

Mitigation that Works
May 20, 2008 Meeting Summary

Introductions and Opening

Elizabeth McManus welcomed Forum members and then reviewed the agenda for the day. (See Attachment 1 for meeting agenda) Topics included:

- A discussion of watershed based planning as an approach to mitigation, including review of “sliding scale” document re: information and decisions;
- a discussion of advanced mitigation and the mitigation “toolbox”; and,
- a review of the process path forward for the Forum effort.

Before beginning the identified agenda items, a Forum member asked the group if it had seen the Seattle Times article regarding wetlands mitigation. The article mentioned that Ecology got the resources only last July to check mitigation sites for permit compliance. A Forum member asked if Ecology could present the results of its compliance efforts to the group. Ecology staff responded that they are beginning to look at the results of the Agency’s compliance effort. Josh Baldi noted that he hoped the Forum would make a recommendation on the need to have an accounting system to determine whether or not the state is making progress. A Forum member asked if the compliance program included checks during construction or just post construction. Gordon White responded that currently it is just post construction as the capacity doesn’t exist for checks during construction. He suggested that a possibility could be moving toward third party certification during project construction. Another member asked if Ecology was partnering with local agencies. Ecology is partnering with locals as well as the Corps. A Forum member noted that there are two paths for “benchmarks.” The first is a compliance path, which includes checking on projects regarding how they are doing – are they meeting their individual development benchmarks. The second path is an ecosystem path. He asked if the state has good ecosystem benchmarks to determine if projects are having the ecological impacts they need to be having in the watershed overall.

Watershed Based Mitigation

Margaret Clancy provided a review of the “Draft Sliding Scale Decision Matrix.” (See Attachment 2 for sliding scale.) She explained that the matrix was produced in response to the Forum’s April discussion regarding whether or not the necessary information exists to make mitigation decisions at a watershed scale. She noted that the Forum recognized that the amount and type of information required depends upon the specific questions being asked. The matrix is a tool that begins to identify what information is required to make which decisions at what scale.

Margaret noted that a key take away message from the matrix for Forum members is that much of the information required to make the identified decisions already exists. She explained that the challenge is that much of the information is not organized, presented and/or integrated in a way that allows decisions to be made effectively and efficiently. She also noted that there may need to be more resolution on data in order to make specific permitting decisions and that there is not a uniform set of data across the state as some places have more information than others.

Margaret suggested that the Forum should consider what recommendations it might make that can provide a pathway/process for how the existing information can be used to make decisions. She also suggested that it would be useful to consider where the information doesn’t exist and what steps should be taken to develop the necessary information. A Forum member noted that in order for the Forum to

make recommendations around data development, consolidation, etc that it would be necessary to have information on the costs and time required to engage in such as Birch Bay.

A Forum member suggested that the data need to be in some form and location so that it is easily accessible to local jurisdictions. Another Forum member noted that there are two important aspects to using the data. One is centralizing the information and the other is defining a pathway to show local jurisdictions how to use existing data. He also suggested that the matrix define some key terms such as “high priority areas” and restorations. He noted that the underlying assumptions should be clear.

Another Forum member cautioned that there are significant budgetary constraints and lack of capacity at the county levels and that guidance around accessing and using existing information would be important. He also noted that information in a large, centralized database can often become outdated fairly quickly. A Forum member noted that any requests to the counties would need to be accompanied by the appropriate funding.

Margaret suggested that at the broad scale, it would be a one-time effort to address some of the critical management goals/needs and that the permit applicants would not be asked to do the work. She described a multi-colored map that identified areas for conservation/preservation, areas for restoration and areas for development. The map would also indentify specific projects identified in different plans. Once could look at the map and see how different restoration, recovery, etc. goals were being met by particular projects/efforts. She suggested that a possible next tier of information would be identification of specific ecosystem functions. Margaret noted that the screens one would use would also depend upon the type of mitigation tool being uses, such as in-lieu fee versus on-site.

A Forum member noted that the process the Forum was discussing represents a cultural shift in the permitting process from retroactive to proactive. Another Forum member noted that the work occurring in Clark County would be a useful example of one way to pull information together at the permitting level. Chris Townsend from the Puget Sound Partnership (PSP) noted that the PSP is considering a data exchange approach versus a massive database of information. He explained that the exchange approach focuses on common platforms, standards, protocols, etc. so that information can be used together and across different geographic locations. The information would not exist in a centralized database necessarily, but entities would keep and maintain their own data in a way that others can access and use the data efficiently and effectively. He suggested that he give a presentation at the June Forum meeting on the PSP’s thoughts around data exchange. Josh Baldi suggested that Chris meet with Forum member Faith Lumsden from the Governor’s Office of Regulatory Assistance as she is working closely with the Clark County effort and could provide useful information around data coordination in that effort. Chris explained that the PSP is considering producing a Puget Sound regional map that will identify priority areas for action and then potential actions. A Forum member suggested that whatever information and process is ultimately used, that it must be transparent and understandable.

A Forum member suggested that other important information to overlay would be social, cultural and economic factors such as transportation corridors. He noted that the Forum should recognize that there might be conflict between overlays, such as when community priorities bump up against conservation priorities. Another Forum member suggested that whatever recommendations result from the MTW Process, that they recognize the “fairness” issues. That there are private land owners with rights and that there are land use plans that don’t match up with ecological goals. She noted it would be important to provide the appropriate context, highlighting how a watershed approach would ultimately

be fiscally responsible and healthy. She suggested that another column be added to the matrix labeled “context” to explicitly acknowledge the need to consider such data as prime agricultural land, development, etc. Margaret suggested that it might be useful to create a flow chart or diagram of some sort that would show where to incorporate the key context issues. Chris noted that PSP is engaged in an effort with the Rural Resources Institute that is looking to develop qualitative values for ecosystem services. He noted that this data is expected in early 2009. He suggested that there are at least two potential ways to use this data: 1.) in the permitting arena; and, 2.) coordination between planning processes.

Another Forum member suggested it was important to think about how funds are allocated so that resources are going to projects that provide the greatest overall benefit. Forum members also suggested examining current grant programs to determine if they can be used in a way to increase the overall effectiveness of the resources invested. A Forum member noted that the local government perspective would be critical to help ensure that local jurisdictions would have the capacity and ability to use any mapping and planning system developed. Another member suggested that any recommended systems be incentive-based initially, designed in such a way that the obvious common-sense alternative is an innovative approach. Josh Baldi suggested that the Forum’s recommendations around such a system would need to be tested by local government. It was suggested that there be a specific recommendation from the Forum to implement a demonstration program.

Fee-Based Mitigation Tool Development/In-Lieu Fee

Chris Townsend from the Puget Sound Partnership then shared a draft Request for Proposals regarding the development of a conceptual model of a fee-based mitigation tool to be used at the watershed level in the Puget Sound region. (*See Attachment 3 for Draft RFP*) He explained that the effort is a two-part process; 1.) drafting a model of what a regional in-lieu fee system looks like, and; 2.) looking at what kind of instrument might be able to implement such a system. For example, the tool might be a memorandum of agreement among all agencies with jurisdiction over permits. He asked Forum members if they would be comfortable having the proposed in-lieu fee study be part of the Forum effort. He asked Forum members to provide their thoughts on the objective and tasks identified in the RFP.

Ron Shultz noted the overlap between the Partnership’s proposal and the conservation markets effort, resulting from the most recent legislative session. Another Forum member suggested that “improving ecological functions” be incorporated into the objectives. Another suggested that it be clear that there is transparency in any system identified. Chris noted that a key characteristic of any system would be a good, open accountability system that makes issues such as what costs will be, what those resources will be used for and in what time frame. A meeting observer asked that in considering an in-lieu fee system, that the Forum consider the standards that mitigation banks have been required to meet and to help ensure that any in-lieu fee system does not negatively impact bankers. He stressed the need to ensure that in-lieu fee programs are funded properly and that the resources are properly used. A Forum member suggested that one possibility could be establishing an initial trust, with seed money from government. This would be subsidized in-lieu fee account to start and the account could be reimbursed as fees are collected. He indicated that this approach might help ensure certainty around an in-lieu fee system. Another Forum member asked if the Partnership considered looking at the broader field of fee-based tools. Chris responded that the Partnership would like an end product that has the ability to move to implementation versus another broad-scan study.

A Forum member wondered how an in-lieu fee system might impact the “avoidance” step in the overall permitting process. He expressed a concern that permittees might select in-lieu fee if it represents the quickest option. Another Forum member responded that another potential use for watershed characterization studies is that they could help define “avoid” in receiving areas versus “avoid” in other areas. He noted that this information might make the avoidance step more efficient. Margaret Clancy noted that a characterization would highlight “high value” function, identifying the most critical areas for avoidance. A Forum participant noted that the Mill Creek Special Area Management Plan (SAMP) and Snohomish EPA Advanced Identification Process looked at prioritizing areas for avoidance, but that they were not necessarily successful. Elizabeth suggested the consultant team look into these two processes for “lessons learned.” A Forum observer noted that avoidance and minimization doesn’t necessarily produce the best result from an ecological perspective. Josh Baldi suggested that at the Forum’s June meeting, Ecology present information on its avoidance and minimization work.

Chris asked the Forum to provide additional feedback via e-mail on the set of tasks and any other suggested edits. He then asked Forum members to volunteer for a subcommittee to focus on in-lieu fee and the Partnership’s proposed project. Commitments would likely include a few half-day meetings and an interview with the selected contractor. The following Forum members expressed interest in participating:

- Ron Shultz, Washington State Conservation Commission
- Megan White (or representative), Washington State Department of Transportation
- Josh Baldi, Department of Ecology
- Rashi Gupta, Association of Washington Counties
- Nancy Brennan Dubbs, US Fish and Wildlife (will need to check-in with the official Forum representative, John Grettenberger)

Chris asked that any other Forum members interested in participating on the subcommittee contact him as soon as possible.

Advanced Mitigation

Glenn Grette of Grette & Associates then presented information on advanced mitigation. (*See Attachment 4 for presentation slides.*) He focused his presentation on experiences with the Port of Tacoma and the Port of Anacortes. He described key needs for successful advanced mitigation:

- A flexible, creative and opportunistic environment
- Predictable functions and credit; predictability for agencies and for project proponent
- Trust

He explained that ports provided a good opportunity for advanced mitigation because they are permanent entities of a public nature. He also noted that they are located in a limited/finite geographic area and have long term plans. A Forum member asked if advanced mitigation has been used for private entities. Glenn responded that the BP Cherry Point Refinery established mitigation for a future cogeneration facility. He did note that advanced mitigation won’t be the right tool for every party and those entities that have predictability in projects and can make up front investments would be the best candidates.

Glenn noted that the approaches differed for each of the Ports. He explained that a more informal approach has been used at the Port of Tacoma where there are expandable mitigation sites. He noted that in the late 1980’s, the Port considered where it made sense to do mitigation, considering factors

such as fish habitat. He explained that many of the mitigation efforts were phased in over many years. At the Port of Anacortes, the project relied on RCW 90.74. This project focused more on an individual site and project. Glenn noted that RCW 90.74 is not a specific mitigation banking statute, an involved process, nor does it have a federal tie-in. He explained that it does facilitate innovative mitigation, has broad application with minimal process, and is desirable for project proponents that have recurring mitigation needs.

A Forum member asked if all potential projects are identified when doing advanced mitigation. Glenn responded that the initial project is identified, but not necessarily those projects to which additional credits will be applied. He noted that at this point, the additional mitigation credits are only for Port use. Another member asked if advanced credits could be traded for different types of impacts. Glenn noted that they could be to an extent. Another Forum member asked what accounting process was used for determining credits. Glenn responded that the “accounting process” was incorporated in the agreement the Port established with the relevant agencies. He further noted that the advanced mitigation process currently works well and that additional constraints would not be useful. Megan White noted that the Department of Transportation has had some experience with advanced mitigation and a big question is always what happens if all the credits are not used and how can the credits be used – is there flexibility. She observed that it would be useful to clarify to what extent projects must be predefined and if they are predefined, what can be done with extra credits. She also noted that guidance around what to do if future impacts are not known would be useful. Glenn noted that in the Ports’ agreements with the agencies, the parties recognized that new agreements might need to be established in the future to address any changes.

Forum members agreed that advanced mitigation is an important tool and that any recommendations should focus on how to make advanced mitigation more workable so that it is used more.

Forum members then considered the section of the draft recommendations outline relevant to mitigation tools. Forum members had the following comments:

- *Generally:*
 - Include the permitting process. This cannot be divorced from the tools used.
- *E.i.2. – Optimize existing tools:*
 - include in-lieu fee
 - Add improved on-site and off-site, if supported by watershed characterization
 - Re: conservation banks and multi-resource banks. Josh Baldi suggested that the Forum consider whether a new law needs to be introduced and passed for new banks introduced. He referenced DNR’s aquatic resources bank bill considered this past legislative session. He noted he would check-in with DNR about the bill and its thought process to introducing the bill. Josh also asked the Forum to consider how agencies with individual responsibilities should coordinate with each other regarding how to manage and be proactive around multi-resource/conservation banks. A Forum member asked why not give proponents with important ecological projects credit for more than one resource, function, etc.
 - Describe what the Forum would like to see accomplished with banks (e.g., multiple species, functions, etc.) and identify what barriers there are to doing so. A Forum observer identified the following bank barriers: regulatory structure doesn’t really exist; minimal resources and capacity at agencies; no manual for using as a tool; push back from local jurisdictions, and; a strong focus on on-site/in-kind mitigation.
- *E.i.4:* Delete this sentence.

Forum members were asked as homework to consider the outline and the draft recommendation areas to ensure that the Forum has covered the issues it wants to in light of its scope and whether anything substantial is missing.

Wrap-up

The group then briefly reviewed the topics for its June 17 meeting (to be held in Olympia) and the focus of its remaining time together.

- June:
 - Review of updated outline which will incorporate changes from the May and June meetings and any comments provided via e-mail by Forum members.
 - Review of draft text of the context and vision sections of the Forum's report.
 - Hear information on Clark County and Puget Sound Partnerships efforts
 - Discussion of Ecology's avoidance and minimization work.
 - Update on Puget Sound Partnership's In-Lieu Fee proposal.
 - Discussion of compliance.
- July:
 - Work through draft recommendation text.
- August:
 - At the August meeting or shortly thereafter, review full text of report
- September:
 - Tie-up loose ends and make final adjustments.

Next Steps

- Project support team will get in touch with remaining Forum members regarding the draft recommendations.
- Project support team will develop/refine recommendations based on Forum discussion.
- Project support team will develop a tiered approach to demonstrate what levels of information might be needed to support various levels of decisions.
- The next Mitigation Forum meeting is May20, 2008 and will be held in Olympia (Location to be determined)

Attending Forum Members

Dee Arntz, Washington Wetlands Network

Josh Baldi, Washington State Department of Ecology

Jessi Belston, Washington Public Ports

Nancy Brennan Dubbs, for John Grettenberger, US Fish and Wildlife

Michelle Connor, Cascade Land Conservancy

Jim Fox, Washington Recreation and Conservation Office

Rahi Gupta, Association of Washington Counties

Doug Peters, Washington State Department of Community, Trade and Economic Development

Dave Remlinger, Skykomish Habitat, LLC

Bill Robinson, The Nature Conservancy

Ron Shultz, Washington State Conservation Commission

Jodi Slavik, Building Industry Association of Washington

John Stuhlmiller, Washington Farm Bureau

Chris Townsend, Puget Sound Partnership
Megan White, Washington State Department of Transportation

Forum Members Not in Attendance

Allison Butcher, Master Builders Association of King and Snohomish Counties
Rich Doenges, Washington State Department of Natural Resources
Mike Grayum, Northwest Indian Fisheries Commission
Bob Kelly, Nooksack Tribe
Steve Landino, NOAA Fisheries
Faith Lumsden, Governor’s Office of Regulatory Assistance
Chris McCabe, Association of Washington Business
Andy Meyer, Association of Washington Cities
Tim Smith, Washington State Department of Fish and Wildlife
Rick Slunaker, Associated General Contractors of Washington
Michael Szerlog, Environmental Protection Agency, Region 10
Muffy Walker, US Army Corps of Engineers

Guest Speakers/Participants

Glenn Grette, Grette Associates

Audience Members

Barb Aberle, Washington State Department of Transportation
Lauren Driscoll, Washington State Department of Ecology
Eric Gleason, TRC Environmental Corporation
Tom Krugman, Bertrand Watershed Improvement District
Gretchen Lux, Washington State Department of Transportation
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