

EDC Exchange Questions and Answers:

Q: Does Hawaii, being islands, been able to develop these concepts taking into account the land area constraints?

A: Hawaii has no such programs right now.

Q: What are the states which have In-lieu fee programs?

A: The following states have in-lieu fee programs, but they may not necessarily be operated by the state itself: AK, AZ, CA, FL, KS, LA, MA, MD, MO, PA, and WV

Q: In California, how does your mitigation for in-direct effects work? Are the indirect areas mitigated again when the area is developed?

A: There is no single answer to this question. It varies from project to project but what follows are a couple of examples. Over the past 10 years this issue has come up on regional sewer projects, major water infrastructure projects and highway projects. The best solution has been to address the number one issue, growth inducing impacts on wetlands and endangered species, as the direct effects that are being assessed and covered in a habitat conservation plan. The HCP could use mitigation banks, in lieu fees, land dedications and other options for mitigation. When an HCP is not available, the infrastructure provider has spent a significant amount of time and money negotiating with the FWS, Corps and EPA on mitigation strategies.

- 1) Major new treated water infrastructure – a local water agency has been asked to analyze the growth inducing impacts (an indirect effect) of providing 35,000 acre feet of treated surface to an undeveloped agricultural area based upon general plan build out projections. The County of Placer is preparing a habitat conservation plan to address the impacts to endangered species and wetland in the same area that is to be served by the water. Because the indirect effects associated with new water infrastructure are the direct effects that the County of Placer is going to analyze the water agency may have no issue to analyze. If the County and water agency were not working together for the same set of effects (general plan build-out), the water agency would have had to address the issue and likely develop a mitigation strategy.
- 2) State Route 65 – A local highway project had the state highway agency (Caltrans) as the lead. The new highway was a bypass around an existing urban area that had significant growth potential. Caltrans had to examine the indirect effects of their new highway including impacts on endangered species and wetlands that could result from new development (if authorized by local government). Caltrans agreed to acquire conservation lands around a key intersection for the highway project and they agreed to

remove a potentially growth inducing highway interchange as a part of the biological opinion issued by the FWS.

- 3) Placer Parkway – a locally-funded parkway project is proposed to connect two state highways and to relieve traffic from an interstate. The project will pass through agricultural lands that harbor endangered species and wetlands. The proponents spent over a year analyzing the growth-inducing impacts of the proposed roadway corridor and prepared numerous alternatives that would lessen the indirect effects (the actual direct effects of the construction and use of the roadway received very little attention). A multi-month dialogue ensued to determine which of the corridor alternatives was “likely” to be the least environmentally damaging alternative (LEDPA). Similar to issue number 1 above, the indirect effects were ultimately considered as part of the HCP assessment of growth. Nevertheless, it cost significant time and money to determine the scope of the indirect effect (following an agreed-upon protocol that was ultimately rejected after the money had been spent), to analyze a range of alternatives and to negotiate what is likely to be the LEDPA alignment. The actual LEDPA determination will not be made until the 404 permit is to be issued.

Q: How are compensatory mitigation and in-lieu fee projects funded? Who is contributing? Where is the money coming from? How do you do it?

A: Compensatory mitigation is funded through the project budget. The contributing agency varies by project. Mitigation banks are funded typically from private individuals that have an interest in developing a wetland mitigation bank. There is no guarantee the banker will sell credits when the bank is established. In-lieu fee projects are established by a non-profit organization or a government entity that has a primary interest in environmental stewardship. Money from an in-lieu fee program is collected from individuals that purchase credits at an in-lieu fee program as mitigation for their project impacts.

Q: Do wetland banks have to be created from upland areas, or can they be a combination of restoration, preservation, and created areas?

A: Wetland banks can be derived from a combination of all methods of mitigation or just a single method. The methods of mitigation are: creation, restoration, preservation, and/or enhancement.

Q: How do you estimate indirect wetland impacts for future growth?

A: This varies by state, but, generally, indirect impacts are nearly impossible to estimate for future growth.

Q: If there is a mitigation bank in an area that subsequently has a natural disaster after establishment, what happens? Do we have to re-mitigate or is there an insurance provision in the agreement?

A: It depends on how the Instrument/Agreement is written. Most Instruments have a force majeure clause. It would be up to the IRT and the Banker to agree on what should happen if a natural disaster event occurs, and this should be written into the Instrument/Agreement.

Q: Are there any international banks such as for species under the Migratory Bird Treaty Act?

A: Currently, there are no international banks set up for species under the MBTA, but there are trading programs set up through/with the assistance of Business and Biodiversity Offset Program (BBOP) that approach a banking model. Their website is <http://bbop.forest-trends.org/>

Q: How are the long term maintenance costs determined and what would an average cost be per acre?

A: One method to calculate the long term maintenance cost is called the Property Analysis Record (PAR), more information can be found at the Center for Natural Lands Management website www.cnlm.org

Q: Can you explain how conservation banking meets the goal of no net loss?

A: Conservation banking does not have the “no net loss” goal. One of the goals for conservation banking is to contribute to the recovery of a listed species. In the case where species are at-risk, but not listed yet, the goal is to contribute efforts aimed at precluding the need to list these species.

Q: Please briefly describe the process of Mitigation Banking- creation (purchase land)- maintaining (if required)- Buying in – complete (credits used up)- conveyance of mitigated wetland. How is Nature Conservancy involved?

A: A private entrepreneurial banker or state entity identifies a property, presents it to the Interagency Review Team (Corps, EPA, Water Quality Agency, state and local agencies), the banker designs the mitigation plan, the Agreement/Instrument is developed and eventually approved by the IRT, all required permits are secured, the mitigation is conducted, partial credits are released each year until all credits have been released, the site is monitored yearly or as required in the Agreement/Instrument, and the site is handed over to a long term steward along with a previously approved endowment.

Q; What sort of education programs have to be developed and/or implemented to ensure cooperation with adjacent landowners? Are there some successful examples?

A; As with any projects, you need to understand your environment, it's up to you to ensure the public is fully aware and understands the project you are trying to implement.

Q; In what situation could we mix stormwater with the natural water in a mitigation bank?

A: If the Interagency Review Team agrees that this is appropriate, you may incorporate it in to your design of the mitigation site. But this is up to the Agreement/Instrument which is approved by the IRT. Most states have stormwater treatment requirements, which vary by state.