### California Department of Fish & Wildlife

## Considerations for Banks in HCP/NCCP Areas

Regional habitat conservation plans (HCP) developed pursuant to FESA and the NCCP Act (jointly called HCP/NCCPs) protect sensitive resources at a landscape level. In addition to mitigating impacts to sensitive resources, plans that meet the requirements of the [NCCP Act](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68627) must provide for the conservation of the covered species within the plan area.

A concern expressed by some bank sponsors is that they won’t be able to compete with a locally imposed fee-based approach in an HCP/NCCP. The plan may be able to realize an economy of scale by collecting fees from project proponents to acquire and manage reserves. It provides a quick and simple approach for project proponents to pay their mitigation fee to the local jurisdiction where they are receiving their land use approval and take authorization. A local HCP/NCCP fee-based approach may be able to set the fee below the free market price for bank credits because the local government fee does not include any profit. The local government is subject to laws that require the fees to be directly related to the mitigation required, including the estimated cost for the mitigation.

Banks in some HCP/NCCP areas complement the efforts of the plan proponents and are a valuable tool for helping to meet the conservation goals of the plan. The pre-approved mitigation areas and reserves identified in the plan provide bank sponsors with an opportunity for siting banks in the areas where mitigation resources will be directed.

An HCP/NCCP effort that overlooks the potential benefits of including the contribution of conservation and mitigation banks may be reducing the options and partnerships that can assist with meeting the mitigation and conservation obligations of the plan. Plan lead agencies are encouraged to involve the banking community in the planning process in order to understand issues and find mutually beneficial ways for banks to contribute to the conservation goals of the plan.

Bank sponsors should consult with regional HCP/NCCP lead agencies for consideration of inclusion of a bank into the toolbox for meeting the mitigation and conservation objectives of the plan. Conservation and mitigation banks are valid tools to accomplish necessary mitigation, and have great potential for streamlining project processing at the local level. Buying mitigation credits at a bank is a quick and easy transaction for a project proponent compared to finding and getting approval for lands that provide suitable mitigation, conducting a real estate transaction, developing a management plan, and transferring management funding to the entity that will be responsible.

Maintaining the market for private bank sponsors can also streamline the process for a local jurisdiction. A bank sponsor who has willingly established a conservation or mitigation bank has already conducted baseline biological inventories, written a management plan, established a secure funding source for permanent management and monitoring of the property, and is carrying out those activities. Maintaining banking opportunities in the plan area can enlist private parties to help the local jurisdictions meet their plan obligations, and it encourages free-market conservation.

An HCP/NCCP typically does not cover all activities and projects in the plan area. In addition, not all lead agencies within the plan area are signatories to the HCP/NCCP. For example, an HCP/NCCP with the city and county as proponents may not cover projects under the jurisdiction of other entities such as schools, special districts, utility companies, or state highway and water projects. Such projects, and any activities not specifically covered by an HCP/NCCP, may not be subject to the terms of the HCP/NCCP, and would need to fulfill their mitigation obligations separate from the HCP/NCCP.

For banks in HCP/NCCP areas, if the bank wants to be fully able to fulfill the requirements of the plan, the bank sponsor may need to work with the plan proponents to determine if additional actions are needed at the bank site to contribute to the conservation goals of the plan. For NCCPs, these additional actions typically focus on monitoring and adaptive management actions to meet the NCCP standard.

The following suggestions may help to integrate banks into HCP/NCCP programs:

* Bank sponsors should participate in HCP/NCCP development to promote their interests, and to offer creative ways to integrate banks into the conservation toolbox.
* Bank sponsors could help the plan proponents evaluate actual costs of acquiring, protecting, and managing mitigation land to improve plan funding estimates. This will help to make local fees realistic and comparable to actual costs, in order to provide a fair market climate in which bank sponsors can participate.
* Bank sponsors could encourage plan proponents to develop a local banking policy to address establishing and administering banks in the plan area. Such a policy should recognize the use of private mitigation banks to meet the plan’s conservation goals.
* Bank sponsors should invite the local governments to become signatory to their bank agreements to increase local government consideration and use of banks for project mitigation.
* Bank sponsors should locate new banks within the planned reserve areas or critical linkages to assure their credits are of high desirability to the plan.
* Bank sponsors could work with the local government to assess lands owned by the local government where it might be suitable to establish a bank with credits to be used by the local government or other plan participants. The lands for potential bank sites should be evaluated relative to CDFW guidance on [what lands are appropriate for banking](http://www.dfg.ca.gov/habcon/conplan/mitbank/mitbank_policies/cmb_notaccept.html) and [bank site selection considerations](https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=76123). The bank sponsor could provide services to establish a bank, and could be the contractor to provide ongoing monitoring and management.
* Bank sponsors could provide services to create turn-key mitigation projects for HCP/NCCPs using local government plan-generated fees. The local government could contract with a bank sponsor to set up a new reserve property using the fees collected from development projects. In addition, the bank sponsor could be the contractor to provide ongoing monitoring and management.
* Bank sponsors could consider entering into long term contracts (multiple years) with the local government to reserve bank credits at a fixed price. The local government would collect fees and then purchase credits at the agreed upon price. Although the bank sponsor would give up some flexibility to adapt prices for the reserved credits to the market, they would gain the assurance that the local government would buy all the credits agreed upon in the contract.