Interagency Review Team Kick-Off Meeting
Puget Sound Partnership In-Lieu-Fee Pilot Program
July 28, 2010
Environmental Services Building

Participants:

Name	Organization	Phone	Email	Primary Contact?
Brad Murphy	Ecology	360-407-6861	brad.murphy@ecy.wa.gov	Y
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Linda Storm	EPA - Aquatic Resources	206-553-6384	storm.linda@epa.gov	Y
Dan Guy	NMFS	360-534-9342	dan.guy@noaa.gov	Y?
Karen Walter	MITFD	253-876-3116	karen.walter@muckleshoot.nsn.us	Maybe
Rich Doenges	Thurston Co.	360-754-4106	doenger@co.thurston.wa.us	Y
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Introduction: Participants were introduced and welcomed to the meeting. Kim gave an overview of the prospectus and talked about the role of Interagency Review Team (IRT) and the goal for the meeting which is to get representatives to serve on the IRT to help develop and review the instrument, review the prospectus, share the process and for the Puget Sound Partnership (PSP) to hear concerns and ideas regarding the in-lieu-fee (ILF) program.

Chris thanked everyone for coming and reminded attendees that the ILF program is key in helping the Partnership achieve their recovery goal. The ILF program was a recommendation from the Mitigation that Works Forum as something that PSP needs to engage in because it is part of the agency's ecosystem recovery goal. Washington Legislators allocated $4 Million as a pre-capitalization fund to develop pilot mitigation projects. Chris also talked briefly about King

County's ILF program stating that the credit/debit tool initially developed for its program is practical and is available for review.

Background on IRT: [See attachment A] The IRT is co-chaired by the Corps of Engineers and Department of Ecology. Representatives from public agencies with an interest in the ILF program are invited to participate in the IRT. Members of IRT will often sign the instrument once completed to show concurrence with the terms of the instrument, but some may choose to send a letter of support instead of signing the instrument. Once the instrument is approved, the IRT still has a role to approve proposed mitigation-receiving sites, credit releases, and ensure the ILF program is run properly .

Timeline: [See attachment B] The timeline is very specific and all efforts should be made to meet the timeline.

Review Process: [See attachment A] The ILF instrument will contain many details and there could be many iterations of the draft. Reviewing the instrument will involve substantive time and effort due to all the details of the instrument and the possibility of multiple iterations to revise those details. Additionally, the Corps' chain of command requires that the district engineer sign the instrument. Therefore the ILF instrument and program will need to closely follow and implement the federal rule.

Overview of PSP's Proposed Pilot ILF Program: The two pilot areas include select watersheds in Pierce (Chambers-Clover: WRIA 12, Puyallup/White: WRIA 10, and Nisqually: WRIA 11) and Thurston (Nisqually: WRIA 11 and Deschutes: WRIA 13) counties. The Partnership will first propose the ILF program in Pierce County. Once the instrument is approved and the program is operational, then Thurston County will be added to the program through an amendment to modify the approved instrument.

- The Pilot ILF program will focus on freshwater wetlands.
- The ILF program will not circumvent or alter existing requirements for mitigation sequencing.
- Program will be designed to be self-sustaining by using complete cost accounting for all expenses involved with providing compensatory mitigation for unavoidable impacts.
- The goal of the pilot program is to start on a small-scale and learn. Identify what works and what needs to be improved.
- The program will provide a new tool to permittees, where currently there are no alternatives to permittee-responsible mitigation.
- Program will provide an opportunity to consolidate small impacts that are less than one acre in size into a larger mitigation site in order to realize efficiencies of scale, both ecological and in terms of compliance.
- The pilot mitigation-receiving sites that have been selected in Pierce and Thurston counties will be announced through a press release after the grants are signed.
- The ILF sites will need to be built within three years of accepting the money for advance credits.
- Once instrument is approved PSP intends to begin process to select future sites, which will involve greater, more comprehensive stakeholder participation.
- Pre-capitalization funds are being used to implement a mitigation receiving sites in advance of any impacts that may use the ILF program.

- Advance mitigation is different than an ILF program because ILF program is required to provide safeguards that meet the requirements of the federal rule (33CRF Part 332).
- The ILF program hopes to provide more options for compensatory mitigation.
- PSP's ILF program is modeled on King County's ILF program, but PSP will be customizing the specific details in its draft instrument to fit its specific needs.
- Unlike Mitigation Banking, which is a competitive process with no requirement for IRT to regulate credit pricing, the IRT will review and approve the fee schedule for the ILF program.
- To address problems with concurrent, permittee-responsible mitigation and to level the playing field for alternatives to this type of mitigation, regulatory agencies will need to fully implement compliance monitoring and enforcement of all mitigation requirements.
- An oversight in the process to select pilot sites resulted in the Suquamish Tribe not being represented at the meeting. Suquamish tribe will be invited to all future discussions regarding PSP's ILF program. Suquamish Tribal representative stated that they have not been invited go participate in all the appropriate meetings. Tribal representatives expressed serious concerns about their willingness to support PSP's ILF program. It was recommended that a separate meeting with tribes be scheduled soon. Chris suggested inviting the leaders and appropriate staff of the Suquamish and Muckleshoot tribe to participate in the next tribal meeting.
- Process for pilot selection was different than proposed process for future site selection: Due to the contracting freeze, the pre-capitalization money needed to be allocated using a grant agreement to another government agency. The site selection process targeted projects that were ready but just needed money. The Partnership had a meeting with federal, state, local, and tribal governments with jurisdiction within the proposed pilot watersheds. At the meeting, the process for proposing, reviewing, scoring, and selecting sites was discussed. Attendees provided comments on proposed criteria for evaluating and scoring the sites. A six-member team reviewed and scored the site proposals and visited sites before reaching consensus on a recommendation of the pilot sites to select. Local tribes were invited to participate, but few participated.
- Future selection of sites will be an open process; the process for the pilot sites will not be a precedent for the selection of the future sites.
- Tribes expressed concerns with the Partnership's readiness to implement the ILF program before successfully implementing other programs such as stormwater. Muckelshoot tribal representative requested that the Partnership slow down the implementation of its ILF program fearing that PSP may be stretched too thin to make ILF successful due to limitations and the many unknowns.
- One suggestion to limit program was to sell credit on behalf of Pierce County in WRIA 12 for implementation of pilot ILF program.
- Because this is a watershed-based program, all proprietary obligations may not be solved by giving money to PSP (?).
- PSP could help bring resources to address mitigation priorities and concerns plaguing concurrent, permittee-responsible mitigation.
- Tribes requested a separate meeting regarding PSP's ILF program to ensure full engagement in the process. A separate meeting will be scheduled with tribes.
- Process for developing credit/debit tool: Tom Hruby has been developing the tool. Currently in Peer Review process and he is asking for comments. The group shared their concerns regarding requirements of critical areas ordinances (CAOs) and how the credit/debit tool will apply.

Agency Review Process to Date: Prospectus was distributed for public review. The prospectus was used to inform people about PSP's Pilot ILF program and will be used to develop the draft

instrument. The IRT will review the draft instrument, but the draft instrument will not be available for public review.

Reviewed Summary of Public Comments: [See attachment C]
If you would like to see all the comments and not just the summary, please contact Kim Harper. Please review comments to ensure yours are captured correctly, because Patricia will develop responses to comments based on this summary.

2 & 3: How to involve local jurisdictions.

- Invite local government to be involved in the development of the instrument.
- One of the difficulties is that the Partnership is the sole sponsor of the program, but they cannot own land.
- This program is a collaborative effort between the Partnership and local government to implement the program.
- Write a narrow instrument describing how we would like the program to operate in both Pierce and Thurston counties, but with the intent to modify and broaden the instrument in the future as needed.

6: Concerns regarding tribal participation. A separate meeting with tribes will be scheduled to discuss the ILF program.

5: Fixing existing problems with mitigation.

- A clear cost analysis needs to be developed and shared with people so they are aware of the true cost of implementation.
- Local governments and other regulatory agencies need more resources to inspect and enforce regulations, thus creating a leveled playing field.
- The federal rule requires that ILF instrument identify the tools to be used to evaluate the credit (mitigation receiving site) and debit (impact site) end. But CAO's and Codes often contain specific mitigation ratios that may need to be adhered to by local jurisdictions. PSP should keep the instrument flexible for credit and debit.
- In response to comments (#5) clearly identify the problems with existing mitigation (include citations from studies) and how ILF program will help or at least not fall into the same problems. Also discuss how ILF program will fit with the rest of the Action Agenda. Discuss the other avenues the Partnership is pursuing to address the problems with existing mitigation, and thereby create a fair and equitable mitigation process for all.

10: No Net Loss.

- No completed project with No Net Loss.
- There cannot be a stacking of credit or double dipping.

12: Clarification of objective J.

- The scope of the ILF should not be limited.
- There's an ecological sequence the projects must go through.
- Mitigation sequence must be protected.
- How can the Partnership support mitigation sequencing?

27: Trading impact in natural resource.

- Not currently an issue because we're focus on freshwater wetlands.

39: Using fees collected in one to establish service in another service area.

- Clearly identify the distinction between pre-capitalization and advance credit.

40: Credit/Debit tool.

- Send credit/debit tool to IRT for comments.
- The tool does include a temporal loss factor.

Next Steps

Response to comments will be drafted and shared with the group.

Next meeting: August/September.

Agenda items for next mtg:

- Review response to comments
- Feedback on what to include in the development of the instrument
- IRT membership

To do:

- Send comment letters (check with Lynda on using Partner Net to share comment letters)
- Send credit/debit tool
- Scheduled meeting with tribes with Karen and Allison to provide support

*Revised based on comments received at 7-28 mtg.5

Attachment A

Highlights of Federal Rule on Compensatory Mitigation

In-Lieu Fee Programs

Role of Interagency Review Team

- The Corps establishes an Interagency Review Team (IRT) to review documentation for the establishment of in-lieu fee (ILF) programs. The Corps seeks to include all public agencies with a substantive interest in the establishment of the ILF program on the IRT.
- The primary role of the IRT is to facilitate the establishment of ILF programs through the development of the instrument. The IRT will review the prospectus, instrument, and other appropriate documents and provide comments to the Corps.
- Members of the IRT may sign the instrument if they choose. By signing, IRT members indicate their agreement with the terms of the instrument. IRT members may choose instead to submit a letter expressing concurrence with the instrument.
- After approval of the instrument, the IRT also advises the Corps in reviewing ILF receiving site plans, assessing monitoring reports, recommending remedial or adaptive management measures, approving credit releases, and approving modifications to an instrument.
- Comments from IRT members must be received by the Corps within the specified time limits. Comments received after deadlines will only be considered at the discretion of the Corps.

Review Process

- The sponsor prepares all documentation and the IRT reviews, comments, and if appropriate, approves.
- Primary documents include:
    - Prospectus – An overview of proposed ILF program that serves as basis for public and initial IRT comment. Complete prospectus includes objectives, explanation of how program will be established and operated, proposed service area, need and feasibility of program, ownership and long-term management strategy, qualifications of sponsor, compensation planning framework, and description of program account.
    - Instrument – Provides authorization for the ILF program to provide credits to be used as mitigation. Instrument must include description of service area, accounting procedures, statements on legal responsibilities of sponsor, default and closure provisions, reporting protocols, compensation planning framework, specifics on allocation of advance credits, method for determining future project-specific debits, credits and fees, and description of program account.
- The IRT receives at least one draft and one final version of the instrument for review.
- Approval of the Instrument is likely to be an iterative process where more than one draft will be needed. Seattle District Corps has not yet approved an ILF program under the 2008 federal rule and potential sponsors and IRT are learning as the process unfolds.

Attachment B

Compensatory Mitigation Rule
Timeline for Bank or ILF Instrument Approval*

		Event	# of Days**		
Phase I		Optional Preliminary Review of Draft Prospectus	30		DE provides copies of draft prospectus to IRT and will provide comments back to the sponsor within 30 days.
		Sponsor Prepares and Submits Prospectus ~DE must notify sponsor of completeness win 30 days of submission~			
Phase II	Day 1**	Complete Prospectus Received by DE			
	Day 30	Public notice must be provided within 30 days of receipt of a complete prospectus	30		
	Day 60	30-Day Public Comment Period	30		
	Day 90	DE must provide the sponsor with an initial evaluation letter within 30 days of the end of the public comment period.	30	15	DE distributes comments to IRT members and sponsor within 15 days of the close of the public comment period.
		Sponsor Considers Comments, Prepares and Submits Draft Instrument ~DE must notify sponsor of completeness win 30 days of submission~			
Phase III	Day 1	Complete Draft Instrument Received by IRT Members			
		30-day IRT comment period begins 5 days after DE distributes draft instrument to IRT members	30	90	Within 90 days of the receipt of a complete draft instrument by IRT members, the DE must notify the sponsor of the status of the IRT review.
	Day 90	DE discusses comments with IRT and seeks to resolve issues ~ # of days variable~	60		
		Sponsor Prepares Final Instrument ~Sponsor provides copies to DE and all IRT members~			
Phase IV	Day 1	Final Instrument Received by DE & IRT			
	Day 30	DE must notify IRT members of intent to approve/not approve instrument within 30 days of receipt.	30	45	IRT members have 45 days from submission of final instrument to object to approval of the instrument and initiate the dispute resolution process.
		Remainder of time for initiation of dispute resolution process by IRT members	15		
	Day 45	INSTRUMENT APPROVED/NOT APPROVED, or DISPUTE RESOLUTION PROCESS INITIATED			

EPA/Corps draft 4/02/08

Total Required Federal Review (Phases II-IV): ≤225 Days
*Timeline also applies to amendments
**The timeline in this column uses the maximum number of days allowed for each phase.

Attachment C

*Summary of Public Comments Received on Puget Sound Partnership's (PSP) In-Lieu-Fee Mitigation Prospectus

Comments of an editorial nature, such as suggesting additions or changes to the text, have not been included in this summary. Comments of an editorial nature will be addressed directly through Track Changes on the first draft of the program instrument.

Substantive comments are listed below. I have summarized or paraphrased most comments in an attempt to lump similar comments together.

GENERAL COMMENTS

1. The in-lieu-fee program will exacerbate development and impacts to critical areas.

2. In-lieu-fees should go to county or city because it is the local jurisdiction and people living in the watershed who know what environmental restoration projects are most important.

3. PSP ILF program should be administered locally and integrated into the communities that it would serve – locally operated ILF sites would be preferred.

4. The ILF program, as proposed, has little relevance to PSP's mission.

5. Address the problems with existing forms of mitigation (lack of long-term monitoring, maintenance, and enforcement) before proposing another untested option.

6. Concern that tribes will not have the opportunity or ability (particularly if the project lacks a federal nexus) to substantively comment on the impact projects proposing to use the ILF program.

7. How would one initiate the use of ILF? Need to identify/describe the process and how regulatory agencies at federal, state, local, tribal levels would coordinate.

8. Review Critical Areas Ordinances and other local government regulations (e.g., Shoreline Master Program, County Comprehensive Plan, Community Plans, Development Design Standards and Guidelines, Zoning Regulations) within the Pierce County Pilot Area to ensure that off-site mitigation (including buffer impacts) are allowed.

9. *Do not allow impacts that occur in one tribe's UNA to be compensated in another tribe's UNA.

NEED FOR PROGRAM (Section 2)

10. Add data comparing number of permits issued versus the number of projects (permits) with wetland impacts for the same time period, or compare number of permits issued with acreage of wetland loss for the same time period.

OBJECTIVES (Section 3)

11. Concern that "no net loss" requirement is not addressed and will not be met. "Restoring functions" may not result in "no net loss." Add language that program will facilitate overall goal of no net loss.

* Revised based on comments received at 7-28 mtg.

12. Concern about Objective D – the regulatory process will remain the same with or without ILF, but regulatory requirements for compensatory mitigation can be more easily satisfied because there is an effective solution to meet the need for mitigation.

13. Clarify rationale behind Objective J ("Provide a functionally viable option to mitigate for small unavoidable impacts that currently may be falling through the cracks")

14. Need more specifics on how PSP intends to achieve all the objectives of the program. Concern that PSP is attempting to do too much.

PROGRAM SCOPE (Section 4.2)

15. Scope of instrument should either be clarified to only include freshwater wetlands, or it should include broader range of resources and include necessary detail (crediting metrics, performance milestones, ratios, etc.).

16. Support for program to expand to all aquatic resources, assuming appropriate mitigation receiving sites are found.

17. Will the PSP ILF program expand into King County?

18. Will PSP ILF program be available for use in addressing natural resource damage (NRD) liability claims?

19. Develop a successful track record at individual sites before implementing an entire regional program.

20. *Write instrument to have a narrow geographic scope. Demonstrate success before broadening the program. Specifically, do not include Puyallup/White watershed (WRIA 10) in the ILF Instrument for the Pierce County Pilot Area.

21. PSP ILF program should stay out of service areas currently served by existing mitigation banks. PSP should insert "do not compete" clause relating to existing mitigation banks into ILF program instrument.

22. The ILF program should include considerations for federally established preference for use of mitigation bank credits.

REGULATORY AUTHORITIES (section 4.3)

23. Concern that there is no state rule to implement and govern ILF programs; therefore it will be difficult to approve, implement, monitor, and account for program's success.

MITIGATION SEQUENCING (Section 4.4)

24. Add further mention/emphasis that the ILF program will not bypass local regulatory requirements for mitigation sequencing.

SPONSOR QUALIFICATIONS (Section 4.5)

* Revised based on comments received at 7-28 mtg.

25. Concerns about PSP's ability to manage fees appropriately. Concern that PSP will use the fees collected to fund implementation of the Action Agenda, rather than apply the funds to compensate for the impacts to critical resources.

26. Concern about the qualifications of PSP as proposed sponsor. PSP as an organization is inexperienced with the construction and implementation of successful mitigation sites. PSP should consider a role as a coordinating/enabling agency for individual ILF program applicants rather than lead sponsor. Greater chance of success if local stakeholders or area-based non-profits were in the role of lead sponsor.

27. Concern about PSP as sponsor. Add language, "or successor agency" since preceding agency incarnations have all been temporary.

MITIGATION RECEIVING SITE SELECTION PROCESS (Section 4.7) *see also comments on section 10.2*

28. Require mitigation to take place on-site or close to where to impacts occur to protect diversity and spatial continuity.

29. Concerns about trading impacts in one natural resource type for gains in another. Impact types in a watershed may be different than the resource types prioritized for conservation and restoration. Too much uncertainty about overall effect on the ecosystem of allowing this.

30. Concern that PSP is focused on salmon, shellfish, and marine habitats rather than freshwater issues that affect WRIA 12. The mitigation receiving sites will, therefore, not adequately address the specific needs of WRIA 12.

31. Develop multiple, smaller sites thereby providing a broad suite of environmental functions. These could be implemented in a reasonable time frame with a higher probability of success.

32. Analyze mitigation need in pilot areas to tailor mitigation-receiving sites to the anticipated types of impacts.

33. Support for development of ILF sites within urban areas – provides great benefits toward maintaining wetland functions near to urban development impacts.

34. Concern that small wetlands and small wetland mitigation sites (less than one acre) are not being valued. Smaller habitats can be essential to maintaining migratory corridors for salmonids and may provide important functions to species that are not replicated in a larger bank. Need to provide details on how program will be managed to avoid this net loss of certain habitat functions.

35. Clarify the definition of a mitigation-receiving site sponsor.

36. Will mitigation-receiving sites be proposed higher in the WRIA 10 watershed? Upper watershed provides different habitat functions than the lower watershed.

PROGRAM ACCOUNT (Section 5)

37. Clarify that calculation of credit costs must fully account for the successful implementation of the entire mitigation project ("true cost accounting") including purchase of the property, design, permitting, construction, monitoring, adaptive management, and long-term maintenance and management of the site after all regulatory requirements have been met. PSP should disclose how it intends to adhere to true cost accounting in the establishment of its fee schedule.

38. The cost of the credit should incorporate a rate for inflation that assumes there will be up to a 3-year delay between collection of fee and project implementation.

39. How will PSP develop a fee schedule? Will it be based on costs for each mitigation-receiving site (in which case sites within the same watershed may compete against each other), or will PSP determine a common cost per credit within a service area or region?

40. How will "extent and severity of impact" be correlated with cost of credit? Will there be penalty fees?

41. Concern that PSP is proposing to use some of the fees collected in one service area to establish a program in another service area. This is contrary to federal requirements that fees be used in the service area where impacts occurred. Concern that this will result in an under-capitalized fee program that will be spread too thin to be effective.

42. Establish/identify a transparent cost associated with applying the Credit/Debit Tool to avoid perception that there is a hidden cost, which PSP is subsidizing. The cost of development and use of the credit accounting system (Credit/Debit Tool) should be somehow acknowledged and included in the cost of a credit from the ILF Program.

43. Could a portion of ILF fees be used to support participation of IRT members? This would assure appropriate representation and commitment by resource agencies.

44. Concern that there is not a long-term funding source to support the staff and other resources necessary to sustain this program.

LEDGER (Section 6)

45. If mitigation-receiving sites include multiple kinds of mitigation credits (for wetlands, streams, riparian buffer, nearshore habitat, etc.), once a credit of any kind is sold, the areal extent of that credit should be "taken off the books" to avoid selling multiple kinds of credits for a single acre.

METHOD FOR DETERMINING CREDITS AND DEBITS (Section 7.1)

46. Concern about the proposed Credit/Debit Tool's ability to accurately assess and value impacts and mitigation.

47. Prospectus indicates that PSP's ILF program intends to provide mitigation for impacts to streams and other critical resources beyond freshwater wetlands. What tool(s) will be used to assess stream/riparian "credits"?

48. How will wetland impacts (debits) translate to stream mitigation (credits)?

49. PSP ILF Instrument should discuss other widely used functional assessment tools, such as Habitat Equivalency Analysis, and note the degree to which they are or are not compatible with the Credit/Debit Tool and PSP fee schedule.

50. How will ILF credits be valued in circumstances where compensatory mitigation "in-kind" is virtually impossible due to lack of adequate properties not designated Agricultural Lands of Long Term Commercial Significance/Agricultural Resource Lands?

CREDIT FULFILLMENT/RELEASES (Section 7.3)

51. If the ILF program has three growing seasons to use fees collected to implement a mitigation-receiving site, how does this fit into the county's review process? How will the temporal loss of functions be addressed?

52. Clarify timing of mitigation-receiving site implementation in relation to when credits are sold (fees collected). Revise "three growing seasons" language.

ADVANCE CREDITS (Section 7.4)

53. Do not allow advance credits because there is no assurance against the potential net loss of resources.

54. Concern that PSP does not understand the demand for mitigation credits, nor how much can be accomplished with collected mitigation fees.

PRE-CAPITALIZATION (Section 7.5)

55. What eligible state-allocated funds are available for pre-capitalization?

56. Concern that state taxpayers are subsidizing a mitigation program. Recommend annual financial and environmental audits of credits in each service area. PSP ILF program should account for all expenditures and costs to ensure that taxpayers do not continue to subsidize development of mitigation projects.

57. Support for pre-capitalizing ILF mitigation-receiving sites (designing, permitting, and ideally constructing) before selling any credits. This can dramatically reduce temporal loss of wetland functions, thereby alleviating one of the concerns about ILF programs.

THE NISQUALLY RIVER WATERSHED – WRIA 11 (Section 8.3)

58. Provide more rationale as to why the Nisqually watershed is included as a pilot watershed.

STAKEHOLDER INVOLVEMENT STRATEGY (Section 9)

59. Keep tribes informed of any proposed mitigation receiving site activities. (Regarding development of inventory of candidate sites: "The Tribe expects to be kept informed of project status and notified of any relevant project related actions," including "opportunity to provide comment as new information becomes available."

SITE SELECTION CRITERIA (Section 10.2)

60. Concern that language, "to ensure that mitigation activities will be able to remove site constraints," may inadvertently preclude good mitigation sites from consideration.

61. Clarify hierarchy of considerations in the site selection process to ensure that good mitigation sites are not inadvertently precluded from consideration.

62. Concern that Agricultural zoning designations in lower watershed areas (particularly WRIA 10?) will prevent use of these lands for mitigation receiving sites. Describe how PSP will overcome these hurdles and be able to restore functions in the lower watershed, and how development impacts in these areas will be compensated.

IRT APPROVAL (Section 10.3)

63. IRT should approve specific sites via an approved instrument (including CE, contingency fund, long-term management fund) prior to awarding any credits.

64. Concern that ILF program will not be held to the same standard that mitigation banks must attain. Recommend that standards and level of review be commensurate with risk of program founded on a "build when paid" basis.

SITE ACQUISITION AND PROTECTION (Section 11)

65. All mitigation receiving sites, whether publicly or privately owned, should be protected by a conservation easement.

PRESERVATION STRATEGY (Section 12)

66. Preservation, if allowed, should be subject to a strict "de minimis" allowable maximum component of preservation. Concern that public entities will try to get value from public land holdings that are already wetlands or are otherwise developmentally constrained.

MITIGATION PROJECT IMPLEMENTATION (Section 13)

67. Will there be a "force majeure" clause to address contingencies for unforeseeable circumstances?

68. Proposed sites should be secured with adequate financial assurances that fully reflect the degree of risk of failure or non-performance.

69. Regarding financial assurances, do performance bonds apply? Is PSP self-insured because it is a state agency? Recommends a contingency fund (containing 15-20% of the total construction cost) to be set up project by project.

EVALUATION AND REPORTING (Section 14)

70. How will PSP's ILF Pilot Program engage local jurisdictions and monitor impacts and improvements at local and watershed scale?

71. Establish a coordinated monitoring database for all mitigation sites, in cooperation with other state agencies. Ensure that information from these sites is tied back to informing Puget Sound Restoration Goals.

Attachment C

LIST OF COMMENTERS AND THEIR AFFILIATIONS

1. Scott M. Hansen, Puget Creek Restoration Society
2. Don Russell, WRIA 12 resident and property owner
3. Hugh Mortensen, Watershed Company
4. Diane Freethy, Skagit Citizens Alliance for Rural Preservation
5. Al Schmauder
6. Cyrilla Cook, Washington Department of Natural Resources, Aquatic Lands Division (DNR)
7. Diane Carlson, City of Bellevue
8. Margen Carlson, Washington Department of Fish and Wildlife (WDFW)
9. Eric Gleason, TRC Solutions; Victor Woodward, Habitat Bank LLC; Jerome Ryan, Skagit Environmental Bank; David Remlinger, Skykomish Habitat, LLC
10. Allison O'Sullivan, Suquamish Tribe
11. Jennifer Thomas, Parametrix
12. Stephanie Jones Stebbins, Port of Seattle
13. Pierce County (Ann Boeholt, Janine Redmond, Dave Risvold)
14. Jeff Parsons, Herrera Environmental Consultants
15. Ian Elliot
16. Crystal Elliot, Herrera Environmental Consultants
17. Sue Mauermann, Port of Tacoma
18. Jerome Ryan
19. Glen R. St. Amant, Muckleshoot Indian Tribe
20. Michael Murphy, King County
21. Nancy Brennan-Dubbs, U.S. Fish and Wildlife Service (USFWS)