

# Wetland Bank Advisor Group Meeting

## Meeting Minutes

July 13, 2007

Corps of Engineers – Mercury Room

10:00 am – 3:00 pm

### Attendees:

Gretchen Lux  
Yolanda Holder  
Joan Cabreza  
Gary Cooper

Steve Erickson  
Amy Kurtenbach  
Doug Peters  
Brooke Hamilton

Jennifer Aylor  
Sara Cooke  
Gail Terzi  
Theresa Dusek

**Facilitator:** Gary Cooper

**Notetaker:** Yolanda Holder

### Reviewed Agenda

- Organizational Details:  
We have added two new positions to our Advisor Group (Steve Erickson & Theresa Dusek) and these will be our final additions to the Advisor Group. They were added to ensure we had representation from a wide spectrum including the environmental community and a city employee.
- We reviewed our calendars and selected meeting dates through November 2007.

### Bank Certification Process

Prior to the meeting, the Advisors Group was sent the following documents to review for their comments at the July meeting:

- ECY Certification Process Alt 1 and Alt 2
- IRT Timeline
- Revised Timelines and Public Comment Opportunities

**Gretchen** - The meeting packet includes the IRT Timeline which was previously provided in our March 28, 2007 meeting. We've restructured this document to include a state technical review period in our new documents (this is the timeline in the proposed federal rule) titled *ECY certification process Alt 1 and Alt 2*.

The two separate alternatives represent two approaches to getting the technical review accomplished.

The sponsor submits technical elements of the bank proposal including goals, rationale, proposed credit conversion, etc. The main difference between the two alternatives:

- Alt 1 - a complete set of comments is provided to the banker and articulates what will be discussed in the two technical review meetings to arrive at the draft instrument.

- Alt 2 – a set of related comment topics will be grouped together and we will meet on a different set of comments at each meeting.

The intent of this state review period is basically the technical review would be broken into chunks that at the conclusion of these meetings, we would have the correct technical information for the draft MBI.

This would allow review of the draft MBI to be a quicker process, by having a specific number of meetings scheduled at the beginning of the technical review process, we would articulate a start time and stop time to the review cycle.

**Sarah** – Is it our intention to have two alternatives for each project and then decide which process would work best for that particular project or to make a decision between the two alternatives?

**Gretchen** – We’re still deciding on this with the help of the Advisor Groups’ comments.

**Brooke** – One option would be to have the choice between the two alternatives for each project might be a good idea.

**Jennifer** – As an example, Wildlands started with Alt 1. They had all the comments in the 1<sup>st</sup> meeting. However, the comments received, the changes requested and the meetings continued for five (5) years. With this in mind, a brand new banker might need more than just two meetings to hit the target of a draft instrument.

**Gail** – Wildlands was part of the pilot program. We now have templates in place and the submittal process now shows the bankers what we’re looking for and this information should streamline the process for the new bank submittals.

**Sarah** – With Alt 1, it would be difficult to not spend money when you only have two meetings. For example, if ground water studies are needed you may not want to spend that amount of money before you know if the project is going to move forward.

**Brooke** – If the prospectus gets the go ahead, it should be easier for the banker to decide whether they want to spend the money or not.

**Sarah** – It would also help the bankers decide if they want to spend the money or not, if you look at the source of the water - if it’s ground water or surface water, and also knowing that you’ll have people to purchase the credits

**Gretchen** – One possibility would be to not articulate the specific number of meetings or the number of do-loops. Another possibility would be to stipulate no more than X number of meetings.

**Sarah** – What about supplying a checklist of the MBRTs expectations for the technical elements to the bankers? The banker would know up front what they need to supply. Depending on the project, there may be some projects that would be able to come in with a 70% design.

**Brooke** – The bankers want to know what we’re looking for i.e. 30% design, 60% design or ? What are they [the bankers] responsible for working out during the construction phase?

**Gail** – The adaptive management is now part of the appendix and no longer part of the MBI.

**Brooke** – Recommends a template for the Prospectus and a checklist on what's needed to be provided to the MBRT for the 1<sup>st</sup> meeting. This information upfront would streamline a lot of the process for the bankers and ensure everyone is ready to move forward.

**Gail** – Having these templates available may also bring any issues forward i.e. conservation easements.

**Gretchen** – We do have a checklist, but it has not been posted to the website. We may want to bring this checklist for comment to a future Advisor's meeting.

**Brooke** – The templates would make things easier for the bankers, because we could just insert the information where it was needed. The bankers would know what the MBRT needed from them.

**Jennifer** – We should make the decision of the total number of meetings at the first meeting while we are reviewing the completed checklist together.

**Steve** – A suggestion on the rule language, would be to input *who* should make the final decision on the number of meetings.

**Amy** – After a certain number of meetings, is there text in the rule that says a submittal can be denied?

**Gretchen** – The idea was that if all the meeting participants haven't come to a consensus, the banker can have a 3<sup>rd</sup> meeting or they can redesign and submit it at the next review period.

**Brooke** – How many days are involved between the meetings, there is currently no timeframe specified?

**Jennifer** – My suggestion is the meetings should be 30-60 days apart.

**Brooke** – 30 days would work fine between meetings; however, the MBRT has a 30 day review period for documents received from the bankers. If the meetings were always 30 days apart this would be a strain on the banker to get the documents revised and submitted prior to the next meeting.

**Gail** – Maybe the amount of time between meetings depends on what stage you're at.

**Brooke** – It's difficult to have too much time between meetings because it's a lot of money, but with a set 30 days between meetings it's a strain to get the documents revised and submitted back in the same week to comply with the 30 day document review period.

**Jennifer** – She feels one possibility would be to state between 30-60 days and both parties can decide on the number of days between each meeting depending on where you are at in the process.

**Brooke** – If we wait to schedule the meetings until they have their documents completed and the documents are ready for review, then it's very difficult to schedule a meeting in a shorter timeline due to staff schedules and how quickly their calendars fill up. Especially, if they're trying to schedule only 30 days out.

**Steve** – I see there are three separate questions we need to make decisions on:

1. How many meetings are needed
2. How much time between meetings
3. When does the review process end

**Brooke** – She feels the rule should state a minimum amount of meetings.

**Gretchen** – A suggestion would be 30 days for one meeting and 60 days for the next meeting for a total of 120 days.

**Sarah** – I feel 120 days is too short to get to a draft instrument.

**Gretchen** - A minimum of two meetings with a specified number of meetings. The sponsor would propose the schedule with the number of meetings and the MBRT would need to agree to it.

**Amy** – Entering into a new phase at the beginning (after you have the final prospectus) and use that information as your proposed scheduled for the next phase and then schedule your meetings at that time.

**Gail** – It’s very difficult to say “no” to an instrument at the end of the process.

**Gretchen** – We would be at a solid instrument at the end of the process with these meetings.

**DECISION: The Advisor’s Group is in agreement of two meetings at a minimum for an easy proposal with total maximum time of 240 days; and an agreed to meeting schedule.**

**Jennifer** – Reviewing the checklist, what about making a timeline and having a set amount of time for the specific criteria on the list.

**Sarah** – If they knew they can get something reviewed on a pay as you go program, developers would pay for the review.

**Gary** – I am aware that we are currently short staffed and meeting some set deadlines would be difficult, but we need to have recommendations on the timeframe if we are at full staff and fully functioning. The recommendation might not be the way it would actually function now due to current staffing and schedules, but it should be shown.

**Joan** – We should also show the expectations and what decisions need to be made at each meeting.

**Gail** – The checklist shows the items we [the MBRT] review as well as the order we review those items.

**Jennifer** – I have two items to comment on: Item #1. Why can't the rule specify if the State doesn't meet the timeframe specified - the State loses the ability to deny the bank and it's approved as is?

**Theresa** – If there is a maximum of 240 days and part of the application process is the checklist, the timeframes and everyone agrees to the meeting timeframes. Both parties can decide on the 240 days and if it is going past the timeframes and goes back to the beginning.

**Gretchen** – What's the mechanism if it's the banker that doesn't meet the timeline?

**Jennifer** – They can redesign and re-submit.

**Jennifer** – Item #2. We would like a limit on the number of reiterations requested by the Agency, as each reiteration costs money. The number of requests we received for a revised reiteration due to editorial changes was such an amount of money, that she would prefer the MBRT be pulled away from requesting editorial changes.

**Gail** – The reiterations should be locked unless a request is made for more credits. The sideboards at the public notice will show how to get the process quickly and the number of credits. The decisions made in the meetings, will be locked & not be covered again – it will be a final decision.

**Theresa** – Commenting on Jennifer's request for limiting the number of reiterations, she feels this limiting will be taken care of with the revisions on the rule with 240 days and having the meeting schedule from the beginning. The timeline and sequencing should also resolve the issues.

**Jennifer** – Yes, even though there are templates reiterations have still been requested.

**Gail** – When that happened in the past, the template was tweaked and doing this will hopefully alleviate this problem in the future.

**Steve** – What is the start/stop clock limitations.

**Gary** – It is 180 days at the county and if they don't meet it, it's considered abandoned.

**Theresa** – She feels it should be on the burden of the banker to propose the schedule, but would be up to Ecology to approve the schedule.

**Jennifer** – The banker's would provide the schedule including the number of meetings. It would include the comments to review, the items to be discussed at each meeting and the timeframe for the meeting schedule.

#### **DECISION:**

- 1. The MBRT will provide templates for:**
  - **The Prospectus**
  - **A checklist of what needs to be in the MBI**
- 2. The banker's will provide:**
  - **The meeting schedule to review the comments including the timeframe**
  - **A schedule of which items will be discussed at each meeting. There should be a sequence. The schedule information should be incorporated with the prospectus.**

**Gretchen** – With the above in mind, we would also need to change some of the language within the prospectus.

**Sarah** – Do the delineation first, so you know what your issues are.

**Joan** – I would like to be able to preserve the right to hold conference calls in between these set meetings, if needed.

**Gretchen** – With the 240 days, is the clock running the whole time?

**Theresa** – No, and the applicant and the Agency should both agree on the start and stop of the clock.

**Brooke** – The schedule should be able to be modified or started/stopped with both parties in agreement.

**Steve** – Should there be a limit on modifications to the start/stop clock?

**Brooke** – It should be flexible.

**Steve** – Keep in mind, the rule is in effect for all of the mitigation banks and not just the current banks, there could be limitless requests for starts, stops or holds to the clock.

**Gary** – The 240 days is a mutual completion within 240 days.

**Jennifer** – The timeframe would enable the bank to paint the financial picture

**Theresa** – The project would either be able to be stopped & need to start over or “held” because something else is needed. If the project doesn’t move forward.

**Gretchen** – What if you can’t get through a decision at the initial meeting?

**Jennifer** – A suggestion for rule language, the rule could include text providing Ecology the ability to deny a submittal because of a fatal flaw or if it’s not ecologically sound.

**Steve** – Prior to preparation of the final instrument, Ecology can make the final determination to accept or deny the submittal.

**Gretchen** – Would the banking association accept this decision?

**Brooke** – No, she doesn’t feel the banking association would accept this.

**Jennifer** – No, she also feels they wouldn’t accept this decision at the prospectus level. She feels Ecology should be able to deny, if needed, after the technical review and before the final MBI submittal.

**Brooke** – If you don’t come to the table with a complete prospectus or without a good foundation, you shouldn’t be able to move forward to technical review.

**Gail** - If it’s incomplete, Ecology can articulate the reasons the application is insufficient.

**ACTION:** Jennifer will provide a draft schedule to the Advisor Group prior to the next advisory meeting.

## **Lunch**

## **Review Timelines & Public Opportunities for Comment**

**Gretchen** – She pointed out a revision on the timeline from our last advisor’s meeting which shows an additional public notice which is a joint 404/401 and draft MBI public notice.

**Steve** – The certification of the bank would come up at the end of this shown timeline. Where does SEPA come in, this isn’t shown on the timeline?

**Jennifer** - The SEPA notice would come in at the construction stage.

**Jennifer** – We run SEPA on the permitting end/construction phase. There is some talk that the bank process will be run through SEPA.

**Gretchen** – Yes, this is the process that we are currently using on our Clark County project. At this time, this is a stand alone process for Clark Co. only.

**Steve** – He sees SEPA on the bank instrument because there is an action.

**Gary** – SEPA should be ran with the proposal. SEPA is about public comment and he agrees with Steve that these public comment processes could be ran together.

**Steve** – It makes sense for local jurisdictions as the SEPA lead.

**Brooke** – There are a lot of kinks that we need to work out, but is it something for the Advisor’s Group. We are to make banking successful.

**Steve** – The advisors group is to be system operational, as a public representative we want to ensure that everyone can understand. SEPA in this state is one of the few ways for the public. For banking he feels that Ecology should be the lead agency.

**Gary** –SEPA could streamline the public comment process.

**Brooke** – Does the 90 days shown on the timeline for the submittal of the draft MBI include the public comment period?

**Gretchen** – She replied, yes.

**Brooke** – Is the legal review within this 90 days?

**Gail** – Some of the issues can be moved around in submittal time to have the legal council review at an earlier time.

**Gary** – Has there been a discussion with legal council as far as the timeframes?

**Gail** – No, we’re hoping to incorporate a start/stop clock to ensure meeting the timeframes.

**Gary** – If you have one person that has not bought into the process of the timeline there has to be a mechanism. Since there is already an approved template can’t this document move forward without legal review. We should only need our legal review for those documents that have been changed from the template.

**Gail** – At this time, all of the documents need to be seen by our legal council and reviewed. Usually the template has needed to be altered because there are different situations with each bank.

**Brooke** – We should show the legal review on the timeline. The MOU with the corps & the conservation easement needs to be signed.

**Gail** – The MOU is no longer needed, that was something that came up in the pilot process. Everything is one document now - The MBI (the colonel signs) with an appendix (MBRT signs)

**Brooke** – With the information from Gail, she would now like to only see the legal review.

**Jennifer** – Bankers are viewing the 30 day timeline on submittal of the prospectus

## **Continue Bank Certification Process**

**Gretchen** – Announcement for accepting proposals. At the proposal stage, we will let those bankers know they have been “selected” from those proposals submitted.

**Gail** – We will have until Dec. 2007 to let the bankers know which proposals have been selected and which proposals are inadequate.

**Gretchen** – We will be referencing our draft guidelines to help us build our checklist prior to the prospectus stage.

**Joan** – The current draft guidelines would be used for those looking at getting a bank.

**ACTION:** Gretchen – items for discussion and review for our next advisor’s meeting: draft checklist, timelines & schedule.

**Theresa** – We should check that we have the right items, the items are in the right order, and the timelines reasonable.

## **Questions from the Public**

**Sarah** – New protocols, timelines on review of public notices are rarely 30 days. We often have only two weeks.

**Gail** – We have a 30 day PN period. People can ask for an extension to the 30 days; and, if we get enough requests for extensions, we can then officially do an extension.

**Sarah** – Is there some way we can get a full 30 days on the comment period?

**Gail** – Yes, get on our mailing list.

**Gretchen** – We could possibly post comment periods on our banking website or our banking list serve or both.

**Sarah** – In the past, it’s difficult to coordinate comments in only two weeks,. Showing the public notices on the list serve or the website would help to solve this problem and would allow a full 30 day comment period.

## **Wrap-Up**

### **Advisor Group Meeting Schedule:**

August 23, 2007	Ecology HQ, ROA-36	10am-2pm
September 20, 2007	Corps of Engineers	10am-3pm
October 17, 2007	Tacoma Municipal Bldg, Room 138	10am-3pm
November 27, 2007	Location TBA	10am-3pm