

DRAFT

MITIGATION THAT WORKS FORUM

DRAFT REPORT AND RECOMMENDATIONS OUTLINE

This draft outline of the Forum's report, including potential recommendations, is based on Forum deliberations to date, interviews and research of previous efforts. Bullet points under each potential recommendation describe the key elements of the recommendation. Some are more described than others, because they have been more addressed to date by the Forum.

The purpose of this outline is to allow Forum members to deliberate more fully and refine (or replace) these potential recommendations so that draft recommendation text can be developed for Forum consideration.

1. Introduction & Context

- a. Current mitigation efforts
 - i. How much, how often
 - ii. Who has main responsibilities
 - iii. Key existing requirements / policy (e.g., "no net loss")
 - iv. distinction between no net loss and impairment
- b. Problem statement
 - i. Past improvement efforts have not solved fundamental problems
 - ii. Desired results are not being achieved
 1. Mitigation does not adequately replace functions
 2. "Death by 1000 cuts" (impairment issue)
 - iii. Mitigation not adequately information-based
 - iv. Mitigation not adequately integrated to address multiple needs and achieve multiple benefits
 - v. Relies too much on small, overly engineered approaches
 - vi. Process is too slow and unpredictable
 - vii. Not adequately measurable or measured or enforced
- c. Recent Improvements
 - i. Recent and ongoing reforms made by state and federal agencies
 1. New guidance
 2. Banking efforts
 3. Inspection/compliance programs
 4. Watershed characterization
 5. Other
 - ii. These reforms likely are helping; however they are still in their infancy and it is clear that additional steps are needed to achieve 100% success.
- d. Charge to the Group
 - i. Shared vision of successful mitigation
 - ii. Strategic recommendations & action plan to achieve shared vision
 - iii. Address multiple resources (not just wetlands)
 - iv. Learn from past efforts
- e. Brief summary of Group process

DRAFT

2. Shared Vision for Successful Mitigation

- a. Key element is successful mitigation will be “watershed based.” This implies a number of characteristics, process features, and results that are different from the current mitigation landscape.
- b. Characteristics of watershed based compensatory mitigation
 - i. Rare -- avoidance and minimization are emphasized for resources that provide high ecological function
 - ii. Relies on Natural Systems
 1. Takes into account ecosystem (watershed) processes not just local habitat structure or other site-scale characteristics/functions
 - iii. Replaces Lost Function
 1. *Except for compelling cases, mitigation within a watershed should be in kind.*
 - iv. Information based
 1. Informed by a watershed characterization or similar “watershed-scale” understanding of environmental opportunities and constraints
 2. Takes advantage of existing information from watershed and salmon recovery planning efforts, where appropriate
 3. Includes coordinated planning at the local and watershed level to identify conservation priorities (e.g., Birch Bay type information/effort)
 4. Includes regulatory modifications at the local level to improve integration with GMA and SMA
 5. Scale-able; can apply to sub-basin, entire WRIA, or other ecological unit
 - v. Integrated
 1. Able to address multiple resources and multiple regulatory requirements
 2. Integrated with species restoration/recovery efforts wherever possible
 3. Integrated with land use plans to avoid conflicts and supports agriculture, development, and other land uses
 4. Allows restoration/recovery efforts to be considered and implemented as mitigation for development impacts where appropriate (perhaps also through Agency agreements)
 - vi. Efficient and Flexible
 1. Encourages appropriate off-site mitigation, and identifies when off-site mitigation is appropriate early in the process
 2. Identifies suitable off-site mitigation areas ‘up front’
 3. Provides options for use of a well defined, broadly available set of tools including, at a minimum, banking, in-lieu fee, advanced mitigation, and other programmatic approaches at all levels--local, state and federal
 4. Involves agreements between agencies to create more predictability about how differing implementation responsibilities will be coordinated at the planning and at the project levels and facilitates multi-resource responses to mitigation needs
 5. Provides more specific information and support on best practices, or other resources, for local governments / planners
 - vii. Measurable & Measured
 1. Targeted toward achieving sustainable functions (which are identified in advance) so that performance can be measured against pre-established benchmarks
 2. Improves level of monitoring, enforcement and adaptive management to ensure success
 - viii. Supported by sufficient human and financial resources

DRAFT

- ix. Other?
- c. Results
 - i. Documented achievement of full replacement of ecosystem functions, but maybe not on a project by project basis.
 - ii. Mitigation is located in the right place (both ecologically and in a land use context)
 - iii. Improves overall health of watersheds over time
 - iv. Timely
 - v. Local planners have more tools/options to recommend to developers
 - vi. Fewer mitigation decisions made solely at the project/permit level
 - vii. Other?

3. Strategic Recommendations

a. Account for No Net Loss of Ecological Function

b. Reinforce and Strengthen Avoidance and Minimization for Resources that Provide High Ecological Function

- i. Near term actions
 - 1. Use watershed/landscape assessment to identify priority areas for protection
 - 2. Track avoidance and minimization efforts (e.g., when are projects changed)
 - 3. Develop a check-list of practical avoidance and minimization best practices for project proponents and local governments
- ii. Longer term actions
 - 1. Increase funding for acquisition and protection of priority areas
- iii. Other observations
 - 1. Need for education / support for local governments

c. Put Mitigation in the Right Place in the Watershed

- i. Near term actions
 - 1. Support refinement of watershed based characterization methods and secure support for using these efforts to meet multiple agency mandates.
 - 2. Identify strategies for encouraging local adoption of watershed characterization approaches and/or identify criteria for which areas in the state should have a characterization.
 - 3. Ensure mitigation leverages existing watershed planning information, define a process and/or criteria for when/how existing plan information (WRIA WMPs and salmon recovery plans) can be used in a mitigation context.
 - a. Identify what information is needed in watershed plans in order to use them for mitigation decisions.
- ii. Longer term actions
 - 1. Create the tools necessary to integrate watershed-based planning for mitigation with local GMA Comprehensive Planning (may need regulatory changes to facilitate this).
- iii. Other observations

d. Develop a More Coordinated, Predictable Approach to Project Review

DRAFT

- i. Near term actions
 - 1. Document existing agency coordination approaches in memorandums of understanding or other agreements.
 - 2. Track and monitor agency coordination and whether coordinated approaches are working to make mitigation projects more efficient. Explore ways to apply a “lead agency” concept, so project proponents have a central point of contact and coordination.
 - a. Explore if there is a hierarchy of lead agencies such as with SEPA
 - 3. Work with local governments to understand and provide what they need to increase the predictability of mitigation project review.
 - ii. Longer term actions
 - 1. Explore regulatory reforms to enable a single (or more aligned) set of mitigation regulations.
 - 2. Establish market-based tools (e.g., transfer of development rights, purchase of development rights) to provide fairness to landowners and to sustain local ordinances and zoning changes.
 - iii. Other observations
 - 1. Special solutions / approaches may be appropriate for smaller projects (e.g., more standard or programmatic approaches depending on the type of project and/or type of impact).
 - iv. Other?
- e. Encourage Appropriate Use of Innovative Compensatory Mitigation Tools**
- i. Near term actions
 - 1. Create a well-defined set of options for mitigation (e.g., banking, in-lieu fee, programmatic mitigation, advance mitigation)
 - 2. Optimize existing tools
 - a. Banking
 - i. Complete and expand ongoing banking reforms to ensure that banks can be efficiently identified, permitted and used.
 - ii. Support and expand development and use of multi-resource banks, including habitat banks
 - b. Advance mitigation
 - c. Other?
 - 3. Tie banking and other tools to watershed characterization efforts so that banks, FIL projects are sited in the right place (and bankers and the public have more predictability).
 - 4. Create simple guidelines (decision criteria?) for when different options might be appropriate.
 - 5. Work with local jurisdictions to help them establish policies, regulations and processes for using alternative tools.
 - 6. Track and monitor use of alternatives to on-site mitigation to make adjustments as needed.
 - ii. Longer term actions
 - 1. Explore options for enabling more third-party implementation of mitigation and monitoring.
 - iii. Other observations
 - 1. Role of advanced mitigation still needs discussion
 - iv. Other?

DRAFT

- f. Placeholder for Recommendations on In-Lieu Fee Programs**
- g. Support Mitigation Efforts with Compliance Monitoring and Enforcement**
 - i. Near term actions
 - 1. Dedicate sufficient human and financial resources to monitoring and adaptive management programs and all levels.
 - 2. Develop a suite of basic/standard evaluation metrics (to be supplemented with project specific metrics) and more standard approaches for monitoring success.
 - 3. Explore opportunities for cooperative monitoring and enforcement involving local, state and federal agencies.
 - 4. Track whether performance standards are being met to understand if ecosystem functions are being replaced.
 - 5. Allow for adaptation/adjustments in mitigation efforts as needed (may need regulatory changes to facilitate this).
 - ii. Longer term actions
 - iii. Other observations
 - iv. Other?
- h. Expand Support for Local Governments**