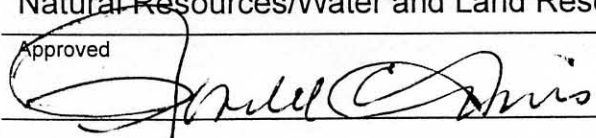




King County
Public Rules and Regulations

Public Rules

Title WETLAND MITIGATION BANKING PROGRAM	Document Code No. PUT 8-11 (PR)
Department/Issuing Agency Natural Resources/Water and Land Resources Division	Effective Date 30 days after filing
Approved 	12-14-98 KING COUNTY CLERK OF COUNCIL

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KING COUNTY CLERK OF COUNCIL

1.0 SUBJECT TITLE: Wetland Mitigation Banking Program ("the Program")

- 1.1 EFFECTIVE DATE: The effective date of the Public Rule is thirty (30) days after this public rule is filed with the Clerk of the Council.
- 1.2 TYPE OF ACTION: NEW.
- 1.3 KEY WORDS: (1) Wetlands; (2) Mitigation; (3) Banking; (4) Wetland Restoration, Creation and Enhancement; (4) Wetland Functional Assessment; (5) Performance Standards; (6) Wetland permitting; (7) King County Department of Natural Resources Water and Land Resources Division (KCWLDRD); (8) King County Department of Development and Environmental Services (KCDDDES).

2.0 PURPOSE: To establish a Wetland Mitigation Banking Program in King County that will create, restore, enhance, and preserve wetlands to mitigate in advance for unavoidable impacts to wetland resources.

3.0 ORGANIZATIONS AFFECTED

- 3.1 Public agencies and utilities, and private applicants who create unavoidable adverse impacts to wetland resources in King County.
- 3.2 King County Department of Development and Environmental Services (KCDDDES).
- 3.3 King County Department of Natural Resources, Water and Land Resources Division (KCWLDRD).
- 3.4 King County Department of Transportation (KCDOT).

4.0 REFERENCES: King County Code 2.98; King County Comprehensive Plan Policies NE - 329 and NE - 322; King County Code 21A.24.345; King County Motion 9295 and Motion 9836; Chapter 90.84 RCW; Federal Guidance for the Establishment, Use and Operation of Mitigation Banks, November 1995 (Federal Register Volume 60, No. 228, pp. 58605-58614); Clean Water Act Section 404 (33 U.S.C. 1344). The King County Code may be accessed on-line at: www.metrokc.gov. Laws of Washington may be accessed on-line at: <http://leginfo.leg.wa.gov>. The federal register and regulations may be accessed at: www.usace.mil/net/functions/cw/cecwo/reg.

5.0 DEFINITIONS: In addition to the following definitions, all definitions included in the King County Sensitive Areas Ordinance are adopted by reference.

- 5.1 Bank Creator: Any public or private entity who restores, creates, enhances or preserves an existing wetland area to create a wetland mitigation bank.
- 5.2 Bank Manager: KCWLRD (or its successor agency) is the Bank Manager for the Program.
- 5.3 Bank User: Any public or private entity who wishes to withdraw credit from an existing wetland mitigation bank.
- 5.4 Buffer: K.C.C. 21A.06.122
- 5.5 Compensation: The restoration, creation, or enhancement of wetlands and, in limited circumstances, the preservation of wetlands to replace wetland area and functions and values adversely impacted by development activities.
- 5.6 Creation: The process of creating wetlands and/or other aquatic resources where they did not previously exist.
- 5.7 Credits: A unit of trade representing the increase in the ecological value of the site.
- 5.8 Debits: The unit of trade that represents wetlands adversely impacted by development activities.
- 5.9 Enhancement: K.C.C. 21A.06.400
- 5.10 Function Assessment: Systematic method(s) designed to evaluate the presence and level of performance of wetland functions. Function Assessment methods include, but are not limited to, Habitat Evaluation Procedure, Wetland Evaluation Technique, Indicator Value Assessment, and Hydrogeomorphic methods.
- 5.11 Implementation Plan: The document that addresses and documents the following:
 - a. Site selection
 - b. Preliminary design
 - c. Final design and number of credits anticipated
 - d. As-built drawings of the bank site specifying the acreage of areas restored, created, enhanced, and preserved
 - e. Attainment of hydrology performance standards
 - f. Attainment of other performance standards

- g. Contingency plans
 - h. Maintenance and monitoring
 - i. Final credit determination
 - j. Final letters of approval for credit use
 - k. Transaction ledgers for tracking credit use
- 5.12 In-kind Compensation: Restoration, creation or enhancement of wetlands that are of similar system and class (as defined by Cowardin, et al.) and that provide similar wetland functions and values as those adversely impacted by development activities.
- 5.13 King County Wetland Mitigation Banking Group (KCWMBG): The KCWMBG is composed of representatives from King County agencies including KCWLRD, Wastewater Treatment Division (KCWTD), Department of Construction and Facilities Maintenance (KCDCFM), KCDOT, and KCDDDES. KCWMBG meetings are open to the public.
- 5.14 Mitigation: K.C.C. 21A.06.750
- 5.15 Mitigation Bank : K.C.C 21A.06.751 A property that has been protected in perpetuity, and approved by appropriate county, state and federal agencies expressly for the purpose of providing compensatory mitigation in advance of authorized impacts through restoration, creation, and/or enhancement of wetlands, and in exceptional circumstances, preservation of adjacent wetlands, wetland buffers, and/or other aquatic resources (ORD. 11621 S. 26, 1995).
- 5.16 Mitigation Banking: K.C.C. 21A.06.752 A system for providing compensatory mitigation in advance of authorized wetland impacts in King County in which credits are generated through restoration, creation, and/or enhancement of wetlands, and in exceptional circumstances, preservation of adjacent wetlands, wetland buffers, and/or other aquatic resources (ORD. 11621, S. 27, 1995).
- 5.17 Mitigation Bank Candidate Site: A property that has the potential to be a mitigation bank site as defined above.
- 5.18 Mitigation Plan: Mitigation plans are a form of special studies required pursuant to K.C.C. 21A.24.330.
- 5.19 Off-site: Outside and not adjacent to the limits of the project area.
- 5.21 On-site: Within or adjacent to the limits of the project area.
- 5.22 Out-of-kind Compensation: Creation, restoration, or enhancement of wetlands that are not of a similar system and class (as defined by Cowardin, et al.) or that do not provide similar wetland functions and values as those adversely impacted by development activities.

- 5.23 Performance Standards: Quantifiable standards established in mitigation plans and intended to create measurable objectives of success. If monitoring demonstrates that performance standards are achieved at a bank site, then the site is considered successful. Performance standards may address, but are not limited to: vegetation survival, cover and community type; hydrology; or establishing physical features designed to be used by wildlife.
- 5.24 Replacement ratios: Ratios deemed by the permitting agencies to sufficiently compensate for permitted impacts to wetlands through the mitigation process. Replacement ratios are often acreage based, but can also be based on function. For example, a 2:1 replacement ratio means that 2 acres of mitigation is required for one acre of permitted impact.
- 5.25 Restoration: K.C.C. 21A.06.1000
- 5.26 Service Area: The designated geographic area in which a bank can reasonably be expected to provide appropriate compensation for permitted unavoidable impacts to wetlands.
- 5.27 Wetland functions: K.C.C. 21A.06.1405
- 5.28 Wetlands, isolated : K.C.C. 21A.06.1410
- 5.29 Wetland: See K.C.C. 21A.06.1415, which reads, in part:
- “Wetlands are those areas which are inundated or saturated by ground or surface water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.”

6.0 POLICIES:

- 6.1 Program Authority: These rules are established pursuant to Ordinance 11621 to mitigate in advance for unavoidable impacts to wetlands that occur as a result of development. *A Guide to the King County Wetland Mitigation Banking Program Public Rules (Guide)* presents expanded information and is incorporated herein by reference and attached.
- 6.2 Mitigation Sequencing: Projects which seek to withdraw bank credits must demonstrate that they have attempted to : (1) avoid wetland impacts by evaluating practicable alternatives; (2) minimize wetland impacts via design alterations or other methods; and, (3) compensate for unavoidable impacts through restoration, creation, enhancement, preservation, and/or a combination of these as outlined in the *Guide* and in compliance with the mitigation sequencing process as defined in K.C.C. 21A.06.750.
- 6.3 Preconditions for Mitigation Banking Sites: Wetland mitigation bank sites shall be restored, created, enhanced, or preserved as outlined in the *Guide*. Wetland

preservation shall occur in conjunction with wetland restoration, creation, or enhancement.

- 6.4 Implementation Plans: Implementation Plans are defined at Section 5.11 of this Public Rule and document the process of establishing bank sites. The Final Mitigation Bank Site Design, one of several required elements of the Implementation Plan, must be agreed to and documented in an Implementation Plan to withdraw credits from a bank site. Additional procedural requirements of Implementation Plans are listed in Section 7.0 of this Public Rule and further explained in the *Guide*.
- 6.5 Credit Availability: The credit release process is fully described in Appendix C. In summary, credits from an approved wetland mitigation bank site are available in the following sequence:
- a. Twenty-five percent (25%) of total credits are available at a bank site once as-builts of the wetland mitigation bank site are approved;
 - b. Fifty percent (50%) of total credits are available once hydrology performance standards have been met; and
 - c. One hundred percent (100%) of total credits are available once additional performance standards have been met OR five years after bank site construction.

The final number of credits available for release five years after bank site construction shall be based upon the existing bank site conditions.

- 6.6 Replacement Ratios: Replacement ratios are higher prior to meeting performance standards. If all performance standards have been met then replacement ratios shall be 1:1. If a site fails to attain performance standards within five years after construction, replacement ratios will not exceed those required in the King County Sensitive Areas Ordinance, and may be 1:1 as determined by site conditions at the time of credit withdrawal.
- 6.7 Service Area Description: The bank service area shall be limited to impacts within a drainage basin, as defined by the King County Comprehensive Plan (Chapter 7, III.B), with a preference given to impacts within a drainage subbasin. Adopted drainage basin plans shall be considered to encompass one service area. Watersheds may be considered service areas when site analysis indicates no bank sites are available to mitigate within a drainage subbasin or a drainage basin. (See also the *Guide*, Bank Service Area.)
- 6.8 Currency: Acreage is the default currency for wetland mitigation banks in King County. The acreage of restored, created, enhanced and preserved wetland, wetland buffer, and other aquatic resources determines the basis for credits available at a bank site. Wetland buffer credits may be given when wetland buffer area is preserved or enhanced beyond the required minimum. Other forms of currency (such as function-based currency) may be allowed, subject to approval of the appropriate regulatory agencies.

- 6.9 Protection: Bank sites shall remain protected from development in perpetuity via conservation easements or controlling real estate interest as specified in the *Guide*.

7.0 GENERAL PROCEDURES:

Bank Site Creation:

Actor:

Actions: _____

Bank Creator:

Identifies potential bank site. Coordinates with Bank Manager to pursue bank site creation.

Bank Manager:

Determines whether bank site is in compliance with site selection process outlined in the *Guide*. If site is in compliance with site selection process, then Bank Manager coordinates with Bank Creator who proposes the bank site selection to the KCWMBG.

KCWMBG:

Recommends approval or denial or modification of bank site.

Bank Manager:

Documents KCWMBG determination of site selection.

Bank Creator:

Prepares Preliminary Mitigation Bank Site Design, which includes:

- Wetland Delineation Report
- Baseline Function Assessment
- Acreage of proposed restoration, creation, enhancement, and preservation
- Proposed number of credits generated from the site
- Goals, objectives, and performance standards
- Monitoring and maintenance plan
- Contingency actions

Bank Creator:

Presents Preliminary Design to KCWMBG.

KCWMBG:

Reviews proposal. May modify preliminary design.

Bank Creator:	Modifies Preliminary Mitigation Bank Site Design based on comments received. Prepares Final Design, including construction drawings. Submits Final Design to Bank Manager.
Bank Manager:	Documents process in bank site Implementation Plan. Coordinates with Bank Creator.
Bank Creator:	Presents Final Mitigation Bank Site Design to KCWMBG.
KCWMBG:	Reviews and denies or approves Final Mitigation Bank Site Design.
Bank Manager:	Documents KCWMBG review process in Implementation Plan.
Bank Creator:	Requests KCDDDES permit determination.
KCDDDES:	Processes permits necessary to create a bank site.
Bank Creator:	Secures required permits. Posts financial guarantee in compliance with K.C.C. 21A.24.140. Sends as-built drawings of constructed bank site to Bank Manager and KCDDDES.
Bank Manager:	Documents as-built drawings of bank site, acreage of areas restored, created, enhanced or preserved, and number of credits anticipated at bank site in Implementation Plan.

Withdrawal of Credits:

Bank User:	Requests a pre-application conference with KCDDDES to review the proposed unavoidable wetland impact and determine whether that impact can be mitigated for by using an approved wetland mitigation bank site. The pre-application submittal shall include a Mitigation Sequencing Analysis which demonstrates that proposed unavoidable impacts to wetlands are best mitigated by a bank in compliance with Policy 6.2 of this Public Rule and K.C.C. 21A.06.750.
KCDDDES:	Determines whether Bank User's proposed unavoidable wetland impact can be mitigated for by withdrawing credits from a permitted wetland bank pursuant to Policy 6.2 and K.C.C. 21A.06.750 and issues Mitigation Bank Preliminary Letter of

Approval if mitigation sequencing has been demonstrated;

or:

determines that the Bank User has not demonstrated that mitigation sequencing has been met. If mitigation sequencing has not been met, KCDDDES issues a Request for Additional Information Letter. Upon receipt of the additional information, KCDDDES makes a preliminary determination to approve or deny the Bank User's credit eligibility.

Bank Manager:

Upon receipt of a Mitigation Bank Preliminary Letter of Approval, the Bank Manager forwards the request to withdraw credits to KCWMBG for review.

KCWMBG:

Recommends approval, or modification of credit withdrawal.

Bank Manager:

Documents process and notifies DDES.

KCDDDES:

Issues a notice of decision followed by a 14-day appeal period in compliance with K.C.C. 20.20. If no appeal is filed, the decision is granted and a Final Letter of Approval (FLOA) is issued by KCDDDES to the Bank User, Bank Creator, and Bank Manager.

Bank Creator:

Submits the King County Wetland Mitigation Bank Site Transaction Notice (see Appendix B of the *Guide*) along with its attached FLOA and Current Mitigation Bank Site Accounting Ledger to the Bank Manager and KCWMBG.

Bank User:

Withdraws credits from permitted bank.

Bank Manager:

Documents credit withdrawal and bank balance in Implementation Plan. Ensures that monitoring and maintenance of site occur and that KCWMBG receives monitoring reports.

8.0 RESPONSIBILITIES

8.1 The Bank Manager is responsible to:

- 8.1.1 Amend the Wetland Mitigation Banking Program Public Rule if needed.
- 8.1.2 Oversee bank sites to ensure that the provisions of the program are consistently applied in a timely manner.
- 8.1.3 Provide technical assistance to Bank Users and Bank Creators or other parties interested in wetland mitigation banking in King County.
- 8.1.4 Act as liaison between Bank Users, Bank Creators, the KCWMBG, and other parties interested in wetland mitigation banking in King County.
- 8.1.5 Oversee and document credit transactions.
- 8.1.6 Ensure that monitoring of bank sites occurs, either by the Bank Creator, or perform the monitoring on a contract basis with the Bank Creator.
- 8.1.7 Notify KCDDDES of enforcement action, if required.
- 8.1.9 Develop standardized bank monitoring protocol and monitor and maintain bank sites if contracted by Bank Creator.
- 8.1.10 Implement contingency action with bond funds if Bank Creator fails to implement contingency action.
- 8.1.11 Document bank site closure once all credits are debited.
- 8.1.12 Maintain up-to-date bank site Implementation Plans that document on-going bank site activity.

8.2 KCDDDES is responsible to:

- 8.2.1 Determine permit requirements for bank site construction and credit withdrawal. Issue appropriate permit to construct bank sites (e.g., a grading permit if applicable).
- 8.2.2 Ensure that all potential Bank Users have followed Mitigation Sequencing requirements such that banks are only used to compensate for unavoidable wetland impacts in compliance with Section 6.2 of this Public Rule.
- 8.2.3 Issue a Preliminary Letter of Approval (PLOA) to Bank Users when an application is made to withdraw credits from a permitted bank site.
- 8.2.4 Issue a Final Letter of Approval (FLOA) to Bank Users when credit is withdrawn from a permitted bank site.

- 8.2.5 Implement enforcement action at a bank site, if required.
- 8.2.6 Provide a representative to staff the KCWMBG.
- 8.3 The Bank Creator is responsible to:
 - 8.3.1 Identify a bank site that is in compliance with Policy 6.3.
 - 8.3.2 Submit information to Bank Manager and DDES to document appropriate site selection, design, and construction.
 - 8.3.3 Secure all required permits for the bank site at the local, state and federal level.
 - 8.3.4 Submit reports to Bank Manager required for the Implementation Plan.
 - 8.3.5 Post financial guarantee of bank site construction, maintenance, monitoring, and contingency pursuant to K.C.C. 21A.24.140.
 - 8.3.6 Construct and design bank site.
 - 8.3.7 Hold or sell credits.
 - 8.3.8 Perform maintenance, monitoring, and contingency activities, or contract to KCWLRD to maintain and monitor the site.
 - 8.3.9 Notify Bank Manager of maintenance, monitoring, and contingency activity.
 - 8.3.10 Submit reports to Bank Manager as required for credit transactions and bank credit balance, monitoring, maintenance, and contingency actions.
- 8.4 The Bank User is responsible to:
 - 8.4.1 Contact KCWLRD to determine procedural requirements to participate in bank sites.
 - 8.4.2 Request a pre-application meeting with KCDDDES to determine credit eligibility; and prepare a Mitigation Alternatives Analysis to demonstrate that the project with wetland impacts complies with policy 6.2 of this Public Rule.
 - 8.4.3 Purchase credits from a Bank Creator. A Bank User may also be a Bank Creator.
- 8.5 The KCWMBG is responsible to:
 - 8.5.1 Oversee activity of the Program.

8.5.2 Review and modify or approve bank site selection, design, and number of credits available throughout the life of each bank site, or up to five years after construction of each bank site.

8.5.3 Review, modify, and approve changes to the banking program.

8.5.4 Oversee bank site monitoring.

8.5.5 Provide technical expertise to the Bank Manager.

9.0 ATTACHMENTS

9.1 *A Guide to King County Wetland Mitigation Banking Program Public Rules*