



THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT

John F. Kennedy School of Government • Harvard University

HONORING NATIONS: 2014 HONOREE

Lummi Wetland and Habitat Mitigation Bank Lummi Nation

Contact:

2665 Kwina road

Bellingham, WA 98226

<http://lummi-nsn.org>

Tribal land is a scarce resource, and tribal leaders often face competing demands concerning land use. Especially pressing are the potential tradeoffs between development and environmental stewardship. The Lummi Nation was eager to develop housing and commercial properties but wanted to make sure that these projects would not damage ecologically sensitive areas on the reservation. To help manage development on its lands, the nation created the first tribally operated commercial wetland mitigation bank in the country. The Lummi Wetland and Habitat Mitigation Bank sells mitigation credits to both tribal and non-tribal projects, helping the nation balance its development and preservation goals.

Tribal Wetlands under Threat

The Lummi Nation is located northwest of Bellingham, Washington and has a population of approximately 5,000 citizens living on and near the reservation. The 12,500 acre Lummi Reservation includes portions of the Nooksack River and Lummi River, their estuaries, and about 7,000 additional acres of tidelands along the Salish Sea. These areas provide crucial habitat for culturally and ecologically important salmon and shellfish, wetland plants, and animals such as frogs, eagles, and heron.

In the early 1990s, the Lummi Nation began to worry about the effect of rapid growth on the reservation's natural resources. Development on tribal lands and in neighboring towns was threatening the health of area watersheds and affecting salmon and shellfish habitats – resources of critical importance to the Lummi people for commercial, ceremonial, and subsistence reasons. US Environmental Protection Agency and Corps of Engineers rules require developers to avoid, minimize, and then mitigate for any unavoidable wetland impacts, but the effectiveness of mitigation projects is mixed. On the reservation, the nation's ability to protect wetland areas was further complicated by US policies that had created land parcels in which multiple people have an ownership interest.

At the same time, the Lummi Nation faced demands to make reservation land development easier, especially for tribal housing and business development. The nation inventoried the reservation and found that over 40 percent was wetlands, which significantly reduced the area in which it was possible to build. Additionally, any building project that had the potential to affect wetlands triggered a complex and lengthy permitting process mandated by the federal Clean Water Act. The process added cost and uncertainty to projects since it required analysis of project-specific mitigation alternatives, a mitigation plan, plan approval, plan implementation (including acquisition of mitigation land), and ten years of monitoring and reporting on the mitigation effort. Given the difficulty of pursuing projects with wetland or habitat impacts, the tribe and other potential developers frequently abandoned initiatives that could have improved reservation residents' quality of life. To change this outcome, the Lummi Nation needed to find a way to develop land while also conserving its wetlands.

Balancing Development and Preservation

The Lummi Nation spent over ten years developing the Lummi Nation Wetland and Habitat Mitigation Bank, a tool which allows the nation to streamline the land permitting process, generate income, and protect crucial land parcels. Developers proposing projects on or near the reservation that will affect wetlands no longer need to develop project-specific mitigation plans. Instead, they can apply to buy credits from the Mitigation Bank, which helps preserve land areas designated by the Lummi Nation and pre-approved by the US Army Corps of Engineers and the US Environmental Protection Agency to meet permit conditions. Within the mitigation parcels, the Northwest Indian Fisheries Commission is the guarantor of the conservation easement required to permanently protect the land.

By offsetting development with the restoration and protection of land areas chosen by the tribe, the Mitigation Bank offers superior wetland and habitat protection and enhancement while also serving as an effective adaptive strategy for sea level rise associated with climate change impacts. As an alternative to the conservation of small and disjointed wetland parcels, the Lummi Nation has identified three reservation areas totaling almost 2,000 acres that are part of an overall effort to enhance its estuary and shore lands. Unlike site-specific mitigation projects, the lands are protected and enhanced before development begins to affect the area. This includes intensive monitoring, converting drained lands back to wetlands, replanting native species such as English Ivy and Japanese Knotweed. Because Mitigation Bank lands are subject to a perpetual conservation easement, they will remain undeveloped forever. Eventually, the Mitigation Bank will preserve about 22 percent of the reservation uplands (as opposed to tidelands) land base.

Since the Mitigation Bank saves developers time and money on required environmental impact work, credits have significant economic value. Currently the Lummi Nation has a set price of \$300,000 per credit; it also has established reduced rates for specified uses. Commercial projects undertaken by the tribal government or individual tribal members receive a discount

of 25 percent, while tribal government housing and tribal municipal projects receive a 50 percent discount. Individual tribal members can obtain credits at no cost to build a single-family home. An Administrative Panel – made up of the directors of the Lummi Nation natural Resources Department, Planning Department, and Cultural Resources Preservation Department – reviews each application to assign the appropriate number of mitigation credits to each project and to determine their cost.

Lummi Nation mitigation credits have proven highly desirable. Initial Phase 1A credits generated interest from project developers located on tribal lands and in the surrounding area. The Lummi Nation's Silver Reef Hotel, Casino and Spa bought the first available credits to fill in a low-valued wetland for a parking lot expansion. Other purchasers included the Lummi Planning Department, the Washington Department of Transportation, and numerous private developers. By mid-2015, 7.3 credits have been sold, generating approximately \$1.6 million in revenue for the Lummi Nation. Taking into account both tribal project discounts and the scarcity value of credits as their availability declines, the Lummi Nation estimates that the entire Mitigation Bank is worth over \$85 million and has the capacity to offset wetland impacts for the next hundred years.

Lummi Nation Priorities

The Mitigation Bank has greatly improved the Lummi Nation's ability to manage reservation land use. Tribal plans for housing and new enterprises are now easier to initiate, since there is a simple and clear mechanism for dealing with ecological impacts. The income generated by the sale of the credits flows directly into the Lummi Nation general fund, providing additional revenue for implementation of the tribe's priorities. The Lummi Nation also has a sole authority to decide whether or not to make credits available to a particular project and to set prices. In one recent case, a private, off-reservation developer wished to buy credits from the Mitigation Bank for a project that conflicted with the tribe's interests; the Lummi Nation chose not to make the credits available.

While it does not resolve all land-use issues, the Mitigation Bank is an administrative mechanism that strengthens the Lummi Nation's wetland restoration and habitat preservation efforts. In establishing the Bank, the nation systematically identified the areas of the reservation that would be protected based on their environmental and cultural significance. The Mitigation Bank provides the legal framework for acquiring and restoring these areas on a large scale. For example, where land parcels have fractionated ownership, the Lummi Nation can buy the interest shares from all the owners, simplifying reservation land ownership and consolidating Lummi Nation land holdings for preservation purposes. Crucially, although Mitigation Bank lands are designated as conservation lands in perpetuity, the Lummi Nation retains its treaty rights to hunt, fish, gather, and perform ceremonies in the protected areas. This aspect is unique to the tribal Mitigation Bank and associated conservation easement.

The Mitigation Bank also helps integrate the Lummi Nation's land management objectives with those of surrounding communities and governments. The Lummi Nation worked closely with federal, state, and local agencies to secure agreement that the Mitigation Bank could be used to mitigate for unavoidable wetland impacts throughout the bank service area, which extends off-reservation. This important precedent, which is now codified in the Washington Administrative Code, makes it possible for credits generated by the mitigation bank to be used to mitigate off-reservation development impacts. Federal and state agencies responsible for fish, wildlife, wetland, and environmental protection coordinate with tribal officials on the plans for mitigation lands, ensuring that ecosystem-wide objectives are met. Since the Mitigation Bank land is tribal, however, the State of Washington has agreed to maintain observer status and defer to federal approvals. The role of the Northwest Indian Fisheries Commission in enforcing the Mitigation Bank conservation easement is particularly noteworthy: it brings the experience of neighboring tribes to the table and gives all parties confidence that the Lummi Nation will fulfill its conservation obligations.

Bringing the Lessons Home

Lummi Nation Wetland and Habitat Mitigation Bank is an innovative tool that allows the tribe to meet environmental objectives and facilitate economic development on its reservation. By designating certain lands for the Mitigation Bank, the nation is preserving the natural resources that are critically important to Lummi culture and livelihood. At the same time, the option to buy mitigation credits makes it easier for the nation to pursue housing and commercial developments that strengthen its economy.

Lessons:

- Creative and integrated management of wetlands can promote cultural values and reframe economic development opportunities
- Mitigation banks are a proven, cost-effective way to preserve and enhance ecologically and culturally important wetland resources.
- Tribal policies that are administratively effective, technically sound, and legally defensible strengthen tribal sovereignty.