

Cumulative Effects Fund

Program Introduction

Draft

Introduction:

The purpose of this document is to assist implementation of a Cumulative Effects Fund. A Cumulative Effects Fund will improve the effectiveness of mitigation, especially off-site mitigation, required by the County's Habitat Conservation Ordinance (HCO) 40.440 and the Wetland Protection Ordinance (WPO) 40.450. This paper proposes a structure for a Cumulative Effects Fund.

Many land use regulations in Clark County help manage changing land use activities including a suite of critical areas ordinances required by Washington State's Growth Management Act (GMA) designed to designate and protect sensitive environmental characteristics and habitats. Regulations are applied diligently but small amounts of habitat or functionality are lost. Even in the best of circumstances, the mitigation required by the ordinances does not fully protect or replace the amount or the quality of the habitat impacted by development or clearing activities. The result is a loss of small amounts of habitat and ecosystem function. The proposed Cumulative Effects Fund is a solution to this problem.

Code Background:

The HCO and the WPO were revised in 2006. As defined in section 40.440.010 of the HCO,

The purpose of this chapter is to further the goal of no net loss of habitat functions and values within designated habitat areas by protecting environmentally distinct, fragile and valuable fish and wildlife habitat areas, as defined in Section [40.440.010\(C\)](#), for present and future generations, while also allowing for reasonable use of private property.

As defined in 40.450.010 of the WPO,

It is the purpose of this chapter to provide balanced wetland protection measures pursuant to the Washington State Growth Management Act (GMA, RCW [36.70A.172](#)) that:

- 1. Include best available science to protect the functions and values of wetlands with special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries;*
- 2. Further the goal of no net loss of wetland functions;*
- 3. Encourage restoration and enhancement of degraded and low quality wetlands;*
- 4. Provide a high level of protection for higher-quality wetlands;*
- 5. Complement state and federal wetland protective measures; and*

6. Allow reasonable use of property.

Additions to each of the ordinances include section 40.440.020.3.d.(18).(F).ii of the HCO and section 40.450.040.D.7.b. of the WPO. These sections authorize the use of a “Cumulative Effects Fund” as an off-site mitigation measure.

A Cumulative Effects Fund uses a ‘Fee in-lieu’ method to provide off-site compensatory mitigation. Fee in lieu methods can achieve good environmental outcomes because they consolidate compensatory mitigation projects and resources to target higher value ecologically significant functions. They provide better financial planning, scientific expertise, and can reduce the loss of habitat functions over time while increasing the certainty of project effectiveness (USAC, 2008).

The chances for a successful cumulative effects program increase if it is developed consistently with other existing local resource management plans. There are many plans available in Clark County. These plans are scientifically based and provide a great deal of information about environmental conditions in the county. They also identify where habitat and ecological functions are properly working and where they could be enhanced. The Lower Columbia Fish Recovery Board (CFRB) Salmon Recovery Plan and Water Resource Inventory Plan (WRIA) are examples.

What is a fee in lieu method:

“Fee in-lieu” methods involve the restoration, establishment, enhancement, and/or preservation of natural resources through funds paid to a government, not for profit or other authorized third party to satisfy compensatory mitigation requirements. The permittee’s obligations are transferred to the fee in-lieu program sponsor. The program sponsor invests the fees in restoration, establishment, enhancement or preservation of priority sites. Priority sites may have essential locations, sizes or other characteristics important to the watershed.

Objectives of the Cumulative Effects Fund:

Using a fee in lieu methodology:

- A) Compensate for the cumulative loss of environmental functions resulting from small, un-mitigated impacts.
- B) Minimize the loss of habitat functions and values by encouraging well designed and focused compensatory mitigation, Compensate for the proposed impacts by restoring, establishing, enhancing or preserving important habitat functions and values commensurate with the proposed development impacts.
- C) Identify projects that meet current and expected demands for compensatory mitigation requirements.

- D) Provide compensatory mitigation consistent with watershed scope programs and regulatory requirements such as the LCFRB Salmon Recovery and Watershed Resource Inventory Areas (WRIA) plans.
- E) Minimize the time lapse between approval of compensatory mitigation and implementation of the mitigation project.
- F) Use program fees for restoration and enhancement as first priorities, and preservation as a third priority.
- G) Preserve and manage mitigation sites funded by the program in perpetuity.
- H) Monitor the success of mitigation sites funded by the program.

EXERCISE #1 March 25, 2009

Program Design Parameters

Based on code requirements, the goals of cumulative effects, application of a fee in lieu methodology, and local experience using fee in lieu, Clark County staff identified the basic components of a successful cumulative effects fund.

The components provide good environmental mitigation for impacts that would otherwise go unmitigated, while being easy to use and accountable. The scope of a cumulative effects fund is different from traditional fee in lieu of mitigation funds operated by state and federal agencies.

In a few cases, the needs of a habitat CEF are different than the needs of the wetland CEF.

There were 5 participants at the first meeting. They responded to the questions as by ranking it 1 for high priority, 2 as lower priority, and 3 as no priority or they disagreed with the concept.

If a parameter was not scored by the meeting attendant, it was assigned a score of 3.

The total scores ranked from a 4 to 10. The table shows the total score, and then a re-assignment to a priority level of 1,2 or 3 based on the distribution of scores.

- Score 4 or 5 equals priority 1
- Scores 6 or 7 equals priority 2
- Scores 8,9, or 10 equals priority 3

Characteristics of a CEF

Habitat	Score\ Priority	Score\ Priority	Wetlands
Habitat impacts under .5 acre	9\3	5\1	County only impacts: nothing with a Corps or DOE impact, or use when the county requirement is above and beyond a DOE or Corps impact.
Applicable to non-professional developers, both Type 1 and Type 2 land use cases	5\1	9\3	Fund recipients are allowed to do mitigation not resource specific “do good work”
Applies to otherwise unmitigable impacts	7\2	7\2	Applied to otherwise unmitigable impacts

Habitat	Score\ Priority	Score\ Priority	Wetlands
Applies to SEPA impacts with cooperation of state agencies	6\1	6\1	Applies to SEPA impacts with cooperation of state agencies
Links to Legacy Lands	7\2	8\3	Links to Legacy Lands
Process works well with plans examiners and permit services	8\3	8\3	Process works well with plans examiners and permit services
Limited number of recipients, based on their qualifications	8\3	8\3	Limited number of recipients, based on their qualifications
Limited reporting requirements for CEF recipients	8\3	8\3	Limited reporting requirements for CEF recipients
Program has the ability to set strict mitigation ratios aside for reasonable use\proportionality considerations	9\3	9\3	Program has the ability to set strict mitigation ratios aside for reasonable use\proportionality considerations
Ability to combine habitat and wetland funds and use them on one project	7\2	7\2	Ability to combine habitat and wetland funds and use them on one project
Fund recipients must be able to show that their land is eligible for conservation projects	4\1	4\1	Fund recipients must be able to show that their land is eligible for conservation projects
The CEF will consider small impacts that are hard to mitigate individually, need to define the thresholds, and exclude projects that do not meet this characteristic.	6\2	6\2	The CEF will consider small impacts that are hard to mitigate individually, need to define the thresholds, and exclude projects that do not meet this characteristic.
Periodic examination of need to change recipients	10\3	10\3	Periodic examination of need to change recipients
Priority sites for receipt of funds are pre-identified (may require balancing with “do good work approach)	9\3	9\3	Priority sites for receipt of funds are pre-identified (may require balancing with do good work approach)
Internal reporting must associate permit requirements with fund expenditures	6\2	7\2	Complement wetland banking programs

Part 2 of this exercise is to tell us..did we miss important characteristics?

- Costs to impact of a critical area must reflect cost of restoring an appropriate area of wetland\habitat.
- Mitigation sequencing process should not be undermined.
- Set up contracts to speed mitigation, so it occurs very soon after impacts.

- Watch out for nexus if you want to separate the applicant impact from the use of the fund dollars.
- Why the .5 acre impact threshold for habitat?