



Mitigation That Works

GMAP Report

October 3, 2008

Topics

- Follow-up from February 2008 GMAP
- Wetland Banking Rule and Program status
- Wetland Mitigation Compliance Program status
- Recommendations, timelines, and actions from the Mitigation That Works Stakeholder Forum



Mitigation That Works Goals & Objectives

Two Major Goals

- 100% success rate for mitigation projects.
- Improved predictability and efficiency for permit applicants.

Objectives

- Establish and sustain a credible wetland banking program.
- Ensure 100% of mitigation projects are assessed for compliance with permits.
- Establish Watershed Characterization as a standard approach to mitigation.
- Develop new mitigation tools to improve environmental outcomes and increase permit predictability.
- Expand training, outreach, and technical assistance.

What are we doing to reach our goals and objectives?

- Adopting mitigation banking rule.
- Increasing focus on compliance.
- Providing technical assistance and grant funds to local governments for watershed characterizations.
- Finalizing and implementing Forum's Recommendations Report.

These actions support Ecology strategies by:

- Increasing our accountability, flexibility, and transparency.
- Protecting our resources.
- Improving coordination among governments.



Follow Up to the February 2008 GMAP

Action	Update
<p>Banking Rule: How will consistency across mitigation banks and between banks and on-site project requirements be addressed in the rule?</p>	<p>The banking rule is applicable only to mitigation banks and therefore cannot address permittee responsible mitigation. It does address consistency across banks. To improve consistency between banks and individual projects, we are aligning 401 conditions with banking conditions through staff education and applying revised standards.</p>
<p>Compliance: Explain how compliance measures translate to long-term environmental outcome – ecological function. Include a simple way to measure what you are finding in the 18-month inspections for grading, planting, invasive species.</p>	<p>We speak to this in slides 10 and 11. We have developed a simple way to measure whether the mitigation site is likely to succeed ecologically. Based on Ecology staff best professional judgment, we have categorized ecological success as either likely, unlikely, or uncertain. Given that the compliance program is still in its infancy, at this stage we can only predict the likelihood of ecological success.</p>
<p>Avoidance: Make recommendations on whether the goal of avoidance needs to be more narrowly framed to address concern that avoidance of impact to marginal wetlands may be counterproductive in some circumstances.</p>	<p>The Forum is including recommendations to strengthen avoidance for higher value resources. Understanding that avoidance may be counterproductive in certain situations, key agencies, including the Corps, are committing to developing guidance that will create a practical way for project proponents and local governments to document their decision process for when avoidance makes sense and when it doesn't.</p>



Follow Up to the February 2008 GMAP

Action	Update
<p>No Net Loss: We need to be able to report on our (Ecology's) progress on meeting the "no net loss" policy goal. It needs to be credible, but not perfect. Propose how this could be answered addressing both the state and local arenas.</p>	<p>To begin to answer the no net loss question for acreage and eventually function, the SEA program recommends a staged approach, beginning with NOAA's C-CAP satellite data. This will give us a change in wetland area and type, for areas greater than 3/4 acre. We won't have a fine level of detail, nor a functional assessment yet, but we will be able to map and analyze broad scale changes over time, going back to at least 1996.</p> <p>We are recommending language for the Forum's report that will align with pursuing this path forward. We will also draft a scope of work.</p>
<p>Database: Determine difficulty and amount of resources it would take to expand tracking database to include projects for which no state action is required.</p>	<p>We have no real ability or authority to track projects for which no state action is required. Our recommended approach to answering no net loss may also address this question somewhat by using satellite data to track all coarse scale changes to wetlands, regardless of whether the change is due to a state or local action.</p> <p>It is also possible that a yet-to-be defined/funded IT strategy for SEA will include data protocols allowing the state and local governments to exchange data on shoreline, wetland and other habitat measures.</p>
<p>401 Actions: Is there a way to translate the pie chart on local v. state decisions (Feb 2008 GMAP, slide 13) to number of acres (from number of actions)?</p>	<p>Answering this question has similar implications as the one above. We cannot answer this currently without a great deal of effort.</p> <p>We can consider this as a business need during our database strategic assessment.</p>



Status of the Wetland Banking Program

The following performance measures were established to gauge whether we are improving the predictability and efficiency of certifying banks:

1. Adopt Banking Rule by June 30, 2009
 - Rule drafting is in process – about 60% completed.

2. Reduce number of months it takes to certify a new wetland bank
 - Target = reduce time from 24 months to 17 months.
 - It's too early to tell how we are doing on this measure. We suggest revising it to reflect agency review time because delivery of products/documents from sponsors has been unpredictable.
 - We are using project management software to report on both staff review/processing time and sponsor response times. We are currently reviewing sponsor submissions within 30 days.

WHAT	WHO	WHEN	STATUS
Working with Agricultural Communications Group.	L. Driscoll	Ongoing	Revising draft rule language based on key external group comments.
CR 102 (proposed rule) filed.	Y. Holder	Jan. 2009	Revisions and stakeholder coordination ongoing.
Public comment period	Bank Team	Jan. – Feb. 2009	Awaiting CR 102 filing.

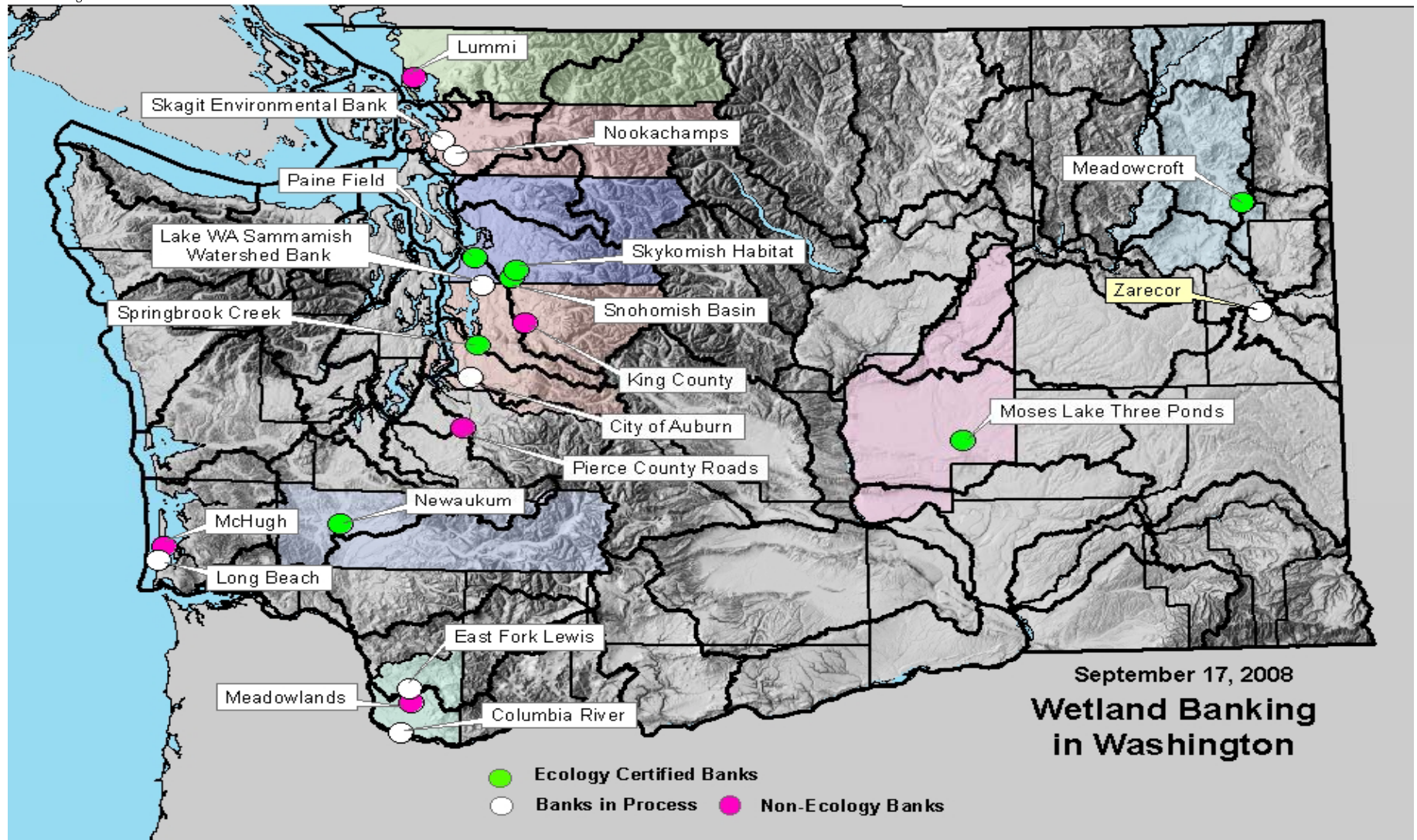
Comments from Advisory Group on Banking Rule

In advance of our formal rule making process, we solicited comments from our external advisory group. Here is a summary of their main comments and how we are responding:

- Ensure consistency with federal rule.
 - *The draft rule language is now aligned with federal rule language.*
- The process is too detailed.
 - *The rule language was changed to match the federal rule process and timelines; and unnecessary procedural steps were removed.*
- Protection of agricultural lands - positive and negative comments received on suggested language to address.
 - *Revised language, working with agricultural representatives, including state agency Agricultural Communications Group.*
- Include language to allow multi-resource banks.
 - *Placeholder while waiting for suggested language from reviewers.*
- Provide guidance on watershed processes and watershed-based banks.
 - *Will update existing guidance on our wetland banking website to provide additional details.*

We will also include tribes in the rule process through our government-to-government notification process.

Wetland Banks in Washington



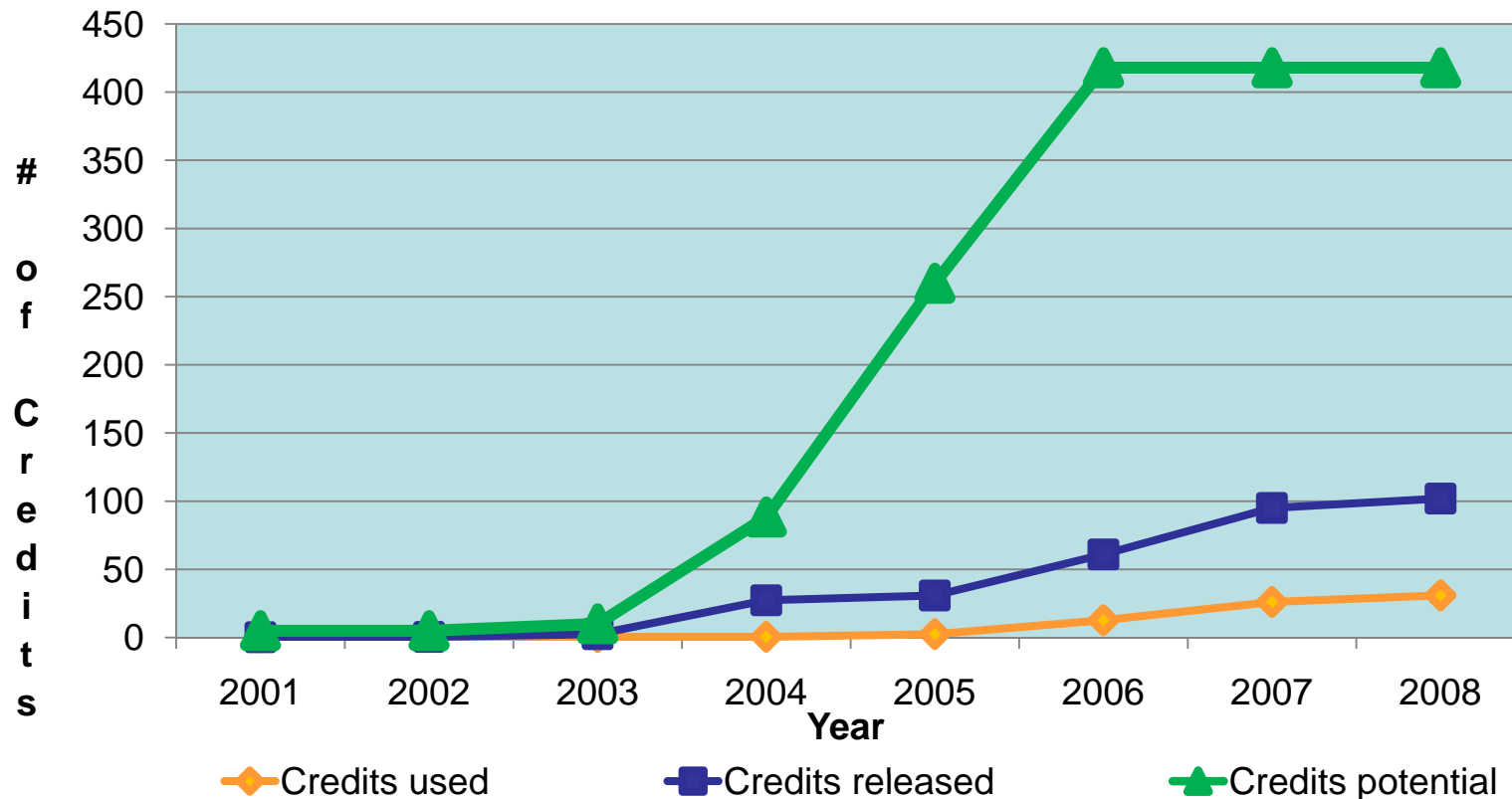
Changes since the February 2008 GMAP:

1. Paine Field is fully accredited and has met all performance measures.
2. Zarecor bank is in process.



Status of Credits for Ecology Certified Wetland Banks

September 2, 2008



- The discrepancy between credits potential and released is due to the time it takes for a bank to mature ecologically. Once potential credits reach maturation, they are then “released” for use.
- Each bank generates a unique number of acres per credit, based on site specific conditions.
- For 6 certified banks, the number of acres per credit ranges from 1.2 – 2.9. The range represents variety in bank conditions and amount of ecological improvement. The average acre per credit is 1.7, and the total acreage is 700.
- Paine Field is not included in this chart or calculation, due to a different crediting system. It represents an additional 60 acres. 8 Thus total acreage for all seven Ecology certified banks is 760 acres.



Status of the Wetland Compliance Permitting Program

We are meeting or exceeding performance measures

- Review 75% of sites within 18 months of receiving completed plans.
 - Reviewed 100% of projects with completed plans.
 - We were able to follow-up and request completed plans and perform site visits on additional sites.
- Verify status of all projects within 2 years of when the permit is issued.
 - We have determined status on 100% of permits issued (113 projects) from January 2004 through August 2006.
 - We have determined status on another 50 projects permitted since August 2006.

Steps to post-construction site review

1. Determine site compliance with:
 - a) permit conditions.
 - b) plan elements.
2. Make recommendations to improve site success.
3. Follow-up with formal letter.
4. Revisit site if initial inspection shows early signs of not succeeding.

WHAT	WHO	WHEN	STATUS
Send follow-up letters after each site visit. Perform follow-up inspections on sites that show early signs of not succeeding.	Dana Mock	On-going	Follow-up occurs on all site visits.
Refine permit conditions based on lessons learned from follow-ups.	Teri Granger	On-going	Updated 401 Water Quality Certification conditions. We will continue to provide updates as we learn more.



Translating Compliance into Ecological Success

A simple way to measure ecological success?

Given that the compliance program is still in its infancy, and that no real demonstrable success can be measured at this time, we are using best professional judgment as a simple way to **predict** the likelihood of ecological success. Not knowing a site's compliance rating, staff were asked to use their best professional judgment, or the "blink factor", to determine a site's likelihood of achieving ecological success.

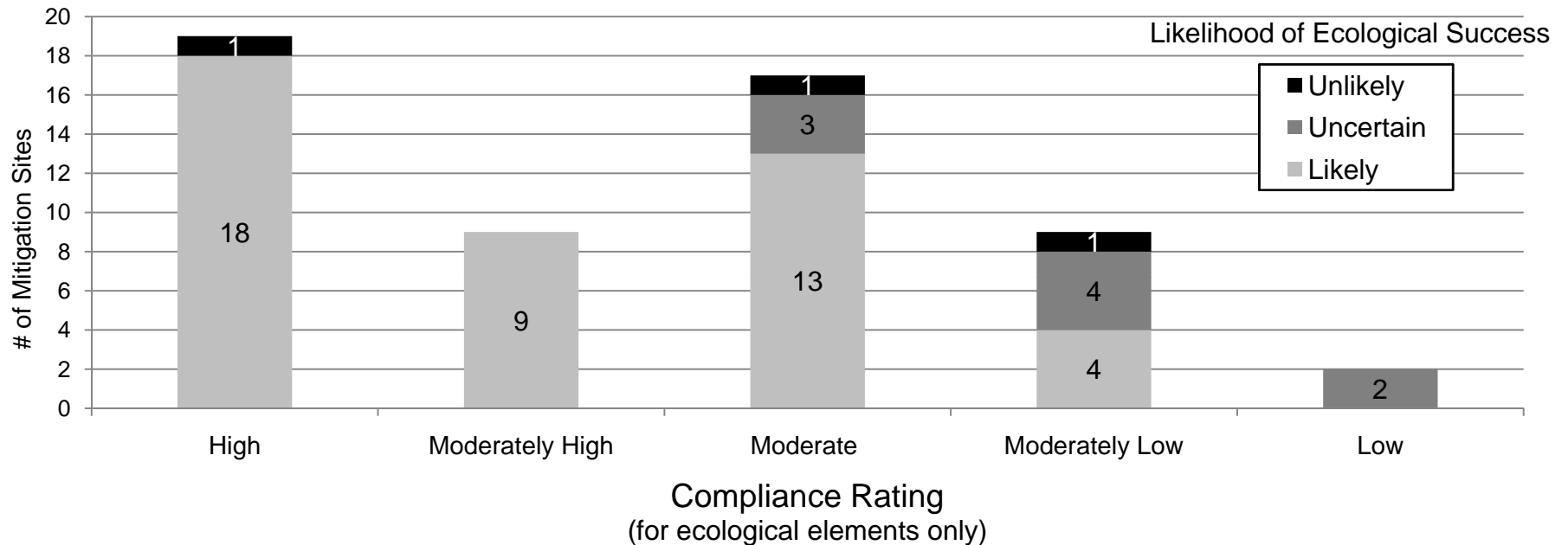
- For the most part, sites with high compliance ratings are also showing high likelihoods of ecological success.
- And, sites with lower compliance ratings are also showing lower likelihoods of ecological success.
 - Based on an evaluation as to why these sites are performing poorly, we believe strengthening our compliance language and program will significantly improve the ecological success of these sites.

Based on these initial comparisons, we will be exploring whether to use a site's compliance rating for ecological permit conditions (water, grading, planting, invasive species, habitat features) as an indicator of its ecological success.

WHAT	WHO	WHEN	STATUS
Review monitoring reports and visit sites at least two more times during the whole monitoring period.	Dana Mock	On-going	Many sites are still within the first or second year of monitoring.
Provide training to local governments, consultants, and agency staff on site selection, plan review, and design of compensatory mitigation projects.	Dana Mock Patricia Johnson	On-going	Three trainings already given in 2008 and two more scheduled for the end of the year. 10

Translating Compliance into Ecological Success

All Post-Construction Mitigation Site Visits
(Mid-2006 to August 2008)



Based on this initial comparison, we have observed:

1. 80% of all sites being visited are predicted likely to succeed. Of these, 90% are within the high, moderately high, or moderate level of compliance.
2. For the project that is in high compliance and unlikely to succeed, location and use restrictions are permanently hampering its ecological success.
3. In the moderately low and low categories, 35% are likely, 55% are uncertain, and 10% are unlikely to succeed.
4. Out of all the sites being visited, 20% are unlikely or uncertain to succeed. We believe that strengthening our compliance language and program will make a significant improvement.

Predictions are based on the assumption that follow-up and adaptive management will continue throughout monitoring period.



Mitigation that Works Stakeholder Forum

Why was the Forum established?

Lack of initiative

A number of multi-stakeholder groups have made recommendations statewide and nationally over the years on how to improve the success rate of mitigation projects. However, there hasn't been good follow through on implementation for a variety of reasons, such as; lack of political support, inflexibility in regulatory requirements, or insufficient funding.

Broad dissatisfaction

Some progress has been made over the last few years (e.g., Ecology's wetland mitigation compliance program) but there still remains broad dissatisfaction with the permitting process and the environmental outcomes.

What is the Forum?

Mission

- To develop and agree on a shared vision for successful mitigation and identify practical actions that can be taken to make all aspects of environmental mitigation work better.
- The Forum is to build upon and go beyond results of previous efforts such as the Transportation Permit Efficiency Advisory Committee and Shared Salmon Strategy.

Members

Broad variety including business and developer associations, land trusts, non-profits, and federal, state, and local agencies. Ecology has a seat at the table and serves as convener.

Timeline

The Forum began having monthly meetings in December 2007. The final meeting is scheduled for October 2008.

Result

The Forum is establishing the direction to achieve a better approach to mitigation in Washington State, beyond wetland mitigation, in a Recommendations and Actions Report.

The Forum Report & Rolling it Out

Forum Report - November 2008

Draft Recommendations:

- Establish and implement a watershed-based approach to mitigation.
- Reinforce the importance of avoiding and minimizing impacts to resources especially those that are highly valuable and difficult to replace.
- Develop and implement a wide variety of compensatory mitigation tools as alternatives to traditional permittee responsible mitigation.
- Develop more coordinated, predictable approaches to reviewing development projects and associated mitigation plans.
- Ensure success of mitigation efforts with compliance monitoring and enforcement.

Highlights from the Action Plan

To ensure implementation, an Action Plan will be part of the Forum's Report. It will identify: specific actions, key players, what can be done with existing resources and what will need new, and approximate timelines.

- In-Lieu Fee program for Puget Sound - work with the Puget Sound Partnership
- Guidance and Use – expand the use of and create or revise guidance for a wide variety of mitigation tools, including guidance for avoidance and selecting off-site options
- Watershed characterization - expand its use in a variety of ways
- Office of Regulatory Assistance's Integrated Project Review and Mitigation Tools Initiative – phase 2
- Compliance - continue to support and expand by improving consistency and increasing funding and training at all levels of government
- Support local governments – to establish policies, regulations, and processes for using new tools; with re-training to implement new tools; and increased funding for watershed characterizations.



Forum ~ Next Steps and Beyond

Mitigation That Works Budget Implications for 2009-2011

- \$750K level of effort budget request, as part of the Puget Sound Partnership's budget proposal, to implement critical action items from the Forum's Report.
- We anticipate the Puget Sound Partnership will have a related capital request to implement a regional In-Lieu Fee program.

Communication Strategy

Ecology is working on a communication strategy for internal and external outreach, including:

- Mitigation That Works Portal on Ecology's home page
- Updating websites and links
- Presenting at agency management meetings
- Outreach and coordination with tribes and local governments

Linkages to the Puget Sound Partnership's Action Agenda and Other Initiatives

- All of the mitigation improvements being recommended in the Forum's Report are related to the Action Agenda.
- The Partnership's In-lieu Fee program links strongly to the Forum's Action Plan.