

Wetland Banking

Wetland banking is not how lenders do business in my home state, Louisiana. The phrase, Wetland Banking, generally refers to a market-based response to mitigation where a party purchases wetland “credits” from a “bank” of man-made wetlands to compensate for wetlands lost during development. Since the man-made wetlands theoretically compensate for the loss of wetlands on the developed property, no net loss of wetlands occurs.

Federal agencies published the Federal Guidance for the Establishment, Use and Operation of Mitigation Banks. 60 Fed. Reg. 58,605 (November 28, 1995). The Washington State legislature then passed a statute reflecting the federal guidelines. RCW 90.84.

The statute lists the legislature’s intent to support and authorize wetland mitigation banking as an appropriate tool for providing compensatory wetland mitigation; directs the Department of Ecology to use a collaborative process to develop rules for the certification, operation and monitoring of compensatory wetland mitigation banks; and funds the Department of Ecology to develop rules and implement a certification program for wetland mitigation banks.

Developers will likely need to work through a sequencing requirement: demonstrating that the developer is using the least environmentally damaging alternative; a plan to minimize potential harm from unavoidable impacts; and compensation paid by the developer for any harm actually caused by the development.

So remember the three magic word: Avoid, minimize and compensate.

Another issue that may limit the impact of mitigation banking is the exchange rate for using mitigation banks. Will the exchange be 1:1, more or less? Some wetlands are especially valuable to protect endangered species while other wetland may be less valuable. Market forces will also generate fluctuations in the exchange rate.

Another issue is the up-front expenditure to establish a mitigation bank, and the lack of guarantee by the Department of Ecology that a specific project could use the bank.

Stay tuned.