

**Mitigation that Works
December 18, 2007 Meeting Summary**

Introductions and Opening

Elizabeth McManus welcomed Forum members and then introduced the project support team, briefly describing each member's role. She explained that the main role of the project support team is to help the group have the deliberations it wants to have and that it needs to have in order to produce recommendations. Megan Duffy will assist Elizabeth with facilitation support. Margaret Clancy, a wetlands biologist with ESA Adolfson, is the key technical resource on the project support team. Mike Sharar of ESA Adolfson is the overall project manager and strategist. Elizabeth further explained that there were elements of the support team that would not be as involved in the overall process, but that were available as resources to be utilized over the course of the Forum effort if deemed useful by the group. This group of available advisors includes: Rod Brown, Cascadia Law Group; Linda Hoffman, of Linda Hoffman Consulting; Bill Ross and Rob Greenwood, Ross & Associates Environmental Consulting; and, Peter Downey, Discovery Bay Enterprises. Each participating Forum member then introduced him/herself.

Once introductions were completed, the Group reviewed the meeting agenda which included:

- provide comments/observations on the November meeting summary;
- continue working on defining the efforts' scope;
- discuss a brief overview of the results of participant interviews and a summary of past mitigation improvement efforts; and,
- discuss what is working and not working in current mitigation efforts as a way to begin to set the agenda for the remainder of the process.

(See Forum web site for meeting agenda)

Summary of Past November Forum Meeting

The group considered the November 18th Mitigation That Works meeting summary. *(See Forum web site for meeting summary)* A Forum member noted that the language regarding the forum's discussion of the avoidance and minimization elements of the broader permitting process did not quite capture her perspective. The summary reads that those elements of the process would remain the same; the Forum member asked that the summary capture the idea that some forum members want to make a statement /recommendation to strengthen the avoidance and minimization steps. Except for the discussion of process scope (see below) there were no further comments on the November meeting summary.

Scope

The Forum discussed the scope of their efforts. One forum member thought that the process' scope as described in the meeting summary was too narrow. He suggested that the scope should be broader, to include recommendations for the mitigation process overall versus just wetlands mitigation. He suggested that by focusing on wetlands mitigation only, the group might get too focused on specifics and not get to recommendations for the process overall. This Forum member expressed more comfort with the scope of the project as it is defined on Ecology's website, which reads:

Background.... Numerous regulatory agencies are involved in permitting mitigation. There is a need for enhanced coordination, reduced overlap in the review process, and consistent review standards and permit conditions for proposed mitigation projects. In addition, Washington State needs a range of

mitigation options to adequately protect a variety of resources that are impacted by development projects, ranging from wetlands, to fish, uplands habitats and endangered species.

What will the Stakeholder Forum Accomplish?

The forum will work to develop a vision of what a comprehensive range of mitigation options for Washington State looks like, including wetland banking, conservation banking, in-lieu fee programs, and other approaches. Last, the forum will engage stakeholders in developing a clear understanding of the meaning of "successful mitigation."

A shared, coherent and effective approach to mitigation has been a long standing goal in Washington State. Ecology has made improving mitigation an agency priority, and it is the goal of the Mitigation that Works Stakeholder Forum to not only provide a needed perspective on the challenges facing effective mitigation, but to reach consensus on actions that can be taken immediately to effect meaningful changes.

Another Forum member suggested that a significant paradigm shift would be required to improved mitigation in Washington State and that by focusing too much on wetlands, such a shift might not occur. Josh Baldi noted that the group could use wetlands mitigation as a surrogate for the broader mitigation process. He stressed the importance of having tangible outcomes from the Forum process and noted that many of the likely tools discussed in relation to wetlands mitigation would also have broader implications.

The Forum considered the proposed scope language as included on the meeting agenda.

Proposed scope to consider:

- *Start with and build on wetlands mitigation to (a) improve that particular process and its outcomes in particular and (b) as a way to provide lessons/ides about collateral improvements to mitigation for other habitats.*
- *Result in (a) a coordinated approach to all the various authorities that govern efforts to mitigate environmental impacts and (b) a package of tools and techniques that could apply to all such efforts as appropriate.*

A member commented that focusing on "tools" is too specific and that the group should be looking at a comprehensive mitigation program. Josh Baldi noted that the language "start with and build on" is meant to encompass steps such as avoidance and minimization. He noted that the overall system would not be left behind. It was suggested that it be clearly stated that the group is looking at a comprehensive program for mitigation, to be implemented after avoidance and minimization. A forum member noted that the tools language as drafted was concerning because previous mitigation reform efforts have emphasized tools and haven't necessarily brought about the desired changes. She suggested that a system which moved away from the traditional approach would be the most effective at improving the mitigation process. Another member suggested that moving away from the traditional approach was likely necessary, but that it would also be important to discuss specific tools so that additional, creative ideas will be included in the group's discussions. Another member suggested that the group focus on creative ideas as well as implementing existing tools in a better way.

Elizabeth asked the group to keep in mind that the process has a 9 month timeframe so whatever scope they agree on should be doable in that amount of time. Josh Baldi added that Ecology hopes for specific recommendations that can be implemented fairly quickly in the form of an action plan. A Forum member suggested that the approach needs to be holistic, looking at all tools, all habitats, all information and functions. He suggested that the Forum should operate at the macro level to address

all inputs of the mitigation process. He suggested that one outcome of the Forum process might be a holistic pilot that looks at all habitat functions and includes all agencies to test and better understand how best to plan and coordinate conservation and mitigation efforts.

Another member observed that the overall views expressed by the meeting participants were similar and that the group should focus on getting started. She suggested that the scope could be defined and refined incrementally, to make sure the group is headed in the right direction and not missing anything. Forum members asked what would likely occur as a result of the group's efforts. Josh Baldi explained that the power of the group rested with the diversity represented by its participants and the power of consensus among those participants. He suggested that the effort could result in administrative directions to agencies, and budget and policy recommendations to the legislature.

The Group converged around the following ideas related to scope:

- There is a need to expressly acknowledge the overall objective of making specific recommendations to improve the overall mitigation process
- There is an interest in improving the mitigation process overall, not just as it pertains to wetlands.

Review of Past and Ongoing Mitigation Improvement Efforts

Margaret Clancy presented a brief, initial summary and discussion of previous mitigation evaluations and improvement efforts. *(See Forum web site for presentation slides)* Margaret referenced both Washington State and National studies of mitigation effectiveness. She noted that there was no standardized approach for evaluating effectiveness and that most of the studies evaluated projects built in the 1990s or earlier, well before recent guidance and regulatory changes. She then highlighted some findings from the Washington state evaluations, noting specifically that the Washington State efforts generally have been evaluated as being more successful at providing acreage rather than meeting performance standards. She explained that although we are still not replacing every wetland acre for acre, mitigation efforts in the state are getting better at doing so. Margaret presented the following numbers for Washington State and emphasized that these are just a sampling of some of the metrics that can be derived from the studies:

- 93% of mitigation efforts are being implemented
- 55% are being built according to plan, when a permit is issued
- 35% meet performance standard
- 29% achieved all ecologically relevant standards

Forum members asked if the 29% related to ecological standards is the most important number if the primary concern is replacing habitats and functions. Margaret responded that all of the numbers were important to look at individually and collectively. A Forum member asked if there were any studies that looked at enforcement specifically. Margaret noted that a Department of Ecology study did find a correlation between the amount of permit follow up and the rate of success and Josh added that the Department is planning a compliance program for mitigation.

Margaret then presented some information regarding Washington State Department of Transportation mitigation efforts. She summarized that according to the department's own analysis, WSDOT successfully provided 92% of required mitigation area and that 47% of mitigation sites attained or exceeded their required wetland acreage. WSDOT representatives at the meeting explained that the slides are helpful however don't provide the full context. For example, the 47% number is low because

there are a large number of mitigation sites with minor misses on acreage. In addition, the study upon which the numbers are based is approximately five years old and some of the sites evaluated were at least 15 years old. WSDOT also has a program dedicated to monitoring and adaptive management. It was suggested that any steps taken subsequent to the evaluation studies should be captured in the summary information.

A Forum member asked if there were any studies that link failure of mitigation efforts to deterioration of overall watershed health. He suggested that perhaps watershed deterioration might not be due to failure of mitigation but could be more greatly impacted by other factors. Margaret responded that she wasn't aware of any studies that specifically addressed that question although there have been some studies that considered land use adjacent to specific sites. Josh Baldi noted that the question of baseline information is a significant issue and that while the Forum might provide recommendations on how to get comprehensive baseline data, the Forum itself would not be able to produce such information in the next nine months. He also noted that the evaluation studies don't take into account the avoidance element. He suggested that the Forum, as part of a potential Action Plan, stress front-end planning for purposes of avoidance and minimization.

Margaret then reviewed the factors that seem to affect success in a mitigation effort. She noted that site selection was a significant factor in the successful outcome of mitigation projects. A meeting observer suggested that in addition to appropriate site selection, lack of/shrinking site availability is also a critical concern for future projects. He suggested that more watershed based approaches would help to address this issue. A Forum member responded that Washington State is positioned well to approach mitigation from a watershed perspective because of its watershed plans and salmon recovery plans. Margaret noted that local Comprehensive Plans are also relevant as they are designed to direct development to logical places. A Forum member suggested that local jurisdictions also need to more accurately reflect developable land as many reports identify land as developable when in actuality, it isn't. Another member suggested that it would be useful to have a category of "desired functions" in each watershed so that mitigation can be tied to overall watershed health.

Margaret also noted that lack of or inconsistent agency follow up to mitigation efforts was a key factor in all of the evaluation studies. A Forum member agreed that compliance and enforcement are critical issues.

A Forum member suggested that it would be useful for the group to differentiate which problems are associated with a component of the mitigation system and which are the result of the wrong system is being used. She suggested that based on Forum member comments, it appears that both factors are issue where mitigation is concerned. The group generally supported approaching its discussion of mitigation issues from two perspectives: 1) what components of mitigation need a tune up and 2) what components of the overall system need to change.

A Forum member asked how to build a framework for the political will necessary to implement an effective mitigation system. He suggested that issues such as compliance and enforcement require political will to make them happen. He noted that many of the suggested recommendations resulting from the evaluation studies appear to be task oriented but not designed to establish the necessary political support. Josh Baldi suggested that the Forum has the opportunity to create recommendations that could significantly improve mitigation in Washington State, including the implementation and compliance components.

The Forum discussed what other types of information it might want to know about in relation to the evaluation efforts. A forum participant suggested that another relevant effort that should be brought before the group is a joint Ecology and WDFW effort to analyze different watershed analyses to determine if there are common places that are critical for different resources. Another member suggested it would be useful to know how “failure” is measured. Members would also like to see information from CTED on where development is currently occurring and where it is planned for the future. Members suggested that this might help prioritize thinking around where resources should go. A meeting observer suggested it might be useful to have more information/data regarding possible tools, such as market incentives. Another observer wondered if it were possible to develop recommendations regarding developing a framework for regional mitigation planning.

Summary of Interview Results to Date

Elizabeth provided the group with a brief summary of the Forum member interviews. (*See Forum web site*) The interviews are being used to begin to understand the various perspectives of Forum participants and to gather information to help plan and sequence the issues for Forum deliberation. Interviews cover issues related to:

- Perspectives on what is working with mitigation;
- Perspectives on what is not working with mitigation;
- Suggestions for improvement; and,
- Defining successful mitigation.

After reviewing the preliminary interview results, the Group discussed whether there were surprises or anything missing. A member commented that one issue that didn’t seem to arise is the need for appropriate resources to ensure successful mitigation. Another member observed that most interests can envision successful mitigation at a higher level and that many of those visions are very similar. She suggested that the difficulty arises in identifying the right steps and the right sequence for those steps to achieve the bigger vision. She noted that the Forum’s efforts could be particularly useful in moving those problem areas forward.

Identifying Priority Topics for Forum Discussion

In light of the summary of past efforts and the interview results, as well as each participant’s interests, the Group engaged in an exercise to identify which issues should be on the Forum’s agenda for the remainder of the process. Participants brainstormed around three things:

1. Elements of successful mitigation
2. One element of the mitigation program/process that is not working and that you would like to help fix
3. One specific mitigation tool/technique you would like to address and how

A number of ideas seemed to rise to the top as part of this exercise. They include:

- Interest in watershed based approaches and planning.
- Coordination among agencies, including interest in interagency agreements
- Coordination among planning processes (watershed, species restoration, and Growth Management Act) to help identify conservation priorities and appropriate sites for mitigation
- Improvement of the mitigation banking system
- Improvement of the fee in lieu system
- Capacity to monitor and accountability over the long term

- Clear, measurable performance standards that are enforced
- Mitigation that fully replaces habitat functions being lost

The entire list of participant ideas is available on the Forum web site.

Wrap-up

The Group reviewed the list of future meeting dates and agreed that their next two meetings (January 15, 2008 and February 19, 2008) would be at the Ecology building in Lacey. After that, other meeting locations will be considered.

Next Steps

- Remaining interviews with Forum members will be scheduled and as many as possible completed as soon as possible.
- The next Mitigation Forum meeting is January 15, 2008 and will be at the Ecology building in Lacey.

Attending Forum Members

Dee Arntz, Washington Wetlands Network
Josh Baldi, Washington State Department of Ecology
Jessi Belston, Port of Vancouver (for Eric Johnson), Washington Public Ports
Allison Butcher, Master Builders Association of King and Snohomish Counties
Margen Carlson (for Tim Smith), Washington State Department of Fish and Wildlife
Michelle Connor, Cascade Land Conservancy
David Dicks, Puget Sound Partnership
Jim Fox, Washington Recreation and Conservation Office
John Grettenberger, US Fish and Wildlife
Eric Johnson, Association of Counties
Bob Kelley, Nooksack Tribe
Steve Landino, NOAA Fisheries
Faith Lumsden, Governor's Office of Regulatory Assistance
Dave Remlinger, Skykomish Habitat, LLC
Bill Robinson, The Nature Conservancy
Ron Shulz, Washington State Conservation Commission
Michael Szerlog, Environmental Protection Agency, Region 10
Muffy Walker, US Army Corps of Engineers
Megan White, Washington State Department of Transportation

Forum Members Not in Attendance

Mike Grayum, Northwest Indian Fisheries Commission
Chris McCabe, Association of Washington Business
Rick Slunaker, Associated General Contractors of Washington
Dave Williams, Association of Washington Cities

Audience Members

Gary Cooper, Washington State Department of Ecology
Lauren Driscoll, Washington State Department of Ecology
Lynn Helbrecht, Washington Recreation and Conservation Office
Jennifer Jerabek, Master Builders Association of King and Snohomish Counties
Bill Leonard, Washington State Department of Transportation

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