

Wetland Bank Advisor Group Meeting

Meeting Minutes

May 2, 2007

Seattle Corps – Edsel Room

10:00 am to 3:00 pm

ATTENDING:

Jodi Slavik
Amy Kurtenbach
Bill Leonard
Mike Rundlett
Gary Cooper
Doug Peters
Gail Terzi
Jennifer Aylor

Kim Harper
Gretchen Lux
Kate Thompson
Christina Merten
Lauren Driscoll
Wendy Bolender

REVIEW OF AGENDA

Gretchen: “Overview of Roles within Ecology’s Wetland Banking Program will be replaced with “Banking Program Update”

Bill: Would like to also follow up on legislation and responses

PROGRAM UPDATES

Gretchen: A joint workshop was held in Clark County on banking and for the public notice for the Clark County Mitigation Partner’s wetland bank proposal. The meeting was well attended - about 60 people. There was a broad group of people that came to listen, 30 from the general public.

Lauren: She provided an update on the budget. Ecology did receive the 1.9 mil for the mitigation initiative. They are currently working on a staffing plan.

Mike: What happened with the addition of the Whatcom County proviso?

Lauren: A proviso was added to the budget for each fiscal year (1/2 FTE of work for Whatcom Co. for 2 years) to help develop a mitigation program and wetland banks in Whatcom County – this will be included in overall staffing work plan. The proviso was proposed by Rep. Kelli Linville. The work will be out of Headquarters with help from the Bellingham Office and the Northwest Regional Office.

Gail: The Seattle Corps had a recent visit by the Division Chief (Dave Olson) and the lead for Wetland Mitigation Banking from HQ (Karen Kokenbach - also currently working on the proposed federal rule). They said that a decision on the federal proposed rule will come out by December of 2007. It will either be a revised proposed rule or final rule. HQ is currently working on drafting guidance on the Rapanos Ruling –to help determine when there is or is not a

significant nexus for the Corps to regulate wetlands. It has been estimated that it will take 20 million to implement the new program. A guidebook will be created for the Rapanos decision.

Dave Olson and Karen Kokenbach came to Seattle to talk about regionalization of wetland banking among the different Corps districts. Present at the meeting were Corrie Veenstra and Larry Evans from Portland and Muffy Walker, Beth Coffey, and herself from the Seattle District. HQ has decided that the Northwest Division will be a pilot for testing out regionalization within the Corps. The plan is to form a Project Delivery Team that includes members from all five districts in the Northwest, which include Seattle, Portland, Walla Walla, Omaha, and Kansas City. There are no meetings scheduled at this time. She will know more in the next couple of weeks. She has been appointed the lead for the Seattle District.

Jodi: Asked Gail to describe how the Corps regionalization/federal rule will impact the state certification program

Gail: Both may affect the state program if the Corps diverges significantly from Ecology's program. The Seattle District has worked really well with the State. However, if we get directions to not share partnership status, then our programs would diverge. Worst case scenario – each group would have their own program. Her role is to make sure the State is included. The proposed rule was not divergent from Ecology, except for strict timelines. Seattle did emphasize that the state is a partner due to the certification process on the state level. Most states do not have these overlapping jurisdictions. This will not affect the current banks. It will be business as usual until a final rule is out, and then the Corps will have to follow the rule.

Gary: Are there any indications of major areas where the Corps are revising the original draft of the federal rule?

Gail: Dave Olson mentioned they are trying to build in more flexibility. Many of the comments received had to do with phasing out in-lieu fees and wetland banking.

Amy: Asked if WA has an in-lieu fees program.

Gail: WA does not have a specific program except for Lake Chelan. In general in-lieu fees program have had poor success rates but we should learn from the mistakes and make improvements. They have worked in WA on a case by case basis.

Bill: Senate Bill 5145 did not get passed but is Ecology still going to take a lead in implementing the outlined conditions?

Gretchen: Ecology is putting together a subcommittee with some members of the Advisor Group to work on writing guidance for wetland banking and agricultural lands. Once that group is formed, representatives that want to be a part of the program will be contacted. The work will be happening in a separate environment than this group.

Bill: Is there a timeline for forming this group?

Gretchen: The first step is to identify the people who will be on the subcommittee

Jodi: Will Ecology still have a prohibition on locating wetland banks on Ag lands?

Gretchen: Yes.

Jennifer: Mentioned that Sky Miller would like to be consider to be on the Ag subcommittee

Mike: What is the status of pending projects?

Gretchen: The comment period for the CCMP public notice on the prospectus just closed and we are currently planning for the next meeting on May 15. We are currently in the final technical review stage with Nookachamps. Ecology is moving forward in their review of Skagit.

DISCUSSION OF ADVISOR GROUP RECOMMENDATIONS

Topic: Outreach and Communication

Proposed Recommendation:

1. [Develop a public involvement plan that incorporates early and ongoing public involvement throughout the bank review process.](#)

Recommendation #1 has been changed to the following:

1. Articulate existing federal, state, and local requirements for public notice and involvement throughout the bank review process.
 - 1a. Develop public outreach for program as a whole
 - 1b. Develop guidance for when project specific MBRT meetings can be open for public observation

Discussion

Bill: He agreed that a public involvement plan was important but disagreed with “on-going public involvement. Ecology is the voice of the public and empowered to make decisions for the public. He did not feel that it was appropriate to have an ongoing public involvement plan

Amy: The plan is about deciding and laying out when the public is involved.

Mike: There are two types of public involvement plans Ecology needs to develop: public involvement at the program level and for the banking proposal themselves. At what steps should the public be involved? The group should look at the Corps requirements in the permit process to drive that.

Gail: Each bank has had different public involvement processes. There is not a set protocol for all the banks. Even within the Corps each District is different

Gary: It seems that the general consensus is that Ecology needs to develop a public involvement plan.

Bill: Not sure there is consensus on that issue. He agrees with Mike, there is a need to have an outreach plan for the program as a whole. The process is already present within the bank certification process. What’s available has not been articulated clearly.

Jodi: The terminology used is really important. The recommendation language currently implies that nothing is there.

Mike: Suggested that a public notice on the bank is issued before a decision is made.

Gail: The Corps and Ecology currently do that - 401/404 public notices. The federal rule does not talk about public involvement—currently the Corps can issue a NW27. However if the Corps starts issuing NW27 for banks there will be a need to determine how to solicit public input. It seems that the banker would want to know what the issues are out there, instead of having it denied at the debit end.

Gary: There seems to be two issues to this discussion: first, need to articulate the existing public involvement process and second, need to develop a public involvement plan

Mike: He thought what we were really trying to define is to what extent we are relying on the external public notice/permit process to generate public input, and how we use that in our own framework in decision making in certifying a bank instrument. Do we need to coordinate better?

Gary: We could review existing procedures and see if they are adequate for the bank process

Mike: We could review the different permits paths and determine how to best coordinate them to serve that purpose.

Bill: He agreed with Mike's statement

Amy: She would be curious to hear what people really think a public involvement plan is. All the things that have been listed and discussed so far are all element of a public involvement plan. One thing missing is a place where people can find the information.

Gary: A public involvement plan is a broader umbrella then just the permit process

Bill: What is the bare minimum that is required in this process? What additional steps would be advisable for a banker to do, not requirements but guidance on what to do. Create guidance on those additional steps. Ecology could develop an overall outreach plan, but to keep banking moving forward, lay out the requirements and articulate those and how they can be coordinated better, the rest of the plan would be advising the banker on what they can do.

Gretchen: Some banks would or would not need a banking 101 workshop. Different banks have different hurdles. She agrees that the plan would be more guidance vs. a plan that bankers must follow. Not trying to make these things a requirement. How do we want to change this recommendation?

Doug: We should highlight that it's a coordination issue – at the extent possible work with federal, state, and local governments.

Jodi: Let's first see what we have before we develop something else.

Jennifer: Bankers do a lot of public outreach in general. On the Nookachamps Bank, there were 9 public notices published throughout the 5-year process. Bankers are hesitant to commit to any activity that takes away from Ecology limited resources, and would suggest staff focus on approving existing banks in the pilot program.

Proposed Recommendation

2. Develop a strategy to improve communications with agencies and local government during the bank review process.

No changes to Recommendation #2 language

Discussion:

Gretchen: Ecology has heard that we need to improve our communication with agencies and local government.

Gail: She asked what the MBRT could do differently. We can't make local gov't come to the table. The feds don't have that requirement to coordinate certain process with local government, just the state. One improvement the MBRT has made is to try and get the locals at the table early on. Currently the MBRT goes to the local gov't with the sponsor and gives a presentation. Not sure what else to do unless we have more public outreach.

Mike: He agreed that local gov't needs to be involved early – but the core problem is to first look at all the permits and authorization and look at coordinating all these things. Need to get the permit process synchronized and so they can work together.

Jodi: She asked if it was possible to do that given the amount of local process and the differences in the local jurisdictions.

Mike: He thought it was possible, need to take some leadership in making this happen so that it works for getting decisions made. The one tool we have is the SEPA/NEPA requirements. All the other decisions flow from this.

Doug: Would Ecology be co-lead on SEPA?

Jennifer: It seems that it's the banker's responsibility to coordinate the approval process.

Gretchen: Banking is different because we have a certification process.

Mike: It's both the banker's responsibility and the agencies responsibility.

Jennifer: For our project we met with the city and county initially – to get approval on their proposed design. Another way to get local involvement is to make sure that local jurisdictions get all the meeting minutes.

Gretchen: We have been making a broader effort to make sure all jurisdictions have the agendas and meeting minutes. The feedback we're getting is that it is helping them keep up to date.

Gary: There doesn't appear to be any disagreement on Recommendation #2.

Proposed Recommendations:

3. [Make information involved with the wetland banking program and the bank review process available to the public through a variety of means, including web site postings, workshops, etc.](#)

Recommendation #3 has been changed to the following:

3. Determine what information involved with the wetland banking program and the bank review process should be made available to the public through a variety of means, including web site postings, workshops, etc.

3a. Make information involved with the wetland banking program and the bank review process available to the public through a variety of means, including web site postings, workshops, etc.

Discussion:

Gary: Are there any disagreements on making info available to the public?

Jennifer: It seems that when documents are in draft form, they would not be appropriate for public viewing

Gail: The MBRT is currently struggling with that exact issue. Our legal counsels are looking into what is proprietary information.

Jodi: Maybe #3 should read that we need to determine what information should be made available to the public.

Bill: He agreed that it would be helpful if Ecology post appropriate pieces of info on the wetland banking web site. There is value to have some info out there for the public to see and to form opinions based on real information. We need to figure out what that information should be.

Jodi: We first need to determine what information is appropriate. She is for posting information on bank projects on the website in order for the public to feel more involved.

Bill: All the info on WSDOT bank is already on the WSDOT website.

Gary: Sounds like we need to determine what information can be made available.

Jodi: This recommendation should be split into two: First, determine what information is appropriate to post and second, make this information available to the public.

Proposed Recommendation:

4. [Banking rep. recommends more verbal communication between the MBRT and the bank Sponsor.](#)

Recommendation #4 was changed to the following:

4. Improve proactive and verbal communication between the MBRT and the bank Sponsor concerning project and policy decisions.

4a. Clarify relationship between MBRT, Advisor Group, and Bankers

Discussion:

Jennifer: It's good to have candid conversations between the bankers and the MBRT. There is a tendency for the process to stall when decisions are responses are formalized into letters.

Honest phone conversations can save months of time for both the Bankers and the MBRT.

Bill: He agreed completely.

Gail: Her experience is that bankers are looking for information from her and then they get into verbal wars.

Bill: There is a perception that the MBRT makes certain decisions and conclusions, and then sends a letter. He would prefer to have been apart of the conversation to clear up any misconceptions. Better communication at key decision points.

Jodi: Are bankers not involved in the MBRT process?

Gretchen: The MBRT has internal meetings where we discuss bank related issues. Then we have project specific meetings with the sponsor.

Jennifer: In the past we have received policy decisions from the MBRT that have negatively impact the bankers without being asked for input during the policy making process.

Gail: We have heard that – but somewhere we have to reach a balance. If we open policy development to everyone – it can drag out the process, especially in the negotiation process.

Bill: Using the Advisors Group as a sounding board is critical to this process. We would like to have the verbal phone call prior to the letter

Gary: It sounds like we need to clarify the relationship between the MBRT, Advisor Group and Bankers.

Doug: What he has heard is that there are some key steps to think about prior to letter writing or policy decisions.

Gail: She agreed that if the MBRT is on the road where they are going to diverge they should contact the bankers.

Jennifer: The Bankers would like to be able to say how a decision will affect us before the policy is established. Let us at least comment on the proposed policy and then make your final decision.

Gail: We are trying to maintain consistency in this banking program. Some of these pieces are non negotiable.

Proposed Recommendation:

5. Continue outreach efforts to encourage participation from the WA Department of Fish and Wildlife and the Services (USFWS and NOAA).

Recommendation #5 was changed to the following:

5. Continue outreach efforts to encourage participation from state and federal agencies, including WA Department of Fish and Wildlife and the Services (USFWS and NOAA).

Discussion:

Amy: Recommended adding “such as” in the sentence to include other agencies like the DNR.

Gail: The problem with getting the Services to the table is how fish credits and ESA would be incorporated into the program. They embrace the concept but want to mitigate on site. It’s a similar problem with WDFW.

Gary: At level as the invitation been made? Does the invitation need to be elevated to a higher position between the two agencies.

Bill: It’s not important to have them at the table until they change their view of on-site and in-kind.

Gail: They just authorized a fish bank in Sacramento, CA. She would like to see the bank instrument. It is a conservation banks vs. wetland bank. But it’s a chance to integrate both policies.

Bill: Not clear how much spatial overlap there is between the two types of banking.

Gail: The fish bank in Sacramento has both fish credits and wetland credits - no double dipping is allowed.

Mike: This seems to fall into general program development. What do we need from these agencies to make decisions on wetland bank proposals? What do we need to do in communication and coordinating with the Services to get those decision made.

Gail: Currently ESA is done through the Corps action.

Gretchen: Sounds like we put this in the wrong place – should be included in program development.

Gary: But it seems that we need to have WDFW at the table

Amy: Her recommendation is to insert language that says: “have other state agency involvement”.

Gretchen: It seems that there are two issues – 1 is to have outreach and 2 is to work on fish credits.

Mike: We should move the specific thought of working with the services to another section.

Group Agreed

Topic: Recommendations for Service Area

Proposed Recommendations:

6. Banking rep. and agricultural rep. suggested Ecology has larger Service Area designations. Language in the rule for determining service area is working
7. Service Area designations should be decided differently in eastern WA and western WA based on ecological differences.

Recommendation #6 was changed to the following:

6. Continue working on developing guidance for options when it comes to determining service area.

No changes to Recommendation #7

Discussion:

Mike: The comment he made at the previous Advisor Group meeting was talking about banking from a business model but also making sure the Service Areas are adequately addressing impacts. Not sure he specifically recommended larger Service Areas.

Gail: In general Service Areas need to make ecological sense. Either we determine Service Area upfront or it is debated on the debit end for every project. Not productive, so if a banker can rationalize a SA on the ecological attributes, in writing then we can consider the proposal.

Jodi: Does the current rule allow for Service Area justification? At that meeting she didn't hear it coming across as a recommendation.

Lauren: There are not restrictions but just guidance in the rule.

Jodi: Is there a problem with the current Service Areas?

Doug: As he mentioned previously, small cities have jurisdictional issues; they have parcels with degraded wetlands and no place to mitigate for impacts to them. He would like to see a provision for smaller cities to have a chance to mitigate at a bank so that urban development happens in the urban environment.

Mike: It is important that we are consistent with the Goals and Purposes in GMA. Need to take a closer look at and be more thoughtful on the impacts to ag land in this program, while still trying to achieve GMA.

Bill: The current WRIA base Service Area is working pretty well and helps keep options open but may run into problems with this down the road

Gail: This is true in the urban environment

Bill: He thought the biggest problem is recommendation #12 – when a bank Service Area includes more than 1 county or jurisdiction. He currently likes how Service Areas have been determined.

Jennifer: Also agreed that the Bankers support WRIA-based service areas.

Jodi: It seems there is a need to raise specific instances where there are problems with the WRIA approach and when it needs to be flexible. We did think about DOT linear projects but not about Doug's point. We need to think about other issues.

Gary: We need to continue to work on methodology in determining SA so that it will be more predictable. So that bankers know what it is and can determine if they can afford to do a bank. CCMP is an example of using a different approach.

Gretchen: Continuing to work on the methodology is a good point. The conversations during the permit end could be minimized if the Service Areas are more logical and more understood. WRIA are pretty large and when we look at them ecologically they can be broken down into smaller units.

LUNCH

Topic: Suggested Guidance Documents

Proposed Recommendation:

8. [How and when it is appropriate to use a wetland bank to mitigate for impacts.](#)

Recommendation #8 has been changed to the following:

8. How and when it is appropriate to use a wetland bank to mitigate for impacts targeted for permittees and general public.

Discussion:

Gail: The MBRT is trying to develop to guidance that will help both the bankers and the general public understand the process better.

Gretchen: What we tried to articulate is the suggested guidance that has been identified by the advisors group. We have heard very clearly that the advisors group wanted to see the list of policies the MBRT is working on. There will be overlap between the MBRT list and the Suggested Guidance Lists.

Gary: In regards to this recommendation, would most people agree with this statement. Was there a particular target audience for this?

Gretchen: The banking sponsor asked for guidance for permittees and for people interested in banking, also local government. The Corps and the state won't see all the permits that might use a bank.

Jodi: This recommendation could be clarified by including the intended audience and eliminating recommendation #13.

Jennifer: Would like to keep #13 as is.

Mike: It seems that a recommendation as been missed on this list regarding the siting of banks. What are the right criteria for site selection? And also need to look at bank siting at the landscape level (goes back to the Ag land issue).

Gail: This information is already in the rule, albeit in different places.

Amy: We should look at our new bank applications and see if what was outlined in the public notice works.

Proposed Recommendation:

9. Establishing and using estuarine banks.

Recommendation #9 has been changed to the following:

9. Establishing and using estuarine and marine banks.

Discussion:

Amy: Asked that the word “marine” be added.

Group Agreed

Proposed Recommendation:

10. Prospectus contents and requirements.

Recommendation #10 has been changed to the following:

10. Clarify requirements for contents of Prospectus

Discussion:

Bill: The prospectus requirements in the rule are a few years old – it seems that we have moved away from what was outlined in the rule.

Jennifer: We have been fine with the prospectus language in the rule, it has been clear to us.

Lauren: Asked Bill if there were changes he would like to see to the list.

Gail: The federal proposed rule has a list, the state rule list is more comprehensive, and the MBRT has more info in our public notice for new bank submittals. She suggested guidance to clarify what the MBRT would want to see in a prospectus.

Gary: There were requirements in the draft rule, which through the pilot process were learned that the process was different then what was in the rule. Should we clarify what is in a prospectus?

Gretchen: Jennifer Thomas stated that she wanted the prospectus contents to be clarified.

Jennifer: Right, instead of crafting guidance. She noted the purpose of the Prospectus was a threshold document used for a go/no go decision for a bank project to be reviewed under the MBRT process. The prospectus guidelines in the draft rule are adequate for this purpose.

Bill: He liked Gary’s idea of clarifying what is actually required.

Jodi: We should limit the amount of time spent (staff resources) on guidance documents.

Some of these items we really don’t need either (rule or guidance)

Bill: He agreed

Proposed Recommendation

11. Continue to work with the Advisors Group on timelines, SEPA, permitting efficiency, proposal requirements, and technical data needs.

Recommendation #11 was removed

Discussion

Mike: He would like to focus on this issue. We need to see an illustration of how these processes line up. Where the decision points are in the requirements and when the public becomes involved. Where they don’t line up, how can we make the process better?

Bill: WSDOT has a general timeline for transportation projects. He can share with Gretchen
Gary: This would be a continuation of the timeline that was presented at the last meeting.
Refining it and compressing it when appropriate but making sure we are capturing adequate
information

Mike: This type of info will help address Recommendations 14, 15, 16, 17, and 18.

Jodi: This seems to be what we are currently doing and have to do before we get to guidance or
rule. Can we remove this recommendation from the list? **Group Agreed.**

Proposed Recommendation

12. [Criteria to help local jurisdictions address wetland banking into their codes.](#)

Recommendation #12 was changed to the following:

12. Develop criteria/guidance and outreach to help local jurisdictions address
wetland banking in their codes and land use planning processes.

Discussion:

Gary: A lot of this already exists in Ecology guidance documents. It may be matter of pulling it
out and presenting it in a different way.

Bill: This is critical. We have run into difficulties of people have said that are working on that
for their next CAO update

Jennifer: Local policies play a key role when private bankers cite a mitigation bank. What does
the local policy say? Bankers spend time reviewing local codes and meeting with planning staff
to lay the ground work. Reactions from different local jurisdictions influence where we site a
bank.

Bill: Ecology can play an important role in working with locals on this issue

Doug: CTED can advise them to keep their options open but in the end it's their call.

Laruen: It would be helpful to bring in language that's in our BAS for local gov't CAO updates

Bill: There still need some sort of outreach

Amy: Recommendation #13 should also include local government

Gary: Under the Mitigation Initiative our goal is to have 12 workshops over the next 2 years,
tailored to local gov't. There is a consensus that we need to find a way to highlight wetland
banking and get banking into their codes.

Mike: No – we need to put forth guidance on how locals should think about banking in their
local codes. It's more than CAO, also what types of activities are permitted in certain land types.

Pretty broad based issue.

Gary: Anyone disagree with Mike?

Doug: It goes beyond codes – zoning designations

Mike: how do we site more urban banks? What types of incentives can we come up with?

Proposed Recommendation

13. [Training for Corps and Ecology permit staff on how and when it is appropriate to
use banks for mitigating wetland impacts.](#)

Recommendation #13 was changed to the following:

13. Training for Corps, Ecology, and Local permit staff on how and when it is
appropriate to use banks for mitigating wetland impacts.

Discussion

Group was in agreement about inserting language about local government.

Proposed Recommendation

14. Definition and development of umbrella banks.

No changes to Recommendation #14

Topic: Timelines and Accountability

Proposed Recommendations

15. Banking reps. recommend that bank processing timelines should be closer to what has been proposed in the federal rule.

Group agreed to skip Recommendations 15-17

Discussion

Gary: Ecology has proposed a timeline between 15 & 17 months, the federal rule says 6 months. In some ways the federal rule could be less predictable.

Jodi: She would still like an AGO on the impacts of the Federal Rule on Ecology's Rule.

Gretchen: It will not be a formal opinion. The questions are out and waiting to hear back.

Bill: Ecology put forth a recommendation at the last meeting regarding timelines. Jennifer Thomas stated that it is not appropriate to move forward until we see what the federal rule looks like. He agreed. We should put this on hold. It's a bit premature to move forward with the state rule. The federal rule will have an affect on the state rule.

Gail: No one disagrees that we need to be more efficient. The template will help. But other things are outside of our control.

Mike: He doesn't think the Corps would adopt a rule that would redirect a state's process that is adopted under a states responsibility. Would be consistent and preserve that state's right. What does Gail think?

Gail: It depends on how the rule is drafted and whether it considers the variations between the states. The good news is that the state submitted a lot of comments.

Gary: It doesn't seem we can really resolve through 15 through 17 today. Don't really see how we can come to a consensus today.

Lauren: It is a very legitimate comment – we are hoping that the federal rule comes out soon. We still plan on moving forward on filing our rule in summer of 2008. We have told the Legislature that we are moving forward. We can't just keep deferring the rule. Once the federal rule is out we can always amend our rule.

Proposed Recommendation

18. Project specific MBRT meetings should be open to the public.

Recommendation #18 was removed

Discussion

Gail: She has heard from one banker they don't like the idea, especially if the bank is in the review process all ready.

Jennifer: If our meetings had been open to the public that may have stopped the misinformation. On the flip side there are propriety issues that we would not want to have out there for our competition. Maybe some things could be open to public and others not open.

Amy: This could work if there was a structured public participation element built into the public involvement plan. She personally thinks that closed meetings let people speak more freely.

Jennifer: On the flip side when Wildlands has not been included in agency meetings regarding their projects, they would have liked to have been there. It would have helped speed up the process as policy decisions were made based on inaccurate information.

Bill: He shares the mixed feelings. He would want public observation not participation. Although there is some great value in open meetings, it may slow down an already slow process. If we can be assured that it won't generate more work then we could consider it.

Gretchen: This comment was said by Sarah Cook. The question here is crafted if there are opportunities for the public to observe the process.

Jodi: We should define certain issues that could be open to the public.

Gary: Is there consensus that we need to protect the efficiency and propriety of the meetings

Mike: Need to evaluate whether the public should be involved in the meetings. Let's move it out of the accountability and into the public outreach (agreement by Bill and Jodi).

Gretchen: If we wait until the 401/404 permit public notice for public involvement, the project has come a long way and it's almost too late to incorporate public input. In addition that is a lot of information about how the decisions were made that the public misses out on. Need to have something in between the two public notice periods.

Gary: Anytime there are meetings taking place where policy is being made then try to make that information to the public.

Gretchen: At this point we are not trying to make policy we are just trying to make decisions to get the bank moving.

Bill: We can use this group as a venue to bring these types of issues to brief folks

Jennifer: If there is a specific project issues that related to a Wildlands project, we would support bringing in another private banker to sit on the Advisor Group for that discussion.

Topic: Additional Recommendations

Proposed Recommendation

19. Banking reps recommended that Ecology not move forward on rule adoption. Instead should continue processing pilot projects and wait until the federal rule is finalized.

Recommendation #19 has been changed to the following

19. Banking and building representatives recommended that Ecology not move forward on rule adoption. Instead should continue processing pilot projects and wait until the federal rule is finalized.

An additional recommendation was added:

Ecology rule, as it moves forward, should be consistent with federal rule

Discussion

Jodi: Would add that BIAW concurs with banking rep.

Mike: He agrees with Ecology on this issue. It is a long rule making process, and Ecology can work on this in anticipation on what the federal rule will say. It is not an irreversible process. We have plenty of time.

Bill: Maybe we can have a consensus statement on this issue. The Ecology rule as it moves forward should make every intention on being consistent with the federal rule.

Mike: Is the concern that the rules for banks under review will change in mid-process?

Jennifer: No, we want Ecology to finish the 6 banks in the pilot program and then determine if the rule is broken. To date, only 2 of the 6 banks in the pilot program have been approved. There is not enough information to determine what elements of the draft rule need to be modified, if any. The allocation of staff resources is another issue.

Amy: Doesn't the pilot have to end at some point? Part of the delays is that we didn't have any guidance on how to process these banks. We need to document our process and it will be hard to wait until the end.

Proposed Recommendation

20. [Advisor Group would like to review drafts of any guidance or policy recommendations developed by the program.](#)

No changes to Recommendation #20

Proposed Recommendation

21. [Develop a dispute resolution process that includes the bank sponsor, the public and the regulators.](#)

Recommendation #21 has been changed to the following

21. Continue discussion on how to address the dispute resolution process that would include the bank sponsor, the public and the regulators.

Discussion

Gretchen: This was a question that Jennifer Thomas had about the appeal process for a decision that is made by the MBRT.

Lauren: Official decisions can be heard through their Pollution Control Hearings Board.

Mike: He asked if this was statute

Lauren: She would need to look

Gretchen: Asked if this applies while in pilot.

Gail: If there is a disagreement between the MBRT and the Sponsor is there a way of resolving the issue besides suing the federal government. The federal government can be sued by the public, and sponsors can dispute a jurisdictional call.

Jennifer: What happens when a decision is made and we disagree? Where do we go with it? That's our struggle.

Gail: There is no dispute resolution process for the banker. We have tried to have open negotiations.

Gary: Is it even possible to develop a dispute resolution process?

Mike: Would it improve the decision process overall?

Gail: It would add an enormous amount of time. We enter into banking negotiations with a spirit of cooperation. There are certain things we don't want to set precedence on and will not negotiate.

Mike: Who signs the MBI?

Gretchen/Gail: The District Engineer for the Corps, The SEA Program Manager for Ecology, the EPA, and locals

Gary: What do we do with this recommendation?

Mike: If that document is ready to be signed, there should be an opportunity for the banker to speak face to face with the person signing.

Jennifer: The Bankers want the opportunity to appeal policy decisions sooner than MBI signing.

Gail: The bankers would not sign something they would completely disagree with. The bankers are frustrated with decisions that are made and they don't have a venue to air their disagreements.

Amy: In local gov't if there was an appeal of a decision, there was an unbiased person who could be used to mediate technical decision

Jennifer: It's a struggle to keep relationships intact when there is a disagreement on a decision.

Do we bring in a mediator? Do we bring the decision to a group like this?

Jodi: This needs more conversation and we should leave it and come back to it later.

Doug: There are existing groups that do this; the question is who pays for it.

Gary: At the local permit level the staff goes in that makes recommendations, the applicants is present, then a hearings examiner makes the decision.

Bill: The problem is that you can't wait until the end to do this.

Jodi: The point being is that we need to have further discussion. I don't remember discussing this issue during rule making.

Based on earlier conversations the following recommendation was added to this section:

Work with state and federal agencies, including WA Department of Fish and Wildlife and the Services (USFWS and NOAA) on program development.

Topic: Recommendation on the New Proposal Process

Proposed Recommendation

22. Re-format the Special Joint Public Notice for the Bank Submittal Opening (PN) to provide clarity of submittal requirements. Already Done!

No changes to Recommendation #22

Proposed Recommendation

23. Provide guidance on how wetland banks should use a landscape/watershed based approach in siting their project. This is occurring and ongoing. Ecology and the Corps are working on developing guidance on how do to do this.

No changes to Recommendation #23

24. Business rep. recommended that the 40-acre size minimum for bank projects listed in the PN should be guidance, and should not be included in a rule.

No changes to Recommendation #24

Proposed Recommendation

25. Applicants should be asked to disclose any restrictions or easements on the bank property vs. stating that banks should not be located in areas where legal restriction could impose limits on bank design in the PN.

No changes to Recommendation #25

Discussion

Kim: This item was addressed in the public notice

Jodi: Was this addressed in the rule?

Gail: This has come up in the nth hour on many banks and we need to know this up front

Jodi: At what stage is this information important to have? This might be language to consider for a rule revision. At what stage it should come in?

Gail: It should be during the initial site review.

Bill: This is something that bankers should know.

Mike: Need to know the ones of interests that might interfere with the use of the area as a bank.

Gail: Correct, like mineral extraction rights. Not just banks but also for concurrent mitigation. Need guidance on this and need to be consistent.

Jennifer: Bankers may not want this information open to the public but we would be willing to sit down with the MBRT.

Proposed Recommendation

26. When scoring new bank proposals distinguish between urban and rural banks.

Recommendation #26 has been changed to the following:

26. When scoring new bank proposals distinguish between marine, urban, and rural banks.

A new recommendation was added:

Agriculture representative recommends developing ways to create incentives for urban banks.

Discussion

Amy: Suggested adding the word “marine” to the sentence.

Jennifer: When scoring banks using the new proposed banks public notice, the ranking would affect how a bank is selected. So if a bank already exists in an area would that new bank proposal be declined or go to the back?

Gail: No

Jennifer: Are the agencies helping determine the market demand? Is that an appropriate decision for the MBRT to make?

Gail: It’s a two prong question. She would prefer the banker to determine that risk. At the same time, she doesn’t want to spend a lot of time reviewing a bank that is in a saturated market. On

the flip side, if you are proposing an estuarine/marine bank where impacts are in headwaters...our resources are also something to consider.

Mike: Should we score urban differently than rural banks. How can we do more to encourage the development of urban banks? All the impacts we are trying to mitigate for are urban yet mitigation is usually on rural lands. We need to balance this issue. Need to increase incentives for urban banks. There are some ecological benefits as well to having urban banks. Would like to bring this forward as new recommendation.

Bill: It has been our experience is that urban banks are 30x more expensive than rural banks

Jodi: Is this beyond the scope of the group. Should be looking at what should be in the rule. A lot that Mike is saying is policy driven by that state and locals do. Should be low on the list

Gretchen: One of the future agenda items is incentives. Maybe we can talk more broadly on this issue that covers this issue.

Mike: As we develop guidance for local government's codes – this is a siting question that fits with this. As we talk about Ag issues within our sub-committee, we will need to talk about it again as a whole. It's going to come to the table at some point. It is more expensive to have urban banks, so can we have incentives to help us achieve this.

DISCUSSION OF MBRT LIST OF IDENTIFIED POLICIES

Gretchen: The MBRT has identified topics that they have found need further guidance/clarification both internally and externally. They have not been designated as policy items. A future agenda item could be to share the drafts of these guidance with the Advisors Group and receive feedback.

This list is very specific for the process of reviewing banks. The MBRT is trying to clarify on how decisions are made. Some of the items listed came from the Advisors Group and others are to help the internal MBRT process.

Bill: He didn't see anything that caused him concern. It will depend on what is actually written.

Gretchen: If we got to the point where we could agree on what needs to go in guidance we could use this list as a starting point.

Mike: We need to sync the two lists together and as a group prioritize the issues

Bill and Jodi agreed

Jennifer: Is the outcome of this going to be a guidance document or a WAC. What will this look like when it's done?

Gretchen: Broadly trying to work with the Advisors Group on our pilot. We are heading toward developing guidance, may also apply some of these things to the rule.

Jodi: Some things are a To DO list – looking at timelines, actually accounting of existing public process. While for other we would develop guidance and prioritizing these issues. We may find out that we don't need to develop guidance. Some issues we may find that could be applied to the rule. We will see what filters out on both ends.

Gretchen: What would the group like to see for the next meeting agenda?

Jodi clarified that she would like to have an update on the AG opinion on the effect of the federal rule on the state rule.

Mike: The biggest issue on the table is the permit process and timelines.

Bill: It would be worthwhile to get some consensus on these issues. It is important that there is general agreement on guidance priorities between the MBRT and Advisors Group so we can be working on the same page

Jennifer: For bankers timelines are huge (getting through the MBRT).

Gretchen: It is important to realize that as the first banks the process was slower.

Jennifer: She would rather concentrate on reviewing and approving mitigation banks (the MBRT review timeline) rather than on Permit Process timeline – something the MBRT has no control over.

Bill: At our next meeting we could spend time discussing both the process timelines and the permit timelines. It sounds like we have consensus on the next meeting.

Topics for next meeting:

1. Timelines – broader utilizing the permit approval process and how does it fit into the public involvement
2. Timeline for processing or approval of MBI.
3. Prospectus requirements

Meeting Schedules

June 13 - Lacey - WSDOT

July 13 - Seattle - Corps district Office

August 23-Lacey - TBA