

Wetland Bank Advisors Group Meeting

Meeting Minutes

January 8, 2007

Ecology HQ

10:00 am to 2:00 pm

ATTENDING

Peggy Bill
Wendy Bolender
Sarah Cooke
Lauren Driscoll
Kim Harper
Amy Kurtenbach
Bill Leonard
Gretchen Lux
Christina Merten
Doug Peters
Mike Rundlett
Carol Smith
Kate Thompson
Jackie White
Victor Woodward

This is the first Advisors Group meeting that was open to the public.

The meeting started with introductions from the Advisors Group Members and from members of the public present at the meeting.

The goal of today's meeting was to discuss improvements to the wetland banking program's communication and public outreach efforts. Gretchen Lux prepared and emailed an outline of discussion points for the Advisors to think about prior to today's meeting. Today the group will discuss the outline and propose ways to improve the communication and public outreach efforts of the banking program. Gretchen acknowledged that members of the public were present and that there would be specific times where the public could ask questions. In addition, Gretchen encouraged the public to submit questions and comments via email to Kate Thompson at kath461@ecy.wa.gov. Gretchen mentioned a change to the agenda. An introduction to using a "web room" was removed from the agenda because Ecology was still working on how the program would work with the Advisors.

Gretchen asked the Advisor group if they would like to meet in Seattle for the next meeting. The group agreed to meet in Seattle on February 20th at the US Army Corps of Engineers. They also agreed to have the March 28, 2007 meeting in the Lacey area. Exact location to be announced.

The group also agreed that the minutes and agendas for these meetings should be made available on Ecology's Wetland Banking website.

Discussion Point 1: General Outreach Needs

The advisors group has identified a need for additional general outreach. The group offered several suggestions. Outreach to the general public could be accomplished through a series of workshops held in different parts of the state. This may be a logical step as a bank proposal begins review process in a county. Although workshops are valuable they are not easy to coordinate and tend to be expensive. Another idea was to be aware of opportunities to get news stories about the banking program published in print and on radio news.

Jackie White mentioned that there are 281 Association of Cities members and affiliate groups and 39 Association of Counties members with affiliated groups. The Association provides information to members of these groups through newsletters or weekly bulletins, website and forums. The Association posts special bulletins for members about meetings through out the state, especially when the Legislature is in session. It may be possible for the Advisor meetings as well as other banking meetings to be posted on the Association's website.

Victor Woodward told the group that he would be willing to offer tours or hold open houses at his bank (Snohomish Basin Mitigation Bank) which would allow more of the general public to attend and provide a better sense of what a bank looks like in the ground.

Bill Leonard mentioned the need to target the public and local government. There needs to be broader networking with local governments. It should be a multi-pronged effort that has everyone focusing on the same issues at the same time. Local governments need help updating the language in their Critical Area Ordinances (CAOs) and Shoreline Master Programs (SMPs) to include the use of wetland banks. Carol Smith suggested that the updates should include language describing how agriculture lands should be treated in regards to wetland banking. Victor agreed and said that CAOs need to be more flexible with their codes. His company (Habitat Bank, LLC) has made efforts to talk with local governments and give them advice on their CAO/SMP updates but specific language from Ecology would help. Mike Rundlett asked if Ecology has formulated example language. Gretchen responded that currently Ecology does not have example language to give to local governments. She is currently working with Ecology's legislative and policy coordinator, Tom Clingman, to craft example language for local governments. They will be working with CTED on this language as well.

Many local governments have rules stating that wetland mitigation must happen within its jurisdiction. The banking community would like Ecology's help reaching out to local governments and providing guidance on the use of banks.

Gretchen summarized what the group has suggested thus far:

- 1) Need to increase outreach efforts – specifically provide guidance to both local governments and permittees on when it is appropriate to use a bank.
- 2) Ecology should craft example CAO/SMP/GMA language for local governments
- 3) Need to develop guidance

Gretchen told the group that although Ecology can provide guidance, local governments decide what updates they will include in their various regulations that govern land use.

Sarah Cooke had concerns regarding the “sequencing” of determining what type of mitigation is appropriate. She is referring to the decision to mitigate on-site vs. off-site vs. banking and in-kind vs. out-of-kind. She is concerned that off-site mitigation is now the status quo versus first looking at on-site mitigation options. Kim Harper mentioned that the Joint Guidance does discuss the considerations for choosing a mitigation location. Peggy Bill added that there are still jurisdictions that say mitigation should stay on-site. Sarah suggested that it would be helpful if Ecology had guidance on how and why banks should be used for mitigation. Christina Merten said that Ecology has trainings scheduled on the joint Washington mitigation guidance document for local government and planners.

Gretchen stated that there is a need for more guidance that will help explain when banks are appropriate to use. This is a gray area that needs further discussion. Amy Kurtenbach told the group about the approach that the DNR uses when they need to provide guidance to local governments. The DNR identifies high priority meetings/issues and enables staff to attend those meetings. They also provide written guidance to other meetings which they cannot attend. This has proven to be a good communication method with local governments.

Mike said that the topic of off-site versus on-site mitigation and sequencing were topics to discuss at the next meeting. Also guidance on determining how to sight banks. This should be added as a focus for our next meeting. He would like to see Ag land versus restoration land issues focused on.

Bill gave an example of a project that WSDOT is working on where they need to find appropriate mitigation sites/options. They found it difficult to find appropriate onsite options, an off-site option that would have taken care of 25% of the required mitigation was land of Agricultural Significance so it could not be used. They first looked at onsite but very little was available. In the end approximately 80% of their mitigation will be offsite.

Sarah agreed with Bill’s approach and said that in the public interest, projects need to show due diligence in going through the appropriate steps in selecting mitigation locations and that once it’s shown that off-site is the best option, banks are then appropriate to use. **The group was in agreement that there is a need for good guidance on how and when it is appropriate to use banks to mitigate for impacts.**

Mike asked if the group had a sense of the market demand for banks. He wanted to know what the statewide planning has been for banking over the next 10 years. When planners are looking at a 10 year plan, they must go through collaborative effort to determine where development should occur. When the private sector is doing planning, they may want to use models to anticipate land use. There needs to be a focus on basic information and guidance to help with this planning process. Victor stated that he has been trying to educate the public/local governments for 3 years on using banks for mitigation. Their bank has been functioning for a year and they are still trying to get folks to use credits. Developers are unsure about proposing the use of banks in their mitigation plans. Kim said that permittees must decide if banking is necessary. Ecology can't recommend one specific bank. Sarah said that having an initial meeting at the project sighting stage is the way to get help early. This meeting would need to involve all local jurisdictions that could possibly be involved.

Carol suggested that Ecology collaborate with the Conservation Districts, they have a good local knowledge and can suggest areas where land might be available. Carol also suggested that Ecology proposed participation grants for local governments. There needs to be a funding mechanism in place so that locals can afford to spend their time and resources into incorporating banking into their rules/codes. Jackie seconded that idea, stating that some local jurisdictions are not willing to move forward due to funding constraints. Some jurisdictions have lost grant money because they were concentrating on other areas.

Discussion Point 2: Public Involvement

Ecology's banking staff recognizes the need for early involvement and has begun to hold early coordination meetings with tribes; local, state and federal regulators; and others who may have a significant interest in the project. This is now occurring prior to submittal of prospectus in a format similar to a pre-application meeting to discuss permitting issues. Bill suggested getting local government involved or added to the Banking Advisors Group.

Sarah wanted to know who has the history of public involvement to date. Victor stated that he has worked on building relationships over the past 5 years. He has been talking to many local jurisdictions and various interest groups. It was suggested that there is a need for early communication with people involved in the critical permit path for banks, communication with developers, and start to present to a variety of different stakeholders groups, like the Master Builders. Gretchen stated that there needs to be a more formal public involvement mechanism. One suggestion was to post more information about each bank on the website including the number of credits available. Gretchen said that Ecology is looking into the possibility of posting each banks' ledger on the website.

Someone asked how is the general public getting this information? Sometimes the MBRT receives the prospectus long before the Public Notice comes out. Mike has found that the public wants to be involved early, with the opportunity to comment on the project vs. a particular permit action. Ecology and the Corps should outline a public involvement process. Ecology's Banking Program could create its own PN process through the new

rule. Mike suggested that a tool that brings all the process together is SEPA. If Ecology accepts the lead agency status, then SEPA is triggered early. This will help start early coordination between agencies.

Sarah thought that it might be a good idea to send out letters to adjacent property owners when you receive the prospectus. Another suggestion is to find air time on the local news, banking could be a public interest story, or utilize public TV networks. Amy suggested putting a sign on the property and folks will associate that sign with the public notice they received. Bill suggested that a way to get information out to the public early is using the SEPA process to put out an early draft of the prospectus, which puts the public on notice that a bank is being proposed. **The group agreed that early involvement is a good idea.** This gives the public a sense of trust that we are not hiding anything.

Sarah stated that if SEPA were used that 30 days is not enough time to comment and that 60 days would be better. Gretchen commented that she doesn't see anything wrong with 60 days. In general comments would be accepted throughout the review process of a bank. Bill asked - how does Ecology and the Corps see as the role of the public? Should there be a formal process for comments? There should be more opportunities to observe the approval process. Jackie believes that this will give bankers and legislators a heads-up.

Amy asked how the public can appeal decisions. The rule is draft right now and there isn't an appeal process outlined in the draft. Kim mentioned that the Corps has no formal role with SEPA. But the Corps would be interested in any comments submitted and as a member of the MBRT would be involved in responding to comments received during SEPA. SEPA would involve early scoping with a formal determination and comments. Early SEPA would put the public on notice. Because SEPA would be done early in the review process resolution of comments may not happen for many months after the comment period was closed. The early scoping required by SEPA may be too early in the process to make final determinations on. Jackie pointed that the group needs to look at the legal aspects of using the SEPA process this early. Do we need legislation in order to use the SEPA process? **The group decided that they need assistance with SEPA in order to chart out process.**

The group suggested developing a flowchart for the public involvement process that would help the public, local governments, developers, and permittees decide when to feed into the process. Another option is to have local open houses for public to talk about a project. There needs to be more explicit instructions and explanation of local process vs. state process. Carol suggested that as a bank works through the steps in the flow chart, to provide that information at each meeting to keep everyone informed of where a bank is in the process. Early meetings with the community will provide more opportunity for public to understand a project. Gretchen suggested that we should put a step into formal public involvement plan document.

The floor was opened to the public for Q and A.

George Boggs – What has been the need for early involvement? Policies? Because of program development, will the early involvement really be necessary? Shoreline Master Program can give lots of the info needed. Would like to know how much the issues that the banking program is facing in Skagit County are shaping the policies for other counties. He would like to remind the group that Whatcom County is approaching the banking and alternative mitigation alternatives in a different manner than Skagit County and outreach could be done differently in Whatcom County.

Scott Hansen - 1) Critical Area Ordinances – in the City of Tacoma, their CAO says that you can not do mitigation in different WRIA's, for example an impact in WRIA 10 cannot be mitigated in another WRIA 2) Asked about Ecology Public notices vs. Local Public notices. Locally only the people within 300 ft of the site are notified. Christina responded that the State's public notice process they try to notify everyone within a ½ mile radius and anyone who has signed up for the 401 permitting notifications and banking notifications. Gretchen stated that Ecology uses the existing Public Notice procedures as much as possible. Kim mentioned that anyone can comment on a Public Notice. Scott would like to see wider notification of the public notices. 3) The Puget Creek Preservation organization is looking for language that states that if there is development that it is low impact. 4) Public Involvement – would like to see a representative from Ecology to speak at meetings, conferences and workshops going on around the state.

Richard Gilda - Would like Ecology's homepage to be more user friendly. He had a difficult time finding the wetland banking website from this location. He suggested placing information about banking in various groups' newsletters, such as planning commissions, non-professional planners. Also putting information out on listserv's from each county. He also pointed out that many local jurisdictions receive advice on regulation language from consultants, so any suggestions that the state could give would be helpful.

Lunch Break

Group broke for lunch at noon. Returned from lunch at 12:30 and resumed discussion

Betsy Stevenson suggested that SEPA may not be the best fit for getting notice out early to the public because it can cause frustrations and early appeals.

Betsy thinks there needs to be process for compiling and returning comments.

Discussion Point 3: Communication on Process

Gretchen stated that we need to develop a process where comments are sent to Kate who will post to the website. Gretchen asked the group what kind/form of output we want from this Advisory Group. How much and what should be posted on the web for the public to see and comment on? Bill stated that we need to make note of key points from the Advisors Group, especially issues that we all agreed upon. This will help us track

how Ecology will or will not be implementing key issues. This will also highlight how some of the advice is being implemented into the wetland banking rule. Jackie suggested she would like to see the results from these Advisors meetings in a report format that she could share with her stakeholders and the Association. Bill said that it is important to document where the group did reach consensus and where the group had different opinions. This documentation will help as the group moves forward and when new people join the conversation. Gretchen agreed that Ecology would look into creating an Advisors Group Report.

Gretchen suggested that we gather suggestions from previous meetings to help on this issue. Amy stated that there needs to be an understanding of when information is proprietary. She asked the bankers (Bill and Victor) what their thoughts were on this subject. They agreed that in general, all information should be public. It is critical that information is available to public. Gretchen does not see anything that would not be public. Amy stated that in the past the bankers had voiced concerns that there were some issues that were part of individual bank decisions that, in a competitive arena like banking, should not be made public until final. Victor said that they initially requested that some financial issues should not be public info. Christina said that Ecology is checking with legal counsel regarding this issue.

Gretchen asked the group when information (both from the advisors group and from bank review) should be posted on the website for public viewing - final draft or each iteration?

Amy suggested that we put out an initial draft and state that it will be evolving. Bill stated that by putting out a final draft this could prevent Ecology from being swamped with comments on every iteration and would be more efficient. A possible problem would be receiving comments on the 1st iteration of a document and we are already at the 4th iteration. It comes down to what we expect from the public. Gretchen said that if we clearly identify what stage of information that we are in, she thinks it would be appropriate to post early drafts of documents, especially when it's design documents. This type of information needs to be out early for the public to see and make comments. Gretchen reminded the group that people who are interested in viewing these documents are not going to have the time to comment on every iteration, and would most likely wait until a more final draft to submit comments. She asked Sarah what she thought about this, as Sarah would be a person who would comment.

Sarah stated that she would be a major person to comment and reiterated again that 30 days is too short of a period of comment. She would not comment multiple times on one project. She suggested that it's important to explain to people early what the steps of the review process are so they can understand when it would be the most useful to submit comments on a project.

Gretchen asked the group what documents on the web would be helpful? Kim suggested that opening up MBRT meetings to the public is a really good idea. Sarah suggested that MBRT should invite WA state and federal folks (WDFW, NOAA, US Fish). Gretchen responded that they have been invited but so far they are not at the table because of

workload issues. Other agencies would be more involved if the projects were conservation projects vs. banking projects. The Services have to sign off on the BE, this is a way to get early involvement. Also, WDFW may need to issue an HPA permit, so this would require their involvement.

The floor was opened to the public for Q and A.

Scott Hansen– The List Serv from Ecology is really good. He thinks that the parties that commented on a project should be notified when there are construction changes. There should be training to non-profits, consultants, city personnel.

Kim responded that in general the public does not need to know every change unless it is a substantial change to the project. If there is a substantial change, then these new designs would have to go out on public notice because permits (like HPA, BE, 401) would require that new permits or revisions be obtained.

Jocelyn Winz– What about taking advantage of the SMP training? Could ask to speak for about 15 mins during the training about banking. The training is already scheduled, so this would be a good opportunity to reach out to regulators.

Gretchen responded that once we have guidance and a process in place this is a good idea.

George Boggs– Need good integration with local ordinances. Need to be clear where there are opportunities for enhancement. Getting public involvement at the project sighting stage is important.

Discussion Point 4: Communication on Program

Gretchen said that communication on the banking program is part of an ongoing internal discussion with the Advisor Group. One change that has been made based on feedback is that Advisor Group Meetings are now all open to the public. Meeting minutes and agendas will be posted on the website and sent out to the banking listserv. Bill suggested that on all minutes, reports etc., the group needs to do a good job of recording consensus as well as where opinions differ. Gretchen noted that Max Willis would be able to help with the minutes. The group also felt that when recording decision points or divergence, it is important to capture who participated in the discussion. Gretchen stated that there isn't an anticipation that the group will come to conclusion on issues during the first few meetings. Kim would like to see a status report of the Advisors group with key recommendations. We need to get the groups input to see if we are capturing what our summary decisions were and future action items. The group also felt that a focus sheet from Ecology on the program that could be given to local governments or interested parties would help.

Discussion Point 5: Outreach to WDFW and the Services

Gretchen suggested that we send out summary of our meeting and re-invite WDFW and the Services. Mike stated that there needs to be issues of interest for these agencies to attend the Advisor Group meetings and to be a part of the MBRT. He mentioned that he was interested in conservation banks and was sure that the Services are too.

Christina suggested that possibly the next meeting would be the perfect opportunity to get WDFW and the Services interested in the project since the topic is Service Area and where banking projects are appropriate. Carol said to also touch base with WDFW's Habitat Division.

The group returned to Discussion Point 4:

Mike suggested having printed materials available about the program to hand out at conferences or meetings. Jackie suggested using Municipal Research and Services Center of WA (MRSC) as a venue for our information. Bill said that we should target local government with focus sheets, brochures, etc. Ecology should use the group to help pull this information together. Tap into all the expertise around the table. Speaking for the bankers in Snohomish County, Victor said they will do what is necessary to get information out.

A suggestion from the group was to send out a letter to local governments that would highlight the future expectation of banking in the state/county, what the geographic coverage might be, help them understand how banking might affect them, and lay out the questions they may have about banking. This letter could go out now while Ecology is working on crafting example language for CAO/SMP updates. This will give local governments a heads up and get them thinking about banking in their county. Jackie said that she would be willing to help with the letter and thought that Doug Peters would also be someone who should participate.

This brought up the idea that the Advisors Group could form different workgroups to start working on the various guidance documents that were discussed today. Gretchen added that these work groups would also consist of people not currently part of the Advisors Group. This is something we can discuss at the next meeting.

Amy asked if Ecology has money to contract a facilitator that could do workshops. Sarah said speaking of budgets; will there be more dollars for expanding the program? Gretchen stated that there are additions to the Governors' budget. She could not answer Amy or Sarah's questions at the moment and that Lauren Driscoll would probably be able to answer those questions. Gretchen thought that there is possibly one Full Time Employee (FTE) in the budget for banking. **Gretchen told the group that Ecology will send out with the meeting minutes a copy of the summary of the Governor's budget.** Sarah asked if there is anything that the different groups can do to help with getting more funding.

The floor was opened to the public for Q and A.

Jocelyn Winz – Do you have a communications plan and a timeline?

Wendy Bolender added that a draft communication plan will help the banking program and would like to assist with the program's development in general

Mike – what is the status of the rulemaking?

Gretchen replied that it will be later this year. Ecology will start this summer by refilling the CR 101 paperwork.

Next meetings: February 20th at the Corps of Engineers in Seattle in the Galaxy Room
March 28th in Lacey area: Lacey Community Center

An email will be sent with reminder, agenda and map to location.

The meeting adjourned at 2:00 pm