

Official Policy on Conservation Banks

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The executive and legislative branches have endorsed the use of conservation banks as a means to accomplish important resource management goals. This document provides formal policy guidance on how to achieve this directive.

INTRODUCTION

A conservation bank is a single parcel, or a series of contiguous or non-contiguous parcels, of habitat which is managed for its natural resource values. The resource benefits derived from this management regime are sold as "credits" to project proponents who seek mitigation opportunities to compensate for resource impacts elsewhere. Credits may be generated to meet any number of resource conservation needs, including compensation for impacts to wetlands, threatened or endangered species, Environmentally Sensitive Habitat Areas, mudflats, sub-tidal areas, and less sensitive resources.

Conservation banks, if properly established and managed, serve several useful functions. First and foremost, banks provide for the conservation of important habitats and/or habitat linkages.

Second, they provide a viable alternative to the current practice of requiring piecemeal mitigation for individual project impacts. Individualized mitigation projects which have little connection with their surrounding ecosystem are often much more prone to failure than a mitigation project which is incorporated into a larger, ecosystem-based conservation bank or regional conservation plan.

Third, conservation banks can take advantage of economies of scale that are often not available to individualized mitigation projects.

Fourth, conservation banks provide significant incentives for private landowner participation and represent one of the best examples of private/public partnerships in an era of shrinking budget resources.

Fifth, conservation banks can be a major funding component for the creation of an ecosystem preserve under a regional conservation plan.

Sixth, and finally, conservation banks simplify the regulatory compliance process while achieving greater conservation goals.

CONSERVATION BANKING

For purposes of providing guidance on conservation banking, all Departments shall designate and train personnel to actively work with potential bank developers in accordance with the following precepts:

1. The priority for mitigation should be to accomplish it at a site which provides for the long-term conservation of habitat and species. As such, off-site mitigation is specifically sanctioned in the context of an otherwise permissible conservation bank.
2. A bank may be established pursuant to regulatory permit or contract between the bank developer and the appropriate regulatory agency(s). Where a bank is established pursuant to contract, care must be taken to create a legally enforceable instrument.
3. There is no minimum or maximum size of a conservation bank and it may be divided into clearly defined subareas. However, the bank and each of its subareas (if any) should be large enough to be ecologically self-sustaining or part of a larger conservation strategy that has a reasonable expectation of being accomplished.
4. Upon sale of the first credit in the bank or subarea, the land in the bank or subarea must be permanently protected through fee title or conservation easement. The land-use restrictions should run with the land and be recorded in the appropriate county(s) of jurisdiction.
5. Before selling bank credits, a proposed conservation bank should be approved by the appropriate resource management agency(s). Basic elements in any approvable bank proposal should include, but are not limited to:
 - a. identification of a bank manager;
 - b. identification of the geographical boundaries of the bank and the service area of the bank;
 - c. provision for fundamental property protection measures (e.g., fencing some or all of the bank property if deemed appropriate, control of off-road vehicle use, etc.);
 - d. provisions for the resolution of current or prospective land use conflicts involving the bank lands (e.g., rights-of-way issues, existing use issues, adjacent land-use issues);
 - e. provisions requiring an annual report by the bank manager to be submitted to the appropriate regulatory agency(s).

6. Prior to the sale of credits, a resource management plan should be approved by the appropriate regulatory agency(s). A sufficient level of funding with acceptable guarantees (e.g., cash, letters of credit, public charity, public funding mechanism) should be provided to fully ensure the operation and maintenance of the bank as may be required.

7. Provision should be made for long term management of bank lands after all the mitigation credits have been awarded. Generally, land management responsibilities should ultimately vest in a resource management agency or qualified non-profit organization, although a private entity may be an acceptable long-term manager.

8. Provision should be made for ensuring implementation of the resource management plan in event of non-performance by the bank owner and/or operator.

9. Provisions should be made in any bank establishment for the monitoring and reporting of identified species/habitat management objectives.

10. An easement or other agreement should be established at the bank in favor of appropriate resource management agency(s) guaranteeing the agency's right of entry onto bank lands for the following purposes:

a. Inspections;

b. Specified resource management responsibilities;

c. Quality Assurance/Quality Control review with regard to bank management and operation;

d. Resource management should the bank operator fail to implement prescribed resource management responsibilities.

11. Bank credits should be established by reference to an environmental baseline which may, but need not be, assessed at the time of the bank creation. This baseline will be used to establish credits for a number of categories requiring resource management, including, but not limited to, the following:

a. Resource Preservation (the preservation of specified resources through acquisition or other appropriate means);

b. Resource Enhancement (the enhancement of a degraded resource);

c. Resource Restoration (the restoration of a resource to its historical condition);

d. Resource Creation (the creation of a specified resource condition where none existed before).

12. The award of bank credits should be negotiated on a case-by-case basis between the project proponent in need of the subject credits, the regulatory agency(s) of jurisdiction, and the bank manager. Generally:

- a. Credits may be negotiated for available or prospective resource value establishment.
- b. Credits may be based on habitat acreage, habitat quality, contribution to a regional conservation strategy that has been approved by the appropriate regulatory agency(s), or any other basis acceptable to the regulatory agency(s).
- c. Actual awards of bank credits need not be withheld pending full realization of the targeted resource value at the bank. Credit availability may vary in accordance with agreed upon performance criteria for the development of the resource value in question.
- d. Awarded bank credits, subject to the approval of the regulatory agency(s), should be made transferrable.

13. Whether out-of-kind mitigation credit will be allowed at a particular bank will require a fact-specific inquiry on a case-by-case basis for the project creating the impacts.

14. The creation of any conservation bank should be listed with the Resources Agency in accordance with forthcoming guidance for purposes of maintaining a statewide bank inventory.

CONCLUSION

Conservation bank agreements developed between the bank developer and the appropriate regulatory agency(s) in accordance with the preceding precepts shall be considered consistent with state policy regarding conservation banks, assuming no violation of federal and state laws. Training manuals on this subject are forthcoming.