

Wetland Bank Advisors Group Meeting

Meeting Minutes

February 20, 2007

Seattle Corps – Galaxy Room

10:00 am to 3:00 pm

Jodi Slavik
Amy Kurtenbach
Christina Merten
Kate Thompson
Bill Leonard
Mike Rundlett
Sarah Cooke
Doug Peters
Kim Harper
Gail Terzi
Victor Woodward
Gretchen Lux
Lauren Driscoll
Wendy Bolender
Gary Cooper
Peggy Bill
Joan Cabreza

Warm-Up

First item of the day was to discuss changes to the agenda. It was decided that Lauren would first discuss the proposed budget package and distribution of work load. This will be followed by Wendy who will present the draft charter and work plan to the group. The identification of work groups will occur during the day's discussion. After Wendy presents, the group will move into discussion of the two main topics of the day: wetland bank site selection and service area criteria.

Introductions were made around the table.

Lauren presented information on the budget request:

Ecology's SEA program is requesting funds (1.9 million) for 10 FTE's (Full Time Employees). Three positions are for the mitigation banking program: one position will be located at the Corps, one position will be located at Ecology, and the third position will be for administrative support.

Another request was for a GIS position which will work on the Watershed Characterization Tool, currently being developed at Ecology

Josh Baldi, from Ecology, went before House Appropriations to present the budget packet. The full packet proposed by Ecology went into the Governor's Budget. There

have been a few requests from Senators asking how this proposal would fit with their ideas of improving mitigation in the state.

Sarah asked what Lauren thought Ecology's chances were to get the full budget package approved. Lauren responded that it was a good sign that the full proposal went into the Governor's budget, but beyond that she wasn't sure.

Lauren went on to describe how the program is currently being funded. There are two different funding sources, Cost Reimbursement Agreements (CRA) with the bank sponsors for review and processing of their bank, and funding from the State's general fund. Current activities funded under the general fund include program development, policy development, administration, legislation. Other activities Ecology will be conducting under the new budget will be education and outreach, technical assistance on banking, rule development, and administrative support for the bank program. Ecology has the option to use/hire contractors to help with education, outreach, and scheduling meetings/forums.

Additional work that will be covered under the budget request will be construction and oversight, post construction monitoring, credit release verification (monitoring, tracking bank ledgers, and audits), permit compliance, and providing support at the Corps.

Jodi asked Lauren if the FTE positions have been prioritized in case Ecology does not get the full amount and will have to cut some of the positions. Lauren responded that she has not done this herself and that decision would include other parties. One option would be to talk with ORA, they might help fund the position at the Corps. Ideally she would push for 1 to 2 of the banking positions and the GIS position.

There were no further questions.

Wendy began her discussion of the charter and work plan she drafted for the Advisors Group.

The charter and work plan were distributed to the group and Wendy asked them to review the documents and come prepared at the March meeting to discuss changes. Since the Advisor Group was reconvened in October there have been many different tasks identified that requires action. The work plan will be useful to chart timelines and the progress on accomplishing these tasks. The Charter clearly outlines the roles and responsibilities for the members and Ecology.

Wendy went through each document and summarized the information for the group. She would appreciate any feedback so the group can work from a common understanding within these next few months.

Peggy asked about the December 31, 2007 deadline mentioned in the charter [indicates the conclusion of the Advisors Group]. How does this date work with Ecology's plans to

open its doors for new banks and how do the recommendations from the group fit into that.

Lauren explained to the group Ecology's plans to publish a Joint Public Notice with the Corps, which outlines the timeframe for accepting new bank proposals. Wendy explained that the recommendations from the Advisors Group would be coming forward month by month, so there would be opportunity to apply the recommendations to the new bank proposals. Lauren added that Ecology can always ask the group for advice at the time it's needed regarding a bank proposal.

Amy asked if applications have vested rights. Can the recommendations be applied to new bank proposals?

Kim responded that the Advisors Group recommendation will be useful in a variety of ways. For the next round of bank openings there is a need to develop a scoring system for the outlined criteria – the Group could be very helping in determining that scoring. In addition the recommendations that come from this group can be applied to future bank submittal periods beyond the 2007 opening.

Victor asked if the Public Notice will have clear language and identify what is needed in a proposal. Gretchen responded that yes, the intent is to have clear and specific language.

Sarah asked what happens if funding does not come through for the program? Kim responded that Ecology would probably have to take on fewer new banks. Gretchen added that Ecology would have the capacity to perform bank reviews via CRA's; however the other aspects of the program would be difficult to conduct.

Sarah asked if the CRA amount could be increased to cover additional bank costs. Gail added that the current problem is shifting between reviewing new banks and monitoring existing banks, usually CRA's stop once a bank is certified.

Sarah said that in the past the group had discussed the possibility to increase costs – pay as you go – to help with these other tasks. If bankers want to have banks in the ground they may be willing to pay more.

Bill said that this cost should be applied across all mitigation activities, including concurrent, not just for banking. Otherwise the increased cost would create a disincentive for bankers. Jodi added that CRA's were intended to be a temporary fix – it should be the State's job to provide this function. BIAW would be opposed to extending CRA's to other aspects of the banking process.

Sarah asked Jodi if she has taken a survey of the members to see if they are opposed to CRA's – most of her clients would love this.

Gretchen told the group that this subject [CRA's] can put placed on an agenda for another meeting. Group agreed.

Bill went back to the timeline of tasks that Wendy had drafted and pointed out that it indicates Ecology will be in rule making during 2008 – when in 2008? Will there be another Public Comment period?

Wendy responded that Ecology plans on filing a CR 102 [i.e., proposed rule language] early in 2008 and at that time another public notice would be issued. She then told the group that the charter and work plan will be sent to them via email. If any members of the public would also like to receive this information they can leave their email addresses.

Mike asked if there was a rule development plan? He then mentioned that there are only a few times in a year that this plan can be reviewed, has Ecology considered this?

Wendy responded that this summer Ecology will file a 101 which will include the rule development plan. When a 102 is filed, new draft language will also be submitted at that time.

Mike assumed that the timeline listed on the work plan would be revised to show more concrete timeframe for rule making. Wendy said yes, that would be the case.

Mike asked whether the Advisors Group would have the ability to review new bank applications. Gretchen responded that when new bank applications are received, Ecology would invite the advisors group to comment on the new bank proposals.

Victor asked for clarification – comment on new bank proposals? Yes.

Gretchen added that when that process begins, Ecology will share information with the Advisors Group. At that point the group will be given more details about the relationship and roles the Group will have in the bank proposal review. The group has identified some issues for future discussion; however it's important to return to discussion of today's topics.

Site Selection Discussion

Gretchen introduced facilitator, Dolores Mitchell, to the group. Dolores will help facilitate the discussion for the afternoon. During the discussion of Site Selection and Service Area, work groups will also be assigned. Wendy prepared a form that will help each work group formulate their recommendations. Gretchen asked the group to think about which work group they would like to participate in during the afternoon's discussion. It is anticipated that each work group will work on their recommendations after this meeting and bring them back to the larger group in April.

Gretchen began the site selection discussion by pointing out the different sections in the information packet that was sent to the Advisors prior to the meeting. The document outlines the site selection criteria that are included in the WA draft rule, the Proposed Federal Rule, and the Draft Joint Public Notice.

Sarah asked if they could start at the beginning of the site selection document and move forward through the document.

Regarding Section I (a) [*The site should have areas that can be restored to wetland conditions*] Sarah asked why the language only mentions restoration. Gretchen responded that when the draft rule is revised Ecology will use the terminology in the new joint mitigation guidance. Sarah asked if the term creation is still used. Gretchen responded that the term is still used.

Christina clarified the information that was included in the site selection criteria packet. The language under the WA Draft Rule is the original/current language that was drafted in 2001. Ecology has not made any changes to this language. It is anticipated the draft rule language will change prior to rule making. The language under the proposed federal Rule is the current language that was proposed. The third section explains the direction the MBRT has discussed in regards to site selection criteria.

Gail talked about the proposed federal rule on wetland mitigation and said that it would probably be finalized later this year. Mitigation banking is a subset with the rule. The rule also talks at length about mitigation for other aquatic mitigation. She would like to see other types of aquatic mitigation included in the banking program but would need to engage the Services in this discussion – not there yet.

Sarah asked if the Seattle District submitted comments. Gail replied that they submitted 13 pages of comments. Sarah asked who was consolidating the comments. A mitigation group at Corps Headquarters in D.C. is consolidating the comments.

Victor mentioned that the National Mitigation Banking Conference will have a presentation on the status of the process for finalizing the proposed federal rule.

Mike asked if the mitigation banking subset [within the federal rule] is lengthy. Gail responded, yes, it also offers regional flexibility, but it is trying to prescribe timelines for efficiency and effectiveness.

Mike assumed that the public comment period was closed and the agencies are in the process of putting together the final rule and addressing the comments. Gail replied that he was correct. Comments will be addressed in the preamble.

Gretchen steered the conversation back to talking about site selection criteria.

Bill commented that the WA draft rule has language addressing watershed plans [*Section I(k)...banks should be consistent with existing watershed plans, etc*] and the language in the Public Notice has what he believes is descriptively vague language about watershed plans [*Section III (a)(i)*]. Watershed plans in WA are generally tied to fish and water quality and make general statements that are broadly useful about siting banks, but not generally informative. Not all watersheds in WA have plans. Has the MBRT given thought on providing specific guidance on what they are looking for?

Gretchen responded that the MBRT tried to be specific earlier in that paragraph and realizes the language is vague but can't require what is not in law.

Bill suggested flipping the language around [*referring to Section III (a)(i)*]

Gail mentioned that in the proposed federal rule, in lieu of a watershed plan, there is a list of information that can be submitted to show a project is consistent with watershed plans.

Bill replied that he believed the intentions are good, but the language is not crafted in a way that the intention is clear. It needs some more work.

Gail asked the group to look at (f), which gives a list of items that can be submitted in lieu of a watershed plan. [*referring to the proposed federal rule, Section II (f)*]

Gretchen agreed with Bill, but the MBRT needed to give flexibility for the different types of information an applicant could provide. She asked Bill if he was willing to provide language that will help fix the paragraph. Bill replied that he would try to do that.

Gail added that local governments were concerned that they have to develop a watershed plan; they can't be directed to do this by state or federal agencies. What does it mean to develop a watershed plan? How can it be used against them?

Sarah responded that there is a framework for this; King County has Basins Stewards that are supposed to review all plans affecting the basins. Could more of this be done regionally?

Bill added that the group needs to be careful about mixing the terms "landscape approach" and "watershed plans"; they are not one in the same.

Gretchen said that the MBRT purposely used both terms since they do have different meanings in WA. Bill responded that the terms still need to be clearly separated.

Amy added that most watershed plans do not include estuaries and salt water environments. She suggested clearly defining what a wetland could be (freshwater and/or marine) in the Public Notice.

Christina responded that the Public Notice does reference the joint guidance document and the Best Available Science document. These documents have definitions of what a wetland is.

Gail replied that she can see what Amy is getting at; currently the program is tailored toward freshwater wetlands. Need to be inclusive of all wetlands, even though the interest has been from freshwater.

Kim questioned the value in specifying that the program is geared toward freshwater in the PN. This may help a potential banker if they knew it was the focus of the program. Currently this program does not address the market for Marine Banks

Bill replied that he doesn't think marine banks should be excluded, it's just the market isn't there yet.

Gail added that the banking in WA may eventually get into ESA (endangered species act) and conservation banks where marine wetlands would play a role. A marine wetland bank proposal has not been submitted. There may be some in the works. Joan mentioned that the Lummi Tribe, Ebey Island, and Bringer have potential marine banks. Bill added that there may be some advance mitigation opportunities regarding salt water wetlands.

Victor added that the wetland banking program should stay open to salt water mitigation banks. Gretchen said that estuarine environments are rated very high [using the WA wetland rating system]. Therefore it is much harder to get a permit to impact estuarine wetlands, thereby the market is smaller. Peggy added that port projects will always be there.

Mike commented that he can see the problem between trading freshwater impacts for estuarine mitigation. It's how he feels about using Ag lands for wetland banks. It's trading one important resource for another important resource. How do we identify the highest ecological value of a site (Salmon recovery vs. Ag lands)? Hopefully this program can move toward estuarine mitigation.

Bill added that it seems very difficult to propose an estuarine mitigation bank, especially with the current requirements for mitigation: on-site and in-kind. The same benefits observed from replacing freshwater wetlands are not observed replacing estuarine wetlands.

Sarah added that the team could review mitigation options that included estuarine mitigation for impacts to freshwater wetlands

Bill said that people will take the certainty track (i.e., replace freshwater losses with freshwater mitigation) to reduce the risk that their permits will be denied or delayed by concerns over the appropriateness of "out-of-kind" mitigation.

Victor said that even with basins stewards present, a city permit that wants to use an estuarine mitigation would probably be denied.

Bill added that there are some fabulous estuarine sites to restore, but he can't tell his agency [WSDOT] that it's a good investment for project mitigation.

Amy suggested inserting a statement into the public notice that estuarine wetlands are a valued resource and estuarine mitigation banks will be considered in this program. At the same time recognizing they are difficult and complex systems.

Bill added that it is a circular process; with requirements of on-site/in-kind mitigation it is a disincentive to focus on and do estuarine mitigation.

Even though there are policy impediments to estuarine restoration, it's still a valued and complex resource that the agency would consider. It could be in a preamble of the PN that the program would look at estuarine and freshwater.

Amy added that not many watershed plans address estuarine wetlands

Mike replied, however many plans that look at salmon recovery and habitat recovery. Although these plans are centered on salmon it also looks at the habitat (estuarine). By reference these types of plans will give this program a boost to explore the idea that mitigation can be out of kind.

Bill added that they still need to recognize and address agency policies for on-site and in-kind mitigation that are steering people away from estuarine mitigation.

Sarah suggested that code could be written that estuaries could be rated as a high priority for restoration. Would want to specifically include estuarine mitigation has an option. If estuarine mitigation doesn't stand out they may not think to include it.

*Gretchen suggested that this is something the group can put into guidance. Good discussion so far; let's look at the questions at the end of the discussion.

Section IV (a): *Is the two tiered approach identified above a good scheme to evaluate site selection? What alternatives would you recommend? Does the group like the two tiered approach?*

Jodi asked for clarity regarding the first level, part (a) [minimum required criteria] – is this level just for the next round of submittals or for the rule?

Gretchen responded that the minimum required criteria (part a) is just for the next round but may help with rule development. The fifth statement [III (a)(v)] is about banks located on agricultural lands [*proposals shall not be located in agricultural lands of Long Term Commercial Significance...*]. There is legislation proposed and lots of dialogue about banking and agriculture. Ecology anticipates addressing this issue during draft rule revisions.

Jodi asked about 40-acre size minimum and the Ag lands issues [III (a)(ii)& (v)]. She felt that this language creates an absolute and does not allow the MBRT flexibility in reviewing other types of proposals. She realizes that the MBRT may want to have some sideboards in place but she is still concerned with stating absolutes.

Gretchen replied that the MBRT needed to determine what the basic criteria would be for accepting proposals onto the next level (scoring). The five items listed is what the group

believes are the most critical to evaluate. The 40 acres was decided based on the MBRT's best judgment. In addition, a smaller site would not generate enough credits to warrant going through the banking process. Also 40 acres follows plat land parcels. Remember another option is there can be multiple sites that equal 40 acres.

Mike added that 40 acres is also justified by the science. Small projects have shown to fail, need larger sites to increase the chances for success.

Joan said that she didn't have a problem if the minimum size is just for the next round because the goal is to have highly functioning banks. She understands the concern if this is the absolute for the rule.

Mike asked where the 40 acre size threshold fit into the bell curve of chances to success.

Victor replied that in urbanized areas the only options are small sites. If these sites get too small the buffer takes out lots of credits.

Gail mentioned the WSDOT Springbrook Bank and how the buffer width was determined based on the smallness of the site. There are not specific criteria out there that a bank has to be a certain size. Instead it's the landscape position, and the surrounding land use that's most important. Small banks can work ecologically but Bill pointed out that it would not work economically.

Sarah suggested that if a project is smaller than 40 acres, there are always different options to consider. Gretchen added that banks are very expensive and the 40 acres size minimum is also based on practicality.

Jodi said that she would like to see the 40 acres as guidance not a rule

Bill had a questions regarding III (a)(iv) about contacting local government. Service Area designation usually involves multiple jurisdictions. It is really important to do coordination early in the process with all the jurisdictions.

Gail added that urban banks have this problem; one jurisdiction says one thing and another jurisdiction says something different.

Gretchen replied that the purpose of this statement is to have the bank sponsor do some early communication with the jurisdictions about whether the bank location would be appropriate. Bill suggested that language should be inserted that would encourage bank sponsor to talk with all local jurisdictions within the bank's likely service area.

Gretchen replied that the issue is about the location of the Bank Sites and whether it's acceptable to that jurisdiction. The issue that Bill is talking about is permitting and service area. Which is different then what the statement was intending to convey.

Victor added that bank sponsor should be talking to various jurisdictions anyway.

Gail pointed out that if a local jurisdiction requires that mitigation has to be within their limits then maybe a banker would not want to put a bank in that location/area.

Victor replied that these rules are hurdles for bankers. Bank sponsors have to figure out if wetland banks are an acceptable land use and not located on agricultural lands. Jurisdictions place Ag land designation on all types of agricultural habitats

Peggy added that ban on agricultural land is just for this round and until criteria for locating banks in Ag lands is finalized.

Mike said that this is an issue for both sides and there is a need to continue working on this.

Gail added that it seems like each county has different Ag land designations, which makes it very difficult to know which lands are long term significant Ag lands.

Mike stated - speaking of Ag lands of long term commercial significance- there are statues that guide local governments in evaluating these Ag lands of long term commercial significance. The problem is that wetland banks are a new land use that has not been well defined. Until then let's follow what it says in GMA (Growth Management Act) and work with local governments.

King County doesn't allow mitigation to occur in floodplains for upland development. Should anticipate more of these projects in the future and should develop criteria to help locals to accommodate wetland mitigation banking in their codes.

Peggy told the group that she did bring a copy of the Whatcom CAO language which has a section that addresses wetland banking. She asked Lauren to email the information to the group.

ACTION: Lauren to send via email the Whatcom Co. CAO [**DONE**]

Bill asked a question about "other high priority Ag lands" that was mentioned in Section III (a)(v). Gretchen told him that language is being removed.

Jodi asked the group, specifically the bankers, if they thought the two tiered approach was workable. Does this give enough information to prepare a proposal?

Victor responded that most of the requirements listed they would look at anyway – is it workable, that's the question.

Bill didn't notice that anything was missing from the list. As a banker these are the kind of things that should be looked into. There needs to be greater clarity in the more vague language. Especially for new bank sponsors that are not savvy in the banking world.

Kim agreed and said better proposals would probably be submitted. Gail added that when the submittal period is open will 5 or 100 projects be submitted. The purpose of the two-tiered approach was to select the best projects. Bill added that folks who do their homework will get past the first step.

Christina said that it would also help those not informed about the process realize what it takes to propose a bank. Victor added that there are banks established that people interested in proposing a bank can come look. Gail said that WA has a good cross section of banks.

Gretchen interrupted the conversation with a time check. It was approaching lunch time. After lunch the group will continue discussion of Section III(b) of the public notice language. Please read this section over. After this discussion the public will have the opportunity to ask questions.

Gail asked members of the public if anyone who could not stay for the afternoon portion of the meeting if they had questions. No one from the audience had questions.

Group broke for lunch

Site Selection Discussion Con't

Group quickly reviewed part (b) of section III under site selection criteria. Gretchen asked the group to look at the questions listed. She asked if anyone had comments.

Bill had a comment on (ii) [*the... goals for the watershed have been taken into consideration in selecting the site.*]. Same comment as before-if part (a)(i) is revised then this sentence should also be revised. Need to bring clarify to this part.

Sarah had a question about format. She noticed that many of the items list in part (a) are repeated in part (b). She suggested formatting the public notice so that part (b) would emphasize the details in part (a). Items listed in part (b) could be a sub-set (the details) of the items listed in part (a)

Kim can see Sarah's point, however it's a little different than the original intent of the document. Once an applicant got passed part (a), they would then need to address the issues listed in part (b). She understands Sarah's point about repetition.

Sarah added that it seemed, for example, (b)(ii) is a subset of (a)(ii), it seems that much of (b) is a subset of the broader topics, i.e. part (a).

Gail suggested that a better explanation of the rationale behind the two-tiered criteria would help.

Sarah suggested that once an applicant could show (a)(ii) then they could be directed to go into detail in part (b) on this issue. She didn't get the point of the original format and felt it wasn't easy to understand

Gretchen said that part (b) was intended to be more specific points that the MBRT would craft scoring criteria around. Part (a) is the first cut, and Part (b) is the scoring section.

Bill asked if the MBRT was envisioning a 2 step application. Or does one proposal need to go through each part. He agreed with Sarah in that it should not be laid out as two-tired to the applicant – too confusing. Sarah added that the instructions need to be rephrased and should let the applicant know that scoring will be based on the following criteria.

Gail mentioned that there is more information and explanations in the actual public notice than what the advisors are currently reviewing. Christina just pulled out this information on the criteria for the group to discuss. Sarah asked if the group could review the draft public notice and offer suggestions. Gail responded that the Corps cannot share draft public notices.

Peggy added that if the MBRT was going to continue with the two-tired approach it seems that the main redundancy is with (a)(i). Maybe instead use only parts (ii) through (v) under part (a). Then move part (a)(i) under part (b).

Sarah stated that she doesn't disagree with everyone, but the language does not flow and is hard to understand, this is based on her experience writing proposals. It would be easier to group the points into different topics.

Christina responded that the original intent was that part (a) was either yes or no and part (b) was for scoring.

Gretchen told the group that the MBRT would take another look at the public notice and figure out a better way to frame it.

Victor stated that now that he understands the purpose of the two tired approach – it seems that the notice doesn't really ask for evidence to support a need for a mitigation bank. Additionally, it doesn't ask for what jurisdictions within the Service Area (SA) support wetland banks. It should tell applicants to look at the different counties, cities, etc. What do they allow? Peggy responded thinks those issues are part of the learning curve.

Gretchen replied that she thought this is a learning curve for local governments. She doesn't think that banks should be prohibited until codes are updated.

Jodi added that she didn't think that is what victor was saying. He was just saying that the information would be informative and helpful in scoring and selecting banks.

Bill stated that he liked the idea; it shows the applicant did their homework. Peggy added that it would be useful to know if there are other approved banks in the proposed SA.

Joan responded that the MBRT didn't want to be in the position to judge the marketability of banks. But it is a good point in that it would be a problem to spend time processing a bank that didn't get much use when there was higher demand elsewhere.

Bill had a comment on part (b) (xiv): need to recognize the differences between urban and rural area.

Doug added that it seemed that number (vi) and (xiv) were similar.

Bill replied that (vi) is looking at connectivity to offsite habitat and (xiv) is looking at onsite issues. Gretchen asked if the group wanted to add language to these sections. Bill stated that it seems that if the applicant can show the project is adjacent to a riparian area – it would be a better project. Gretchen added that if an applicant knows the land adjacent is protected then it should maybe score higher.

Victor stated that a bank in an urban setting would not have protected land adjacent, so it seems unfair to penalize an urban bank for that. Gretchen agreed and recognizes all urban banks would have the same problem. Victor thought that a high priority should be given to urban banks since the bank would be protecting open space.

Amy thought conservation easements (CE) are usually not placed on urban banks. She asked Peggy if Cascade Land Conservancy (CLC) have CE on small parcels. Peggy responded they could.

Gail stated that in the urban setting the banker will need to buffer against some egregious activity, but if it's not an absolute then the banker can not be certain what type of protection is needed. Some comprehensive plans are more clear than others about future development.

Bill stated that a few people here pointed out that there is a need to make the distinction between urban and rural banks in the public notice. Kim suggested maybe developing a different scoring system for urban vs rural banks.

Peggy stated that the proposed federal rule refers to wetland banks being able to compliment other community goals. Maybe a line should be added that a bank should show their ability to achieve multiple planning goals – such as salmon recovery, water quality, flood control, education. These applications would receive higher points.

Victor asked about (xv) [*The site.....is available for long term protection under a CE or other mechanism*] – what other mechanisms would be consider besides CE for long term protection? Bill suggested that the options beyond CE for protection be left open. Christina added that the language allows flexibility if someone comes up with another idea

Sarah added that an item she did not see on the list is the requirement for an applicant to show the equivalent of a bond for maintenance and monitoring. Gail responded that this type of information would be in the MBI. The Seattle Corps will not sign an MBI unless Financial Assurances (FA) are in place, including Long term monitoring and maintenance FA. Nationwide the corps has found FA important to have in place.

**Sarah asked if this issue [FA] could be an item to be discussed for another time.
Yes.**

Gretchen asked if anyone else had more comments.

Bill had a comment on (xvi) – this section should list all types of easements. Instead of saying the bank should not be located in areas where legal restriction could impose limits on bank design ask them instead to disclose any of the following (FAA restriction near airports, historical districts, community covenants, etc.) **Group agreed.**

Public Questions

Gretchen asked if the public had questions.

Gary Copper: He stated that he supported Bill’s comments about using the term “watershed plan”. It’s a term that has the potential to mislead folks. What he would like to see in the approach for siting banks is a functional assessment of wetland functions within the watershed. He thought that the last sentence should be broken out.

Regarding part (b) – he agreed that all the requirements would benefit from being categorized – for example like functional assessment “technically feasibility, ecologically viability, local compatibility. These could be the different sections. Would have 3 or 4 categories with the items listed in (b) listed under the appropriate category.

Victor agreed that Gary’s suggestion would make it easier to respond.

Lucinda Tear, from Windward, asked if there was a way to create a wetland mitigation bank in a neighborhood. The people in the community could use the profits from selling credits to repay themselves for stormwater related costs.

Joan replied that the ideas sounds like a great local project – maybe get tax breaks.

Lucinda added that it might be good for smaller sites. Need ways to encourage and provide incentives.

Gail added that the she hasn’t seen anything like that but wouldn’t preclude it. The problem would be the long-term monitoring and maintenance issues. Who would oversee the bank in the long term? There are grants out there to do what you’re talking about.

Lucinda said that maybe this idea would work in subdivisions that have a homeowners association.

Gretchen added that there must be an ecological lift in order to create credits i.e. money, not just providing a buffer to an existing wetland. Gail asked how are credits sold that reflects modified behavior.

On a different point - Lucinda stated that she would support particular language supporting marine and estuarine areas in the PN/Rule, even if rules and guidelines are not identified.

Jenny Buening, Windward, stated that she recently read a prospectus about creating a bank in Magnuson Park. She asked how it works when a private bank is proposed on public land – it seems beneficial but complicated.

Bill talked about the Springbrook bank as an example. The city of Renton supplied the land, WSDOT supplied the money for design and construction. The credits are being split down the middle. This occurred through a side agreement and is not addressed in the MBI. Each bank would be case-by-case basis.

Gail added that Victor is currently involved in a case of merging public and private interests.

Victor talked about the Clark County Mitigation Bank. His company, Habitat Bank, is partnering with ports, city, and county. These groups would like to have access to a mitigation bank but do not have the staff or the knowledge to set up one. Therefore this is where a private banker could come in and be helpful.

Jenny stated that she knows it's early in the process but is this project a good example of how to make a bank to work in the urban environment.

Victor talked about one of the proposed sites in Clark County. The City of Battle Ground had a property and needed a private banker to supply the knowledge and work.

Jenny stated that it seemed that the public has the land but not the resources and bankers have the resources but not the land – urban banks would be ideal.

Victor agreed; these are the best options left for urban banks.

Peggy gave another example - State Parks are looking to go in this direction.

Gary asked a follow-up question. Does this affect the playing field among the bankers in the long run when there is not the initial investment in the land? Have there been discussions among the bankers about this issue?

Victor replied that partnering with public entity is the best way to lower a banker's capital. It's a competitive process.

John Bolender, Mason CD: He comes from a small rural county which is not staffed well or financed well. They may not be able to compete with the criteria listed. He would encourage the group to establish scoring that assigned more points to the ecological functions vs. whether a bank has been identified in a watershed plan. Also he thought that the public notice should reinforce that the prohibition on Ag land is a temporary. In Mason County they have a large tract of land that is zoned Ag lands of long term significance but is unfarmable – this needs to be restored into an ecological function.

Gretchen thanked the public for their questions and announced that the group would be moving onto the discussion of Service Area designation.

Service Area Discussion

Gretchen mentioned that Ecology does not have the same level of detail on SA as for site selection. She pointed out that within the SA packet; Ecology's watershed characterization tool was included. She asked if the group had comments on the SA information.

Victor felt that in order to promote banking as economically sustainable Ecology should encourage larger SA. If the banks in these larger SA are successful then other banks will come in and provide greater variety in bank options. He thinks Ecology/MBRT should start with generous SA to encourage banking opportunities.

Gretchen asked if the program started with generous SA – how does it move toward smaller SA later.

Victor replied that whether a bank gets used relates to whether a permitter allows an impact to be mitigated at that bank. If a bank has a large SA, they might be able to keep that size. However, when other banks become established they will market themselves as the better option to mitigate for impacts close to them. Might not be a problem if there are multiple banks within the same SA. Most impacts are onsite.

Sarah added that if Ecology allowed a large SA then there needs to be a written statement that certain functions must be replaced onsite.

Gretchen replied that it seemed that in a situation where a bank has a large SA, only part of the impact would go to the bank and part would be mitigated on site, like stormwater.

Sarah added that it is common to split mitigation of functions between on-site and off-site.

Gail stated that stormwater ponds can be built on site, but this doesn't really address the issue. Habitat can be mitigated off-site. This is the most contentious issue the MBRT

has to deal with, especially in western WA. It is very difficult to designate SA that would give bankers a profitable project and would also keep the environmentalists happy.

Mike stated that it is important to look at a bank project's needs in context with the Service/Market Area. It's a start up business and they are looking to be profitable. It makes sense to have a large SA. This begins to tie back to developing a market-based plan for these banks. It would be useful to know information such as, customer profile, sales projection, in relation to other banks out there. All these things tie together in establishing SA. Need this information to determine a policy to move these projects forward. Need to come to a decision that is a good tradeoff of the resources. It seems that a bank that has a small SA would be situated closer to the impacts and might be located to more urban settings.

Victor replied that bankers have no idea of their potential customers. A "customer" does not look to a bank until the option to mitigate on-site is removed. Bankers cannot solicit customers like traditional business. Snohomish Basin Mitigation Bank (SMBM) has been in operation for 2 years and has not sold any credits to private development. Credits have been only sold to public projects. It is hard to know how the SA will work with the size of banks and the demand.

Bill added that the best a banker can do is to show where growth is occurring and where impacts are likely to occur.

Mike stated that one of the intended objectives of the wetland bank program was to move toward a more successful approach to mitigation; a more desirable model. How do we begin to move from unsuccessful models to where mitigation succeeds? How many acres of mitigation are we going to need statewide, regionally, county, and city? Do we move toward a franchising approach in terms of establishing a market area?

Bill added that WSDOT is currently working on this type of scenario. WSDOT knows their projected projects for the next 17 years in 3 regions. They could list the number of acres they are projecting to impact. But how does this work for private development? Victor added that future impacts can be hard for local governments to predict.

Gail added that in her experience a banker comes into the process and wants a larger SA which is then negotiated down to a smaller SA. It must make ecological sense. The MBRT struggles to determine a SA that is ecologically viable.

Jodi asked what is the MBRT looking for. Gail responded that she would like to stop negotiations on SA with bankers and have the ability to tell a banker what their SA is.

Victor stated that the bankers have been fine with the designated SA. The bankers and the MBRT have come to an agreement on appropriate SA. It is just his philosophy to have bigger SA.

Gail realizes that there is the extra check and balance on the debit end. She wishes SA could be larger and use the debit end to ensure proper impacts are being mitigated for at banks. However this can make the process longer and puts the burden on the permitter. An appropriate SA will help streamline the process when it comes time to debit.

Jodi addressed Question b under Section III of the Service Area Discussion. She asked the group if there should be a distinction between the east side and west side.

Gail responded yes. Victor added that the language should acknowledge the difference and then determine SA in negotiations.

Doug stated that one of the issues expressed by small towns and cities is the lack of opportunity to mitigate for impacts. A bank would be a great place for them to mitigate for impacts. SA doesn't really take into account this issue. Even if code was silent about where to mitigate, the city will not go looking outside of the city to mitigate for impacts.

Victor responded that an entrepreneurial banker would suggest a bank that would be appropriate to mitigate for the proposed impact. Doug asked if it was a strict SA designation.

Gail responded that the SA boundaries are pretty strict but there is some flexibility. There may be an argument for including a jurisdiction that may not have been included. But they need to make their wishes known. But to codify this and to be more inclusive would raise red flags. For linear projects they can go outside SA lines. Others can be reviewed on a case-by case basis. Can anyone else think of ways to limit/expand it?

Kim added that the typical process to determine SA and to allow jurisdictions a say in the Service Area is by going out on PN on the prospectus. At that point the SA hasn't been agreed upon and it's an opportunity for a jurisdiction to say they want to be included.

Gail added that this may change over time however Ecology/Corps don't get many comments on the proposals.

Christina stated that the comments received say SA is too big. This is related to mostly fish /tribal related.

Sarah asked if the proposal also goes through the corps public notice process? Gail replied yes, it's a joint public notice. Gretchen added that a PN is issued on the prospectus and on the permits. Sarah asked if a bank was accepted into the program, whether the project would still need to go out on PN. Gail said yes, the prospectus introduces the bank and location to the public.

Gail added that the next step is to determine the type of permit that should be issued, if appropriate, an individual permit or NWP. Then Ecology will issue their 401 permit (if

appropriate). The MBRT is still trying to figure out the best way to inform the public and ensure their ability to comment on the process.

Victor gave the example of the Clark County prospectus, which is 50 pages. Gail explained that the PN that will be issued on this project will be brief but will refer back to the full prospectus. The public can then request or download a copy from the website.

Bill added that the Advisors groups had discussed public involvement in the past and it seems we need different ways to incorporate different needs.

Gretchen stated that there is currently not a way to put out the details like credit release schedule for public notice. Gail responded that we wouldn't want to do that anyway, otherwise it would be a big loop. Gail suggested opening the MBRT meetings to the public. Jodi added that there is feasibility in opening these meetings.

Sarah thinks that there will be less comments about the program once the draft rule is finalized.

Gretchen redirected the group back to the general topic of SA and asked if there were anymore questions from the group.

Gretchen directed the group to question c [talks about ecology's watershed characterization tool]. Ecology believes the watershed characterization tool is a good way to help with Service Area determination. She explained that the tool in of itself does not determine SA. But the tool identifies areas that have similar hydrological and geomorphic features.

Bill asked for more clarification.

Kim explained that there is a link on Ecology's website (Web link will be inserted in final minutes) that talks more in depth about the tool. Ecology is currently using this characterization on Victor's project. Gretchen added that Ecology has used it in Clark County and used the broad groups as a system for grouping of how water moves across the landscape.

Jodi asked what jurisdictions have used this tool - Whatcom, Jefferson and Clark County. Victor added that this tool is widely available and it's not easy to find the maps.

Lauren explained that one of Ecology's budget ads is for a GIS position to provide technical assistance both for consultants and local governments on the use of this tool

Gary Cooper added that a broader effort is attached to this tool. There is a broader watershed characterization, a second phase, effort being conducted in Whatcom County which includes groups like the DNR, WSDOT, and the Services. There have been 3 tools developed: Ecology's watershed characterization, USFWS has developed a tool that

looks at habitat, and DOT is using a finer scale approach. It's an iterative process - starts from a broader scale and moves into a finer scale

Mike is still confused on how this tool is used to determine SA. Is it driven more by amount and location of wetlands displaced by projects.

Kim responded that it is an ecologically based process. It looks at how water is delivered to an area, the topography, and underlying geology. It also looks at development trends. Can look at historic wetlands and where wetlands are now. Takes into account existing information on the watershed, and then divides the area into geomorphic units. These areas are then further divided into different groups (protection and restoration opportunities).

Bill mentioned that his group is very familiar with Dick Gersib's watershed characterization for the green river watershed. While this information might be helpful in locating parcels that could be used to develop a bank, he doesn't understand how this information would set up a SA.

Gail responded that the tool could be used to limit a SA. By looking at geomorphic units – it may not be used to specify specific boundaries.

Gretchen suggested that Ecology come back to the group and present the tool in greater detail. She reiterated that the tool would not be used to delineate the SA but it could help.

Bill clarified that Ecology was not proposing to add a new requirement?

Gretchen replied no. The tool is one way to get more information on a watershed scale. Unfortunately she doesn't have time today to present the tool in any kind of detail.

Question from the Public

The group then took questions from the public.

Lorraine Tear asked if the SA for an estuarine wetland would look at different aspects than a freshwater wetland. Gretchen explained how the watershed characterization tool would take that into consideration in determine groupings. Lorraine added that she would support the WC tool approach.

No further questions from the audience.

Wrap-up

Gretchen wanted to move into assigning Work Groups to work on the various recommendation highlighted by the Advisors group.

Gretchen discussed the sheet that Wendy put together to help formulate the recommendation.

Bill asked how much time did Ecology anticipate it would take to work on this and what is the schedule?

Sarah asked if there be a DOE moderator.

Gretchen responded that she could see DOE has a scribe to help with the process. But the goal is not to get consensus among the group. Just want to see what the recommendations are, if even there are several opinions on one topic.

Jodi stated that she didn't understand the purpose of having a Work Group, as she missed the last few meetings.

Gretchen explained that in the past meetings the group discussed wanting a formal report that outlines the Advisors recommendations. The idea is to have small work groups crafting the recommendation and bringing it back to the larger group to review.

Both Mike and Jodi agreed that the Advisors have verbally provided their recommendations and would rather have Ecology draft the recommendation and bring it back to the group to review. **The group agreed that Ecology would take the groups suggestions and draft guidance/recommendations and present to the group.**

ACTION: Ecology staff to draft advisor group recommendations

Kim said that she would edit the public notice based on the day's conversations. There is not enough time for the group to review the revisions before it is issued. The purpose of getting the PN out now is so people have enough time to put together a proposal before the submittal period opens later this year.

Sarah asked if the group had comments could an addendum be added to the notice.

Gail responded that no, that couldn't happen, but the group would have the chance to comment on the PN when it's issued.

Mike asked what the timeframe was for issuing the PN. Gail said maybe next week.

Sarah asked if the PN will mention the scoring criteria. Gail responded that it's mentioned but the actual scores are not discussed, still working on developing that internally. Sarah asked if the applicants will know the scoring details.

ACTION: Kate to check on Sarah's problem with accessing the web room (she has a MAC, does this matter?)

Upcoming Advisor Group Meeting Dates:

March 28, 2007 at the Lacey Community Center
May 2, 2007 at the Seattle Corps District
June 19, 2007 in Lacey, exact location TBA.

Identified Future Agenda Items

- ❖ Discussion of Cost Reimbursement Agreements – what types of banking activities can these agreements cover?
- ❖ Financial Assurance for bank establishment and long term maintenance and monitoring – how much is enough.
- ❖ Ecology's Watershed Characterization Tool – what is it and how is it used?

Guidance Identified

- ❖ Develop guidance on estuarine wetland mitigation.

Meeting Adjourn.