiple Agency(s) Reviewing Wetland Banking	Involved in Watershed or Special Area Management	Involved in Inter-governmental and Non-governmental Regional Planning	Wetland Compensation Ordinance	Mentions the Potential for Wetland Compensation Banking in Policy	Operates a Wetland Compensation Bank	Planning for a Wetland Compensation Bank Program
Benton County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Clark County	Planning Department	Single	No	No Mention	No	Yes (Wetland Ordinance)	No	Under Consideration
Cowlitz County	Planning Department	Single	No	No Mention	No	No	No	No
King County	Planning Department	Multiple	Yes	Yes	No	Yes (Zoning Code and Comp. Plan)	No (Very Close)	Yes
Kittitas County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Lewis County	Planning Department	Single	No (NYRCS is doing watershed planning in the area)	No Mention	No	No	No	No
Pacific County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Pierce County	Planning Department	Multiple	Yes	Yes	No	No	Yes	Yes (Expansion of Existing Program)
Skagit County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Stromboli County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Spokane County	Planning Department	Multiple	Yes	No Mention	No	Yes (Comp Plan)	No	No
Thurston County	Planning Department	Multiple	Yes	Yes	No	No	No	No
Whatcom County	Planning Department	Multiple	Yes	Yes	No	Yes (CAO)	No	Yes

Table 3. Summary of County Interviews: Responses Specific to the MOA

County	General Impression of the WSDOT WCBP MOA	Interested in Participating on Oversight Committee	Prefer Voting Membership on Oversight Committee	Consultation Should Occur Before Candidate WCB Sites are selected	Integrate WCBP into County Wetlands Programs/Plans	Allow Compensation Outside Impacted Watershed	WSDOT Ownership of the WCBP Sites in Perpetuity	Transfer Ownership to federal or State Natural Resource Agency	Transfer to Non-governmental Land Trust Organization	Interested in a Joint Venture with WSDOT
Benton County	Good	Yes	Yes	Yes	Yes	Not Preferred, But Flexible	Fine	No Mention	No Mention	No Mention
Clatsop County	Good, (implementation is true test)	No	(Not Applicable)	Yes	No Mention	Flexible	No Comment	No Comment	No Comment	No Mention
Cowlitz County	Very Good (implementation is true test)	Yes	Yes	Yes	No Mention	Flexible	Fine	No Mention	No Mention	No Mention
King County	Good	Yes	Yes	Yes	Yes	No	Not Preferred	Fine	No Mention	Yes
Kittitas County	Fine	Yes	Not Necessary	Yes	No Mention	Not Preferred, But Flexible	Fine	Fine	No Mention	Yes
Lewis County	Fine	Yes	No	No Mention	No Mention	Flexible	Fine	No Mention	Fine	No Mention
Pacific County	No Comment	Yes	No	No Mention	No Mention	Flexible	Fine	Fine	Fine	No Mention
Pierce County	It is Possible	Yes	Yes	Yes	Yes	No	Fine	Possible	Fine	Yes
Skagit County	Fine	Yes	Yes	No Mention	Yes	Not Preferred, But Flexible	Fine	Fine	Fine	No Mention
Snohomish County	Fine (implementation is true test)	Yes	Yes	No Mention	Yes	Not Preferred, But Flexible	Fine (With Concerns)	No Mention	No Mention	No Mention
Spokane County	Impressed	Yes	Yes	Yes	Yes	Flexible	Fine	Fine	No Mention	Yes
Thurston County	No Comment	Yes	Yes	No Mention	Yes	Flexible	Not Preferred	Fine	No Mention	Yes
Whatcom County	Stronger County Role	Yes	No Mention	Yes	Yes	Flexible	Not Preferred	Fine	Fine	Yes

TRIBAL INTERVIEWS

Part I: General Questions on the County Government Structure

Question #1 — Which departments, divisions, or sections in the tribal government would be involved in oversight and review of a wetland compensation bank initiated by WSDOT to mitigate for impacts to rivers or wetlands in watersheds that support anadromous fish stocks?

(4 responses)

Question #2 — Who are the key people in the tribal government structure that would be involved in oversight and review of a wetland compensation bank initiated by WSDOT?

(4 responses)

(Questions 1 and 2 are considered together because the answers are closely related.)

All four tribes listed sections of tribal government that relate to natural resource protection as the lead for oversight and review of a WSDOT wetland compensation bank proposal. The section titles include the Natural Resource Department, the Department of Environment, the Environmental Protection Program, and the Environmental Division (within the Fisheries Department). A clear emphasis is placed on fisheries resources. Each tribe offered either a fish oriented department or committee and/or fish specialists as contacts for oversight and review of a WSDOT wetland compensation bank proposal. The Tulalip and Nisqually tribes included a Department of Culture and a Cultural Resource Committee, respectively, adding a second dimension to the review process. Finally, each respondent either directly or indirectly described a structural split in most tribal governments between staff that review issues affecting the tribes' resources and actual tribal members who form policy and make decisions.

The central issue for tribes is the protection of tribal resources. Those resources include fish and wildlife in the tribe's "usual and accustomed areas," ceded lands, and reservation lands. These resources are linked very closely to cultural values and

institutions in the tribes. WSDOT should be aware of this linkage and should be prepared to communicate with the tribes on both a technical level and within a context of cultural values.

WSDOT must also be aware of the unique structure of a tribal government. Many of the staff members in these governments are not tribal members. Non-member staff may have limited authority to form policy or make decisions. It may be necessary in some cases to verify staff recommendations with tribal councils or committees.

Question #3 — Has the tribal government ever participated in the review of mitigation projects for impacts to rivers and wetlands in watersheds that support anadromous fish stocks?

(4 responses)

All four tribes are active in reviewing mitigation proposals. Each tribe mentioned that it reviews WSDOT projects. One of the central roles of tribal resource protection departments is to review and comment on development projects that may impact tribal resources. The tribes do not have permitting authority off their reservation lands, but they do have rights in ceded lands and “usual and accustomed areas” that are protected by the U.S. government as a “trust responsibility.” The tribes will take an active role in the oversight and review of the WSDOT WCBP in order to protect tribal resources.

Question #4 — Is the tribal government involved in reviewing county watershed plans or special area management plans?

(4 responses)

The term “reviewing” was used inappropriately in this question. The tribes both initiate and participate in watershed and special area planning. All the tribes are involved in watershed planning. The Tulalips also manage the Stillaguamish Shellfish District.

The responses to this question highlighted the fact that tribal interests are well represented from the watershed and special areas planning perspective. These planning processes both reveal that the most appropriate areas for restoration in the landscape

represent the tribal priorities for protecting off-reservation resources. The watershed and special area planning processes are an excellent opportunity for WSDOT to gain consensus on the location of Candidate WCBP sites. Refer to Appendix D for more details relating to watershed and special area management planning.

Question #5 — How would the tribe coordinate a working relationship with various jurisdictions such as city or county governments when involved in the oversight and review of a wetland compensation bank initiated by WSDOT?

(4 responses)

The Nisqually, Tulalip, and Yakima tribes all work with adjacent jurisdictions in the SEPA review and comment process. Each of these tribes also communicates with jurisdictions on a less formal basis, participates in watershed planning that includes a wide array of interests, and has "good" relationships with adjacent jurisdictions.

The Muckleshoot Tribe stated that its appropriate Environmental Division staff will actively participate on the inter-agency Oversight Committee that reviews, comments on, and makes recommendations regarding a WSDOT WCBP project. The Muckleshoot Tribal Fish Committee, composed only of tribe members, considers policy issues. This is an example of how government staff implements policy while tribal members decide policy.

The bottom line in these responses is that the tribes are well organized to represent their interests in a coordinated, working framework with adjacent jurisdictions and interests. They will be active, interested, and, potentially, very helpful participants in the WSDOT WCBP.

Question #6 — Does the tribe have any existing policy statements that would provide guidance to WSDOT when it considers initiating a wetland compensation bank for impacts to a watershed that supports anadromous fish stocks?

(4 responses)

The Nisqually and Tulalip tribes have written statements that establish a preference for mitigation or compensation in the same watershed where impacts occur. The Yakima Tribe has an “integrated resource management plan” that is currently being revised and will provide future guidance to WSDOT.

The Muckleshoot Tribe mentioned no written policy statements. It restated the importance of including the Environmental Division of the tribal government in the pre-planning stage of any project occurring within the Tribe’s Usual and Accustomed Area.

The discussions with the tribes revealed that they are willing to accept impacts to low value resource areas if compensation occurs in areas that have high resource value. All the tribes indicated a policy flexibility based on a “case-by-case” consideration of projects. The tribes tend not to be rigid in implementing policy. They are very interested in protecting their natural resources, as well as in coordinating efforts to restore or enhance the resources. One key to successful implementation of the WCBP MOA will be involving the tribes early to ensure that these high priority tribal resource areas are considered in the process of locating bank sites.

Part II: Specific Questions on the WSDOT WCBP MOA

Question #1 — Is the role of the tribal government on the Oversight Committee appropriate to protect tribal interests? If not, then please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Parts A–C of the Agreement for a discussion of tribal involvement on the Oversight Committee.)

(4 responses)

All the tribes stated an interest in participating on the Oversight Committee. Otherwise, the responses to this question varied. The Nisqually and Muckleshoot tribes prefer to vote on the Oversight Committee. The Yakima Tribe does not require a vote,

but it will accept a voting role if it is offered. The Tulalip Tribe is satisfied with non-voting participation on the Oversight Committee.

The Muckleshoot Tribe is concerned that the Oversight Committee does not have enough involvement in the process of locating the Candidate WCBP sites. The tribe believes that the participants on the Committee, especially the tribes, should play a more active role in proposing Candidate WCBP sites. The Nisqually Tribe also is concerned that the role of the Oversight Committee is too weak. It believes that the Oversight Committee needs to be more than a review and recommendation group.

The ambivalence about the Oversight Committee reflects questions about when the participants on the Committee will actually affect the process, and how much power the Committee will possess. In regard to the first question, the tribes recommended that WSDOT consults with the tribes before proposing a Candidate WCBP site to the Oversight Committee. The tribes will be more amenable to WCBP sites if their high priority resource areas have been considered in the selection process. Considering these sites early in the process will save time and reduce conflict. The second question is difficult to answer until the agreement has been implemented. The Oversight Committee can halt the process at twelve levels of review, as outlined in the WSDOT WCBP MOA on page 10 in Figure 1. Clearly the Oversight Committee is provided power in the WCBP MOA, but the tribes are reserving judgment until the agreement has been implemented.

Question #2 — Is the process for establishing the bank, locating a site, designing the development plan, and executing the development plan viable from the tribe's perspective? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Parts A - D of the Agreement)

(4 responses)

The Yakima and Tulalip tribes both indicated that the process is viable from the tribes' perspective. The Yakima Tribe added that "implementation will be the true test of the process." The Muckleshoot Tribe considers the process viable if the Tribe is a signatory.

The Nisqually Tribe believes that the WSDOT WCBP should operate more like a “classic” bank. The Tribe thinks the current agreement will result in a large-scale, project-specific compensation program that will be more similar to a “zero balance” bank than a “classic” bank program. The difference, in the Tribe’s view, is that a “classic” bank program would not be linked to specific project impacts and project contracts. The Tribe would prefer that a separate funding source that relates to transportation demand be established to initiate WCBP projects. These projects should be located in regions where WSDOT development activity is likely to create impacts to wetlands and should occur well in advance of the development project. (Refer to Literature Review for more details on the types of wetland compensation banking structures.)

It appears that the tribes support the process in general, and implementation of the agreement will be the most important test. The Nisqually Tribe’s comments raised some of the most basic issues being debated about wetland compensation banking. If WSDOT is able to initiate a more “classic” bank program that involves pre-impact restoration, enhancement, creation, and/or preservation that is not related to a current highway development project, WSDOT may reduce its future transaction costs with counties and tribes by establishing bank credits that already meet performance standards and that are therefore available for compensation.

Question #3 — Are the criteria for acceptance of the use of a WCBP site satisfactory from the tribe’s perspective? Do linear highway projects create a unique situation in the context of watershed protection? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VII of the Agreement, pay particular attention to subsection 3 regarding mitigation for impacts to fish habitat or flood flows.)

(4 responses)

As mentioned in the response to question #6 in Part I, the Yakima and Tulalip tribes prefer that impacts are compensated for in the watershed in which they occur, but they remain flexible on this issue and review proposals on a case-by-case basis. The Nisqually Tribe is very concerned that impacts to the Nisqually River are compensated

for in the Nisqually watershed. The Yakima, Nisqually, and Tulalip tribes believe that the WSDOT WCBP MOA is too rigid in Section VII, #3, which requires compensation in the same river reach. The tribes would rather that the compensation happen in a high priority resource sight.

The Muckleshoot Tribe is concerned that when two or more watersheds within multiple tribal jurisdictions are affected by a highway development project, adverse impacts may occur to one tribe's resources without compensation while another tribe would receive compensation. This would be unacceptable to the tribe.

WSDOT will have some flexibility from the tribes when locating bank sites outside the watershed where impacts occur, especially when the Candidate WCBP site is considered a high priority resource area. However, WSDOT must give close attention to adjacent tribal jurisdictions in multiple watershed situations.

Question #4 — The WSDOT Wetland Compensation Agreement designates the WSDOT to manage, maintain, and protect the WCBP site in perpetuity. Is this acceptable? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Part D of the Agreement)

(4 responses)

The Nisqually Tribe believes it is important that a local entity such as the Nisqually River Land Trust assume at least joint control and ownership of WCBP sites with WSDOT. The Yakima Tribe also suggested that the WSDOT transfer WCBP sites to either a non-governmental conservation organization or a government agency that manages natural resources. The Muckleshoot Tribe is uncomfortable with WSDOT as owner and manager of the WCBP sites in perpetuity. It mentioned two specific concerns: (1) WSDOT often contracts its compensation work to firms that may not understand the goals of the WCBP MOA and, therefore, may fail to properly implement a banking project; and (2) local jurisdictions may be in a better position to ensure that future surrounding land-use decisions do not adversely affect the WCBP sites. Only the Tulalip Tribe is satisfied with WSDOT's role as manager and owner of the WCBP sites in

perpetuity, although it suggested that an agency such as the U.S. Fish and Wildlife Service (FWS) could assume control of the WCBP sites.

The responses highlighted the tribes' primary interest in resource protection. Each tribe hesitated to support WSDOT in the role of a resource protection agency. Each suggested that WSDOT consider transferring the WCBP sites to a state or federal resource agency such as the Washington State Department of Natural Resources, the Department of Fish and Wildlife, or the FWS. The tribes are likely to prefer federal agencies because they are bound by the federal "trust responsibility" to protect tribal resources.

Question #5 — Please include any comments or ideas that may enlighten WSDOT in regards to implementing the WCBP Agreement with consideration of tribal interests. Feel free to explore other sections of the Agreement if you desire!

(4 responses)

The responses to this question covered a broad range. The Yakima Tribe stated that, while the agreement is "intriguing," implementation will be the true test of its worthiness. The Nisqually Tribe restated the need to develop the "classic" bank structure. It also requested early consultation on locating Candidate WCBP sites in the Nisqually River basin. The Tulalip Tribe warned WSDOT against "moving out too fast" on a project and waiting too long before consulting with other jurisdictions. State agencies often "end up back-tracking" to allow all jurisdictions a role in the process.

The Muckleshoot Tribe expressed a number of concerns about the agreement. First, it believes that WSDOT should have worked with the Muckleshoot Indian Tribe to develop the agreement. Second, if the Tribe is not a signatory to the agreement, WSDOT should sign memorandum of understanding/agreement to ensure that tribal rights and resources are not adversely affected. Third, the tribe disagrees with the assumption stated in Section III, #2, that many small wetlands are less valuable than one large wetland.

Finally, it finds some ambiguity in whether debits and credits are measured by area alone or by area rated for function and value.

A universal message from the tribes is that WSDOT should coordinate with the tribes as early as possible. Early involvement with the tribes will be a key to implementing the WCBP smoothly and successfully in tribal jurisdictions. The tribes will want involvement during the search for Candidate WCBP sites.

Summary of Tribal Response

Table 4. Summary of Tribal Interviews: Responses About Government Policy

	Lead Agency For Reviewing Wetland Compensation Banking	Presently Review Wetland Mitigation Plans	Participate in Watershed or Special Area Management Plans	Support the Coordination of Federal, State, Local, and Tribal Resource Programs
Muckleshoot Tribe	Fisheries Department	Yes	Yes	Yes
Nisqually Tribe	Natural Resource Department	Yes	Yes	Yes
Tulalip Tribe	Department of Environment	Yes	Yes	Yes
Yakima Tribe	Fisheries Resource Program	Yes	Yes	Yes

Table 5. Summary of Tribal Interviews: Responses Specific to the MOA

	General Impression of the WSDOT WCBP MOA	Interested in Participating on the Oversight Committee	Prefer Voting Membership on the Oversight Committee	Consultation Should Occur Before Selecting Candidate WCB Sites Are Selected	Allow Compensation Outside the Impacted Watershed	WSDOT Ownership of the WCP Sites in Perpetuity	Transfer Ownership to Federal or State Natural Resource Agency	Transfer to Non-governmental Land Trust Organization
Muckleshoot Tribe	Needs More Coordination with Tribes	Yes	Yes	Yes	Not Preferred	No	Yes	No Mention
Nisqually Tribe	Impressed	Yes	Not Necessary (Would Vote If Offered)	Yes	Not Preferred	No	Yes	Yes
Tulalip Tribe	Impressed	Yes	No	Yes	Flexible	No	Yes	Yes
Yakima Tribe	Impressed	Yes	Yes	Yes	Flexible	No	Yes	Yes

CONCLUSIONS

- ◆ The WSDOT WCBP MOA is considered by most of the respondents in our research to be the leading framework for implementing wetland compensation banking in Washington State. The counties and the tribes are impressed with the sophistication and detail in the MOA. Some county jurisdictions are considering adopting the WSDOT WCBP MOA framework for their own banking programs.
- ◆ Most counties and the tribes believe that implementing the agreement remains the critical test of the MOA. Successful projects in the initial stages of implementation will yield broad support for future WSDOT projects and place WSDOT in a leadership role in wetland compensation banking and wetland protection.
- ◆ Most counties and tribes are interested in being members of the Oversight Committee, and eight counties believe they should be voting members of the Oversight Committee. Two tribes requested a vote on the Oversight Committee, while two feel a vote is not necessary. There is general agreement that county and tribal participation on the Oversight Committee should commence before WSDOT proposes Candidate WCBP sites. The counties and tribes want to be consulted on locating the WCBP sites and think the sites should facilitate local goals.
- ◆ The primary concerns of county government are to couple wetland compensation banking projects with ongoing planning initiatives such as general management agreement comprehensive plans, watershed plans, and special area management plans. These processes will often indicate areas in which to locate a WCBP site that maximize community and ecological benefits while minimizing the impacts to nearby landowners, and they will facilitate WSDOT's efforts.
- ◆ The primary concerns of tribal governments differ from those of the counties. The tribes focus on protecting and enhancing tribal natural resources in "Usual and Accustomed Areas." Salmonids and shellfish are prominent examples of "tribal natural resources." "Natural resources" are an essential part of Native American culture and, hence, are considered a "cultural resource." WSDOT must be sensitive to this linkage when working with the tribes.

- ◆ Decision making processes are changing in county and tribal governments in order to encompass the wide array of jurisdictions involved in regional planning efforts. Interagency decision making organizations are playing an increasing role in the planning process. Non-governmental decision making organizations are also increasing in number and influence. These are often organized around a specific geographic region, such as a watershed, and provide practical information for locating wetlands compensation projects. They also tend to unify diverse interests to support resource management policy that protects a broad array of public and private interests.
- ◆ Within the counties and the tribes, there are varying approaches to protecting watershed resources in the context of wetland compensation banking. Highly populated, urbanized counties tend to adhere to a rigid requirement that compensation occur in the same watershed where the adverse impacts occur. Sparsely populated, rural counties are more flexible on the issue of locating compensation outside the watershed where the adverse impacts are found. The tribes are the most flexible jurisdictions in regard to the watershed issue. Tribes focus attention on natural resources, and often that means salmon habitat. They place the highest priority on locating WCBP sites where they will have the greatest impact on tribal resources. The tribes are willing to consider off-site and out-of-kind compensation projects if they enhance tribal resources.
- ◆ Counties and tribes differ on the issue of long-term ownership and management of WCBP sites. Most of the counties are satisfied with WSDOT as owner and operator of WCBP sites in perpetuity. The counties cited WSDOT's institutional and financial stability as important qualifications. The tribes are not satisfied with this arrangement. Reflecting a concern that these natural resources be managed properly, they prefer that ownership be transferred to either a state or federal natural resource agency such as the Washington State Department of Natural Resources, the Washington State Department of Fish and Wildlife, or the FWS. The counties indicated that they will support WSDOT decisions to transfer ownership and operation of WCBP sites to natural resource agencies.

OPTIONS FOR IMPLEMENTATION

The findings and conclusions of this research suggest the following options to facilitate the implementation of the WCBP MOA within county and tribal jurisdictions.

- ◇ WSDOT could consult with the counties and tribes before WCBP sites were identified and recommended to the Oversight Committee. The counties and the tribes are very interested in playing a role in choosing locations for candidate bank sites. They often possess valuable information on the most appropriate areas in which to locate a restoration project, including ecological, economic, administrative, and cultural information. The WCBP MOA compels WSDOT to “comply” with county initiatives. The counties desire a more collaborative relationship through the WCBP MOA in which WSDOT would achieve compliance with its regulatory compensation requirements while facilitating county planning and tribal resource goals. This approach would satisfy a major concern of both the counties and the tribes and would fulfill the federal preference for integrating wetlands compensation banking with local planning initiatives.
- ◇ WSDOT could communicate its intention to recognize and protect tribal resources when implementing the WCBP MOA in accordance with the federal “trust responsibility” and the Washington State Centennial Accord. Some of the tribes expressed disappointment that WSDOT did not include the tribes in the WCBP MOA negotiations. Direct dialogue with tribal governments or umbrella organizations that represent the tribal governments would satisfy many of the concerns of the tribes and would establish a respectful foundation for a working relationship between the tribes and WSDOT.
- ◇ WSDOT could consult with interagency and non-government decision making and planning organizations when identifying candidate WCBP sites. These organizations usually include diverse interests within a planning area. Both county and tribal governments participate in these organizations. Many of the positions and goals of these organizations have broad public and private support in their communities. WSDOT would be more likely to create community support for bank-related projects if it worked collaboratively with these groups.

- ◇ WSDOT should choose the initial banking projects very carefully. The first few projects will draw enormous attention from federal and state agencies, county and tribal governments, and private interests. WSDOT should avoid large, complex projects early on; it should choose site development plans that have a relatively solid record of ecological success; it should treat the initial bank projects as experimental pilot projects and be explicit about the learning component of these projects; and it should choose jurisdictions that are amenable to wetlands compensation banking. A successful series of projects would have a long-term positive impact on the program and would ease the relationship between WSDOT and other interested jurisdictions and interests.
- ◇ WSDOT would need to approach the criteria for locating WCBP sites outside a watershed where the adverse impacts occurred with flexibility and on a case-by-case basis. The county and tribal jurisdiction vary widely on this issue. Most counties and tribes would allow compensation to be consolidated in a single watershed when impacts occurred in more than one watershed. This type of arrangement would be more likely when WSDOT and the local jurisdictions agreed on a candidate bank site that maximized ecological, economic, administrative, and cultural benefits. King and Pierce counties remain committed to more rigid protection of individual watersheds, and it might be difficult to convince these jurisdictions to accept more flexible watershed protection.
- ◇ WSDOT could seek an alternative owner(s) of WCBP sites once the performance standards had been met and all credits had been withdrawn from the bank. Many department of transportation banking programs around the nation operate on this concept. State fish and wildlife agencies and natural resource agencies are the most common long-term owners of WCBP sites. The U.S. Fish and Wildlife Service also regularly assumes ownership of WCBP sites. This action would relieve WSDOT of long-term natural resource management responsibilities and would allow the Department to focus on transportation issues. The tribes would be more comfortable with a natural resource agency as the ultimate owner and manager of the WCBP sites. While counties do not require a transfer, they would support such transfers. Either legislative action or a formal MOA with partner agencies would be required to clarify ownership responsibilities and long-term

appropriations to support the maintenance, monitoring, and management of bank sites.

- ◇ WSDOT could carefully brief counties and tribes on the WCBP before proposing a project in their jurisdictions. The positive response to the *Wetland Compensation Banking Research Project* indicated that both the counties and the tribes greatly appreciate early communication and a chance to state their concerns.
- ◇ WSDOT should be aware that city governments are ahead of county governments in planning for and implementing wetlands compensation banking. Limited alternative development sites, expensive land prices, and a highly impacted natural environment make off-site compensation very attractive in an urbanized setting. WSDOT should coordinate the WCBP MOA with city governments.
- ◇ WSDOT should clarify in the operating guidelines for the WCBP MOA the following technical issues mentioned by the counties and tribes:
 1. Place a greater emphasis on the landscape and watershed perspective in section III part B of the WCBP MOA, page 3, under “Goals of the Program.”
 2. Clarify how wetlands functions and values by area will be used to determine credits and debits in the program. It appears to many jurisdictions that compensation is being measured not by functions and values by area, but by wetland class (I, II, III, and IV) by area, as defined by Department of Ecology.
 3. Clarify the long-term legal and financial responsibilities for ensuring that a WCBP site does not degrade because of design problems in the development plan, failure to implement the plan, lack of contingency plans, or poor management practices.
 4. Clarify that small wetlands can be just as important as large wetlands by providing unique functions and values and, when it is appropriate, that compensation projects should target “complexes” of small wetlands for restoration, enhancement, creation, or preservation.

ACKNOWLEDGMENTS

The research team would like to thank Jim Schafer, the Project Technical Monitor, Art Lemke, the Project Manager, and David Stevens, Director of Environmental Policy at the Washington State Department of Transportation, for their helpful and productive comments throughout the research process and on draft versions of the report. Also, thanks go to TRAC staff Amy O'Brien and John Anzinger for assistance in putting the final report together. The Office Staff at the School of Marine Affairs at the University of Washington deserves appreciation, as always, for their efforts to support research within the School. And finally, we would like to thank each of the county and tribal government representatives that participated in the research.

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APPENDIX A
COUNTY AND TRIBAL INTERVIEW
QUESTIONNAIRES

Wetland Compensation Banking Questions for County Government

I. General Questions on the County Government Structure:

1. Which agencies, departments, or divisions in the County government structure are or would be involved in oversight, review, or permit issuance for a wetland compensation bank initiated by WSDOT?
2. Who are the key people in the County government structure that are or would be involved in oversight, review, or permit issuance for a wetland compensation bank initiated by WSDOT?
3. Does the County have any ordinances, development regulations, or policies that directly address wetland compensation banking?
4. Which existing County ordinances, development regulations, or policies are applicable to or may provide guidance to a wetland compensation banking process? Which of these may need amendments to accommodate wetland compensation banking?
5. Does the County have watershed or special area management programs that would be appropriate to link with a wetland compensation bank?
6. When projects cross into adjacent counties, cities, or tribes how is that project coordinated among the separate jurisdictions?
7. Does the County view wetland mitigation projects due to impacts to wetlands during highway development activities different than wetland mitigation in conjunction with a residential, commercial, or industrial development project?

II. Specific Questions on the WSDOT Wetland Compensation Bank Program MOA:

1. Is the role of the County on the Oversight Committee appropriate to protect County interests? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Parts A and C of the MOA)
2. Is the process for establishing the bank, locating a site, designing the development plan, and executing the development plan viable from the County's perspective? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Parts A - D of the MOA)
3. Are the criteria for acceptance of the use of a WCBP site satisfactory from a County perspective? Do linear highway projects create a unique situation in the context of watershed protection? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VII of the MOA)
4. The WSDOT WCBP MOA designates the WSDOT to manage, maintain, and protect the WCBP site in perpetuity. Is this acceptable? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Part D of the MOA)
5. Please include any comments or ideas that may enlighten WSDOT in regards to implementing the WCBP MOA at the county level of government. Feel free to explore other sections of the MOA if you desire!

Wetland Compensation Banking Questions for Tribal Government

I. General Questions on the Tribal Governmental Structure:

1. Which departments, divisions, or sections in the tribal government would be involved in oversight and review of a wetland compensation bank initiated by WSDOT to mitigate for impacts to rivers or wetlands in watersheds that support anadromous fish stocks?
2. Who are the key people in the tribal government structure that would be involved in oversight and review of a wetland compensation bank initiated by WSDOT?
3. Has the tribal government ever participated in the review of mitigation projects for impacts to rivers and wetlands in watersheds that support anadromous fish stocks?
4. Is the tribal government involved in reviewing county watershed plans or special area management plans?
5. How would the tribe coordinate a working relationship with various jurisdictions such as city or county governments when involved in the oversight and review of a wetland compensation bank initiated by WSDOT?
6. Does the tribe have any existing policy statements that would provide guidance to WSDOT when it considers initiating a wetland compensation bank for impacts to a watershed that supports anadromous fish stocks?

II. Specific Questions on the WSDOT Wetland Compensation Bank Program MOA:

1. Is the role of the tribal government on the Oversight Committee appropriate to protect tribal interests? If not, then please discuss the problems and provide some potential alternatives or solutions. (Refer to Section V, Parts A–C of the MOA for a discussion of tribal involvement on the Oversight Committee.)
2. Is the process for establishing the bank, locating a site, designing the development plan, and executing the development plan viable from the tribe's perspective? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Parts A - D of the MOA)
3. Are the criteria for acceptance of the use of a WCBP site satisfactory from the tribe's perspective? Do linear highway projects create a unique situation in the context of watershed protection? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VII of the MOA, pay particular attention to subsection 3 regarding mitigation for impacts to fish habitat or flood flows.)
4. The WSDOT Wetland Compensation Agreement designates the WSDOT to manage, maintain, and protect the WCBP site in perpetuity. Is this acceptable? If not, please discuss the problems and provide some potential alternatives or solutions. (Refer to Section VI, Part D of the MOA)
5. Please include any comments or ideas that may enlighten WSDOT in regards to implementing the WCBP MOA with consideration of tribal interests. Feel free to explore other sections of the MOA if you desire!

APPENDIX B
COUNTY INTERVIEW REPORTS

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Benton County Interview

Interview

Date:October 4, 1994

Place:(phone)

Participant(s):.....Phil Mees, Long Range Planning Coordinator, Benton County
Planning Department

Address:.....Benton County Planning Department
Planning Annex
P.O. Box 910
Prosser, WA 99350

Phone:(509) 783-1310

Response to Questions

Part I

1. **Planning Department and Engineering and Road Department**
2. **Planning Department**
Phil Mees, Long Range Planning Coordinator
Engineering and Road Department
Dennis Skeate, County Engineer
3. **The Benton County Critical Areas Ordinance (CAO) addresses wetland restoration and enhancement. The CAO considers off-site mitigation projects as an alternative to on-site mitigation when impacts are unavoidable and on-site mitigation impossible.**
4. **The CAO establishes a 6:1 replacement ratio for wetland mitigation projects. This portion of the CAO conflicts with the more flexible and generally lower ratios in the WSDOT banking agreement. Benton County is firmly committed to this ratio.**
5. **The Lower Yakima River Greenway Project is attempting to secure a greenway from the mouth of the Yakima River at the Columbia River to Benton City, a distance of 30 river miles. Lands within the greenway would be only those which are publicly owned. Additional purchases of public property along the river and management for greenway use are possible over the long term. The greenway focuses on the riverine corridor and nearshore lands, thus it could be an appropriate wetland bank site.**

6. There is a Benton-Franklin Regional Council which deals mostly with transportation issues.
7. No. The Planning Department does not view highway projects differently as part of its permit and review processes. The Planning Department does believe WSDOT and other government agencies need to set an example for private developers of effective mitigation efforts.

Part II

1. The Planning Department feels that if they choose to sign the WSDOT banking agreement and participate on the Oversight Committee, then it should be a voting member of the committee.
2. The Planning Department believes WSDOT site selection should incorporate local processes such as the greenway project or Health Department water quality concerns.
3. The Planning Department firmly believes that mitigation should happen in the same watershed as the impacts, especially when the watershed is degraded. The county would consider mitigation in the most "appropriate watershed" only if mitigation in the same watershed as the impacts is impossible.
4. The Planning Department is comfortable with WSDOT as the caretaker of the bank sites in perpetuity. It does not see co-management with the county as feasible.
5. The Planning Department recommends that WSDOT emphasize education and public relations when proposing a bank site in Benton County. They suggest presenting the program as a way to help implement the CAO, protect water quality and quantity, maintain biodiversity, and protect natural functions that are of value for agriculture and municipal services. They also stress the need to coordinate all jurisdictions, including the possibility of funding the participation of some agencies that are terminally under-funded. Finally, the county believes that preservation should take precedence over restoration. Restoration has not proven effective in replacing full functions and values of wetlands and, therefore, should be considered experimental. Link restoration projects to high priority preservation projects rather than linking preservation to a restoration project just to serve as a buffer. High priority preservation sites in Benton County are the riparian zone along river corridors. These corridors are the only historically wet areas in the county. Many of the wetlands in the county not associated with the rivers are actually due to irrigation development in the area. The take home message is to help the county preserve and possibly enhance or restore naturally occurring sensitive resources that face immediate pressure from development!

Clark County Interview

Interview

Date:June 17, 1994

Place:(phone)

Participant(s):.....Phil Gaddis, Water Quality Division, Department of Community Development

Address:.....P.O. Box 9810
Vancouver, WA 98668

Phone:(206) 699-2375

Responses to Questions

Part I

1. The Planning Department.
2. Planning Department
Phil Gaddis, Ecologist, Water Quality Division, Department of Community Development
3. The February 1992 county Wetland Protection Ordinance mentions wetland compensation banking as an option for mitigation for impacts to wetlands.
4. The Stormwater Compensation Ordinance is a relevant ordinance, but does not address wetland compensation banking.
5. The County is not involved in watershed planning.
6. The County has not faced this situation and has no plans worked out to coordinate with adjacent jurisdictions.
7. The county does see a highway project as unique and would treat highway activities with flexibility.

Part II

1. The county clearly stated they wanted no part of the responsibility or liability for creating a wetland compensation bank for WSDOT. The county will review the work WSDOT submits and comment on proposals. The county is jaded due to horrendous problems when previously entered into joint agreements involving wetlands. They feel like they always get more involved than they bargained for and in the end are left with a mess at best and often a failure.

2. No comment other than it looks good on paper, but the county has been disappointed in the past on mitigation issues related to the 1988 permits for I-5 improvements in Clark County.
3. The County considers the site selection process "OK". Planning and design guidelines are deficient. Design should be modeled after the closest control site, and only native species occurring in the area should be used in planting design.
4. The county would like to see contingency plans for mitigation failures.
5. The county is considering their own local mitigation bank to mitigate the impacts from development near Burnt Bridge Creek. They would like to restore a drained lake and marsh system back into an ecologically healthy and functioning wetland area.

Cowlitz County Interview

Interview

Date:June 13, 1994

Place:Kelso, WA

Participant(s):.....Skip Urling, Planning Division Manager, Department of Building
and Planning
Sheldon Somers, Environmental Planner, Department of Building
and Planning

Address:207 4th Avenue North
Kelso, WA 98626

Phone:(206) 577-3052

Responses to Questions

Part I

1. The Department of Building and Planning.
2. The Department of Building and Planning.
Skip Urling, Planning Division Manager.
Sheldon Somers, Environmental Planner, Planning Division.
Kathy Harnden, Environmental Planner, Planning Division.
County Commissioners.
3. There are no laws in the county at this time that deal directly with wetland compensation banking. Wetland banking activity would be negotiated and involve the people mentioned above.
4. No laws even provide guidance. The county may face the GMA planning requirements next year. Shorelines regulations would control some situations.
5. The County is not involved in watershed planning at this time.
6. The County works with adjacent jurisdictions within the limits of their ordinances.
7. Yes, the county does see a unique situation in the linear nature of a highway development and the site dependency on existing highway paths. The county would be flexible in designing a mitigation strategy.

Part II

1. The county wants a strong say in land-use decisions in the county. A long-term use decision such as a WCBP site is especially important because it affects development options and patterns in the county. They are concerned about eliminating future potential development sites, zoning designations. The county definitely wants a vote on the Oversight Committee. They would like at least an equal input in the siting search with WSDOT. They have many potential sites in mind: Port Willow Grove, Cottonwood Island, Fishers Island, Carol's Bluff, and Silver Lake.
2. The agreement looks very good on paper. The county is concerned about past failures to fulfill mitigation obligations. Two large concerns: 1) long-term funding and follow-through on long-term maintenance - some sort of trust fund may be needed; and 2) maintenance of a wetland over the long term is problematic because the characteristics of a wetland naturally change.
3. The watershed restrictions are not a big issue in the county and the county will be flexible on the criteria for use.
4. Again, must consider the changing conditions of the wetland. The county sees large WCBP sites as higher potential for long-term management.
5. The county is interested in being able to purchase compensation credits for its activities impacting wetlands in the county either from a WSDOT type bank or a private bank.

King County Interview I

Interview

Date:June 14, 1994

Place:Bellevue, WA

Participant(s):.....Tom Beavers, Resource Planner, Environmental Division,
Department of Development and Environmental Services.
Klaus Richter, Senior Resource Planner, Environmental Division,
Department of Development and Environmental Services

Address:3600 – 136th Place Southeast
Bellevue, WA 98006-1400

Phone:(206) 296-7277

Responses to Questions

Part I

1. The Department of Development and Environmental Services and the Department of Public Works

2. **Department of Development and Environmental Services**

Klaus Richter, Senior Resource Planner, Environmental Division (He is a wetland ecologist and is working with Tina Miller on the King County WCBP.)

Tom Beavers, Resource Planner, Environmental Division (He is working on the King County Comprehensive Plan for the GMA.)

Laura Casey, Land Use Services Division (Oversees the Sensitive Areas Ordinance.)

Randy Sandin, Land Use Services Division (Oversees the Sensitive Areas Ordinance.)

Mason Bowles, Land Use Services Division (Oversees the Sensitive Areas Ordinance.)

Department of Public Works

Tina Miller, Surface Water Management Division (She is coordinating the King County WCBP and working on the first WCBP site on the East Sammamish Plateau.)

Dave Crippen, Road and Engineering Division

3. Ordinance 11621 amends title 21A (Zoning Code), and Section 72 of the ordinance allows mitigation banking for unavoidable adverse impacts caused by development activities of public agencies or utility facilities. The 1994 King County Comprehensive Plan, Policy WE – 328, states that the County should develop a plan for the establishment of a wetland mitigation bank. The Public Works Department and the Utilities, Water, and Sewage Department have created an agreement to guide the creation of a WCBP on the East Sammamish Plateau. The agreement has been adopted as an ordinance in the county. The agreement/ordinance may affect future WCBP agreements in the county.
4. The Zoning Code and Comprehensive Plan both provide guidance for wetland mitigation banking.
5. King County Surface Water Management in the Department of Public Works has watershed plans and special area management programs.
6. The county is working cooperatively with adjacent jurisdictions. The Bear Creek Plan with Snohomish County is an example.
7. The county would not look at highway development activity as unique (Richter). The county SAO does provide exemptions for public agencies (Beavers).

Part II

1. Local government should have a vote on the Oversight Committee. Otherwise the Oversight Committee looks good.
2. The landscape perspective should be the first and most important consideration when choosing a site. Thus #6 on page 13 should be moved to #1 and the list adjusted accordingly. The list is good, the county simply wants to see a very high priority placed on landscape and ecosystem perspective and on the principals of conservation biology.
3. The county sees no opportunity to transfer mitigation outside the watershed. One large wetland is not necessarily more valuable than many small wetlands. No net loss of wetlands within a watershed planning basin.
4. The county sees many opportunities for co-management, joint ventures and contracted work between the county and WSDOT. Monitoring should be integrated or perhaps contracted to the Surface Water Management Division since they are already monitoring the county's resources. The Parks Department would definitely like to be involved in the management of the restored resources. The county sees some problems with WSDOT managing the restored resources in perpetuity. How will WSDOT guaranty funding for monitoring , maintenance, and management in perpetuity? How will WSDOT manage the restored resources in perpetuity if the resources begin to change as all natural systems do over time? Monitoring can only be accurate if it is done in the context of the larger landscape.

5. **Many suggestions:**
1. **The values and functions of a wetland should remain linked to the area when valuing credits and debits.**
 2. **Mitigation should not always be in kind. More flexibility is required so low class, degraded wetlands are not compensated for in kind.**
 3. **Five years may not be enough time to assess the success of a restoration project.**
 4. **Providing credit for preservation buffers around a wetland is redundant. The SAO already protects 100 feet around wetlands. Buffers greater than 100 feet may be acceptable.**
 5. **The Horner and Raedke methodology is old. Mary Kentula is reviewing a new and improved methodology.**
 6. **What happens to the fauna in the transition from Phase I to Phase II?**

King County Interview II

Interview

Date:June 14, 1994

Place:Bellevue, WA

Participant(s):.....Mason Bowles, Planner, Land Use Services Division,
Department of Development and Environmental Services

Address:3600 – 136th Place Southeast
Bellevue, WA 98006-1400

Phone:(206) 296-7294

Responses to Questions

(This interview followed the first interview and was more free ranging. I did not adhere to the list of questions).

Comments

1. King County is looking for a programmatic permit for its WCBP. It will consider adopting the WSDOT WCBP MOA with some changes as a way of gaining the support of the signatories to the WSDOT WCBP MOA.
2. The county would like to see the use of reference sites in the WSDOT WCBP.
3. The county is looking to the West Eugene Wetland Special Area Study for a model set of performance standards using reference sites.
4. The county would like to see a heavy emphasis on landscape planning.
5. The county would like the mitigation to consider the hydroperiod over time. Make sure the restoration effort is resilient to changing hydrological conditions.

Kittitas County Interview

Interview

Date:September 20, 1994

Place:Ellensburg, WA

Participant(s):.....Heather Douglass, Assistant Planner, Kittitas County Planning Department

Address:.....Kittitas County Court-house
Planning Department
Room 182
Ellensburg, WA 98926

Phone:(509) 962-7506

Responses to Questions

Part I

1. The Planning Department and the Public Works Department.
2. **Planning Department**
Mark Carey, Director
Neil White, Planner I
Heather Douglass, Assistant Planner
Debbie Randall, Assistant Planner
Public Works Department
Greg Gifford, Director
Page Scott, Transportation Planner
3. The county Critical Areas Ordinance was adopted on August 12, 1994. The CAO does not mention wetland mitigation banking, but does not restrict it as a possible option.
4. The CAO does establish replacement ratios for mitigation proposals. The county would require that WSDOT comply with these ratios when implementing a bank site in Kittitas County. The CAO also provides guidelines for flood retention and shorelines protection that may influence the siting of a bank in Kittitas County.

5. The only regional or special area management program mentioned was the Yakima River watershed adjudication.
6. The county works with adjacent jurisdictions via the SEPA processes.
7. The county does not initially treat a highway project differently. The project proposal would be subject to the standard permitting process, and the threshold would be the impacts to critical areas.

Part II

1. The county should have a more active role on the Oversight Committee. A vote is not necessary, the county will vote with its permitting authority. The Oversight Committee should take a close look at the local permitting parameters and emphasize local initiatives in siting the banks.
2. The county feels the process is fine. It seems almost too detailed with too much "back and forth" in the decision making phases. The county is curious about how WSDOT plans to deal with the long time frames involved in these projects. A project initiated in 1995 that under the best scenario is completed in 2000 will experience rising and difficult to predict costs. This could lead to budget problems. WSDOT should consider interest bearing trust funds as a tool to insure funding of the bank projects.
3. The county stresses that the criteria for selecting a bank site must be based on ecological functions as well as economic opportunities. There should be a formalized ranking of choices for determining in which watershed a bank is sited. A formal decision analysis should be combined with the ranking system.
4. The county is satisfied with the role of WSDOT as the manager of the bank sites. The county may be interested in joint ventures with the county road construction projects.
5. The county would like to see the WSDOT coordinate wetland mitigation projects with development mitigation projects and county road construction projects. They mentioned the Hyack residential development proposal as a possible joint venture project.

Lewis County Interview

Interview

Date:October 19, 1994

Place:(phone)

Participant(s):.....Mike Zingle, Department of Public Services, Community Development Division, Planning Manager

Address:350 North Market Boulevard
Chehalis, WA 98532

Phone:(206) 740-1146

Responses to Questions

Part I

1. Department of Public Services.
2. Department of Public Services.
Mike Zingle, Planning Manager, Community Development Division
3. The county Shorelines Management Development Regulations issued March 1994 mentioned the use of "alternative" methods of wetland mitigation.
4. The Shorelines Management Development Regulations may need amendment to accommodate wetland compensation banking.
5. The county is not involved in watershed planning. The Soil Conservation Service's Lewis County Conservation District is conducting watershed planning and management.
6. The county works with adjacent jurisdictions mainly through the SEPA process. The county rarely works with the Chehalis Tribe (not a treaty tribe).
7. The county is not as active in regulating wetlands as other counties to the north along Interstate 5 such as Pierce, King, and Snohomish Counties.

Part II

1. The county is satisfied with its role on the Oversight Committee.
2. The county considers the process for establishing a bank as outlined in the WSDOT MOA a viable arrangement. Their one concern is over the evaluation of credits and debits. "Is there a firm and uniform method to do this?"

3. The county's preference is for some watershed mitigation. However, the county would be flexible on mitigation outside the watershed the impacts occur in. Lewis County defines the watershed at a large scale. The Cowlitz Basin covers two thirds the land area in the county, and the Chehalis Basin covers the remaining third.
4. The county believes WSDOT is well suited to own and manage the bank sites in perpetuity. A non-profit conservation trust approved by the local community would also be an appropriate owner/manager.
5. Involve the local government early on any banking projects and begin a standard public notification process.

Pacific County Interview

Interview

Date:October 3, 1994

Place:(phone)

Participant(s):.....Bryan Harrison, Director, Pacific County Department of
Community Development

Address:P.O. Box 68
South Bend, WA 98586

Phone:(206) 875-9356

Response to Questions

Part I

1. Department of Community Development, Department of Public Works, and the Flood Control Advisory Board.
2. **Department of Community Development**
Bryan Harrison, Director of Community Development
Department of Public Works
Chuck Mikkola, Assistant County Engineer
Flood Control Advisory Board
Malcolm McPhail, Chair of the Flood Control Advisory Board
3. There has been no discussion of wetland compensation banking in Pacific County and there are no ordinances that directly address wetland compensation banking.
4. There are no ordinances that are applicable to wetland compensation banking, nor any ordinances that will have to be amended to accommodate wetland compensation banking.
5. The county is involved in the Seaview Interdunal Wetlands planning effort. This initiative aims to balance development pressures with the preservation of the interdunal wetland system. The county is interested in the possibility of integrating this planning effort with the WSDOT Wetland Compensation Bank Program.
6. The county is not very organized with adjacent jurisdictions regarding wetland mitigation banking.

7. The county does consider highway development work a "public interest" and, therefore, will treat proposed projects differently than other non-public development proposals.

Part II

1. The county considers its role on the Oversight Committee appropriate and believes that it would participate in the discussions of the Committee without being a voting member.
2. No comment on the specifics of establishing bank sites.
3. The county does consider the issue of compensating for impacts in one watershed in a different watershed a problem. They would not support compensation for impacts on the Willapa Bay watershed if a bank was sited in the Grays Harbor watershed. The position seems to be one of the scale of watershed considered.
4. The county is satisfied with WSDOT as the long-term manager of the wetland bank sites. They do not discount other options such as transferring the properties or responsibility for managing the properties to other resource agencies or private non-governmental conservation organizations.
5. Pacific County suggests very clear communication efforts with the local leaders to assuage the sensitivity to purchasing land for conservation in the county. Link the bank sites to local values and services.

Pierce County Interview

Interview

Date:September 22, 1994

Place:Tacoma, WA

Participant(s):.....Dan Drentlaw, Resource Management Supervisor, Resource Management Division, Department of Planning and Land Services

Address:2401 South 35th Street
Tacoma, WA 98409

Phone:(206) 591-3628

Responses to Questions

1. The Department of Planning and Land Use Services and the Department of Public Works.

2. **Department of Planning and Land Use Services**

Dan Drentlaw, Resource Management Supervisor, Resource Management Division.

Department of Public Works and Utilities

Mary Lynch, Environmental Biologist (supervises the DPW&U Off-site Wetland Mitigation Banking Program).

Roy Hubert, Watershed Planner, Water Resource Division.

3. The Critical Areas Ordinance does not mention wetland mitigation banking. The Wetland Management Regulations do not mention wetland mitigation banking. The Department of Public Works has a signed agreement with the Department of Planning and Land Use Services to operate an off-site wetland mitigation banking program. The program is active, but small. Approximately 12 were developed as bank sites. The sites are usually associated with direct on-site mitigation projects where there is an opportunity to restore additional wetland acreage.

4. The Wetland Management Regulations would need detailed guidelines for wetland mitigation banking for banking to occur on a large scale. The county admits that their own banking program will require more detailed guidelines as it expands.

5. The county is beginning to plan at the watershed scale. The Lower Puyallup River has received the greatest attention.

6. The county communicates effectively with adjacent jurisdictions through the SEPA process. The county is also a participant with other counties, tribes, state agencies, and conservation groups in the management of the Nisqually River basin.
7. The county views WSDOT as one of a few entities that could operate a mitigation bank successfully. WSDOT has the financial resources and the institutional longevity to oversee a banking program. The county also recognizes a public interest/public trust issue linked to highway improvements. Finally, the county considers the linear character of highway projects a unique feature that makes banking even more attractive and appropriate.

Part II

1. The county believes that if it is a signatory to the agreement, then it should be a voting member. The county should have a pivotal role in selecting bank sites that will further the goals of watershed planning and comprehensive plans.
2. The agreement looks feasible from an administrative perspective. The county questions whether the ecological goals of restoration, enhancement, and creation can be achieved.
3. The county requires that mitigation be sited in the same watershed where the impacts occur to avoid increasing cumulative impacts to watersheds. The county also feels that mitigating outside a watershed that is impacted would be difficult to administrate at the local level.
4. The county is satisfied with WSDOT as the long-term manager and landowner of mitigation bank sites. The county parks department may want to play a role. The county believes that land trust could also play a useful role. WSDOT must provide financial support to the sites.
5. The county may be interested in joint ventures between the WSDOT and the county DPW&U. The county is concerned that wetland mitigation banking will ease the mitigation sequencing process and make it easier to fill wetland areas.

Skagit County Interview

Interview

Date:October 31, 1994

Place:(phone)

Participant(s):.....Zoe Phahl, Shoreline Administrator, Current Planning Division,
Department of Planning and Community Development

Address:Room 204
Skagit County Administration Building
Mt. Vernon, WA 98273

Phone:(206) 336-9434

Responses to Questions

Part I

1. The Department of Planning and Community Development and the Department of Public Works
2. **Department of Planning and Community Development**
Oscar Graham, Senior planner, Supervisor of Current Planning, Current Planning Division

Zoe Phahl, Shorelines Administrator, Current Planning Division

Rob Kanable, Watershed Planner, Resource Planning Division

Department of Public Works
Dave Brookings, Flood Control Engineer, Surface Water Management Division
3. There is no mention of WCBP in present ordinances. The future CAO may include WCBP as a mitigation option.
4. There are many documents that provide guidance for WCBP including the Uniform Building Code, the Flood Damage Prevention Ordinance, the Shorelines Master Program, SEPA implementation, and watershed plans.
5. The county is involved in several watershed planning efforts including the Nookachamps Creek, Samish River, and Padilla Bay plans. The county is also developing a country-wide drainage plan.

6. The Samish River watershed planning process is a joint venture with Whatcom County. The County works well with adjacent jurisdictions through the SEPA process and other less formal arrangements. The county coordinates with the Skagit River System Cooperative, a tribal watershed planning group.
7. The county would not consider a WSDOT project unique and would follow the normal permit and review process.

Part II

1. The county would prefer to vote on the Oversight Committee. The county is concerned about the time commitment involved in participating on the Oversight Committee. Where will meetings be held? How often?
2. The agreement looks fine. The county mentioned that it may be difficult to transfer agricultural land to conservation easements. This is just a technical point. Agricultural land currently enjoys a protected status in Skagit County. It may be difficult to transfer land from one protected status to a new protected status.
3. The county prefers that compensation occur in the watershed where the impacts occur, but will be flexible on this issue if they are part of a clearly negotiated alternative.
4. WSDOT is appropriate as owner and manager of the bank sites. Transfer ownership and/or management to another entity when beneficial and feasible.
5. The county would appreciate being part of the discussion on developing bank sites early in the process. County resources related to the Comprehensive Plan, watershed plans, surface water planning, or mapping resources will be a great asset in the process.

Snohomish County Interview

Interview

Date:September 21, 1994

Place:Everett, WA

Participant(s):.....Marilyn Freeman, Senior Planner, Planning Department
Larry Adamson (written comments), Supervisor, Water Resource
Division, Community Development Department

Address:Mail Stop 604
3000 Rockefeller
Everett, WA 98201

Phone:(206) 388-3313

Responses to Questions

Part I

1. Planning and Community Development Department (tentative).
2. Planning and Community Development Department
Gary Reirsgard, Permit Supervisor
Larry Adamson, Permit Supervisor
Tom Rowe, Grading Permit Supervisor
3. There is no mention of wetland mitigation banking in the county Critical Areas Ordinance. The CAO does consider "innovative" ideas for wetland mitigation.
4. A number of county ordinances provide guidance for implementing wetland mitigation banking including: 1. Title 17 Grading Ordinance; 2. Title 24 Drainage Ordinance; 3. Title 27 Flood Hazard Ordinance; and Title 32 Critical Areas Ordinance. The county Shorelines Management Master Program also provides some guidance.
5. The county Surface Water Management Department is conducting watershed planning in the county. There are also a number of restoration efforts in the lower Snohomish River estuary associated with Port of Everett and City of Everett development projects including the Ebey Island, Union Slough, and Biringier Farm projects.
6. The county communicates with adjacent jurisdictions through the SEPA process. There is a cross-county agreement with King County to manage Bear Creek.

7. The county is wary of working with WSDOT. The WSDOT has generally ignored the county in the past on wetland issues.

Part II

1. First, the county feels that their comments and response to the WSDOT Wetland Compensation Banking Agreement should have been heard before the state and federal agencies approved the program. Second, either include a county vote on the Oversight Committee or "this does not make sense".
2. No detailed comments on this question. Implementation will be the true test of the Agreement.
3. The county CAO includes a preference for mitigation within the same watershed.
4. The county is satisfied with WSDOT managing the bank sites if they do it properly. The county is not impressed with WSDOT efforts in the past. The county is concerned about long-term funding of these sites. The county is not interested in assuming ownership of the sites.
5. The county emphasizes the need to deal with drainage issues on-site if wildlife and other functions and values are mitigated off-site. Overall the county questions the limited local participation in the WSDOT Program.

Spokane County Interview

Interview

Date:June 15, 1994

Place:Spokane, WA

Participant(s):.....Paul Jensen, Senior Planner, Long Range Section, Planning Department

Address:1026 West Broadway
Spokane, WA 99260

Phone:(509) 456-2205

Responses to Questions

Part I

1. **Public Works Spokane County: Planning Department, Engineering Department, and Utility Department**

2. **Public Works Spokane County**

Paul Jensen, Senior Planner, Long Range Section, Planning Department (He is writing the county wetland protection ordinance this summer.)

John Mercer, Director of the Long Range Section, Planning Department (He is leading the Comprehensive Plan effort for the GMA.)

Tom Mosher, Shorelines Section, Planning Department

Steve Horobiowski, Zoning Section, Planning Department

Ross Kelley, Engineering Department

Brenda Simms, Stormwater Utility Department

Stann Miller, Stormwater Utility Department

3. The county has no ordinances or regulations that consider wetland compensation banking directly or in detail. The Spokane County Comprehensive Plan has a section which mentions wetland banking as a means of mitigation. A Draft Wetland Protection Ordinance includes wetland mitigation banking as a way of mitigating impacts.

4. The county zoning laws would have to be considered. The county has preferred uses for certain areas. The WCBP site should conform to county zoning designations and augment long-range land-use planning in the county as provided in the Critical Areas Section of the Spokane County Comprehensive Plan.

5. The Water Quality Division of the Engineering Department has watershed plans.
6. The Spokane Regional Council deals with these issues.
7. The County does not consider a highway development project differently than other projects.

Part II

1. The county should have a vote on the Oversight Committee. The county often feels left out of the state process like shorelines decisions. The county should have a strong role in land use and siting issues within the county.
2. The county is impressed with the document. The county will consider adopting a similar document for road improvement activities conducted by the county.
3. The county would be flexible on criteria for use as long as they satisfy county planning objectives. The watershed issue is not as critical in Spokane County as the aquifer protection issue.
4. WSDOT as the lead is acceptable. The county would be interested in sharing management and monitoring the restored resources. For instance, the Parks Department would be interested in integrating wildlife and recreation opportunities into the WCBP site.
5. The county is interested in the possibility of joint ventures between the county and WSDOT. They think their own road building and maintenance people would be interested in the wetland compensation bank concept.

Thurston County Interview

Interview

Date:September 22, 1994

Place:Olympia, WA

Participant(s):.....Paula Ehlers, Environmental Review Officer, Department of
Development Services

Address:2000 Lakeridge Drive SW
Olympia, WA 98502

Phone:(206) 786-5490

Responses to Questions

Part I

1. Department of Development Services and Thurston Regional Planning Council
2. **Department of Development Services**
Don Krupp, Manager
Paula Ehlers, Environmental Review Officer
Thurston Regional Planning Council
Steve Morrison, Long Range Planner
3. The county Critical Areas Ordinance mentions "alternatives" and "options" for wetland mitigation.
4. Details on mitigation banking would need to be added to the CAO.
5. The county is involved in the Nisqually River Council. The county is also looking at wildlife habitat within the borders of the urban growth boundaries established under Growth Management Act planning.
6. The county works well with Pierce County. Lewis and Mason counties have less restrictive land use regulations and a different set of development issues. The county works well with the Nisqually Tribe. The Squaxin Tribe is very vocal on local resource issues.
7. The county recognizes the public interest in highway projects. Highway projects are a public good. The county is concerned that the WSDOT rarely pays attention to county regulations.

Part II

1. The county would like a vote on the Oversight Committee if they sign the agreement.
2. No Comment (did not read the agreement in detail).
3. No Comment (did not read the agreement in detail).
4. The county would like WSDOT to consider joint ventures with the county road department. The county Parks Department may be interested in joint management.
5. No Comment

Whatcom County Interview

Interview

Date:September 21, 1994

Place:Bellingham, WA

Participant(s):.....Terri Galvin, Senior Planner, Planning Services Division, Planning and Development Services

Address:.....Northwest Annex
5280 Northwest Road
Bellingham, WA 98226

Phone:(206) 676-6756

Responses to Questions

Part I

1. Planning and Development Services and Transportation Services.

2. Planning and Development Services

Terri Galvin, Senior Planner, Planning Services Division

Jeff Griffin, Planner 2, Planning Services Division

Matt Aamot, Permits, Land Use Services Division

Steve Fox, Biologist, Land Use Services Division

Transportation Services

Ed Hencken, Director, Engineering Division

3. The Whatcom County *Temporary Critical Areas Ordinance* (July 1992) section 10.9.7 requires that the county develop a wetland mitigation banking system to integrate into the permanent CAO.

4. The *Temporary Critical Areas Ordinance* (July 1992) includes detailed discussion of wetland mitigation guidelines including provisions for off-site mitigation.

5. The county mentioned a number of watershed plans and studies including Silver Creek, California Creek, Samish Creek, and Lake Whatcom. The Soil Conservation Service is active in Ten Mile Creek. The largest watershed planning project in the county is the Nooksack Initiative led by the Washington State Department of Ecology (DOE). DOE has a field office in the watershed. The Nooksack watershed covers 60% of the county land base. The Nooksack Initiative has produced a report identifying all the wetlands in the Nooksack flood plain, *Wetlands in the Nooksack River Flood Plain*.
6. The county reports a good working relationship with Skagit County to the south and British Columbia, Canada, to the north. The Nooksack Tribe is cooperative. It is more difficult to coordinate activities with the Lummi Tribe.
7. The county recognizes the public interest served by transportation projects. The projects are a public trust issue in which development values must be balanced with maintaining ecological values and services.

Part II

1. The county believes that WSDOT is over-simplifying the needs of the county by choosing the county government as the sole representative of county interests. The county government is not necessarily representative of regional interests. WSDOT should consider the interests of user groups in the county including, most notably, farmers. Local decisions should be made in an open forum of local people.
2. The county should take a very strong role in locating bank sites.
3. The county is flexible on the watershed issue. The county feels the restrictions to off-site mitigation when anadromous fish are impacted is too rigid. The best resources providing the highest biological functions, services, and values should receive restoration protection.
4. The county is interested in receiving ownership of bank sites or supports the transfer of ownership to a local land trust (Whatcom County Land Trust).
5. WSDOT should be sensitive to local sentiments. There is a very strong private property rights movement in the county built on a negative reaction to state and federal agencies either purchasing land for conservation or regulating resources for conservation.

APPENDIX C
TRIBAL INTERVIEW REPORTS

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Muckleshoot Tribe Interview

Interview

Date:November 3, 1994

Place:(phone/letters)

Participant(s):.....Karen Walter, Watershed Coordinator, Environmental Division

Address:.....39015 172nd Avenue S.E.
Auburn, WA 98002

Phone:(206) 931-0652

Responses to Questions

Part I

1. Environmental Division, Fisheries Department; Fish Committee, Tribal Council; Legal Department.
2. Isabel Tinoco, Director, Fisheries Department
Chantal Stevens, Environmental Division Manager, Fisheries Department
Karen Walter, Watershed Coordinator, Environmental Division, Fisheries Department
Glen St. Amant, Senior Habitat Specialist, Environmental Division, Fisheries Department
Rod Malcolm, Habitat Specialist, Environmental Division, Fisheries Department
Leslie Groce, Environmental Planner, Environmental Division, Fisheries Department
Isabel Tinoco, Natural Resource Coordinator
3. The Environmental Division staff has participated in the review of such projects in a technical capacity on behalf of the Muckleshoot Indian Tribe. Examples include the following: the Senior Habitat Specialist is a member of the Elliott Bay and Commencement Bay Trustee Panel. The Habitat Specialist reviews development projects and permits for impacts and mitigation measures including SR-18, SR-161, and SR-167. The Environmental Planner is a member of the Mill Creek SAMP The Env. Div. Watershed Coordinator is working with King County and other jurisdictions on (watershed) Basin Plans under the DOE's Non-point Program.
4. The Environmental Division staff is involved in developing county watershed plans and special area management plans.

5. The Muckleshoot Indian Tribe would coordinate a working relationship by requesting that the appropriate Environmental Division staff become part of the inter-agency team that develops and reviews any WCBP initiated by WSDOT within the Tribe's Usual and Accustomed Area. Environmental Division staff would attend meetings, help gather data and field information, and develop the technical aspects of the WCBP. Any policy-making elements of the WCBP would be coordinated by Environmental Division staff with the Tribe's Fish Committee.
6. There are no formal policy statements as such. However, past experience with WSDOT indicates that it is essential that WSDOT work with the Tribe in the pre-planning stages of any project occurring within the Tribe's Usual and Accustomed Area to avoid adverse impacts to both treaty fishing access and treaty resources. The Tribe does not always align itself with the DFW; therefore, it would not be a good idea to assume that if DFW agrees with a project then the Tribe would automatically agree with the project. Early planning and preparation with the Environmental Division is the key to success.

Part II

1. First, the Muckleshoot Indian Tribe believes it is very important that they be a signatory to the MOA and a voting member of the Oversight Committee if they are to participate in the WCBP MOA process. Second, the Tribe feels the Oversight Committee should play a role in identifying Candidate WCBP sites rather than just reviewing WSDOT proposals.
2. The tribe is concerned that if they are not a voting member their role in the Oversight Committee process may be neglected in the future and alterations to a WCBP site may occur without appropriate consultation with the Tribe.
3. There is a problem with subsection 2 regarding watersheds. If a WSDOT activity crosses multiple watersheds and multiple jurisdictions and only one watershed receives mitigation, then it is quite possible that adverse impacts may occur to one tribe's rights and resources and not to another's. This mitigation strategy does not account for individual tribal sovereignty; therefore, it is unacceptable. Linear highway projects do create a unique situation in the context of watershed protection. In some cases, these highway projects result in the largest percentage of impervious surfaces in the entire sub-basin. Therefore, both direct and cumulative water quantity and quality impacts must be evaluated for the entire sub-basin, and project review should not go through a phased process as it often does. It is quite possible that current stormwater regulations (DOE's manual for example) do not adequately address stormwater impacts to salmonids. Therefore, WSDOT should go beyond the stormwater standards in watersheds where anadromous fish occur or could occur if human caused barriers were removed. Without such an effort, it will be very difficult to get individual developers or residents to change their behavior or practices. Basin planning will become a futile effort. In addition, several WSDOT roads and highways cross streams and rivers several times within one watershed. It is known that several WSDOT culverts currently present migration barriers to anadromous fish and should be retrofitted as soon as possible.

Fish habitat should include historical fish habitat in subsection 3.

4. This may not be acceptable for two reasons: first, WSDOT tends to contract work out and there have been problems with adequate erosion and sediment control as a result. Therefore, we would be concerned that WSDOT would contract this work out to a firm that does not understand the goals of the agreement or is not particularly experienced in wetland compensation banking. Second, perhaps it would be better to have the local government or signatories to the MOA (including tribes) be responsible for WCBP site management and maintenance since these agencies will also be aware of permitting upstream or other watershed activities.
5. The tribe had a number of general comments:
 1. WSDOT should have worked with the Muckleshoot Indian Tribe to develop the WCBP MOA;
 2. the Tribe is concerned that the WCBP may short circuit the appropriate mitigation sequencing process and result in lackluster planning efforts to avoid wetland impacts;
 3. historical wetland and river functions and values must be considered in the WCBP MOA process;
 4. a complex of small wetlands should not be cast as less valuable than one large wetland, particularly where hydrologic continuity occurs and streams have low flow problems;
 5. the Tribe is concerned about allowing compensation credit for preservation of wetlands. This may lead to a net loss of wetland functions and values;
 7. credits and debits should be evaluated by area and function and value; the four tiered state rating system would be acceptable if it dealt with salmonids and shellfish more effectively;
 8. WSDOT must work with the Tribe during the planning and scoping phases to avoid a situation where the Tribe is forced to oppose a project late in the permitting process.

Nisqually Tribe Interview

Interview

Date:September 22, 1994

Place:Olympia, WA

Participant(s):.....George Walter, Environmental Program Supervisor
Dave Trout, Director of Natural Resources

Address:12501 Yelm Highway SE
Olympia, WA 98513

Phone:(206) 438-8687

Responses to Questions

Part I

1. The Natural Resource Department and the Cultural Resource Committee.

2. Natural Resource Department

George Walter, Environmental Program Supervisor

Dave Trout, Director of Natural Resources

Cultural Resource Committee

Georgina Kautz, Fisheries Policy Coordinator

3. The tribe has commented on WSDOT projects in the past. These projects were minor and set away from the Nisqually River. The tribe has also commented on hydroelectric projects. Recently the tribe was involved in the siting of a pipeline through the Nisqually River estuary and the associated wetland mitigation planning.
4. The tribe plays a pivotal role in all issues effecting the Nisqually River watershed. The three adjacent counties, Lewis, Thurston, and Pierce, consult consistently with the tribe.
5. The tribe enjoys a good relationship with all state and adjacent county jurisdictions. The tribe is very active in the Nisqually River Council. The county jurisdictions usually support initiatives led by the tribe and the Nisqually River Land Trust (George Walter is also the Director of the Land Trust).
6. The tribe has a policy that all mitigation for impacts effecting the Nisqually basin should be located in the Nisqually basin.

Part II

1. The tribe has no problem with having no vote and would accept a voting role if offered. They are not sure there is a significance to signing the agreement.
2. The tribe would like to see mitigation banking begin now and not have it linked to specific highway projects. They see the WSDOT Wetland Compensation Bank Program as a large wetland mitigation project. They would like the concept of a "bank" emphasized. The tribe is curious how WSDOT is going to fund these banks. Will the fund come from individual highway project contracts or from a general fund? Are they going to link each site to a specific highway project and set of impacts?
3. The tribe would like to see habitat mitigation occur in the most effective place. The criteria for siting banks is too rigid in the tribe's opinion. The tribe feels this reflects an ascending view within resource agencies that "micro habitat" preservation is critical.
4. The tribe would like to see WSDOT fund the site, but they would like a local organization to at least co-manage and own the sites. The pipeline project mitigation resulted in the 30 acres of threatened Nisqually River estuary wetland being preserved and ownership transferred to the Land Trust. The tribe supports the Land Trust as a recipient of preservation land.
5. The take home message from the Nisqually Tribe is to emphasize the "bank" concept. The tribe would like to be solicited for restoration and preservation proposals.

Tulalip Tribe Interview

Interview

Date:October 21, 1994

Place:(phone)

Participant(s):.....Daryl Williams, Environmental Officer, Department of Environment

Address:6700 Totem Beach Road
Marysville, WA 98271

Phone:(206) 653-0220

Responses to Questions

Part I

1. The Department of Environment and the Department of Culture.
2. Department of Environment
Daryl Williams, Environmental Officer
Kurt Nelson, Fish Biologist
Richard Young, Environmental Officer
Department of Culture
Hank Gobin
3. The tribe is very active in reviewing current mitigation and enhancement projects in the Snohomish, Stillaguamish, and Skykomish watersheds. The tribe participates in review through the SEPA process and by direct less formal interaction with the adjacent county governments. The tribe is currently working with WSDOT on stream enhancement projects to compensate impacts from the SR 530 and SR 9 bridge replacement projects.
4. The tribe initiates watershed planning in Allen Creek and Quilceda Creek. The tribe is involved in a joint watershed planning and management program in North Creek with Snohomish and King counties. The tribe also manages the Stillaguamish Shellfish District.
5. The tribe enjoys an extensive and successful working relationship with county, state, and federal jurisdictions. The tribe is also working with the Port of Everett on the port expansion proposals. The tribe is not working as closely with the City of Everett.

6. **The tribe has no established policy that addresses wetland compensation banking. The tribe would consider projects on a case by case basis. Present policy prefers compensation within the watershed impacted by the development project. However, the tribe is flexible on the watershed issue. The tribe looks at watersheds on the scale of the Snohomish and Stillaguamish basins.**

Part II

1. **The tribe is usually a non-voting member of state committees and usually prefers that role. They have no problem with their role on the Oversight Committee.**
2. **The process seems fine. The tribe would consider proposals on a site by site basis.**
3. **As stated in responses to question 6, Part I, the tribe is flexible on the watershed issue. There may be a situation when the tribe would support compensation out-of-kind and off-site to restore, enhance, or preserve wildlife habitat at risk elsewhere in the watershed.**
4. **The tribe is satisfied with WSDOT as owner and Manager of the bank sites in perpetuity. The tribe would like to see the FWS or a non-profit conservation trust considered as an alternative to the WSDOT.**
5. **The tribe suggests that WSDOT contact all jurisdictions prior to initiating detailed plans for a bank site. The tribe believes state agencies tend to "move out too fast" on projects and end up back tracking to allow all the jurisdictions a role in the process.**

Yakima Tribe Interview

Interview

Date:September 20, 1994

Place:Ellensburg, WA

Participant(s):.....Scott Nicolai, Environmental Planner, Fisheries Resource Program

Address:.....Fisheries Resource Program
P.O. Box 151
Toppenish, WA 98948

Phone:(509) 865-6262

Response to Questions

Part I

1. The Tribal Fish and Wildlife Committee, the Fisheries Resource Program, and the Environmental Protection Program.

2. Tribal Fish and Wildlife Committee

Lonnie Selam, Chair of the Tribal Fish and Wildlife Committee

Carroll Palmer, Director of Natural Resources

Fisheries Resource Program

Scott Nicolai, Environmental Planner, (issues on the ceded land only)

David Lind, (issues within the reservation)

Environmental Protection Program

Bill Beckly, water quality, (issues on the cede land only)

3. The tribe is very active in reviewing mitigation projects for impacts to rivers and wetlands. They have commented on over one hundred SEPA projects in 3 years, including several WSDOT projects — the SR 24 bridge project and all bridges on SR 97. The tribe's position is "no net loss of riparian functions" in these projects.

4. The tribe is active in the Yakima River Management Cooperative. The Cooperative is an organization of private landowners, the state, tribes, and environmental groups attempting to integrate the interests and activities present in the Yakima River watershed. The tribe is also a participant in the Timber, Fish, and Wildlife planning process.

5. The tribe communicates with adjacent jurisdictions via telephone, letters, and by attending local public meetings as part of the Growth Management Act long range

planning process. The tribe is also on the SEPA mailing list of adjacent jurisdictions.

6. The tribe is presently rewriting its Integrated Resource Management Plan.

Part II

1. The tribe is interested in participating on the Oversight Committee for all projects that impact the ceded lands. The tribe would like to be a voting member of the Committee.
2. The tribe thinks the sections of the agreement pertaining to establishing the bank sites "look good" and adds that implementation will be the true test of the agreement.
3. The tribe has no problem with off-site, out-of-kind compensation. They are more flexible on the watershed issue than the language in the agreement. The tribe questions any mitigation projects that occur in heavily urbanized areas. The tribe mentioned the Bluett Pass highway improvements as a possible project for which off-site riparian restoration efforts may be appropriate.
4. The tribe encourages WSDOT to involve non-governmental land trusts in the long-term management and stewardship of bank sites.
5. The tribe is "intrigued" with the agreement and awaits its implementation as the true test of worthiness.

APPENDIX D

PLANNING AND WETLAND COMPENSATION BANKING

Background

The Final Report of the National Wetlands Policy Forum recommended that the nation's wetlands protection programs "anticipate rather than react...focus on the future, not the present or the past" and "consider the whole, not just the individual parts" (Conservation Foundation, 1988). President Bill Clinton's 1993 wetlands policy statement encouraged wetlands mitigation banking within the context of regional and local resource planning programs (The White House, 1993). On March 6, 1995 five federal agencies proposed guidance for the establishment, use and operation of mitigation banks that also encourages coordination between mitigation bank programs and regional and local resource planning programs. In a discussion of planning and site selection issues the guidance suggests that "location of the site in relative to other ecological features, hydrologic sources ... and compatibility with adjacent land uses and watershed management plans are important factors to consider." Also worth considering, according to the guidelines, are "development trends ... habitat status and trends, local or regional goals for restoration or protection of particular habitat types or functions (e.g. establishment of habitat corridors), water quality and floodplain management, goals, and establishment of habitat for species of concern" (USDD, 1995).

It is a recurring theme in most of the literature on wetlands compensation banking that the future of banking will be closely linked to regional and local planning processes (Short, 1988; Castelle, 1992; Kusler and Lassonde, 1992; Reppert, 1992; World Wildlife Fund, 1992; Dennison and Berry, 1993; McKenzie and Rylko, 1993; National Association of Industrial and Office Parks, 1993; ELI, 1994; Brumbaugh and Reppert, 1994). These processes assume many forms and include advanced wetlands identification and planning, special area management plans, watershed planning, and growth management comprehensive planning. Successful restoration will be achieved only if individual projects recognize the system within which they are located (National Research Council, 1992).

Planning is the best tool regulators and developers have to ensure that projects are located in the landscape in a manner that is sensitive to the surrounding ecological systems, land-use practices, and long-term social goals. "It is sometimes said that about real estate that value depends upon location, location, location. Similarly, the importance of wetland functions and values also depend upon location, location, location" (Kusler, 1992). Federal, state, and local planning initiatives are increasing in number, though they remain varied in their level of sophistication and maturity. Wetlands compensation banking will be facilitated in areas where planning is well developed.

Another important consideration for implementing wetlands compensation banking is a shift in decision making processes. First, interagency decision making organizations are being used more often to confront complex natural resource problems. Second, non-government decision making organizations such as watershed councils include diverse public and private interest groups and are also increasing in number. Both of these types of decision making organizations have the potential to facilitate wetlands compensation banking projects.

Advanced Wetland Identification and Planning

The U.S. Environmental Protection Agency Regulations Subpart I §230.80 for Section 404(b)(1) of the Clean Water Act (February 6, 1990) allows the EPA to inventory wetlands in an area prior to any permit application and identify appropriate areas for the possible future disposal of fill.. "Advanced Identification" (ADID) can be initiated by the agencies or by another entity such as a local government. The process involves gathering all available water resource data from other agencies, Coastal Zone Management Programs, and watershed plans and identifying wetlands that are suitable and unsuitable for dredge and fill activities. ADID can provide useful information for prioritizing wetlands protection, guiding land-use planning, and facilitating future permit applications in the study area. The most important contribution of ADID is the higher degree of certainty gained by knowing where the most ecologically valuable wetlands are in a

landscape as well as where the possible future disposal of fill is acceptable. Thirty-five ADIDs have been completed and 36 are currently in process. Some of these study areas have implemented compensation banks or have plans to create banks (ELI, 1994).

Special Area Management Plans (SAMPs)

SAMPs are a procedure added to the Coastal Zone Management Act by amendment in 1980 that allows federal and state agencies, local governments, and the public to create a comprehensive plan to balance the protection of natural resources with “reasonable coastal-dependent economic growth” (16 USC §§ 1451-1464). SAMPs include a detailed policy statement, public and private land and water use standards, and timelines for implementation of the plan (ELI, 1994). An important distinction between SAMPs and ADID is that SAMPs have formal legal status and can dictate permit decisions. In a memorandum of understanding, the EPA and the COE agree that a SAMP can substitute for traditional mitigation sequencing under the § 404(b)(1) guidelines for mitigation. A SAMP should employ mitigation sequencing steps during the planning process; hence, sequencing is accomplished comprehensively in a SAMP. The COE has expanded the use of SAMPs beyond the jurisdiction of Coastal Zone Management Programs. The COE uses four criteria in deciding whether to participate in a SAMP: (1) the area must be environmentally sensitive and under intense development pressure; (2) there must be public involvement; (3) a local agency must participate to ensure local representation; and (4) all participants must agree to a plan that includes regulatory guidelines (ELI, 1994). The Environmental Law Institute study found only one bank was currently part of a SAMP (ELI, 1994).

State Sponsored Wetlands Inventory and Planning Processes

In 1987 Oregon enacted a law that authorizes and regulates wetlands compensation banks owned and managed by state agencies. This law was supplanted in 1989 by the Wetland Inventory and Wetland Conservation Plans Act (ORS 196.668 -

196.692). The primary goal of the Wetland Inventory and Wetland Conservation Plans Act “is to protect wetlands resources through the integration and coordination of state-wide planning goals, local comprehensive plans, and state and federal regulatory programs” (National Association of Industrial And Office Parks, 1993). The Oregon Division of State Lands is directed by the Wetland Inventory and Wetland Conservation Plans Act to conduct a state-wide wetlands inventory. On the basis of the inventory, county and city governments are encouraged to produce conservation plans to protect wetlands while allowing for development. The conservation plans include a comprehensive alternatives analysis and mitigation plan to mitigate and compensate for adverse impacts to wetlands from new development activity in accordance with the section 404(b)(1) guidelines. The West Eugene Wetlands Plan is the first local plan completed under this framework and it is becoming a model wetlands protection plan around the nation (ELI, 1994).

As mentioned in earlier, Washington State has a similar program called the State Wetland Integration Strategy (SWIS). The goal of SWIS is to “to develop and implement a more effective, efficient, and coordinated system to better protect the wetland resources of Washington state” (DOE, 1994). Four local governments in the state received grants to conduct wetland inventory studies. The City of Everett, Washington, is currently conducting an inventory of the wetlands types, quality, number, and position in the landscape of the Snohomish River Estuary (City of Everett, 1993 and 1995). The City of Camus is developing a wetlands plan for a 1,500 acre sub-basin of the Fisher Basin, just west of the city (DOE, 1994). Clallam County is assessing the functions and values of wetlands in the Sequim Bay and Dungeness River Regional Watersheds (Clallam County, 1995). And Whatcom County is analyzing the various county policies and regulations addressing wetlands and considering reforms. (DOE, 1994). These inventory and planning methods are similar to the ADID, but they are initiated and carried out by local

governments and encompass local concerns and interests while attempting to integrate policies and programs with adjacent jurisdictions..

Comprehensive Planning

The Washington State Growth Management Act of 1990 (GMA) compels urbanized county and city jurisdictions to adopt comprehensive plans that consider ways to absorb future growth while maintaining a quality of life and a healthy environment. These plans supplement watershed planning efforts with critical information on projected growth of public infrastructure, residential and commercial expansion, and natural resource protection goals. Wetlands compensation banking represents a flexible tool for protecting and improving wetlands resources within the goals and guidelines of a comprehensive plan.

Cowlitz County provides an example of how a comprehensive plan might assist in locating a proper wetlands compensation bank site. The county is short on industrial development land. Much of the undeveloped industrial lands in the county are adjacent to the Columbia River. These same lands are ideal areas for wetland and riparian restoration. The county is concerned that WSDOT acting alone may purchase valuable industrial land and convert it to wetland. The county can not afford to lose any remaining industrial land. The county is also concerned that a WSDOT wetland bank project placed near an industrial zone may eventually result in land-use restrictions on those industrial lands. A comprehensive plan will establish where the most appropriate locations for wetland restoration exist within the local legal, social, cultural, land-use, and watershed perspectives. A properly located bank site will be protected from current and future land-use activities that could potentially degrade and unravel the original restoration effort.

Watershed Planning

Watershed planning is increasing at the federal, state, and local levels of government. Tribal governments and non-government interest groups are also initiating and participating in watershed scale planning. These activities were endorsed by the Clinton Administration as an important part of wetlands protection (The White House, 1993). In the Phase I report of the COE's National Wetland Mitigation Banking Study an entire chapter is dedicated to highlighting the important connection between watershed and comprehensive planning and wetland mitigation banking. The report states that "an increasing number of ecologists and resource management specialists are calling for consideration of landscape perspective in management of watersheds and wetlands" (Brumbaugh and Reppert, 1994). Finally, the most recent annual meeting of the Association of State Wetland Managers focused on the topic "Watershed Management and Wetland Ecosystems: Implementing Fair, Flexible, and Effective Approaches" (The Association of State Wetland Managers, 1995).

Watershed planning establishes baseline information about the condition of resources and habitats in a basin and can target reconnecting fragmented areas in the landscape through restoration. The decision on the type of compensation and the location of the compensation can be driven by resource management needs on the basis of analysis of a broad, interconnected watershed context (Brumbaugh and Reppert, 1994).

The Puget Sound Water Quality Act provides funds for county jurisdictions to produce Watershed Action Plans for the three most significant basins in the county (Chapter 90.70 RCW). Many of the urban counties in the state already plan surface water management on a sub-watershed basis (King County Department of Public Works, 1993). Native American tribes in the state also use watershed planning to monitor salmon habitat conditions and produce criteria for restoration projects (Northwest Indian Fisheries Commission, 1993). The state and federal agencies, along with the tribes, are committed

to a series of watershed planning pilot studies as part of the Timber, Fish, and Wildlife Agreement (Carey, 1994).

Interagency and Multi-Party Decision Making Organizations

The interconnectedness of natural systems has resulted in a demand for collaborative decision making arrangements between the public agencies responsible for managing natural resources (Carey, 1994). The actions of a single agency often reverberate through many agencies, causing tension and conflicting management strategies. The MOAs between state and federal agencies signed to coordinate wetlands compensation bank programs are an example of these arrangements.

Agency decisions also affect non-governmental groups that have an interest in management decision and can inhibit management implementation. "Increased stakeholder knowledge and empowerment...has shifted...management into a 'shared power' world, where the maximum level of satisfaction for all stakeholders can only be attained through cooperative consideration, mediation, and negotiation of these interests" (Carey, 1994). Non-government decision making organizations are emerging such as watershed councils. The Yakima Resource Management Cooperative, the Nisqually River Council, and the Skagit River System Cooperative are examples in Washington State of collaborative, non-governmental decision making organizations that include a broad set of interests.

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APPENDIX E

**WETLAND COMPENSATION BANKING: CASE STUDIES IN
WASHINGTON STATE**

City of Renton

Burlington Northern planned to divest land holdings nationwide, including the properties of a subsidiary called Glacier Park Company in the City of Renton. The Glacier Park properties included many wetlands. The City of Renton negotiated the terms of permits for some filling of lower quality wetlands on the company's land, making the properties more attractive to developers. The terms included creating a wetland compensation bank. Glacier Park donated 45 acres of formerly high quality contiguous wetlands that had been filled in the past to the City for the bank. The City operates the bank on a "pay-as-you-go" basis. The first phase of restoration involves only 8.25 acres, and costs are estimated at \$50,000 for bank start-up and operation and \$50,000 per acre for restoration work (National Association of Industrial and Office Parks, 1993).

Pierce County

Pierce County currently operates a wetland compensation banking program. The title of the program is the "Pierce County Public Works And Utilities, Road Department, Off-Site, Wetland Mitigation Banking Program" (Pierce County, January 1994). The program was initiated in May of 1992. There are six separate sites in the bank involving 12.5 acres of restored wetland. Four of the six sites are project related, on-site mitigation efforts that resulted in more restored acreage than was required. These extra acres were added to the bank program. The remaining two sites are the result of identifying potential restoration sites and restoring those sites prior to any impacts occurring and unrelated to any specific project. The County anticipated some type of future development impact in the area and acted in advance to compensate for the impacts. The activities in the Pierce County program have all fallen within the jurisdiction of the U.S. Army Corps of Engineers and the Clean Water Act /Nationwide 27 permits as "restoration projects." Mary Lynch, an Environmental Biologist for the Pierce County Department of Public Works, predicts that the county will need to improve the current agreement in order to expand the program and use the banking tool for larger projects. She mentioned that the

WSDOT agreement may provide an appropriate framework for a larger county program (Mary Lynch, personal communication 1994).

King County

King County is in the process of planning a wetland banking program to compensate for expected development impacts on the East Sammamish Plateau (Mason Bowles and Tina Miller, personal communication 1994). The Public Works Department and the Utilities, Water, and Sewage Department are working together on the program. Detailed guidelines are still being written (Tina Miller, personal communication 1994).

Public Ports

Port authorities have become very active in planning for wetland compensation banking. (Gallagher, 1992) As many as five ports are actively working on bank programs or advanced mitigation projects similar to banks — the Ports of Skagit, Bellingham, Everett, Tacoma, and Seattle. The Washington Public Ports Association is making compensation banking a top priority in 1995 and 1996 (personal communication with Eric Johnson, Washington Public Ports Association).

Other Initiatives

There have been other attempts to use wetlands compensation banking in Washington, but none of these have actually been implemented or formally proposed at this time. The Mill Creek SAMP, sponsored by the United States Army Corps of Engineers, King County, and the cities of Auburn and Kent, hoped to use banking, but cited a lack of certainty over how to structure and implement a bank and ensure long-term management of compensation sites (National Association of Industrial and Office Parks, 1993). The Snohomish Estuary Wetland Integration Plan, sponsored under the Statewide Integrated Wetland Strategy, is a wetland inventory and planning effort that is considering the use of wetlands compensation banking (City of Everett, 1993 and 1995). The Port of Everett has purchased Biringer Farm in the study area, which they hope to restore to a tidal marsh condition and use as compensation for port development projects

and for general commercial sale (National Association of Industrial and Office Parks, 1993). The City of Everett has adopted a SAO that includes provisions for compensation banking (Castelle, 1992).

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