

Cumulative Effects Fund Meeting Questions Raised at Meeting

**April 22, 2009
6:30 to 8:30 pm
1300 Franklin
Training room, 6th floor
Vancouver WA**

Meeting purpose

The purpose is to review preliminary requirements for recipients who want to use a Cumulative Effects Fund. Feedback to staff will be used to refine the program.

Policy\process questions raised at the meeting:

- Would there be an advantage to having a county department as the recipient?
 - King County uses this model. It could be an advantage because administrative requirements would be internal and the county has projects countywide. The county sub-contracts with the private sector or non profit sector for much of the on the ground work.
- What is an adaptive management plan?
 - The adaptive management plan indicates what the recipient will do to correct failures in the mitigation.
- Do the audit requirements pertain to financial audits or performance audits?
 - Financial
- What kind of financial stability must be demonstrated by a recipient?
 - Staff will research criteria. Financial audits are required in the master agreement and the selection process requires financial stability, but more details could be helpful.

Draft reviewed at meeting:

1. Eligible Cumulative Effect Fund Recipient
 - a. The Cumulative Effects Fund recipient is responsible for mitigation activities, compliance with mitigation plans, long-term maintenance of mitigation sites, financial accountability, and remediation in the event of mitigation failure. The recipient is responsible for acquisition and compliance with all other state and federal permits required for the site.
 - b. The County will select one CEF recipient. Status must be granted by Clark County before the organization can receive funds. The county and the organization will execute a master agreement allowing receipt of funds.
 - c. At a minimum, the county shall use the following criteria to select the CEF recipient:
 - i. Experience in performing mitigation work or in subcontracting to have the work performed;
 - ii. Willingness to participate in projects that may not be part of the organization's core mission, but are part of the CEF program's mission;
 - iii. Success rates of previous mitigation projects;

- iv. Success in administering state or federal grants, or other sources of funding that require reporting to granting agencies;
 - v. Financial stability;
 - vi. Availability of professional staff, either on staff or via contract;
 - vii. Ability to assume long term maintenance responsibilities and to respond to remediation needs.
 - d. The county may withdraw a recipient's eligibility status for poor performance.
- 2. Eligible Mitigation Activities by CEF Recipient
 - a. Recipient may use CEF awards for restoration, enhancement, re-establishment or preservation of mitigation properties.
 - b. Preservation may include purchase of land, conservation easements, deed restrictions, or development rights.
 - c. Funds may be used for implementation of best management practices for streams.
 - d. Funds may be used for initial restoration or enhancement activities on a site, performed in compliance with a mitigation plan, completed less than 18 months before the CEF request for funds.
 - e. Funds may not be used for creation of wetlands, preparation of wetland or stream mitigation plans, fees, acquisition related costs such as appraisals or surveys, or purchase of credits from mitigation banks.
 - f. Funds may not be used to duplicate or replicate previously completed activities that provided mitigation required by a permit issued by any regulatory agency.
- 3. CEF Sites
 - a. The designated CEF recipient shall maintain a list of sites in each WRIA where they might expend CEF funds. The CEF recipient shall make every attempt to identify a variety of wetland and habitat sites with a cross section of wetland and habitat characteristics.
 - b. The sites on the list shall have the following minimum characteristics:
 - i. Reflect watershed priorities as defined by an adopted watershed plan.
 - ii. Have a mitigation plan. The plan shall specify, at a minimum:
 - 1. Mitigation work description and timeline;
 - 2. Maintenance plan;
 - 3. Financial plan for project completion;
 - 4. Long term management plan; and
 - 5. Adaptive management plan
 - iii. Have a monitoring plan
 - iv. Be targeted for restoration, enhancement re-establishment or preservation activities.
 - v. Have a likelihood of success.
 - vi. Create minimal conflict with adjacent land uses.
 - vii. Have a reasonable expectation of long term preservation of the portion of the mitigation site with activities funded by CEF.
- 4. Mitigation Requirements for CEF Recipient
 - a. CEF recipients are chosen for their program strength and breadth and may apply CEF funds to any project appearing on their list of CEF sites, subject to the constraint of using the funds within the appropriate WRIA.
 - b. Because CEF, by definition, applies to impacts that otherwise would not be mitigated, mitigation ratios are not applied to the use of funds.

- c. The CEF recipient is expected to use the funds to achieve desirable environmental results and to leverage the funds.
 - d. Annual review by the Advisory Committee will examine the use of funds.
5. Leverage and Match Requirements
- a. CEF funds may pay for any proportion of a project, and be leveraged and matched in any way suitable for the project.
 - b. The County may enter into agreements with the eligible CEF recipient to provide multi-year funding for specific projects, subject to availability of funds.
6. Timeliness of Use of CEF
- a. The CEF recipient will be informed of the characteristics of the donor property and the availability of new funds quarterly.
 - b. The recipient will agree to use the funds on an identified project within one calendar year.
 - c. Funds may be used for restoration or enhancement activities performed in compliance with a mitigation plan, performed no more than 18 months before the notification of availability of funds.
7. County\ CEF Recipient Instrument
- a. A master agreement contains principles that may extend across several project sites. Site by site agreements are not required.
 - i. Party responsible for providing mitigation and long term maintenance.
 - ii. Agreement to provide site ownership or purchase agreements and property survey.
 - iii. Overview of standard maintenance processes.
 - iv. Overview of performance standards for success.
 - v. Overview of monitoring requirements and processes
 - vi. Overview of long-term management plans.
 - vii. Overview of adaptive management plan.
 - viii. Current audit.
 - ix. Commitment to project completion and continued maintenance in the event of organizational change.
 - x. Provisions for transfer of long-term responsibilities to other organizations.
 - xi. Identification of funding for long-term maintenance.
 - xii. Overview of Process for selecting onsite field staff and contractors.
 - xiii. Frequency and content of technical reports for projects.
 - xiv. Timing and process for requests for reimbursement.
 - xv. Content and frequency of financial reports.
 - xvi. Agreement to allow county access to sites funded or partially funded by the program, for performance monitoring. Monitoring will occur at the county's expense and will be arranged collaboratively with the recipient.
 - b. Site specific information
 - i. The recipient is shall retain the following information for projects that use CEF:
 - ii. Mitigation parcel
 - 1. Legal description and survey.
 - 2. Description of baseline resource type, amounts of resource to be mitigated, methods of compensation, how mitigation methods address needs of the watershed.
 - 3. Project start and end dates.

4. Documentation of site ownership or purchase agreement.
 5. Mitigation and construction plan.
 6. Activities funded via CEF and projected costs.
- c. Approval of agreements
- i. The Master Agreement shall be approved by the Board of Clark County Commissioners
 - ii. The Master Agreement shall be approved by the executive of the recipient.
8. Separation of Duties
- a. Community Development staff are responsible for performing land use planning reviews, determining eligibility of applicants for off-site compensatory mitigation, developing mitigation ratios and other conditions of approval for off-site mitigation, developing the agreement between the applicant and the county, and collecting the fees. DCD staff also performs site monitoring. Within Community Development, there is separation between the staff that develops the staff reports and determines eligibility of compensatory mitigation and the staff that collect fees. There is also separation between staff and the hearing examiner or planning manager that makes the planning decision to allow off-site mitigation.
 - b. Mitigation Marketplace Administrator is responsible for analyzing sites, developing options for off site mitigation based on watershed plans, preparing report on options.
 - c. ESA staff are responsible for monitoring the funding by WRIA, communicating with the CEF recipient, understanding the relationship between the donor properties and priority sites, developing the list of eligible recipients, making distributions to from the fund to eligible recipients, collecting technical and financial reports, and communicating with the technical and advisors and Advisory Committee in support of the program.
 - d. The Advisory Committee reviews the annual distribution of funds and advises staff on the priority sites list. They also make suggestions for program revisions.
 - e. The CEF recipient is responsible for performing mitigation activities, long term maintenance of sites, remediation if necessary and financial accountability.
9. Requirements for County CEF Reports by WRIA
- a. Financial
 - i. DCD Tidemark case and fee deposited, by WRIA, by date range.
 - ii. Disbursements to recipients, by WRIA, by date range.
 - iii. Unexpended program funds, with date of deposit, by WRIA, by date range.
 - b. Technical
 - i. List of permits for which in lieu fees were accepted, amount and type of impacts on donor site, location of off site project as reported by CEF recipient, by WRIA by date range.
 - ii. Amount paid to CEF program, amount disbursed, project start and end dates, CEF recipient, by WRIA by date range.
 - iii. Monitoring results of projects, year 1-10.
 - iv. Projects subjected to remediation by type, reasons, project start and end date, by WRIA, by date range.

10. Technical Input

- a. Technical staff responsible for program administration shall meet as necessary to coordinate program activities.
 - i. Community Development
 - ii. ESA
 - iii. County Auditor's Office
 - iv. Community Development Department
 - v. Mitigation Marketplace

11. Advisory Board

- a. Provide independent review, guidance, advice and recommendations on the development and implementation of the Cumulative Effects Fund;
- b. Review and analyze the annual evaluation, monitoring and adaptive management report for the program to ensure that it continues to meet its stated goals and puts in place new actions that allow it to adapt to changing conditions over time.
- c. Review expenditures or disbursements made from the Cumulative Effects fund. The Advisory Board would review projects to ensure that they are within the defined service area, that they meet the obligations of compensatory mitigation that the collected funds were meant to address, and that both habitat and wetland compensation is performed.
- d. The CEF Advisory Board shall hold meetings at least once per year, with a membership consisting of:
 - i. Development interest
 - ii. Agency representative - DOE, WDFW.
 - iii. Conservation\Environmental -
 - iv. Agricultural - local farm interest.
 - v. Public Utility - PUC interest.
- e. The staff of the ESA program will staff the board.
- f. The department head of ESA or the chair of the board may convene a meeting of the board.