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1 **Making Mitigation Work**
2 **The report of the Mitigation that Works Forum**
3 **September 2008**
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7 [NOTES TO REVIEWERS:
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- 9 1) A number of suggestions have been made to reorder the recommendations in various ways,
10 including a suggestion that the order of the recommendations more closely follow the mitigation
11 sequence. Please consider this as you review.
12
- 13 2) A number of suggestions have been made to combine or otherwise reduce the number of
14 recommendations, particularly related to the various recommendations on guidance development
15 (1.1, 2.1., 2.2, e.g.) please consider this as you review.
16
- 17 3) There have been a number of suggestions to add a brief overview of aquatic mitigation
18 requirements and process to the front of the report. Do you want this?
19
- 20 4) Please consider the timing of the various recommendations – is there anything you would like
21 to say about sequencing or timing?
22
- 23 5) The draft will get a good scrubbing for language/proofreading after the August meeting
24
- 25 6) There are still a few placeholders for numbers or other information, please be patient as we
26 work to fill those out. Thank you!
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1 **The Charge to the Forum**

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3 Aquatic resources mitigation should create a real opportunity to sustain both our economic
4 vitality and our environmental resources. Unfortunately, this opportunity is far from being
5 realized and we continue to erode the quality and quantity of our wetlands and other aquatic
6 resources, or lose them altogether. In 2007 project proponents spent approximately [DOLLAR
7 AMOUNT] on wetlands mitigation alone in Washington State. State agencies spent
8 approximately [DOLLAR AMOUNT] to administer programs, and local governments spent
9 untold thousands. Aquatic mitigation associated with Hydraulic Project Approvals cost
10 approximately [DOLLAR AMOUNT]. All total, according to a study by Evergreen Funding
11 Associates, the Puget Sound Region spends approximately [DOLLAR AMOUNT] on mitigation
12 annually. There is ample evidence and broad agreement among all stakeholders that our return
13 on this spending is low:

14

- 15 • Estimates of mitigation success vary, but local, regional, and national studies show that most
16 mitigation projects fail to fully achieve their intended goals and are not effectively replacing
17 lost or damaged resources, habitats and functions. We are not even close to achieving the
18 goal of 'no net loss' for wetlands and shoreline habitat.
- 19 • Mitigation decisions are not adequately informed by an understanding of ecosystem
20 processes or watershed conditions, so opportunities to direct mitigation dollars to promising
21 mitigation and conservation efforts likely are being lost. For example, when we fail to take
22 watershed conditions into account we can inadvertently drive development into the areas that
23 are most appropriate and suited for restoration or conservation.
- 24 • The process for reviewing and permitting development projects and making mitigation
25 decisions is widely viewed as too slow, complex, costly and unpredictable.
- 26 • Decision making often is fragmented across multiple federal, state and local decision makers,
27 creating a confusing patchwork of permit requirements and impeding efforts to recognize or
28 act upon landscape level impacts.
- 29 • Alternatives to on-site, in-kind mitigation have not been adequately explored or put into
30 place, limiting choices and encouraging site-scale mitigation efforts even when these efforts

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1 are not likely to be sustainable over time. Local governments, especially cities, are often
2 reluctant to approve off-site mitigation if it occurs outside their jurisdictional boundaries.
3 • There are few widely accepted tools or methods to identify and account for the multiple
4 benefits that some mitigation projects, especially larger scale projects, may offer.
5 • Longstanding regulatory approaches to mitigation have not yet fully caught up to newer,
6 watershed-based scientific approaches.

7
8 Many of the problems with environmental mitigation are well studied and well understood – and
9 over the years a number of multi-stakeholder groups have made recommendations to improve the
10 mitigation process—in Washington State and across the country. While some progress has been
11 made to improve mitigation as a result of these efforts, there remains broad dissatisfaction with
12 the mitigation process and the environmental outcomes.

13
14 In this setting, the Mitigation that Works Forum was convened in December 2007 to develop and
15 agree on a shared vision for successful mitigation and identify practical actions that could be
16 taken to make all aspects of environmental mitigation work better in Washington.

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1 **Our Shared Vision of Successful Mitigation**

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The key element of our shared vision for successful mitigation is that it *work*. This means communities would be assured that habitats and species are protected and, ideally, the quality and quantity of environmental resources would improve over time; businesses and development interests would have better choices about how and where to mitigate impacts and be assured that well designed projects can be permitted in a timely fashion; and regulatory and permitting agencies would have the assurance, tools and resources to make decisions efficiently, verify that mitigation occurs in the right places in the watershed (meaning, the places where it will produce the greatest ecological benefit over time), and monitor and enforce implementation so that the desired results are achieved.

Mitigation that *works* will be recognized primarily by the results it achieves. Our shared vision is that successful mitigation:

- Takes a watershed approach to offsetting development impacts and replacing ecosystem functions in the right ways and in the right places so there is ‘no net loss’ of ecosystem functions and values.
- Is better integrated with local land use planning and regional transportation planning.
- Focuses mitigation spending on the areas and functions that are sustainable, have the highest need for protection, and highest potential for restoration, so that the health of watersheds improves over time.
- Is timely and predictable – project proponents know what to expect during the permitting process because agency decisions are transparent and consistent providing clear paths to decision points.
- Makes use of a broad set of compensatory mitigation options such as banking, in lieu fee, and advance mitigation, in addition to traditional on site approaches.
- Relies on programmatic decisions where possible, to further streamline the permit process and focus human and financial resources on actions that achieve economic and environmental goals.

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1 These words may seem familiar as these same outcomes have been sought by other past efforts
2 to improve environmental mitigation. We emphasize that, in our view, this shared vision is NOT
3 yet being widely achieved by regulatory agencies, permit decision makers, or project proponents.
4 Many projects continue to be poorly sited, poorly designed and implemented, and poorly
5 maintained (if they are maintained at all) and not enough attention has been devoted to
6 monitoring and enforcement. As a result, ecological values and functions continue to be lost and
7 the cumulative impacts of many poor decisions (or failure to mitigate at all) increasingly imperil
8 watersheds, especially in developing areas.

9
10 The state needs a new way of approaching mitigation -- moving away from the past narrow and
11 often confrontational view of site by site piece meal solutions to a broader landscape or
12 watershed scale view to get a more functional natural systems. To achieve our vision of
13 successful mitigation significant changes are needed in both our policies and implementation
14 strategies. These changes include:

- 15
- 16 • Greater reliance on watershed characterization information, and watershed and salmon
17 recovery plans, and completion of watershed characterization efforts and plans in areas
18 where they are lacking so we have a better information basis for deciding where to locate
19 mitigation and where to focus development.
 - 20 • Better acceptance by permitting agencies to use watershed characterization and other larger
21 scale planning processes to determine areas with highest functioning systems to locate
22 mitigation projects.
 - 23 • More reliance on natural systems and processes – so that mitigation projects are more likely
24 to be naturally sustainable over time and better, more consistent use of science and ‘lessons
25 learned’ when siting and designing mitigation projects.
 - 26 • More use of mechanisms such as banking, in lieu fee and advance mitigation so that
27 mitigation occurs in the locations that are most ecologically appropriate and beneficial to the
28 watershed, not simply on the sites where impacts occur.
 - 29 • Incorporation of avoidance, minimization and mitigation guidelines and planning into
30 comprehensive land use planning and regional transportation planning.

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- 1 • More predictable permit decisions both for mitigation providers and for project proponents,
2 and more programmatic mitigation agreements and general or regional permits for projects
3 that have predictable and limited environmental impacts.
- 4 • Agreements among regulatory and permitting agencies to integrate decision making across
5 levels of government and environmental programs.
- 6 • Additional investment in compliance monitoring and enforcement so we know where
7 mitigation projects are working and can fix those that are not.
- 8 • Additional investment in training and support for the local government permit writers and
9 planners who are on the front lines of mitigation decision making.
- 10 • Additional investment of human and financial resources at the state and federal level.

11
12 Bringing about the changes necessary to achieve our shared vision of successful mitigation forms
13 the basis for our more detailed recommendations.

14
15 **Building on Recent Improvements**

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17 In our deliberations on successful mitigation we heard stories of failed programs and projects but
18 also stories of progress. These include:

- 19
20 • Ecology, for the first time, has dedicated resources for mitigation compliance monitoring and
21 enforcement.
- 22 • Ecology, EPA and the U.S. Army Corps of Engineers are working on joint guidance to
23 address when off-site mitigation is appropriate and how to make decisions about off-site
24 mitigation.
- 25 • Ecology convened a Mitigation Banking Advisors group to facilitate completion of the state
26 banking rules and assist Ecology in implementing mitigation pilot projects.
- 27 • EPA and the US Army Corps announced innovative new standards to promote no net loss of
28 wetlands by improving wetland restoration and protection policies, increasing the effective
29 use of wetland mitigation banks and strengthening the requirements for the use of in-lieu fee
30 mitigation. The new wetlands compensatory mitigation standards emphasize best available
31 science, promote innovation and focus on results.

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- 1 • The National Marine Fisheries Service and U.S. Fish and Wildlife Service are working with
2 private banking interests to establish the state’s first habitat bank that will provide credits for
3 improvements in salmon production to aid in the recovery of threatened salmon stocks.
- 4 • Some local governments such as the City of Duvall have updated their critical area
5 regulations to allow and encourage use of mitigation banks and other offsite mitigation tools,
6 reversing a decade’s long trend toward requiring traditional, concurrent on-site mitigation.
- 7 • Some entities such as the Ports of Tacoma and Anacortes have successfully used innovative
8 mitigation approaches authorized under RCW 90.74 to provide advanced mitigation for
9 impacts to marine resources such as eelgrass and salmon habitat.
- 10 • The Washington Department of Transportation has used advanced mitigation to [
- 11 • Ecology developed a guidance document titled “Protecting Aquatic Ecosystems: A Guide for
12 Puget Sound Planners to Understand Watershed Processes” to help local governments
13 implement watershed characterization and they are actively assisting characterization efforts
14 in several counties and cities.
- 15 • Local communities such as Birch Bay in Whatcom County have taken advantage of state and
16 federal grant funds to develop specific watershed plans identifying key areas for
17 development, protection, and restoration to be integrated with local land use plans and
18 critical areas regulations.
- 19 • The state’s Office of Regulatory Assistance (ORA) has developed an Integrated Project
20 Review and Mitigation Tools Initiative--an electronic permitting pilot project for Clark
21 County that streamlines the permit application process and provides links to information on
22 potential mitigation sites.

Comment [EDM1]: Fill out DOT example

23
24 Successes like these begin to create a foundation for more improvements to mitigation programs
25 and outcomes.

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1. Establish a Watershed-based Approach to Mitigation

Establishing a watershed-based approach to mitigation means that decisions about where and how to make mitigation investments will be based on an understanding of watershed processes and their effects on ecosystem functions. Mitigation efforts that are watershed-based are more sustainable than those that account only for on site factors and are more compatible with land use decisions related to conservation, restoration and development. By approaching mitigation at the watershed level we will direct mitigation investments to the places and ecosystem functions that are most likely to be successful and meaningful, leveraging mitigation efforts to improve ecosystems over time.

SHORT TERM ACTIONS

1.1 Compile and Expand Watershed Characterization Information. Ecology, in cooperation with local governments, should compile existing watershed characterization information and complete watershed characterizations in other areas. As a first priority, this work should be done for Puget Sound watersheds and high-growth watersheds outside the Puget Sound, including east of the Cascades. Watershed characterization information should be compiled (or where information is not available, developed) at a level of detail sufficient to identify high-priority areas for protection; ecologically important areas that are minimally altered and can be effectively restored; unique, rare or otherwise intrinsically valuable resources; and areas where more intensive development can occur without major additional adverse effects on water quality, water flow or habitat.

In its most basic form, the characterization information can be used to help identify areas that are priorities for acquisition (or protection via conservation easements), areas that are appropriate for mitigation/conservation banks or advance mitigation, and areas/resources around which in-lieu fee programs could be structured. These areas should be identified and mapped and maps provided to federal and state agencies and local governments and made available to project proponents and the public. Characterization information also can and should be used to support

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1 ongoing local efforts such as development of local shoreline master plans and critical area
2 ordinances.

3
4 1.2 Expand and improve watershed characterization tools and guidance. The basic
5 characterization information called for in Recommendation 1.1 focuses on describing basic
6 ecosystem processes and helps form a coarse-scale baseline for measuring ‘no net loss;’ finer-
7 scale information on specific resources and/or functions likely will be necessary to facilitate a
8 full accounting of the ‘no net loss’ equation as called for in Recommendation [number]. Ecology
9 should build on the existing watershed characterization methods and explore ways to develop a
10 model that standardizes use of existing readily available information and datasets necessary for
11 characterizing watershed conditions and to develop needed characterization approaches for the
12 nearshore marine environment.

13
14 1.3 Compile Watershed and Salmon Recovery Plan Information to Create an Inventory of
15 Potential Mitigation Sites/Projects. Ecology should mine existing plans, including watershed
16 management plans, watershed and shoreline restoration plans, salmon recovery plans,
17 Washington Biodiversity Council Conservation Opportunity maps, and Department of Fish and
18 Wildlife Conservation Action Plans to create an inventory of sites and potential projects that
19 might be candidates for mitigation. This effort should start with the Puget Sound Basin and
20 other areas under intense development pressure. The mitigation site identification tool created in
21 2007 as part of the Shared Strategy might serve as a starting point for this identification. Good
22 candidate sites for mitigation should be mapped on the watershed characterization maps
23 recommended in 1.1 and over time integrated with electronic permitting systems such as the one
24 piloted by ORA in Clark County.

25
26 As an initial step, Ecology should identify criteria for identifying which projects/sites or types
27 of projects/sites may be eligible for mitigation consideration. Next, Ecology should seek
28 agreement from federal and other state agencies on a process for determining the types and level
29 of mitigation credit that can be achieved by the various types of projects/sites. These steps are
30 necessary to ensure that implementing projects from existing restoration, recovery and

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1 conservation plans will make meaningful contributions towards ecosystem improvement as
2 opposed to simply maintaining the status quo.

3
4 1.4 Establish clear expectations about what information is needed to make various types of
5 mitigation decisions. By December 2009, Ecology, the Department of Fish and Wildlife
6 (WDFW) and the US Army Corps of Engineers (Corps) should work with local government
7 planners and permit writers to identify the types of information needed to support different types
8 of mitigation decisions, including identification of priority areas for acquisition (or protection),
9 areas that are appropriate for mitigation/conservation banks, and areas/resources around which
10 in-lieu fee programs might be structured. The process should acknowledge that not all
11 mitigation decisions require the same level of information and should give decision makers
12 greater confidence that they can recognize when information is adequate. The work this Forum
13 did to outline a “sliding scale” of mitigation-related information and decisions might for the basis
14 for this guidance. This would lay a foundation for developing formal guidance as described in
15 4.1 and 4.2 below.

16
17 This work should build on and not duplicate Ecology’s 2005 Wetland in Washington State
18 (Volumes I and II) documents and the mitigation guidance documents prepared by Ecology and
19 EPA in 2006 to focus specifically on streamlining the process for making watershed-based
20 mitigation decisions and using innovative mitigation tools such as in-lieu fees and advanced
21 mitigation. Ecology should work with the Corps of Engineers to ensure that the new guidance is
22 compatible and consistent with the Corps’ new rule on Compensatory Mitigation for Losses of
23 Aquatic Resources.

24
25 1.5 Use Watershed Characterization Information to Expedite Mitigation Decisions. Ecology, the
26 WDFD, and any other state agencies with mitigation decision making responsibilities, EPA and
27 the US Army Corps should make a clear policy statement to encourage the use of watershed
28 characterization information, including the inventory of potential mitigation sites for decision-
29 making at the project level. This means state government would establish the expectation that
30 watershed characterization information will be used in state mitigation decisions and local plan
31 updates, and would encourage local permit writers and the federal agencies to rely on watershed

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1 characterization information in their decision making. Ecology and other state agencies should
2 establish policies and guidance to describe how permit applicants and other project proponents
3 (e.g. bankers) can obtain expedited mitigation approval by proposing projects that are consistent
4 with the areas/sites identified in the watershed characterization maps recommended above.

5
6 LONGER TERM ACTIONS

7
8 1.6 Use watershed characterization to inform land use planning. Watershed characterization
9 information will be most useful in areas where local jurisdictions are amenable to linking the
10 findings to land use planning decisions. Ecology and CTED should indentify local partners that
11 can effectively integrate the characterization information with other ongoing land use planning
12 efforts and support that integration by providing appropriate technical and financial resources.
13 This support would allow local communities to analyze different build-out scenarios in light of
14 the characterization results and make adjustments, if needed, to achieve local watershed goals
15 (similar to the Birch Bay watershed planning effort).

16
17 Where information on high-priority areas for conservation, restoration and development do not
18 match existing land use planning and zoning designations (including designations for agricultural
19 land), or planned build-out, Ecology and CTED should actively engage the affected local
20 jurisdictions to encourage them to consider this information in future critical area ordinance and
21 comprehensive planning updates. This dialogue should identify opportunities to more closely
22 align planning with watershed characterization and the Washington Biodiversity Council's
23 Conservation strategy and support strategies for maintaining the total amount of buildable land
24 and agricultural land and valuing the water quality, water flow, and habitat services that
25 conserved lands provide. The collaboration with local government should include exploring and
26 testing concepts such as transfer of development rights, conservation markets and other
27 mechanisms to monetize the value of ecosystem services on agricultural and non-developed
28 lands. It also should create a menu of approaches for local governments to consider such as low
29 impact development, urban forestry and urban density design models to reduce the impacts of
30 development on water other natural resources.

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2. Develop and Implement a Wide Variety of Compensatory Mitigation Tools as Alternatives to On Site Mitigation

Successful mitigation will require a wide variety of tools and options for decision makers and project proponents including multi-resource banks, in-lieu fee programs, advance mitigation, and traditional site-scale approaches. By working together to improve the effectiveness of all the mitigation approaches and to clearly identify how decisions about use of alternatives to on-site mitigation will be made, Ecology, EPA, the US Army Corps, the Department of Fish and Wildlife, the US Fish and Wildlife Service and National Marine Fisheries Service (collectively “the Agencies”) can increase the predictability and performance of the entire mitigation process.

SHORT TERM ACTIONS

2.1 Publish clear guidance on when off-site mitigation may be appropriate. By December 2009, the Agencies should issue joint guidance on how mitigation watershed-based decisions can be made specifically describing circumstances under which off-site mitigation may be appropriate, the specific information needed to approve an off-site mitigation approach, and the process for approving off-site mitigation decisions. This guidance should create a predictable set of expectations about when and where off-site mitigation might be used and how decisions to do off-site mitigation will be made. This is not to create a cookbook approach to decision outcomes, site-specific decisions always will require some level of professional judgment on the part of the decision maker – the purpose is to make the decision process and timing more predictable for project proponents. Every effort should be made to leverage the watershed characterization information described in Recommendation 1 to create as much predictability as possible around where off-site mitigation may be appropriate in individual watersheds. This guidance also should describe how various mitigation tools can be used to leverage positive environmental outcomes as noted in 2.2 below.

2.2 Create and implement a well-defined menu of options for mitigation describing best practices for both the traditional on site approaches and for off-site approaches. As part of the guidance on mitigation decision making called for in Recommendation 2.1, the Agencies should issue joint

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1 guidance for mitigation and multi-resource banks, in-lieu fee programs, programmatic
2 mitigation, advance mitigation, off-site and traditional site-scale mitigation. This guidance
3 should serve as a resource both to local government permit reviewers and as a guide for project
4 proponents. Ecology should work with CTED to obtain buy-in from local governments on how
5 tools will work at the local level.

6
7 2.3 Support local governments in establishing policies, regulations and processes for using the
8 full suite of mitigation tools including off-site mitigation. Local governments are critical in
9 implementing mitigation policies. The Agencies and the Department of Community, Trade and
10 Economic Development should work closely with local governments on development of the off-
11 site mitigation guidance described in 2.1 and the mitigation menu described in 2.2 to ensure that
12 these policies can be implemented by local governments and should work with local
13 governments to prepare model local policies, regulations and guidance for individual
14 jurisdictions to consider adopting into their local codes. If necessary, this effort might begin with
15 an assessment of which local governments allow for banks and other mitigation tools in their
16 updated CAOs and why and an identification of the concerns or barriers that prevent all local
17 governments from adopting such tools. As part of this effort Ecology and CTED should work
18 with local governments to identify and overcome barriers to approving cross-jurisdiction
19 mitigation where watershed characterizations indicate that such an action is appropriate and to
20 ensure support for locally developed programmatic mitigation approaches.

21
22 2.4 Train project proponents, local government permit writers, and agency staff on how to
23 determine which mitigation tools are best for different types of impacts/permit actions and when
24 off-site mitigation may be appropriate. The success of improved mitigation tools depends on
25 implementation – the best guidance on tools will not improve mitigation outcomes if the tools
26 are not embraced and used by project proponents and mitigation decision makers. Following
27 completion of the guidance called for in Recommendations 1.3, 4.1 and 4.2, the Agencies should
28 develop a joint curriculum to facilitate implementation of watershed-based mitigation. We
29 believe that joint training – where all interested parties can learn about mitigation tools and how
30 they may apply to their individual circumstance – is the best way to build acceptance and
31 encourage use.

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2.5 Improve the wetlands banking system. Ecology should complete and expand ongoing reforms to the wetlands mitigation banking process to ensure that banks can be efficiently identified, permitted and used. This would include taking a proactive approach to identifying sites most suitable for banking and providing assurances to bankers that such sites can be approved more quickly than in the past.

2.6 Establish multi-resource conservation banks. Ecology and other state agencies with mitigation responsibilities should work with the Corps and the state natural resource agencies and Federal services to establish additional habitat and conservation banks. Habitat and conservation banks might be established independently or to service multiple resources (e.g., habitat and wetlands). Part of this effort should be to explore development of crediting systems that can appropriately account for multiple resources.

2.7 Placeholder for something on in lieu fee

2.8 Expand appropriate use of advance mitigation. Ecology (and the Corps) should work with the state Department of Transportation, and other interested parties to develop specific guidance facilitating the use of advance mitigation for capitol projects such as transportation improvements. As an initial step this guidance would be tailored to the needs of WSDOT for use in areas where mitigation banks and other market-based mitigation options are not available.

LONGER TERM ACTIONS

2.9 Track and monitor use of mitigation tools and alternatives to on-site mitigation. Just as the Agencies must track and monitor the implementation of traditional on-site mitigation, they should pay attention to how and when watershed-based mitigation approaches are being used. This tracking should consider whether off-site mitigation approaches are being used in appropriate circumstances and whether they are meeting their performance standards and achieving no net loss (where that standard applies). The tracking also should consider where traditional on-site mitigation efforts are not functioning as well as watershed-based alternatives.

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1 (For example, if a smaller, lower grade, isolated on-site wetland is not maintained or so separated
2 from hydraulic processes that it does not contribute to system function.) This tracking
3 information should be used to make adjustments to the policies and guidance on mitigation
4 approaches and to refine training and outreach.
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1 **3. Reinforce the Importance of Avoiding and Minimizing Impacts to Resources Especially**
2 **those that are Highly Valuable and Difficult to Replace**

3
4 One of the keys to meeting our goal of ‘no net loss’ is to ensure that we don’t continue to lose
5 aquatic resources, especially those that are exceptional, rare, unique, or have proven to be
6 difficult or impossible to replace. This is why permitting agencies at the local, state and federal
7 levels have long followed the ‘mitigation sequence,’ which prioritizes avoiding and minimizing
8 impacts as the first steps in protecting wetlands and other valuable resources, and why this
9 sequence continues to be critical to successful mitigation programs.

10
11 Sphagnum bogs, fens, and mature forested wetlands are examples of habitats that are becoming
12 increasingly rare and are almost impossible to replicate. We cannot afford to lose any more of
13 these systems, even small ones, and need to redouble our efforts to protect them. Unfortunately,
14 it is often difficult for permitting agencies to say ‘no’ to projects that impact these high value
15 resources. As a result, we need a way to strengthen our approach to impact avoidance and
16 minimization in these situations. This renewed emphasis on avoidance and minimization should
17 be balanced and tailored to the value of the affected resources – high value resources identified
18 through a watershed characterization approach at an appropriate level of detail should have a
19 very high bar for impacts; impacts to lower value resources should be allowed in exchange for
20 planned implementation of appropriate off-site mitigation that has greater environmental benefits
21 compared to on-site options. Recognition of a high-value resource will depend heavily on
22 watershed conditions; different types of resources might be considered high value in different
23 types of watersheds.

24
25 **SHORT TERM ACTIONS**

26
27 **3.1 Create additional avoidance and minimization guidance.** Ecology and other state agencies
28 with mitigation responsibilities and the Corps should work with local governments and project
29 proponents to develop a check-list of practical avoidance and minimization best practices. This
30 could include a list of items to be considered (drainage plans, lot layout, road configuration,
31 vegetation retention, etc.) and tips on ecologically sensitive design that local planners can use

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1 when reviewing development applications. The goal of this effort is not to create a “cookbook”
2 approach to avoidance and minimization, since every site is different, but rather to create a
3 practical way for project proponents and local governments to document – and have confidence –
4 in their avoidance and minimization decisions.

5
6 3.2 Track avoidance and minimization efforts (i.e., when are projects change to avoid or
7 minimize impacts). Ecology and other state agencies with mitigation responsibilities and the
8 Corps should work with local governments to document when use of the mitigation sequence
9 results in changes to projects (such as moving or resizing structures or lots) and how these
10 changes avoid or minimize impacts that would otherwise have occurred. Over time, information
11 from this tracking should be used to update and improve the avoidance and minimization
12 guidance described above.

13
14 3.3 Invest in conservation. Ecology and other state agencies with mitigation responsibilities
15 should work with the federal government and non-governmental agencies to increase funding for
16 acquisition and protection of priority areas, so they are ‘off-limits’ to impacts.

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1 **4. Develop More Coordinated, Predictable Approaches to Reviewing Development Projects**
2 **and Associated Mitigation Plans**

3
4 By expanding use of inter-agency agreements, lead agency approaches, programmatic
5 agreements and regional and general permits we can reduce the transaction costs associated with
6 mitigation, make decisions more reliably and more quickly ease tensions on all sides of
7 mitigation efforts. Electronic permitting systems such as the one piloted by ORA in Clark
8 County also can expedite permit reviews by allowing agencies and applicants to engage in a very
9 transparent ‘real time’ electronic dialogue about project issues and permit decisions.

10
11 SHORT TERM ACTIONS

12
13 4.1 Document up-front coordination of mitigation decisions. Ecology should reach out to the
14 federal regulatory agencies with mitigation and Endangered Species Act responsibilities to
15 determine how and to what degree the federal agencies can rely on the watershed
16 characterization information compiled and developed under Recommendations 1 and 2. Ideally,
17 this will result in a set of memoranda of understanding or agreement that maximize reciprocity
18 for mitigation decisions across agencies and among levels of government. As part of this effort,
19 Ecology should actively seek to gain local government support for the state/federal agreements
20 to promote consistent implementation at all levels of government.

21
22 4.2 Expand use of the lead agency concept. Ecology should expand use of the lead agency or
23 multi-agency permit (MAP) team concept for projects that require more than one permit. This
24 would involve identifying which decisions will be made by each agency, establishing a single
25 point of contact, or lead agency, for the project proponent to interact with, and identifying target
26 timelines for completing permit reviews assuming the proponent agrees to implement a
27 sustainable, watershed-based mitigation project.

28
29 4.3 Expand use of programmatic agreements and regional or general permits. Ecology, the
30 Corps and US Environmental Protection Agency (EPA) should identify opportunities to expand
31 use of programmatic agreements and/or general permits for common types of development

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1 projects that often require mitigation. These agencies should work together to identify common
2 mitigation situations that may be candidates for programmatic agreements and/or regional
3 general permits based on the number and types of permits issued in the past three years. In
4 addition, Ecology, the US Fish and Wildlife Service and NOAA Fisheries should develop a
5 complementary Section 7 Endangered Species Act consultation for mitigation efforts carried out
6 under these agreements. At least one new programmatic agreement or regional general permit
7 and complementary Section 7 consultation should be completed within a year of this report.

8
9 4.4 Complete and Expand the Office of Regulatory Assistance’s Integrated Project Review and
10 Mitigation Tools Initiative. In a pilot project with Clark County, ORA is working to create an
11 on-line system to help applicants for wetland fill permits identify permit requirements and
12 coordinate the permit review process. This project has great potential and should be continued
13 and expanded. Expansions might address: making the system available to additional
14 communities or statewide, adding more mitigation functions to the system (currently it is focused
15 on wetlands), making the system work for the marine environment, and adding content to
16 address other permits, such as stormwater permits and shoreline substantial development
17 permits.

18
19 4.5 Document and Act on ‘Lesson’s Learned’ from ORA’s Integrated Project Review and
20 Mitigation Tools Initiative. ORA is gathering information about the consistency of permit
21 conditions across permitting programs (e.g., if a condition is meant to address the same type of
22 action whether it is worded in the same way), and about overlaps and conflicts between
23 environmental requirements and permits of various agencies. This information, if acted upon,
24 has the potential to greatly improve permitting programs. ORA should report to the other State
25 Agencies, including the Departments of Fish and Wildlife and Ecology, about their findings and
26 convene these Agencies to resolve discrepancies in permit conditions and identify ways to
27 resolve overlaps and conflicts among environment requirements and permits.

28
29 [Is this enough on the Clark County pilot? You also had talked about the possibility of a Report
30 to the Legislature on lessons learned and opportunities to expand the tool – should we include
31 that?]

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LONGER TERM ACTIONS

4.6 Reform and streamline environmental regulations. Recent work by the Puget Sound Partnership has exposed the need for regulatory reform to break down some of the institutional barriers to implementing watershed-based approaches to environmental protection and mitigation. Ironically, the fact that our resource protection efforts are housed in regulatory ‘silos’ sometimes inhibits our ability to manage and protect the ecosystem as a whole. Breaking down these institutional barriers will require re-evaluating some of our state environmental laws that are directed at a single resource or issue and looking for opportunities to reduce conflicts and overlaps (at a minimum), and provide greater synergy and integration across different regulatory platforms. Working with local government planners and permittees, Ecology and the WDFW should explore creation of a more integrated, streamlined set of state regulations for environmental protection and mitigation that might be used by both state and local permitting authorities.

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1 **5. Support Mitigation Efforts with Compliance Monitoring and Enforcement**

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3 We must be able to identify and take action against projects that failed to mitigate, and identify
4 and correct mitigation projects that are not working so we can achieve no net loss and, ideally,
5 recover watersheds over time.

6

7 SHORT TERM ACTIONS

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9 5.1 Account for no net loss of ecological function by creating and maintaining a wetland

10 inventory. Building on the landscape-scale characterization described in Recommendation 1,
11 Ecology, in cooperation with local governments, should compile existing wetland inventory
12 information and supplement it with additional mapping to develop a comprehensive wetland
13 inventory for the Puget Sound Basin and high-growth Eastern Washington Counties. This
14 inventory should emphasize locating and tracking the status of wetlands, including high value
15 irreplaceable wetlands to identify priority areas for protection. Characterization at this level of
16 detail should flow from the landscape and watershed scale characterization described in
17 Recommendation 1 and likely will be necessary to support negotiation of regional general
18 permits or other programmatic agreements with the federal mitigation agencies described in
19 Recommendation 3.

20

21

22

23 5.2 Develop and track a suite of standard evaluation metrics and monitoring approaches.

24 In order to win broad support from government, business and environmental interests, we will
25 need to demonstrate that watershed-based mitigation provides a better path for meeting the
26 State’s no net loss policies compared to our current system. A central aspect of this
27 demonstration is developing such an accounting system to track progress against valid ecological
28 metrics. This can be complex and costly, but new technical and technology tools offer promise.
29 For example, watershed characterization and GIS tools developed through Whatcom County’s
30 recent Shoreline Master Program update provide the county with unprecedented opportunity to
31 map shoreline, wetland and other critical areas in their watersheds. Such approaches can be

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1 coupled with information from more detailed ecological function measurements to assess
2 changes in ecological conditions over time. It is recommended that the pilot fee in lieu program
3 develop appropriate accounting protocols to determine whether no net loss is being achieved in
4 the specific service area. Lessons learned from the pilots should inform development of a
5 broader accounting to determine whether the state is meeting its responsibilities in each
6 watershed.

7
8 Ecology should work with the WDFW, the Corps, the US Environmental Protection Agency,
9 NOAA Fisheries and the US Department of Fish and Wildlife to develop a set of common
10 evaluation metrics or performance standards for different types of mitigation projects (e.g.,
11 wetlands, shorelines, and habitat) and some common approaches to monitoring for these metrics.
12 Metrics should be focused on determining whether ecological functions are truly being replaced
13 and on gauging the sustainability of the mitigation project over time. This will facilitate and
14 common understanding of whether mitigation projects are working or not, and will help project
15 proponents and sponsors focus on the outcomes that are most important to environmental
16 outcomes. Use of common metrics and monitoring approaches for multiple mitigation projects
17 over time may allow for comparison over time of the success of various mitigation design,
18 construction and maintenance strategies. We emphasize that common metrics are only a starting
19 point for development of individual project performance standards, and likely would need to be
20 supplemented with project-specific metrics for most projects.

21
22 5.3 Create a model compliance monitoring and inspection checklist. Ecology should work with
23 other state agencies with mitigation responsibilities, the US Army Corps, and local governments
24 to create a model compliance monitoring and inspection checklist for mitigation projects. This
25

26 5.4 Allow for adaptation/adjustments in mitigation efforts as needed. When compliance
27 monitoring efforts show that a mitigation project is not working, prompt efforts should be made
28 to correct the problems so that the mitigation project begins to provide environmental functions
29 and values. At the project level, this could involve the mitigation agencies creating some
30 additional flexibility in the construction and monitoring sequence to allow for planting one year
31 following grading to ensure that proper grades are established. It also could involve the

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1 mitigation agencies creating the possibility of adapting mitigation plans and projects if
2 unanticipated site conditions or other circumstances prevent the projects from performing as
3 intended.

4
5 5.5 Dedicate sufficient human and financial resources to monitoring and adaptive management
6 programs at all levels of government. This is critical. Ecology, for the first time, has dedicated
7 staff and resources for compliance monitoring and enforcement for mitigation projects We
8 understand that resources at all levels of government are limited and are pulled in many, many
9 directions. At the same time, it is foolish to rely on mitigation to protect and (ideally, over time)
10 recover the ecological health of our watersheds, invest considerable sums of money building
11 projects, and then fail to assess the outcome. The results of this are predictable and have been
12 experienced time and again – failure of many projects and catastrophic failure of mitigation
13 system to achieve no net loss. Ecology should convene the mitigation agencies, local
14 governments, development agencies, developers and mitigation bankers to develop a strategy to
15 create sustainable resources for compliance monitoring and enforcement of mitigation projects.
16 This should include exploration of opportunities for cooperative monitoring involving local, state
17 and federal agencies based on mutual aid or interlocal agreements, and of options for more third-
18 party implementation of monitoring. This effort should explore both compliance monitoring for
19 projects that have gone through the mitigation sequence and obtained a permit (i.e., known
20 projects) and projects that failed to avoid or minimize impacts or mitigate (i.e., illegal
21 projects/fills). Projects where efforts were not made to avoid, minimize or mitigate should
22 become the highest priority for mitigation-related enforcement actions.

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1 **6. Increase Support for Local Governments**

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3 Ultimately, mitigation is a land use issue. We count on mitigation to offset the effects of urban
4 and rural development and we need mitigation sites to be functional and sustainable in the
5 context of continued build out, resource extraction, agriculture, and other uses of the land.

6 Decisions about where to locate mitigation sites can be challenging when there is a limited land
7 bases and a need to accommodate many competing uses. Local governments and the people they
8 serve are making critical land use decisions every day that will affect our ability to achieve our
9 mitigation vision. Failure to actively involve them in implementing these recommendations will
10 doom progress--but we can't expect them to participate without providing additional resources
11 and support.

12

13 **SHORT TERM ACTIONS**

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15 6.1 Work with local governments to understand and provide what they need to increase the
16 predictability of project review. As part of developing the mitigation guidance described in
17 Recommendations 1 and 4, Ecology and CTED should convene representatives of local
18 governments and work with them to understand the range of approaches that local governments
19 may use to approach permit review and mitigation sequences. From this understanding, Ecology
20 and CTED should work with local governments and the other mitigation agencies to provide
21 local governments what they need to increase the predictability of project review at the local
22 level.

23

24 6.2 Provide additional training and coordination support for local governments so they can
25 network more effectively. Ecology and CTED should sponsor an annual mitigation innovations
26 retreat for local government permit writers. The focus of this retreat should be on creating an
27 opportunity for local governments to share their best practices, problems and solutions, and to
28 understand emerging approaches and policies at the state and federal level.