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Date & Name	COMMENT (LETTER OR EMAIL)
<p>May 15, 2010 Diane Freethy, Skagit Citizens Alliance for Rural Preservation</p> <p>*The attachment to this message is provided in Appendix A</p>	<p>From: Diane [freeprss@wavecable.com] Sent: Saturday, May 15, 2010 8:02 PM To: Harper, Kimberley A NWS Subject: PSP ILF Mitigation Program Public Comments Attachments: PSP - State Auditor's Report 5.12.10.pdf *</p> <p>re: Application No. NWS-2010-654 Puget Sound Partnership</p> <p>Kimberley ... In light of the report released May 12th by the Washington State Auditor's office (see attached), we feel the applicant's unabashed disregard for rules and regulations is cause enough to cancel further review of the proposal.</p> <p>According to the State Auditor's Office: "The Puget Sound Partnership was established as an independent state agency on July 1, 2007, to lead efforts to restore the Puget Sound."</p> <p>The "ILF Mitigation Program" as described by the applicant has little, if any, relevance to PSP's mission. Moreover, we see no evidence that the agency's leaders and/or staff are capable of properly managing a compensatory mitigation program of this nature.</p> <p>Our organization opposes PSP's participation in this or any government-sponsored pilot program at this time.</p> <p>Thank you for inviting us to comment on this issue.</p> <p>Regards, Diane Freethy, President Skagit Citizens Alliance for Rural Preservation.</p>
<p>May 18, 2010 Jerome Ryan</p>	<p>From: Jerome Ryan [mailto:jerome_ryan@yahoo.com] Sent: Tuesday, May 18, 2010 1:37 PM To: Merten, Christina (ECY); Terzi, Gail M NWS Cc: Murphy, Brad (ECY) Subject: Re: JOINT PUBLIC NOTICE: PROPOSAL TO ESTABLISH THE PUGET SOUND PARTNERSHIP IN-LIEU FEE (ILF) MITIGATION PROGRAM</p> <p>Brad, I would like to speak with you about this proposal. I am very concerned about the general concept of a State sponsored In-Lieu Fee Program being established in the service area of mitigation banks. We are already having issues of potential economic success without State sponsored programs setting up shop using grant monies to fund projects. I think there is a time and a place for such</p>

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projects, and those are areas where there are not mitigation banks established or proposed, so that mitigation can be provided for impacts in those watersheds. But to directly compete with banks, whereby the sponsor is State funded smacks of a conflict of interest, and a direct under cutting of the program that we bought into when we started this arduous process. I was told by the IRT that when this project was initially proposed, that the service areas would be limited to areas that are not overlapping with mitigation banks. I also want to know where in the Washington State Guidelines, there is the legal appropriation for In-Lieu Fee Programs. I have not been able to find it. Lastly, it has come to my understanding that the group that put forward this concept, is largely interested in the management fees associated with the creation and long term management of the program, and I would like to see how the prospectus for this Program is going to allocate those fees and account for those fees.

Jerome Ryan
Mobile: 415.990.0525
Office: 707.874.2780
PO Box 2281, Sebastopol, CA 95473

From: "Merten, Christina (ECY)" <CHME461@ECY.WA.GOV>
To: Jerome Ryan <jerome_ryan@yahoo.com>; Gail M NWS Terzi <Gail.M.Terzi@usace.army.mil> Cc: "Murphy, Brad (ECY)" <bmur461@ECY.WA.GOV>
Sent: Fri, May 14, 2010 10:31:21 AM
Subject: RE: JOINT PUBLIC NOTICE: PROPOSAL TO ESTABLISH THE PUGET SOUND PARTNERSHIP IN-LIEU FEE (ILF) MITIGATION PROGRAM

Jerome,
I am copying your comment to Brad Murphy who is managing this ILF project review for Ecology. The service area proposed in this announcement is what is currently being proposed by the project applicants and has not received approval from the IRT agencies. This announcement is letting the public know that Ecology and the Corps have received the prospectus for this project and as you know, there can be many changes to a project between prospectus stage and final Instrument stage. As for project administration Brad would be a better resource for that information.

Christina Merten, P.E.
Wetland Banking Specialist
Shorelands and Environmental Assistance Program
WA State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452
Office: 425-649-7007
Cell: 360-480-2060

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	<p>Wetland Mitigation Banking Homepage <http://www.ecy.wa.gov/programs/sea/wetlands/mitigation/banking/index.html></p> <hr/> <p>From: Jerome Ryan [mailto:jerome_ryan@yahoo.com] Sent: Thursday, May 13, 2010 3:13 PM To: Merten, Christina (ECY); Gail M NWS Terzi Subject: Fw: JOINT PUBLIC NOTICE: PROPOSAL TO ESTABLISH THE PUGET SOUND PARTNERSHIP IN-LIEU FEE (ILF) MITIGATION PROGRAM</p> <p>Gail and Christina, I would like to get some clarity on this program. When I had spoken with you in the past about this program, I had been told that the program would not go into any of the service areas of existing banks...However, the language in here states that the program would expand to include all the watersheds that drain into the Puget Sound. Is this true? I also wanted to check on how this program was going to be administered or brought in line with the State guidelines on mitigation. I looked at the State guidelines and did not see any mention of suitable mitigation being inclusive of In-Lieu Fee Programs.</p> <p>Jerome Ryan Mobile: 415.990.0525 Office: 707.874.2780 PO Box 2281, Sebastopol, CA 95473</p>
<p>May 20, 2010 USFWS, Darold Rhodes</p>	<p>From: Darold_Rhodes@fws.gov Sent: Thursday, May 20, 2010 10:28 AM To: Harper, Kimberley A NWS Subject: PSP ILF Mitigation Program Public Comments</p> <p>The U.S. Fish and Wildlife Service is providing a NO ACTION response on the above referenced Public Notice. Endangered species issues will be addressed separately through the Section 7 process.</p> <p>~~~~~</p> <p>Darold Rhodes, Office Assistant Washington Fish & Wildlife Office 510 Desmond DR SE, Suite 102 Lacey, WA 98503 360-753-6051 360-753-9565 fax ~~~~~</p>
<p>May 31, 2010 Don Russell</p>	<p>From: <krdr1@juno.com> To: kimberley.a.harper@usace.army.mil,Brad.murphy@ecy.wa.gov Cc: Blake.Brian@leg.wa.gov,Roma.Call@psp.wa.gov, bryanflint@tahomaaudubon.org,cpl@dnr.wa.gov, mgrayum@ci.dupont.wa.us,Rockefeller.Phil@leg.wa.gov,</p>

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tskjervold@gmail.com, stot461@ecy.wa.gov, dtroutt@nwifc.wa.gov

Date: Mon, 31 May 2010 15:10:01 -0700

Subject: Proposed Puget Sound Partnership In-lieu Fee Mitigation Program

Kimberley and Brad,

This proposed program and its implementation in Pierce County is a really bad idea.

Why? For several reasons. (1) The political culture in Pierce County as exemplified by the Pierce County Council's actions is pro development and anti preservation, protection and restoration of Pierce County's degraded groundwater, springs, streams, wetlands, lakes and Puget Sound, i.e., areas defined as critical and sensitive areas. (2) The governmental agencies in Pierce County [and cities within] mandated to preserve, protect and restore critical and sensitive areas are under pressure from the County Council (by ordinances passed) and developers (by threat of lawsuit) to permit development in critical and sensitive areas. (3) The fundamental environmental problem in WRIA 12 [contaminated and depleted shallow aquifer groundwater] that needs to be addressed in Pierce County is not of significant concern to the Puget Sound Partnership or governmental agencies that are being looked to restore Puget Sound by 2020.

Below I address each of these reasons why the In-lieu Fee Mitigation Program is a bad idea.

The political culture in Pierce County in regard to environmental protection is one beholden to the interests and financial and legal might of the Master Home Builders Association and gravel mine operators. One need only follow campaign money contributions and the ordinances recently passed by Pierce County Council to see the compromises (reciprocity?) made in Pierce County ordinances that effectively undermine Federal and State environmental regulations mandating that critical and sensitive areas shall be preserved, protected and restored.

This Pierce County Council bias toward development in critical and sensitive areas will be abetted by allowing a developer to pay an *"in-lieu fee mitigation"* for *"...unavoidable impacts to resources."* in so much as it sets up a powerful financial incentive for cash strapped governmental agencies to grant permits to cash rich and law suit inclined developers (who don't want to be involved in mitigation anyway) to propose development in critical and sensitive areas and the permitting governmental agencies finding that what the developer is proposing are *"unavoidable impacts to [critical and sensitive] resources."*

The preserve, protect and restore functions of our County and City governmental agencies have been the ones most consistently under funded

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and the first functions to be eliminated as a consequence of reduced tax revenues. Exacerbating this condition is the apparent inability of Pierce County governmental agencies to view, coordinate their efforts, or manage the Chambers-Clover Creek (WRIA 12) on a holistic watershed wide basis. Acts of preservation, protection and restoration of critical and sensitive areas have been on a piece meal and sporadic basis and largely ineffective in WRIA 12. The best WRIA 12 examples of this ineffectiveness are: (1) The futile attempt to restore salmon habitat in the middle reach of Clover Creek's surface water drainage ditch in the Parkland/Midland area. Never mind the fact that this reach of Clover Creek is blocked by chemical (contaminated surface water runoff and toxins from algal blooms in Lake Steilacoom and Spanaway Lake) and physical (drying of Clover Creek and Shera falls) barriers that preclude salmon access to Clover Creek above Lake Steilacoom. Furthermore the cyanobacteria toxins generated in Lake Steilacoom and Spanaway Lake poison the water in Chambers Creek making it inhospitable as salmon habitat. (2) The failure of the City of Dupont [and the acquiescence of DOE and DNR] to apply and enforce its sensitive and critical area ordinances, that if done, would deny CalPortland a permit to dewater the Vashon Drift Aquifer that sustains water quality in Edmond Marsh and flow in Sequelitchew Creek.

The South Puget Sound focus of the Puget Sound Partnership (PSP) is on the protection of major salmon bearing rivers and restoration of the marine habitat for salmon and shellfish. WRIA 12 has no major salmon bearing river or shellfish industry as does WRIA 10 and 11 thus it is a stepchild, apparently deserving little attention by the PSP. What WRIA 12 does have because of contaminated and depleted shallow aquifer groundwater is degraded wetlands, alternately flooded and dry streams and toxic cyanobacteria blooms in 23 out of 29 lakes in Pierce County. The fact that high concentrations of cyanobacteria toxins (rendering Chambers Creek inhospitable for salmon) and nitrates (which decimate eel grass beds and foster marine toxic algal blooms) flow into Puget Sound from WRIA 12 and the health of its residents are imperil appear to be of little consequence to PSP. [See the attached paper regarding Pierce County's participation in PSP]

If preservation, protection and restoration of WRIA 12 was a priority of PSP's and Federal and State regulatory agencies then the funding that PSP and county governments should be seeking are: (1) A user fee paid by consumers on every hundred gallon of groundwater extracted and delivered to residences by water purveyors, (2) A portion of surface water management fees paid by County residences should be earmarked to clean up our malfunctioning groundwater fed wetlands and lakes, (3) A portion of sewage disposal fees paid by those who are reliant on large municipally owned sewage treatment plants should be earmarked to clean up the pollution caused in Puget Sound by untreated water soluble pollutants (e.g., nitrates et al), (4) home owners who rely on septic systems for disposal of sewage and domestic waste water containing phosphates and nitrates that enter and pollute groundwater should be paying a

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	<p>monthly or annual mitigation fee for the degradation of water quality that such disposal is causing (expressed as freshwater toxic algae blooms in lakes and excessive plant growth in groundwater fed streams and lakes) and (5) A fee levied on each ton of gravel taken from surface gravel mines. After all the gravel taken is a public owned resource and compensation should be provide to mitigate the environmental damage that gravel mining causes to natural vegetation, topsoils and the function and value that saturated gravel (aquifers) serves by sustaining wetlands, streams and lakes when the gravel is left in place.</p> <p>In conclusion; an In-lieu Fee Mitigation Program is a bad idea that, if implemented, will only encourage more degradation of the critical and sensitive areas in Pierce County.</p> <p>Don Russell WRIA 12 citizen and property owner</p>
<p>May 31, 2010 Don Russell</p>	<p>From: krdr1@juno.com Sent: Monday, May 31, 2010 3:55 PM To: Harper, Kimberley A NWS; Brad.murphy@ecy.wa.gov Cc: Blake.Brian@leg.wa.gov; bryanflint@tahomaaudubon.org; cpl@dnr.wa.gov; mgrayum@ci.dupont.wa.us; Rockefeller.Phil@leg.wa.gov; tskjervold@gmail.com; stot461@ecy.wa.gov; dtroutt@nwifc.wa.gov Subject: Proposed Puget Sound Partnership In-lieu Fee Mitigation Program</p> <p>Kimberley and Brad, Add to my list of funding sources for preservation, protection and restoration of critical and sensitive areas: (5) A fee levied on each ton of gravel taken from surface gravel mines. After all the gravel taken is a public owned resource and compensation should be provide to mitigate the environmental damage that gravel mining causes to natural vegetation, topsoils and the function and value that saturated gravel (aquifers) serves by sustaining wetlands, streams and lakes when the gravel is left in place. Don Russell</p>
<p>June 4, 2010 Al Schmauder</p>	<p>From: Al Schmauder [al_schmauder@hotmail.com] Sent: Friday, June 04, 2010 4:38 PM To: Don Russell; Harper, Kimberley A NWS; brad.murphy@ecy.wa.gov Cc: blake.brian@leg.wa.gov; Roma Call, psp; Brian Flint; cpl@dnr.wa.gov; mgrayum@ci.dupont.wa.us; rockefeller.phil@leg.wa.gov; tskjervold@gmail.com; stot461@ecy.wa.gov; David Trout Subject: RE: Proposed Puget Sound Partnership In-lieu Fee Mitigation Program</p>

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	<p>Kimberly and Brad,</p> <p>I don't like this fee for damage idea either. It will be difficult to control. It will likely cause an acceleration of the destruction of the critical resources.</p> <p>Al Schmauder</p>
<p>June 4, 2010 Hugh Mortensen</p>	<p>From: Hugh Mortensen [HMortensen@watershedco.com] Sent: Friday, June 04, 2010 1:47 PM To: Harper, Kimberley A NWS; Brad.murphy@ecy.wa.gov Cc: Suzanne Tomassi</p> <p>Subject: Puget Sound Partnership ILF Mitigation Program NWS-2010-654</p> <p>Ms. Harper, Mr. Murphy:</p> <p>Thank you for the opportunity to comment on the PSP ILF Program Prospectus. We have the following questions:</p> <p>What eligible state-allocated funds are already in place for pre- capitalization?</p> <p>The service areas include impacts to streams as threats, and the prospectus includes stream improvements as goals. What tool(s) will be used to assess stream credits in the service areas? How will wetland impacts debits translate to stream credits?</p> <p>Sections 13.3 and 13.4 describe adaptive management and state that the adaptive management plan will address "unforeseeable" circumstances - will there be a force majeure clause that offers some type of contingency?</p> <p>HUGH MORTENSEN; PWS Senior Ecologist 750 6th Street S. Kirkland, WA 98033 425.822.5242 t 425.827.8136 f http://www.watershedco.com/ <http://www.watershedco.com/></p>
<p>June 7, 2010 Sue Mauermann,</p>	<p>Port of Tacoma P.O. Box 1837 Tacoma, Washington 98401-1837 Telephone: (253) 383-5841</p>

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Port of Tacoma	<p>June 7, 2010</p> <p>Kimberly Harper US Army Corps of Engineers Regulatory Branch PO Box 3755 Seattle, WA 98124-3755</p> <p>Brad Murphy Washington State Department of Ecology PO Box 47600 Olympia, WA 98504-7600</p> <p>Re: Puget Sound Partnership In-Lieu Fee Mitigation Program NWS 2010-654</p> <p>Dear Ms. Harper and Mr. Murphy:</p> <p>The Port of Tacoma appreciates the opportunity to review the Puget Sound Partnership In-Lieu Fee Mitigation Program Prospectus and joint public notice documentation. The Port of Tacoma is located on Commencement Bay, within Pierce County and primarily within the Puyallup/White Watershed (WRIA 10).</p> <p>Over the years, the Port has established a regional expertise in developing high quality, high functioning habitat/mitigation sites throughout Pierce County. Moreover, the Port has expertise in habitat/mitigation site selection, design, construction, monitoring and stewardship and would be happy to assist the Puget Sound Partnership as needed. In addition, the Port has several properties that may lend themselves to potential mitigation banking opportunity sites that should be considered by the Interagency Review Team (IRT) as appropriate.</p> <p>In general, the Port is supportive of an in-lieu fee mitigation program and the ten objectives outlined in the prospectus. Specifically, the Port supports the ability to:</p> <ul style="list-style-type: none">• develop high quality off-site mitigation for unavoidable impacts to aquatic resources at development sites;• utilize scale efficiencies by combing the impacts from individual smaller projects within a service area into mitigation at larger sites;• more efficiently meet regulatory requirements by streamlining the compensatory mitigation process;• provide an alternative to permittee-responsive mitigation where currently no alternative exists; and,• provide a functionally viable option to mitigate for small unavoidable
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impacts that currently may be falling through the cracks.

While the Port supports in-lieu fee mitigation we offer the following comments for your consideration:

- Mitigation Assessment Tool - There is insufficient detail to comment on the proposed program accounting related to the King County/Ecology Credit/Debit Mitigation Assessment Tool model discussed in the prospectus. A review of King County's website did not easily reveal the tool. According to the prospectus, the tool will also be applied to "determine the potential lift with the conceptual mitigation plan." This is an extremely important concept that the seller and buyer must agree on, therefore additional documentation and/or analysis should be provided so that an assessment of tool can be conducted and/or evaluated.
- Stakeholder Involvement Strategy - As part of the Stakeholder Involvement Strategy process, the Port requests to be included as a participant. The Port has demonstrated leadership in habitat development and will play a key role in future habitat creation within Pierce County, which lends to a coordinated effort.
- Site Selection Process - As noted above, the Port has acquired sites designated for future habitat/mitigation improvements. The Port requests the ability to assist the Puget Sound Partnership with its site selection process.
- Sponsor Site Selection Process - In reviewing the site selection sponsorship, the definition of a site sponsor is unclear. Specifically, it is unclear if the initial site sponsor is the project proponent/applicant or the Puget Sound Partnership. A better description of that process would be appreciated.

Again, thank you for the opportunity to comment on this proposal. The Port looks forward to working with all the resource agencies to make this a successful program. Feel free to contact Jason Jordan, the Port's senior environmental project manager, at 253 830-5321 or jjordan@portoftacom.com should you have any additional comments or questions.

Sincerely,
Sue Mauermann
Director, Environmental Programs

c: Jason Jordan, Senior Environmental Project Manager

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<p>June 9, 2010</p> <p>Crystal Elliot, Herrera Environmental Consultants</p>	<p>From: Crystal Elliot [mailto:celliot@herrerainc.com] Sent: Wednesday, June 09, 2010 5:04 PM To: Harper, Kimberley A NWS Subject: Puget Sound Partnership ILF Mitigation Program NWS-2010-654</p> <p>Dear Kim,</p> <p>Thank you for providing the opportunity to comment on the proposed Puget Sound Partnership In-lieu Fee Mitigation Program. I have a few serious concerns about the program and its ability to adequately compensate for ecosystem functions lost due to permitted wetland impacts. My comments and suggestions are provided in bulleted format below.</p> <ul style="list-style-type: none">* Temporal lag in replacement of lost functions creates risk for violation of "no-net-loss" * The prospectus indicates that the ILF will "reduce temporal loss of function" (page 1). However, in a somewhat contradictory statement, it states that "the Partnership's ILF Program will have three growing seasons to obligate funds for compensatory mitigation after fees are collected" (page 10). In addition, it states that these funds can be "used for developing mitigation banking plan," (page 10), which indicates that the money may be used to fund a planning effort for a project that has no designated implementation timeframe. In addition, it states that "the ILF program sponsor may request advance credits within each service area based on the projected volume of development occurring in that service area", which means that credits can be sold to compensate for impacts in advance of even a plan being in place for the receiving-site plan. All of these stipulations provide an enabling mechanism for significant delays in replacement of lost functions. * Following, given the potential for a significant delay in the compensation for wetland losses under the ILF program, the risk of lost functions (and therefore a violation of no-net-loss) is extremely high. In addition, the prospectus does not specify a strategy for addressing the escalation of project costs over time beyond the original debit, which can be significant even over a one-year timeframe, let alone a three-year timeframe or longer. * The ILF Program needs to better articulate how this approach would actually result in no-net-loss given the high risk for temporal loss of ecosystem functions. * The Final Federal Rule on Compensatory Mitigation issued by the
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Corps and EPA in 2008 (40 CFR Part 230) establishes a preference for the use of mitigation bank credits, when available.

* The Final Rule states that mitigation banking is the preferred method of compensatory mitigation for loss of wetlands due to the fact that mitigation bank credits can not be sold until replacement of functions is assured:

"Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule establishes a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation." (40 CFR Part 230, p.19594)

* With regard to the Final Rule's opinion on in-lieu fee programs:

"After carefully considering all comments, for and against, we have decided to retain in-lieu fee programs as a distinct third-party compensation option, subject to equivalent ecological standards as the other types of compensatory mitigation (mitigation banks and permittee-responsible mitigation) but somewhat different administrative and procedural requirements. We agree that in-lieu fee programs are important sources of compensatory mitigation in areas that do not have mitigation banks" (40 CFR Part 230, p.19665).

* Therefore, given these stipulations in the Final Rule, the ILF Program should include considerations/accommodation for this federally-established preference for the use of mitigation bank credits when possible.

* ILF Program restoration site development on large sites in lower watershed areas will be precluded by Agricultural Resource Land designations, and therefore impacts to wetlands in these lower watersheds (and subsequent collection of ILF fees) will occur without an ability actually construct projects that will compensate for these losses.

* The program's proposal of using Pierce County, an area of significant projected growth and associated ecological challenges, for a pilot area is well-founded. Historic and ongoing modifications to the County's lower watersheds, particularly WRIA 10, pose a significant hurdle to Puget Sound ecosystem restoration objectives, including recovery of ESA-listed spring Chinook on the White River. However, the prospectus does not address the significant hurdle of attempting to restore functions in these lower watershed, where the majority of

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large, undeveloped sites (those explicitly targeted by the ILF program for restoration) remaining that exhibit the greatest potential to benefit species recovery, reestablish floodplain connectivity, and improve water quality lie in areas that have been designated as Agricultural Lands of Long Term Commercial Significance (ALLCS) and zoned as Agricultural Resource Lands (AgNRL). This designation precludes conversion for restoration purposes.

* The inevitable manifestation of this paradox at the county level was illustrated by a recent court ruling that usurped Pierce County Public Works and Utilities plans for a compensatory mitigation project on a promising site, which happened to be under ALLCS/AgNRL designation (Ann Boeholt, pers. comm., 7/9/09). The prospectus should indicate how the program sponsor proposes to address this issue: how can ILF debits be allowed in good faith under the assumption that Mitigation Receiving Sites will actually be able to replace lost functions when there are no available properties on which to construct restoration projects? How will ILF credits will be valued in circumstances where compensatory mitigation "in-kind" is virtually impossible due to lack of adequate properties not designated as ALLCS/AgNRL?

* If these questions can not be adequately addressed and solutions articulated by the ILF Program and the Ag-NRL-ecological restoration issue can not be rectified, the Corps should seriously question the feasibility of this program to maintain no-net-loss in Pierce County's lower watersheds.

Thank you again for the opportunity to comment on this proposed program,

Crystal

~~~~~  
Crystal Elliot, PWS  
Ecologist  
Natural Resources and Planning  
[celliot@herrerainc.com](mailto:celliot@herrerainc.com)

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| <p>June 9, 2010<br/>Ian Elliott</p> | <p>From: Ian Elliot [ie@fairpoint.net]<br/>Sent: Wednesday, June 09, 2010 8:51 PM<br/>To: Harper, Kimberley A NWS<br/>Subject: In lieu of fee program</p> <p>Kim, Below is a copy of a letter sent to you by my daughter with some input from myself. When I was serving in the state legislature I worked with Jerry Alb to get the mitigation bank process into state law. I agree totally with the issues put forth below and feel the in-lieu program is a step backward in terms of "No net loss".</p> <p>Ian Elliot</p> <p>Dear Kim,</p> <p>Thank you for providing the opportunity to comment on the proposed Puget Sound Partnership In-lieu Fee Mitigation Program. I have a few serious concerns about the program and its ability to adequately compensate for ecosystem functions lost due to permitted wetland impacts. My comments and suggestions are provided in bulleted format below.</p> <p>Temporal lag in replacement of lost functions creates risk for violation of "no-net-loss"</p> <p>The prospectus indicates that the ILF will "reduce temporal loss of function" (page 1). However, in a somewhat contradictory statement, it states "the Partnership's ILF Program will have three growing seasons to obligate funds for compensatory mitigation after fees are collected" (page 10). In addition, it states that these funds can be "used for developing mitigation banking plan," (page 10), which indicates that the money may be used to fund a planning effort for a project that has no designated implementation timeframe. In addition, it states that "the ILF program sponsor may request advance credits within each service area based on the projected volume of development occurring in that service area", which means that credits can be sold to compensate for impacts in advance of even a plan being in place for the receiving-site plan. All of these stipulations provide an enabling mechanism for significant delays in replacement of lost functions.</p> <p>Following, given the potential for a significant delay in the compensation for wetland losses under the ILF program, the risk of lost functions (and therefore a violation of no-net-loss) is extremely high. In addition, the prospectus does not specify a strategy for addressing the escalation of project costs over time beyond the original debit, which can be significant even over a one-year timeframe, let alone a three-year timeframe or longer. The ILF Program needs</p> |
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to better articulate how this approach would actually result in no-net-loss given the high risk for temporal loss of ecosystem functions.

The Final Federal Rule on Compensatory Mitigation issued by the Corps and EPA in 2008 (40 CFR Part 230) establishes a preference for the use of mitigation bank credits, when available.

The Final Rule states that mitigation banking is the preferred method of compensatory mitigation for loss of wetlands due to the fact that mitigation bank credits can not be sold until replacement of functions is assured: "Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule establishes a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation." (40 CFR Part 230, p.19594) With regard to the Final Rule's opinion on in-lieu fee programs:

"After carefully considering all comments, for and against, we have decided to retain in-lieu fee programs as a distinct third-party compensation option, subject to equivalent ecological standards as the other types of compensatory mitigation (mitigation banks and permittee-responsible mitigation) but somewhat different administrative and procedural requirements. We agree that in-lieu fee programs are important sources of compensatory mitigation in areas that do not have mitigation banks" (40 CFR Part 230, p.19665).

Therefore, given these stipulations in the Final Rule, the ILF Program should include considerations/accommodation for this federally-established preference for the use of mitigation bank credits when possible. ILF Program restoration site development on large sites in lower watershed areas will be precluded by Agricultural Resource Land designations, and therefore impacts to wetlands in these lower watersheds (and subsequent collection of ILF fees) will occur without an ability actually construct projects that will compensate for these losses.

The program's proposal of using Pierce County, an area of significant projected growth and associated ecological challenges, for a pilot area is well founded. Historic and ongoing modifications to the County's lower watersheds, particularly WRIA 10, pose a significant hurdle to Puget Sound ecosystem restoration objectives, including recovery of ESA-listed spring Chinook on the White River. However, the prospectus does not address the significant hurdle of attempting to restore functions in these lower watershed, where the majority of large, undeveloped sites (those explicitly targeted by the ILF program for restoration) remaining that exhibit the greatest potential to benefit species recovery, reestablish floodplain connectivity, and improve water quality lie in areas that have been designated as Agricultural Lands of Long Term Commercial Significance (ALLCS) and zoned as Agricultural Resource Lands (AgNRL). This designation precludes conversion for restoration purposes. The inevitable manifestation of this paradox at the

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|                                                                                         | <p>county level was illustrated by a recent court ruling that usurped Pierce County Public Works and Utilities plans for a compensatory mitigation project on a promising site, which happened to be under ALLCS/AgNRL designation (Ann Boeholt, pers. comm., 7/9/09). The prospectus should indicate how the program sponsor proposes to address this issue: how can ILF debits be allowed in good faith under the assumption that Mitigation Receiving Sites will actually be able to replace lost functions when there are no available properties on which to construct restoration projects? How will ILF credits will be valued in circumstances where compensatory mitigation “in-kind” is virtually impossible due to lack of adequate properties not designated as ALLCS/AgNRL?</p> <p>If these questions cannot be adequately addressed and solutions articulated by the ILF Program and the Ag-NRL-ecological restoration issue cannot be rectified, the Corps should seriously question the feasibility of this program to maintain no-net-loss in Pierce County’s lower watersheds.</p> <p>Thank you again for the opportunity to comment on this proposed program, Crystal Elliot, PWS Ecologist Natural Resources and Planning<br/>celliot@herrerainc.com</p>                                                                                                                              |
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| <p>June 10, 2010</p> <p>Jeff Parsons,<br/>Herrera<br/>Environmental<br/>Consultants</p> | <p>From: Jeff Parsons [jparsons@herrerainc.com]<br/>Sent: Thursday, June 10, 2010 8:10 AM<br/>To: Harper, Kimberley A NWS<br/>Cc: Jose Carrasquero; Crystal Elliot; Mark Merkelbach<br/>Subject: Comments to PSP In Lieu Fee program</p> <p>Dear Kim,</p> <p>Thank you for providing the opportunity to comment on the proposed Puget Sound Partnership In-lieu Fee Mitigation Program. I have a few serious concerns about the program and its ability to adequately compensate for ecosystem functions lost due to permitted wetland impacts. My comments and suggestions are provided in bulleted format below.</p> <ul style="list-style-type: none"> <li>* Temporal lag in replacement of lost functions creates risk for violation of “no-net-loss”</li> <li>* The prospectus indicates that the ILF will “reduce temporal loss of function” (page 1). However, in a somewhat contradictory statement, it states “the Partnership’s ILF Program will have three growing seasons to obligate funds for compensatory mitigation after fees are collected” (page 10). In addition, it states that these funds can be “used for developing mitigation banking plan,” (page 10), which indicates that the money may be used to fund a planning effort for a project that has no designated implementation timeframe. In addition, it states that “the ILF program sponsor may request advance</li> </ul> |

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credits within each service area based on the projected volume of development occurring in that service area”, which means that credits can be sold to compensate for impacts in advance of even a plan being in place for the receiving-site plan. All of these stipulations provide an enabling mechanism for significant delays in replacement of lost functions.

\* Following, given the potential for a significant delay in the compensation for wetland losses under the ILF program, the risk of lost functions (and therefore a violation of no-net-loss) is extremely high. In addition, the prospectus does not specify a strategy for addressing the escalation of project costs over time beyond the original debit, which can be significant even over a one-year timeframe, let alone a three-year timeframe or longer.

\* The ILF Program needs to better articulate how this approach would actually result in no-net-loss given the high risk for temporal loss of ecosystem functions.

\* The Final Federal Rule on Compensatory Mitigation issued by the Corps and EPA in 2008 (40 CFR Part 230) establishes a preference for the use of mitigation bank credits, when available.

\* The Final Rule states that mitigation banking is the preferred method of compensatory mitigation for loss of wetlands due to the fact that mitigation bank credits can not be sold until replacement of functions is assured: “Since a mitigation bank must have an approved mitigation plan and other assurances in place before any of its credits can be used to offset permitted impacts, this rule establishes a preference for the use of mitigation bank credits, which reduces some of the risks and uncertainties associated with compensatory mitigation.” (40 CFR Part 230, p.19594)

\* With regard to the Final Rule’s opinion on in-lieu fee programs: “After carefully considering all comments, for and against, we have decided to retain in-lieu fee programs as a distinct third-party compensation option, subject to equivalent ecological standards as the other types of compensatory mitigation (mitigation banks and permittee-responsible mitigation) but somewhat different administrative and procedural requirements. We agree that in-lieu fee programs are important sources of compensatory mitigation in areas that do not have mitigation banks” (40 CFR Part 230, p.19665).

\* Therefore, given these stipulations in the Final Rule, the ILF Program should include considerations/accommodation for this federally-established preference for the use of mitigation bank credits when possible.

\* ILF Program restoration site development on large sites in lower watershed areas will be precluded by Agricultural Resource Land designations,

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and therefore impacts to wetlands in these lower watersheds (and subsequent collection of ILF fees) will occur without an ability actually construct projects that will compensate for these losses.

\* The program's proposal of using Pierce County, an area of significant projected growth and associated ecological challenges, for a pilot area is well-founded. Historic and ongoing modifications to the County's lower watersheds, particularly WRIA 10, pose a significant hurdle to Puget Sound ecosystem restoration objectives, including recovery of ESA-listed spring Chinook on the White River. However, the prospectus does not address the significant hurdle of attempting to restore functions in these lower watershed, where the majority of large, undeveloped sites (those explicitly targeted by the ILF program for restoration) remaining that exhibit the greatest potential to benefit species recovery, reestablish floodplain connectivity, and improve water quality lie in areas that have been designated as Agricultural Lands of Long Term Commercial Significance (ALLCS) and zoned as Agricultural Resource Lands (AgNRL). This designation precludes conversion for restoration purposes.

\* The inevitable manifestation of this paradox at the county level was illustrated by a recent court ruling that usurped Pierce County Public Works and Utilities plans for a compensatory mitigation project on a promising site, which happened to be under ALLCS/AgNRL designation (Ann Boeholt, pers. comm., 7/9/09). The prospectus should indicate how the program sponsor proposes to address this issue: how can ILF debits be allowed in good faith under the assumption that Mitigation Receiving Sites will actually be able to replace lost functions when there are no available properties on which to construct restoration projects? How will ILF credits will be valued in circumstances where compensatory mitigation "in-kind" is virtually impossible due to lack of adequate properties not designated as ALLCS/AgNRL?

\* If these questions cannot be adequately addressed and solutions articulated by the ILF Program and the Ag-NRL-ecological restoration issue cannot be rectified, the Corps should seriously question the feasibility of this program to maintain no-net-loss in Pierce County's lower watersheds. Thank you again for the opportunity to comment on this proposed program,

Sincerely,  
Jeff Parsons, PhD  
Senior Engineer/Geomorphologist  
Herrera Environmental Consultants  
2200 Sixth Ave, Ste 1100  
Seattle, WA 98121  
office front desk: 206-441-9080  
office direct line: 206-787-8263  
cell: 206-384-1143

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|                                                                         | <p>Also Adjunct Assistant Professor<br/>School of Oceanography<br/>University of Washington<br/>Seattle, WA 98195-7940</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
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| <p>June 10, 2010<br/>Alison<br/>O'Sullivan,<br/>Suquamish<br/>Tribe</p> | <p>Environmental Program<br/>Fisheries Department<br/>360/394-8450<br/>Fax 360/598-4666<br/>The Suquamish Tribe<br/>P.O. Box 498 Suquamish, Washington 98392</p> <p>June 10,2010</p> <p>Catherine Blackwell, Project Manager<br/>US Army Corps of Engineers<br/>PO Box 3755<br/>Seattle, WA 98124</p> <p>RE: In Lieu Fee Wetland Mitigation NWS-2010-654</p> <p>Dear Ms. Blackwell,</p> <p>This letter transmits the Suquamish Tribe's ("Tribe") comments concerning the in lieu fee wetland mitigation program, NWS-2010-654. The comments below are similar to those the Tribe provided to the Puget Sound Partnership (Partnership) in September of 2009. The May 6, 2010 prospectus is correct in stating that the Suquamish Tribe is not in support of in lieu fee proposals at this time (due to many significant uncertainties and unanswered questions). Other than the pilot study location, the proposal appears to be similar to the one reviewed and commented on in 2009.</p> <p style="text-align: center;"><u>General Comments</u></p> <p>The Tribe understands that although the goal of this program is not to expedite development, the parameters of the program do not fully address this concern. The Tribe supports the Partnership's strategy for cleaning up, restoring, and protecting Puget Sound by 2020. However, the Tribe believes that the action agenda must be implemented in its entirety to be successful. This proposal may have the potential to hasten development in sensitive areas by offering yet another option to mitigate impacts on more constrained sites. In addition, wetland mitigation banking projects (which are essentially the same as "in lieu fee") are not proven successful. Uncertain{y exists as to the long term funding support and staff availability for sustaining this proposal.</p> <p>The uncertain and undefined "cooperative" approach between jurisdictions,</p> |

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agencies and Tribes raises concerns. To date, coordination with the Suquamish Tribe regarding other proposed mitigation banks is notably lacking or nonexistent. Not all development projects requiring mitigation require authorization by the Corps (or have a federal nexus) which may limit the Tribes ability to substantively comment and provide input on impacts to treaty rights and resources. The USACOE has a federal responsibility to the Tribes to protect treaty rights and resources.

The Tribe strongly believes that another option for mitigation should not be offered until problems with existing available mitigation programs are addressed. Most would agree that the lack of success in mitigation projects results from lack of long term monitoring maintenance and enforcement. The Tribe feels that existing mitigation programs need to be evaluated and deficiencies for demonstrated success need to be addressed prior to implementing more untested options.

The Washington State Department of Ecology (DOE) has already certified 8 wetland mitigation banks across the state and another 6 are in the process of being certified. Also, there are 4 other "non-Ecology" wetland banks in operation. The Suquamish Tribe believes that these existing banks should be monitored and evaluated for success, eliminating the need for a new "pilot" study.

Specific Comments

Needs and Objectives: Downplaying the importance of smaller wetlands is problematic. Although the values and functions provided by small isolated wetlands may seem marginal when considered individually, cumulatively, and especially at the regional and watershed scale, these wetlands provide significant ecological, hydrological, and water quality functions. Smaller wetlands provide migratory corridors for a variety of species (including but not limited to amphibians and reptiles) that are dependent on these types of habitats for some or all of their life stages. Eliminating small wetlands reduces habitat connectivity and species biodiversity (Semlitsch and Bodie. 1998. Are Small Isolated Wetlands Expendable? Conservation Biology, Pages 1129 -1133).

4.7 The prospectus states that an "inventory" or list of candidate sites is yet to be developed. The prospectus states that the Tribes will be utilized when the Partnership develops this list but there is no assurance of meaningful consultation. The Tribe expects to be kept informed of project status and notified of any relevant project related actions. We would like the opportunity to provide comment as new information becomes available.

7.1 The prospectus states that the Partnership is responsible for evaluating ecosystem conditions and prioritizing the most important actions to restore watersheds throughout the region. The Tribe is concerned about the

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|                                        | <p>Partnerships ability to accurately assess and value the impact (benefits) of development (mitigation) projects. The Tribe has not had an opportunity to evaluate the Credit/Debit tool to assess impacts as it is still being developed and the Suquamish Tribe Environmental Program has not been provided an opportunity to review or comment on the process. The use of a highly political body to oversee such a program does not seem appropriate and it has the potential to have significant impacts on tribal treaty resources.</p> <p><u>7.4</u> Advance credits should not be an option. Advance credits do not provide the Tribe or the agencies any assurances that the resources will be adequately protected and the goal of no-net-loss attained. Advanced credits could mean empty promises.</p> <p><u>7.5</u> Although the concept of mitigation banking has been in practice for more than 15 years, it is still relatively new. To successfully complete mitigation before the impact ensuring no-net-loss and providing the agencies with the assurance of mitigation success takes a significant amount of investment funding for the creation but also years for the wetland to become established before credits can be sold. The Tribe is not convinced that significant and long term funding is available.</p> <p>Based on our review, the Suquamish Tribe objects to this proposed project for the above reasons and recommends denial of the proposed project until more detail has been provided and considerable uncertainties associated with the proposal are adequately addressed. We believe the proposed project has the potential to cause significant damage to Tribal resources. You can contact me at (360) 394-5447 (<a href="mailto:aosullivan@suquamish.nsn.us">aosullivan@suquamish.nsn.us</a>) if you have any questions.</p> <p>Sincerely,<br/>Alison O’Sullivan<br/>Biologist, Suquamish Tribe Environmental Program</p> |
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| <p>June 10, 2010<br/>Pierce County</p> | <p><u>General Comments</u><br/>We can agree that mitigation, in general, is a less than perfect process. However, we remain unconvinced as to whether this means that mitigation, as a practice, is flawed or whether it means that our methods of establishing performance standards and goals are flawed. Also there is not agreement with the generalization that small mitigation projects “.....less than one acre in size” are “...even when successful...limited in scope.”</p> <p>We agree that In-lieu Fee (ILF) programs, in general, do hold promise as a good solution to the individual mitigation sites done concurrently with the impact, which are sometimes inadequately buffered or otherwise poorly designed but</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

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that still meet regulatory requirements. There are reasons that concurrent mitigation frequently fails such as poor siting within the watershed or inadequate site assessment work prior to mitigation design. In-lieu Fee programs can help alleviate some of these failings.

The proposal to pre-capitalize ILF pilot sites will further improve the ability of this program to adequately compensate for unavoidable wetland disturbances. In our experience, construction of mitigation/restoration sites can easily take 4 years from conception to execution: one year for site identification and property acquisition, one or more years for site assessment, design, and environmental permitting, and one or more years for construction and site planting. Pre-capitalizing one or more ILF sites and beginning the process of site assessment, design, permitting, and even construction before any ILF credits are sold can dramatically reduce the temporal loss of wetland functions that would otherwise result if sites are only identified, designed, and constructed once sufficient ILF funds have been gathered. This alleviates one of the concerns about ILF programs.

We agree that restoration efforts in key locations could provide significant improvements to hydrologic processes as well as benefits to water quality. Within less than 2 years of construction, the Pierce County South Midland Wetland Reserve—a site where Pierce County Surface Water Management restored and rehabilitated wetlands—is demonstrating benefits to water quality. A recent sampling for fecal Coliform in surface waters upstream and downstream of the Reserve showed a nearly 90% decrease in fecal Coliform counts after the water flowed through the restored floodplain wetland. The ILF program would provide options to individuals or agencies who proposed actions that have an unavoidable wetland disturbance, but who are lacking the expertise and resources to restore and create wetlands. It would also provide another option for compensatory mitigation to those individuals and agencies that do have such resources but who are unable to come up with a better mitigation site.

Finding available and appropriate land for wetland restoration to provide concurrent mitigation can be a challenge – a challenge for the public sector and the private sector. The challenge to find suitable sites in urban areas is particularly challenging--where parcels are small and development is dense. The development of ILF sites within urban areas would be of great benefit towards maintaining wetland functions near to urban development impacts.

Specific Comments

The achievement of “No Net Loss” is very important and is a major reason the program is needed. It should be included in the Section 2 discussion.

Page 2—PSP focuses on water quality which is good, but suggests that

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restoration is all that is needed. The overriding goal of agencies is still “no net loss” of wetlands. This goes beyond restoration, which may not meet that goal. Perhaps a different term could be used. Restoration in terms of a type of mitigation implies something different than an overall goal of restoring functions. Mitigation ratios required by agencies may require the creation of additional wetlands to meet that goal, to meet mitigation ratios of more than one to one.

It would be helpful to see a relationship between the permits issued and the number of wetlands or amount of habitat impacted in the discussion about development in Pierce County.

Section 3, Objectives, item D. The compensatory mitigation process remains the same whether a mitigation bank exists or not. Perhaps the objective should be that regulatory requirements for compensatory mitigation can be more easily satisfied because there is an effective solution to meet the need for mitigation sites.

Objective E, wouldn't a related objective be to provide the best mitigation crediting sites for individual projects?

Section 4.1, the amount of payment for the credits is supposed to include site development, management costs, etc. How will the extent and severity of impacts be correlated to the cost of credits? Can there be “penalty” fees?

Same section, third paragraph, “...ecological benefits are maximized *and to facilitate the overall goal of “no net loss” of resources.*” (To address the “no net loss” goal.)

Section 4.5, Sponsor Qualifications. Should this include a mention of “or successor agency”? PSP's predecessor agencies have all been temporary.

Mitigation credit sites are needed as are the environmental benefits they provide. It would be great to see the program expanded to all aquatic resources since they are all so connected.

Regulatory Authorities (page 6)

Local Critical Areas Ordinances and Shoreline Master Programs are listed among regulatory authorities that the ILF program shall be in accordance with. Within Pierce County, the County Critical Areas Ordinance (Title 18E) and Shoreline Master Program (Title 20) are only two of the county codes that must be consulted for any development (including development of restoration projects). The County Comprehensive Plan (Title 19A), Community Plans (Title 19B), Development Design Standards and Guidelines (Title 18J), and Zoning Regulations (Title 18A) are some of the additional authorities that would be applicable. Other jurisdictions likely have similar codes, beyond the critical

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areas ordinances, that would be applicable.

**Determining costs of credits**

Costs of designing, constructing, and maintaining mitigation-receiving sites will vary due to a number of factors. Debit unit prices from site to site could therefore be expected to vary as well (if they are based on site implementation, construction, and maintenance costs). If permittees have a choice of which site they will buy into/which debit price they will pay, they will clearly choose the cheapest. Alternatively, debit prices will simply vary based on the service area and permittees have only the choice of paying the price for credits at the site that is within the service area of their impact site (this alternative will not work if and when there are more than two sites in a service area), or PSP must consider a way to determine a common price for all debit units region-wide. This final option is complicated by the fact that the costs of yet-identified mitigation-receiving sites is, of yet, unknown.

**Time period to generate credits**

While we understand that the 2008 Federal Compensatory Mitigation Rule states that mitigation-receiving projects must be identified within “three full growing seasons” of the credit sale, the Federal Rule was written to apply broadly, to the entire country. There may be confusion, locally, as to what is meant by “growing season” and a different term should be used (e.g. “year”) or “growing season” should be defined in a glossary. In the minds of some, spring and fall could be considered independent growing seasons. It is important that this requirement be clear and transparent.

It would be helpful for more specifics on how the PSP will accomplish all of its objectives. It can be challenging to manage a relatively small number of mitigation projects within a single jurisdiction such as Pierce County. The PSP Program promises to coordinate with review agencies at the Federal, State, and local levels while assuring compliance with no-net-loss requirements and demonstrating greater efficiency and providing greater ecological benefit. Plus, it will do all these things while streamlining the compensatory mitigation process. The intent is appreciated, but the proposal lacks specifics as to how PSP will meet these objectives.

It is imperative that the program makes it clear to all that this is not a program that is going to allow applicants to argue that the ILF program will allow them to bypass the local regulatory requirements to be in compliance with the “avoid, minimize, mitigate” pathway. Each applicant must satisfy ALL THE LOCAL WETLAND REQUIREMENTS before being authorized to use the program.

Objective J is an example of where in-lieu mitigation would be most helpful to local jurisdictions: *“Provide a functionally viable option to mitigate for small*

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|                                                                 | <p><i>unavoidable impacts that currently may be falling through the cracks</i>". Objective J is the best use of ILF as, at least in Pierce County, most of these small impacts are associated with single-family development and mitigation for these small impacts can be particularly onerous. Having said that, we wonder why PSP feels these small impacts "may be falling through the cracks". We believe the Pierce County regulations are addressing small impacts.</p> <p>It's unclear how one would initiate the use of ILF. Would a project proponent contact PSP or would the County? Would the County have to first agree that all impacts have been avoided or would that be a decision for the PSP? If the County determined that impacts had not been avoided, would the applicant have to pursue all County-specific administrative remedies (such as an Appeal of an Administrative Decision) or could the applicant contact the PSP? How does this get coordinated?</p> <p>The "Credit/Debit Tool" was not found on the King County website. More information about this tool would be needed before comment is made.</p> <p>The ILF Program would have three growing seasons to obligate funds for mitigation after fees are collected. This prompts two questions: 1) how does this fit into the County's review process and 2) what sort of temporal loss should be allowed between the development impact and the implementation or assignment of mitigation?</p> <p>In regards to #1: typically, the County will sign off on a development project once mitigation is completed or (more frequently) a financial guarantee provided. Would this same sort of schedule be maintained under the ILF Program except, the monies would be provided to the PSP?</p> <p>In regards to #2: once the guarantee is received, the County issues an Approval that stipulates the amount of time the applicant has to complete the required mitigation. Usually, the time frame is one growing season. The County has been criticized for allowing even one growing season between impact and mitigation. The ILF Program might allow three growing seasons. One could expect that time line to create additional concern over temporal loss.</p> |
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| <p>June 11, 2010</p> <p>Diane Carlson,<br/>City of Bellevue</p> | <p>City Of Bellevue<br/>Office of the City Manager.<br/>Post Office Box 90012<br/>Bellevue, Washington. 98009-9012<br/>Phone (425) 452-7228. Fax (425) 452-5247</p> <p>June 11,2010</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

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|                                                                                                                                              | <p>Ms. Kimberley Harper<br/>U.S. Army Corps of Engineers<br/>Seattle District Regulatory Branch<br/>P.O. Box 3755<br/>Seattle, WA 98124-3755</p> <p>Re: In-Lieu Fee (ILF) Mitigation Program (Permit Application 2010-654)</p> <p>Dear Ms. Harper:</p> <p>Thank you for the opportunity to comment on the proposed In-Lieu Fee (ILF) Mitigation Program. While we support the concept of this pilot project to improve the effectiveness and efficiency of wetland mitigation efforts, we have several questions related to the planning process, implications to King County jurisdictions and timing.</p> <p>We are very interested in the how the outcomes of this watershed approach will balance offsite mitigation with impacts within project vicinity. Moreover, we would appreciate understanding of how the pilot will engage local jurisdictions and. monitor impacts and improvements at the local and watershed scale. Finally, we would like to know more about the timing and processes for expanding any pilot provisions into King County.</p> <p>In closing, we hope to have an opportunity to meet with you and other communities to review the results of the pilot study and to discuss these matters further before expansion of this program. Please feel free to contact Kit Paulsen, Bellevue's Environmental Scientist, at (425) 452-4861 or <a href="mailto:kpaulsen@bellevuewa.gov">kpaulsen@bellevuewa.gov</a> for further information about our comments.</p> <p>Sincerely,<br/>Diane Carlson<br/>Intergovernmental Relations Director</p> |
|                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <p>June 11, 2010</p> <p>Victor<br/>Woodward<br/>Habitat<br/>Bank, LLC;<br/>Jerome Ryan,<br/>Skagit<br/>Environmental<br/>Bank;<br/>David</p> | <p>JOINT COMMENT LETTER</p> <p>BY EMAIL</p> <p>June 11, 2010<br/>Kimberley Harper, IRT Member<br/>US Army Corps of Engineers – Regulatory Branch<br/>PO Box 375<br/>Seattle, WA 98124-3755</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

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| <p>Remlinger,<br/>Skykomish<br/>Habitat, LLC</p> | <p>Brad Murphy, IRT Member<br/>Washington State Department of Ecology<br/>PO Box 47600<br/>Olympia, WA 98504-7600</p> <p>Re: Joint Comments from Washington State Mitigation Bank Sponsors in Puget Sound Region to Joint Public Notice: NWS-2010-54 - Puget Sound Partnership ILF Mitigation Program</p> <p>Dear IRT Members:</p> <p>Thank you for the opportunity to review and comment on the joint public notice for Puget Sound Partnership's In Lieu Fee Mitigation Program. The mitigation bank sponsors in the Puget Sound region have each reviewed the proposed Prospectus for Puget Sound Partnership's In Lieu Fee Mitigation Program. We have discussed the issues presented in this letter as a group and agree that the following comments reflect our collective comments and concerns about the proposed program.</p> <p>As bankers, we are intimately familiar with requirements for incentive-based mitigation programs and alternative forms of mitigation. We are generally supportive of those programs which afford permit applicants a cost-effective mitigation option to traditional permittee-responsible mitigation. When constructed and implemented properly, such programs can provide substantial improvements over other forms of mitigation. When poorly constructed, however, these programs can be a total failure. One of our primary concerns is that there is no implementing state rule to implement and govern the efforts of this program. We are aware that the state has committed a substantial amount of funding (\$4,400,000) toward the pre-capitalization of this program. However, without a clear set of implementing rules, it will be difficult to successfully approve, implement, monitor and account for the program's success. Prior to the authorization of any project using these funds as a seed source of capital, the state should promulgate rules for the process which like other rules should include public participation and the opportunity to comment.</p> <p>Prior to the formal adoption of state rules (WAC 173-700) for mitigation banking, all bank Sponsors were subject to a pilot rule to "test" the effects of proposed rulemaking. Bank Sponsors who were already in process with the Corps on their applications prior to the implementation of the state's pilot rule were forced to "re-start" the process once a pilot rule was put into effect.</p> |
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Here, however, the In Lieu Fee program is being proposed absent any rule (pilot or otherwise) for the establishment and implementation of the in lieu fee program. We question whether this is allowable under state law. Can an entire regulation-based program be authorized from a fiscal budget note without any implementing rules? If so, we question the fundamental fairness of such an arrangement – particularly when the taxpayers are subsidizing it with a group that admits that it is inexperienced in dealing with successful construction and implementation of mitigation sites and mitigation programs.

Absent a clear and binding state rule, if this application is to proceed, we request that the program follow the Federal Rules for Mitigation and In Lieu Fee Establishment (33 CFR Parts 325 and 332, and 40CFR Part 230) and that the program meet all basic requirements for program establishment and accountability prior to the Sponsor’s ability to assess and collect any in lieu fee payments. Further, because the program is being proposed based on an incomplete set of rules and regulations, we request that the program not be allowed to “creep” into other service areas served by existing mitigation banks that have otherwise complied with the higher standards required under applicable state law. We recommend that the Corps and Ecology review the Oregon Department of State Lands In Lieu Fee program which contains a specific “do not compete” clause relating to existing mitigation banks, and include this within any program Instrument.

Failing the adoption of an implementing state rule and absent a specific non-compete clause, we expect that the established hierarchy of preference for mitigation options, as clearly contained in Federal Rule at 33 CFR § 332.3(b)(2) - (6), [§ 230.93(b)(2) - (6)] will be followed. The preamble language of the Federal Rule clearly explains the purpose and justification for preferring the use of mitigation banks over in lieu fees in large part to the risks bankers face “up front” in establishing their projects, compared to in lieu fee arrangements which are typically built on a “build when paid” basis, thus subjecting them to a higher degree of risk of failure. Likewise, establishing an in lieu fee program where banks already exist represents not only the potential for unfair competition, but also a conflict of interest for approving agency stakeholders who may have a vested interest in promoting a particular in lieu fee opportunity over a mitigation bank.

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It is our opinion that if an in lieu fee program is to be established where there is an existing mitigation bank, the in lieu fee payments should first be used to buy all mitigation bank credits before proceeding with a competing program. However, in no case should in lieu fee programs be used to rehash service areas or be used to modify or supersede a mitigation bank's general service area simply because the in lieu fee sponsor has identified a site or "future roster of sites" broken down by sub basin. In other words, an in lieu fee should not be able to use the "impact within the sub basin" argument to give preference to a "proposed" in lieu fee project and site, over an existing bank's established service area.

We also question the qualifications of the sponsor to conduct and operate such a program. It seems the group would be better served to consider a role as a coordinating/enabling agency for individual in lieu fee program applicants rather than as the lead sponsor. The admitted inexperience in dealing with the physical restoration process and management of mitigation sites is a primary reason. If one were to aggregate fees and handicap the probability of success, the chances of success would be far greater if local stakeholders or area-based non-profits were in the lead role as Sponsor. This would also promote efficient and accurate program accounting and accountability – ecologically as well as financially. From the prospectus, it appears the Sponsor's intent is to collect and aggregate fees and to partially implement projects in the watershed where the fee was collected, but also to use a portion of the fee to set up programs in other watersheds. This is contrary to Federal requirements that require fees to be placed in the watershed where the impact occurs and virtually guarantees an under-capitalized fee program that is spread too thin to be effective.

It is also clear from the prospectus that the Sponsor does not truly understand the demand for mitigation credits, or how much can be reasonably accomplished with mitigation fees that may be collected. Intuitively, it makes far more sense to determine a fee, anticipated number of advance credits, etc. once a site has been identified, secured, studied and designed and performance standards have been set to establish a common expectation for the Sponsor and agencies. Understanding a site's

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receiving potential and cost inputs are vital before determining or assessing any fees. Further, given the unpredictable nature of the timing of future unavoidable impacts, and whether they would even qualify for in lieu fee mitigation makes it difficult to meet a concrete performance schedule. For this reason, we encourage the agencies to approve specific sites via an approved instrument and ensuring proper protection (conservation easement, financial assurance, long term endowment) provisions are fully provided prior to the award of any credits / fee potential – particularly because the Sponsor has more than ample financial backing dedicated to this specific effort to deliver a fully approved, fully entitled opportunity without having to assess additional fees at this point.

Also, while there are references to a variety of habitat types – estuarine, riparian corridor, headwater tributaries (fish function), and floodplain wetlands, it is often ecologically inappropriate to mitigate out-of-kind resources with a single kind of mitigation replacement. For this reason, if the Sponsor is proposing to establish a universal fee that could provide replacement of all of these habitat types, we propose that the Sponsor be encouraged to develop multiple sites with the appropriate type of resource potential to provide a broad suite of functional replacement.

The objectives provided in section 8.3.4 (Nisqually River Watershed) provide a good example for the types of sites that should be undertaken to provide a broad suite of environmental replacement. However, the scale proposed by these efforts suggest a long term/legacy type approach rather than a near-term action plan that could be implemented solely with compensatory mitigation fees – particularly given the timing requirements for performance contained in Federal Rules.

We encourage the Sponsor to pursue multiple sites that are smaller and more easily managed to capture a broad suite of environmental functions, but that can still be implemented in a reasonable time frame and with a high probability for success. The alternative is setting goals that are too aggressive and risking a situation where the fee program is undercapitalized and underperforming. At a minimum, sites should be selected based on their environmental uplift potential, the probability for successful establishment, timeliness of improvement/establishment and be secured by adequate financial assurances that fully reflect the degree of overall risk of failure or eventual non-performance.

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We suspect that, based on these criteria, the preferable option for the Sponsor will be to proceed in a stepwise fashion on a series of smaller sites before tackling the largest ones.

The prospectus also discusses program accounting and auditing, but focuses more on the credit/debit

end of the equation and does not really address financial accounting or auditing except an overall program audit every five years.

Given the many problems that in lieu fee programs have experienced in other parts of the country with under-capitalization and non-performance, and given the inexperience

of the Sponsor, we recommend that the agencies require annual financial audits of in lieu fee programs

as well as environmental/credit audits for each specific fee area or in lieu fee project service area. The

accounting rules for in lieu fees are very clearly defined in federal statute and in order for the program

to succeed and maintain its credibility, it is necessary to fully account for and disclose all fee collection

and program expenditures by watershed/service area – particularly when \$4.4 million in state funds

have been used to pre-capitalize the program, effectively subsidize mitigation projects that when “paid

for” again via fee (if using state funds, as with WSDOT or other state agency) are actually being paid for twice by the taxpayers.

ILF programs should annually account for all expenditures and costs including, but not limited to:

staff costs, appropriate land costs, monitoring, maintenance and a contingency cost so that these mitigation projects are not further subsidized with tax payer money to promote local

development (for increased sales tax revenue) and ultimately compete against private bankers.

Regarding specific credit and debit accounting, the requirements of “no net loss” needs to be met

without exception, and carefully evaluated in all in lieu fee proposals.

As an indicator of this disconnect,

the Sponsor’s prospectus carefully explains how lands already protected by a conservation easement

can be used under this program, and that preservation of high-quality systems should be encouraged.

However, we feel that preservation options should be discouraged, as with banking and other forms of

mitigation, and that if allowed should be subject to a strict and *de minimis* allowable maximum

component of “preservation” because many public entities will simply be trying

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|                                         | <p>to get value for existing public land holdings that are already wetlands, or are otherwise developmentally constrained because they are high-quality systems. In reality, no developer will receive a permit to implement an impacting project on a large, pristine Category 1 wetland for any reason. We feel that allowing a preservation-only in lieu fee agreement will be very detrimental for the watershed if this form of mitigation rewards preservation of already protected areas and doesn't instead require restoring wetland acreage in the watershed to achieve the goals of no net loss.</p> <p>While we appreciate the goals of the program, and are supportive of basin-wide, watershed restoration projects as preferred mitigation options, we are concerned by the lack of detail and apparently limited understanding and sophistication reflected by Sponsor's proposal. We are hopeful that the next iteration of this prospectus and later draft of the program Instrument will correct many of the deficiencies we find in this proposal. We are also hopeful that the IRT-agencies will recall the experiences dealing with the mitigation bank sponsors, the standards we have been bound to, and the level of effort it has taken to reach the point where credits are "available" for use. Bankers have made substantial financial and professional investments in these opportunities, and we continue to struggle to make these opportunities successful. We hope that such standards and an appropriate level of detailed review will be conducted commensurate with the level of risk of a program that is founded on a "build when paid" basis.</p> <p>Sincerely,<br/>Victor Woodward<br/>Habitat Bank, LLC</p> <p><i>/signature authorized/</i><br/>Jerome Ryan<br/>Skagit Environmental Bank</p> <p>David Remlinger<br/>Skykomish Habitat, LLC</p> |
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| <p>June 11, 2010</p> <p>Jennifer G.</p> | <p>Parametrix<br/>411 108<sup>th</sup> AVENUE NE, SUITE 1800<br/>BELLEVUE, WA 998004-5571</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |

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| Thomas,<br>Parametrix | <p>Kimberly Harper, USACOE<br/>Brad Murphy, Ecology</p> <p>Re: Puget Sound Partnership ILF Mitigation Program<br/>NWS-2010-654</p> <p>Dear Ms. Harper and Mr. Murphy:</p> <p>Please find enclosed my comments on the above-referenced project. Thank you for the opportunity to provide comments.</p> <p>Overall, it's encouraging to see the Partnership recognizing an opportunity to improve the compensatory mitigation process by establishing an In-Lieu Fee Program. If successful, the program proves to provide ecologically successful mitigation in advance of permitted impacts. It will provide opportunities for off-site mitigation which don't currently exist. Further, the proposal includes establishing sites in urban areas, both where wetland mitigation banks do not currently exist, and to capture mitigation needs within urban drainages – these are both important and necessary steps in the right direction (towards improving the existing mitigation process). The program also promises to be financially transparent, and fully accountable – critical elements to a successful program. The absence of these qualities in other ILF proposals has led to the criticism and failure of previous ILF programs.<sup>1,2</sup></p> <p>My comments are organized by page and line number of the Prospectus document. In an effort to be as helpful and succinct as possible, each section begins with a concrete recommendation, which is then followed by discussion and rationale for the suggestion. The intent is to support the proposal, which is well researched, written, and organized overall.</p> <p>Section 2.0 Need for Program</p> <p>Suggestion:</p> <p><i>Begin a new paragraph (paragraph 3) with a brief history of ILF policy – and criticisms. State up-front that unlike many historic ILF Programs, the Partnership's proposal can address temporal loss by creating an advanced mitigation site within a watershed. Also, the Proposal establishes clear and transparent financial accountability.</i></p> <p>Discussion:</p> |
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<sup>1</sup> Royal Gardner, 2000. *Money For Nothing? The Rise of Wetland Fee Mitigation*. 19 Virginia Environmental Law Journal 1.

<sup>2</sup> Review And Analysis of In Lieu Fee Mitigation in the Clean Water Act Section 404 Permit Program, Institute for Water Resources technical report, November, 2000. CEIWR-PD.

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While overall this section is strong (good to identify existing Programs, such as King County's, existing banks, and both support and lack of tribal support up front) it may be helpful to simply include one sentence at the end of paragraph 2 that explains the use of advanced mitigation and the pilot project to reduce temporal loss of function typically associated with permittee responsible mitigation. Historically, In-Lieu Fees have often acted as 'accounts' into which funds are collected as projects are permitted, and mitigation sites are implemented over time. Such a process cannot address temporal loss of function, and the use of advanced mitigation to address temporal loss is a key distinction of the Partnership's ILF proposal. Make this explicit upfront.

In the 'Objectives' section, it is assumed that 'high quality' is intended to mean 'ecologically successful' but it might be most effective to simply state that. Similarly, the assumption of Objective 'F', is presumably that the program be both financially and ecologically self-sustaining. The other objectives, particularly H, I, and J, are good.

Section 4.0 Program Establishment and Operation

Suggestion:

*Delete use of the term 'severity of impact' – unless you have an identified methodology. If so, discuss that specifically.*

Discussion:

The last sentence of the first paragraph states: "The amount and payment will be based on the extent and severity of environmental impacts. Payment will be required before permitted impacts can occur." There is insufficient detail in this section to allow a reader to evaluate how this might be measured. While one can conjecture that 'extent' could mean area (in square footage or acreage), 'severity' is less subject to scrutiny. How does one measure severity of impact? Is there a connection to how the impact affects ecological process? A consideration of whether ecological processes in the watershed are impaired? Or is it how the impact affects function or functions on site? Introducing a new variable into how impacts are measured raises many questions, none of which are addressed in the Prospectus. If there is a specific understanding of how 'severity' of impact is to be measured, it might be good to include that detail here. If not, maybe it's best not to raise those questions here, and allow readers to assume that a standardized process will be (or has been) developed.

The use of funds to implement high priority restoration sites is great. The prioritization of site selection, however, arguably creates some confusion in that the Prospectus states: "Restoration projects will be selected based on an analysis of their ability to mitigate for impacts and provide significant and broad ecological benefits." These are both laudable goals, but may very well be two different things – how will the Partnership prioritize between impacts to on-site functions and watershed priorities? In other words, is the intent to mitigate in-kind (function for function), or is the intent to use this process to

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address re-establishment of driving ecological processes within a watershed? Answers to these questions could easily lead to two different types of actions, and result in different site selection. Will watershed-based goals be prioritized over site-based consideration of impacts? Providing some clarity on prioritization will assist both the Partnership and the IRT when it comes to site selection and restoration design considerations and priorities.

This paragraph also includes the first instance in which the Prospectus mentions the use of initiating sites in advance. Moving this reference up would help to address this issue earlier. It might also be possible to address the questions which this issue raises: "How many sites? Where? On what basis would mitigation needs per watershed be established? How would the sites be selected and prioritized?"

The final paragraph of this section does an excellent job of addressing summary issues, and re-iterating that this program will not change the existing regulatory sequencing process.

#### 4.5 Sponsor Qualifications

Suggestion:

*Cite federal rule as basis for requirements of this section. Include discussion on how Partnership will address aquatic area habitat mitigation. Do not allow this opportunity to slow implementation of pilot.*

Discussion:

The first full paragraph on page 8 provides some detail and insight into how the Partnership anticipates developing the site selection process. This is helpful detail.

The second paragraph sets out the intended management agreements of the Program. There should be a citation following this information which makes it clear that: "working with a non-profit or governmental management entity...." Is a requirement of the Federal Rule.

While the third paragraph addresses the Partnership's expertise with respect to the wetland regulatory process, aquatic habitat impacts and considerations are not addressed here. Would the Partnership consider use of its staff to review aquatic mitigation proposals as well? Is there an intent to include both wetland and aquatic area mitigation sites in the pilot project (mentioned in the last paragraph of this section, on page 8). Because the use of aquatic mitigation valuation is new, it offers both opportunities and challenges. While it's an important aspect of holistic planning and ecological restoration, it may also delay progress of the pilot, in that it may require developing a new methodology and process for evaluating aquatic area credit. This risk shouldn't discourage the Partnership, but it also shouldn't be allowed to jeopardize implementation of the pilot. This appears to be a potentially significant time and cost risk of pursuing a holistic approach to mitigation. Given the

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Partnership's ambitious timelines, it may be worth considering developing the wetland mitigation aspect first, to be followed by the aquatic area mitigation strategy, if it cannot be accomplished in a timely way.

**4.7 Mitigation-Receiving Site Selection Process**

Suggestion:

*Add local government staff to the list of resources.*

Discussion:

Local government staff should be added to the list of staff resources (last bullet on page 9). These folks often have on-the-ground knowledge of the watersheds, and have often worked for years in developing basin plans and restoration priorities. They also understand the key players within a watershed, and can be valuable allies in effectively implementing projects.

Suggestion:

*Clarify that the notation: "to ensure that mitigation activities will be able to remove site constraints" does not inadvertently preclude good mitigation sites from consideration.*

Discussion:

The first paragraph following the bullets on page 9 states: "In addition to a site's ability to provide benefits at a watershed scale, potential sites will be reviewed *to ensure that mitigation activities will be able to remove site constraints thereby restoring processes and providing a lift in functions.*" (*emphasis added*). Certainly restoration of driving ecological processes should be prioritized as a first action among a suite of options, but it should not preclude the Partnership from selecting sites which cannot accomplish this goal. For example, ecologically valuable mitigation sites, particularly in urban areas, can still be established by focusing on re-establishing ecological structure and function. Urban watersheds, such as the Chambers-Clover Creek basin, often suffer from fundamentally impaired ecological processes. There is still the opportunity to provide significant structural and functional improvement to wetlands and aquatic habitat within these urbanized basins. Furthermore, most of the mitigation needs/demand occur within these basins. Therefore, while, consideration of restoring ecological processes is important, it cannot be allowed to be the sole consideration. Rather, it is the first, in a hierarchy of options to be considered. Where it is not feasible, it should not prevent the Partnership from pursuing re-establishment of ecological structure and function. Perhaps this is the intent, but it would be worth mentioning here.

**5.0 Program Account**

Suggestion:

*Tie 3 year timeframe to federal rule citation.*

Discussion:

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It should be acknowledged that the 3 year timeframe for allocating funds to be used towards ILF site implementation is a requirement of the Federal Rule. Without this citation, this timeframe could be construed as both arbitrary and unfair to other forms of alternative mitigation (i.e. banks). (My guess is that this is a simple oversight, as the Federal Rule is cited on page 12 with respect to this same requirement. Moving the citation up to the first usage would help to clarify this issue).

Suggestion:

*Research the language related to establishing a Performance Bond (page 11, bullet 2), to ensure that this is an appropriate financial mechanism for a public agency. A construction contingency fund may be more appropriate – established project by project.*

Discussion:

Page 11 of the Prospectus includes a bullet specifically related to establishing a performance bond. As a wetland scientist, I'm not an expert on financial tools for managing large construction projects, but having spent 15 years working on wetland mitigation banks (primarily for the public sector), I do have some familiarity with financial mechanisms intended to ensure construction of large restoration projects. It's my understanding that state agencies cannot bond against themselves. They are self-insured. While a bonding mechanism is a standard tool for private sector development, most public agencies do not, and I believe, cannot bond against themselves. I believe the intent is to set up a construction contingency fund, project by project, and to fund this account with a 15 – 20% contingency of the total cost of construction. It might also be worth noting that the intent is to establish these funds by project, and that overall, this is anticipated to be manageable, given that establishing one ILF site per WRIA within the Partnership's purview (i.e. Puget Sound drainages) is a manageable number, even at full build-out. (Particularly given that Kitsap is choosing not to participate, and permitted bank sites exist in the Skagit, and Snohomish basins, as noted in the Prospectus, and an ILF Program already exists in King County). This means that even at full build out, the Partnership is looking to manage approximately a dozen sites. This gives some sense of scale, which is helpful for a reader trying to intuit the scope and scale of the Partnership's proposal.

Overall the fiscal approach appears to be both sound and transparent – keys to a successful program.

6.0 Ledger

Suggestion:

*Clarify the intent of 'balances of available credits for each resource type'.*

Discussion:

The first bullet states that the ledger will include: "Beginning and ending

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balances of available credits of each resource type....” – meaning both wetland and aquatic habitat area credits? If so, it might be good to specify. If this is not the intent, it seems to leave the door open to further questions – what types of credits is the Partnership contemplating, beyond wetland and aquatic habitat area? If this is the intent, perhaps it is worth specifying, and adding the clause: “and other agencies as required” to the initial paragraph. Adding this clause leaves the door open to the federal services, as well as other state agencies, such as WDFW, who may take an active role in defining how aquatic area habitat credits are determined.

Suggestion:

*Do a quick review of existing CAOs in Pierce County within the pilot watershed. Make sure that these CAOs allow for use of off-site mitigation, including ILFs. Make sure that buffer impacts are allowed off-site. If CAOs within the watershed do not address these topics, set up a workshop to work with Cities to make these changes.*

Discussion:

With respect to the final paragraph of this section: “The program account ledger will separately track funds collected through sale of Federal credits, state only credits (isolated wetlands), and local credits (for buffer only impacts and non-jurisdictional critical area resources).” It would be worth a review of local critical areas ordinances of both cities and counties within the pilot project’s service area, to determine whether they allow for use of off-site mitigation mechanisms, and whether they allow buffer impacts to be mitigated for off-site. These issues have created stumbling blocks for the nascent wetland mitigation banking industry. If a local code does not allow for use of an ILF site, it limits the utility of this regulatory mechanism. Rectifying this omission in code can cost time and money, and undermines the effectiveness of having permitted mitigation in the ground prior to the impact. Perhaps the Partnership, in cooperation with Ecology, (and perhaps the Department of Commerce) could engage in some technical outreach in the initial pilot basin, to ensure that local CAOs allow for use of ILF sites specifically for these impacts. Certainly guidance to cities in updating their CAOs should allow for the use of off-site mitigation tools, as is suggested in recent publications (Wetlands and CAO Updates: Guidance for Small Cities, January 2010, Ecology Publication # 10-06-002). Unfortunately, many small cities are severely understaffed. As a result, outreach by the Partnership, in cooperation with state agencies, to assist in technical updates with respect to the use of ILFs and other forms of off-site mitigation may be both particularly useful and welcome.

#### 7.1 Method for Determining Debits and Credits

Suggestion:

*To ensure transparency and full-cost accounting, identify a cost associated with the development and use of the credit/debit tool. Alternatively, identify use of this tool as meeting BAS requirements.*

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Discussion:

I think it's a great idea to take advantage of the work that King County and Ecology are doing to work collaboratively to establish a standardized wetland assessment framework to provide the basis for the functional evaluation of the credit/debit tool. I do think the Partnership may expect the accusation that this represents a 'hidden cost', that should be accounted for in the cost of a credit. Because the methodology is still under development, it may be difficult to accurately estimate this value, but it may be worth considering, to ensure full transparency and an 'equal playing field' with respect to other forms of off-site mitigation. (For example, a banker must negotiate the functional value, and credit value, of his or her bank site, based on how the land is managed (area of re-establishment, vs. re-habilitation, vs. preservation etc.) . While agency guidance may be used here [and the Partnership could certainly argue that use of King County's accounting tool is no different than adopting agency guidance on standard mitigation ratios, and could qualify as using 'best available science' in compliance with GMA], none-the-less, the credit value negotiation is at the heart of establishing both cost and value of wetland mitigation banks. It is often a negotiation that takes a good deal of time (and therefore money) to achieve. The last thing the Partnership wants to be accused of is subsidized mitigation. Therefore, it makes sense that the cost of development and use of the accounting system be somehow acknowledged and included in the cost of a credit from the ILF Program. If the Partnership intends to account for this cost in the price of a credit, then stating that here will address the issue, and will eliminate the potential perception of 'hidden costs' and/or government subsidized mitigation before it even begins.

7.4 Advance Credits

Suggestion:

*Include an estimate of the range of ILF sites (in acres) as well as the number of sites contemplated (one per watershed) to give the reader a sense of scale of the Program at full build out.*

Discussion:

This is a great idea, and one that the Partnership clearly intends to capitalize on. However, some sense of scale would be tremendously helpful here, in order for the reader to understand the Partnership's vision of the full scope of project implementation (and some idea of costs). The Partnership could limit its discussion to the pilot project within Pierce County, and possibly Thurston County, to begin. Since the intent is clearly to use pre-capitalization funds to get the program up and running (and address the issue of temporal loss), simply re-iterating that the Partnership will start in Pierce County, and, at this time, the initial sites under consideration range from 5 to 30 acres (or whatever the case may be), allow the reader to measure the scale of the Program v.v. the existing mitigation process, and, in particular, in comparison to wetland mitigation bank sites. It might be useful to note that, generally

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speaking, ILF sites within urban basins will tend to be of a smaller scale (5-50 acres) than ILF sites located in rural or semi-rural areas. Further, the cost per credit is likely to increase for sites in urban areas, due, at least in part, to higher land costs. However, much mitigation demand is generated in these urban watersheds, and finding functional on-site mitigation can be particularly difficult in the urban setting. The main point is that the Partnership intends to address a need with a regulatory tool that doesn't currently exist, and to the extent that the Partnership can identify the intended scope and scale of anticipated needs, it helps the reader to understand the overall intent.

#### 8.1.3 Threats

##### Suggestion:

*Engage in active outreach to establish ILF sites in concert with levee setbacks in the Cities of Orting, Sumner, and Puyallup, in addition to continuing to work with Pierce County and the Puyallup Tribe.*

##### Discussion:

This section correctly notes that rapid growth within the Puyallup/White watershed is placing further pressure on existing flood ways and critical areas. Wouldn't it be great if the Partnership, through implementation of its In-Lieu-Fee Program, could help to address some of these issues by encouraging the use of levee setbacks, and further encouraging the areas newly reconnected to the riparian floodplain be considered as priority sites for In-Lieu-Fee projects? This would provide further incentive (beyond health and safety!) to local jurisdictions to pursue these types of projects. Levee setbacks are costly projects. So costly and complex, that many are beyond the means of many local jurisdictions, small cities in particular. However, with federal grant assistance, and the promise of both increased flood protection and mitigation within their own jurisdiction, these projects seem to offer a natural fit as top priorities for the Partnership to consider as initial pilot project sites. This type of approach could be assisted by working with the Governor's Office of Regulatory Assistance, to provide further help to small jurisdictions seeking to implement levee setback projects. This would minimize the cost of pursuing this type of project for small cities, and could establish a process whereby any small jurisdiction located within a floodplain could consider multiple beneficial aspects of such an approach. Certainly, from an ecological perspective, it creates a tremendous opportunity to re-establish driving ecological processes within the floodplain, and reconnecting both streams and wetlands, currently behind dikes. That would be a really exciting potential win-win, improving fish and wildlife habitat, meeting salmon recovery goals, and increasing flood storage at the same time.

In fact, this issue is addressed specifically on page 23, and identified as one of the watershed's primary salmon recovery strategies. This is a great approach, and effort should be expended to include small cities within the watershed, in addition to continuing to work with Pierce County.

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9. Stakeholder Involvement Strategy

Suggestion:

*Clarify the site selection process hierarchy of considerations to ensure that good mitigation sites aren't inadvertently precluded from consideration.*

Discussion:

This section provides a nice overview of how the Partnership intends to build on existing information and watershed plans to help inform and narrow the site selection process. This is excellent. In particular, it's important that the Partnership calls out that *"The plans represent compromise and consensus between various interests."* (page 35). For this very reason, it's critical to the success of the Program overall that consideration of the best possible sites not inadvertently preclude selection of good sites. Let me explain. I have spent nearly 20 years selecting, designing, and permitting large scale wetland restoration sites. I have seen many, many outstanding sites (from an ecological restoration perspective) slip away because of issues not related to their ecology (unwilling land owners, inability to bring multiple land owners together, difficulty in financing, difficulty in zoning, cost of restoration, adjacent land-owners concerns, etc.). I don't think we are yet at a point where we can reject potential mitigation sites because they fail to meet the highest ecological criteria. What we need is functional, high quality mitigation – mitigation that works. Sites should not be rejected out of hand if they fail to restore driving ecological processes, but can still offer significant functional lift. While I agree that sites which provide potential for restoring driving ecological processes should be prioritized, this prioritization should not preclude consideration of sites that may still offer significant functional lift. At the end of the day, you still need a willing land owner (or multiple land owners) and property acquisition can take years. Don't tie your hands unnecessarily, and leave yourself as many options for site selection as possible, for as long as possible.

9. Site Selection Process

This is a good overview, and, I hope, consistent with my comments above regarding site selection considerations.

General:

Suggestion:

*Provide a rationale as to the selection of the Nisqually Watershed as a good pilot project location.*

Discussion:

The section on the Nisqually River (page 32 et seq.) is good. Anything that contributes to on-going restoration in the watershed is a good thing. However, given that *"currently, 73 percent of the river shoreline is in protected ownership"* (page 33). And that the aquatic resource goals (page 34) are extra-ordinarily detailed (this is a good thing) – I just wonder if this is the highest priority

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watershed for a Program that relies on mitigation demand for operation. I think that the Nisqually watershed offers tremendous restoration opportunities, and I fully support those, but again, I would hate to see other sites, in other Thurston County watersheds (perhaps with higher mitigation needs) passed by. It seems that the Nisqually is and should be a high priority watershed for habitat restoration – but is it the highest priority watershed to accommodate mitigation needs? What are the anticipated mitigation demands in the watershed? How do these demands compare to other watersheds within Thurston County? How was the Nisqually watershed prioritized over others? ILF site selection should be based on an understanding of the answers to these questions. Perhaps some rationale as to why the Nisqually was presented would help to answer these questions. (Even if it's because it met the basic criterion of a watershed that drains to Puget Sound, it had well-developed basin plans, and political support. These are all fine reasons. It just seems an odd choice as a priority watershed in which to accommodate mitigation, given that it's probably the Puget Sound watershed that is in the best condition, ecologically, and given the amount of land in public ownership, I would anticipate mitigation demand to be lower than in several other watersheds which drain to Puget Sound).

**13.3 Maintenance and Monitoring:**

**Suggestion:**

*Allow for the option of independent, third party monitoring of the sites. Establish a coordinated mitigation site monitoring database in cooperation with other state agencies. Ensure that information from these sites is tied back to informing Puget Sound Restoration Goals.*

**Discussion:**

Monitoring is a required, and necessary element of any mitigation site. Why not use this as an opportunity to learn more, collectively, about failures and successes of mitigation sites within the region? This could be done under the auspices of the recent Executive Order on Natural Resources Reform Initiatives (EO -09-07), and coordinated with other, third party monitoring and data sharing efforts. This would be another step towards ensuring both transparency and accountability in the mitigation process.

**Conclusion**

In conclusion, the Puget Sound Partnership's Prospectus to establish an In Lieu Fee Program is a sound document. It is well-written, well-presented, and well thought out. If successful, the Partnership's ILF Program will establish a valuable and needed regulatory tool currently unavailable in the existing wetland and aquatic resource compensatory mitigation arena. This is much needed. The failures of compensatory mitigation are well documented. Wetland mitigation banking has proven slow to develop in Washington State. Yet mitigation requirements still need to be met, both for public and private

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|                                                                               | <p>sector projects. We can do better than the existing compensatory mitigation process. Establishing site selection criteria informed by watershed conditions and considerations is a necessary step in the right direction. Mitigation can be used as a tool to help implement watershed restoration priorities. At the very least, mitigation sites should be complementary to watershed goals. The Partnership's ILF Program, if successfully implemented, proves to be a valuable tool towards improving the success of the existing compensatory mitigation process. Further, the Partnership has clearly chosen to avoid competition with existing wetland mitigation bank sites. In addition, they have undertaken necessary outreach and coordination with the Tribes – a critical step. Where they are lacking Tribal support, they state that, and are not planning on implementing pilot projects without such support. All of these decisions show foresight, thoughtful planning, and strategy towards implementing a successful program. Perhaps most importantly, the Partnership has clearly taken pains to address some of the historic failures of previous In-Lieu-Fee Programs. This proposal will address temporal loss by getting at least one site in the ground prior to permitted impacts. In addition, there is significant detail on fiscal transparency and accountability – again – key points of a successful program. This is all very encouraging. I wish the Partnership, and the IRT agencies who are working to develop this program, tremendous success.</p> <p>Thank you for the opportunity to comment.</p> <p>Sincerely,</p>  <p>Jennifer G. Thomas<br/>Senior Wetland Ecologist<br/><b>Parametrix</b><br/>411 108<sup>th</sup> Avenue NE, Suite 1800<br/>Bellevue, WA 98004<br/>(425) 458-6231<br/>(425) 442-7988 (cell)<br/>JThomas@parametrix.com<br/>Comments submitted via e-mail June 11, 2010</p> |
|                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <p>June 11, 2010</p> <p>Stephanie Jones<br/>Stebbins, Port of<br/>Seattle</p> | <p>Port of Seattle<br/>PO Box 1209<br/>Seattle, WA 98111-1209<br/>USA<br/>Tele: (206) 728-3000<br/>Fax: (206) 728-3252<br/><a href="http://www.portseattle.org">www.portseattle.org</a></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |

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June 11, 2010

U.S. Army Corps of Engineers  
Regulatory Branch  
PO Box 3755  
Seattle, WA 98124-3755  
Attn: Kim Harper

RE: Puget Sound Partnership In-Lieu Fee Mitigation Program (NWS-2010-654)

Dear Ms. Harper:

The Port of Seattle has reviewed the public notice and associated documents for the referenced proposal. While the Port does not have comments related directly to the In-Lieu Fee (ILF) pilot projects which will be undertaken in Thurston and Pierce Counties, it is an interested stakeholder for any future expansion of the program in King County and WRIA 9.

The Port appreciates the opportunity to comment on the Partnership's ILF efforts. The prospectus is thorough and outlines an excellent structure for managing an ILF program. It appears to be patterned after the King County "Mitigation Reserves Program (MRP)", which the Port of Seattle endorses as a locally operated, well-managed and capable program. As the MRP and several entrepreneurial mitigation banks have begun to do in King County watersheds, the Partnership's proposed ILF would appear to fill a similar and much-needed role in other watersheds draining to Puget Sound that currently lack a coordinated and efficient model for implementing compensatory mitigation projects.

We would ask your consideration of the following comments:

1. The current proposal is for fees collected at the local level by the Partnership to be administered through Olympia before being returned to the local jurisdiction and spent on actual projects. The Port of Seattle strongly urges that locally-operated ILF or mitigation banks be preferred and, at a minimum, the PSP program should be administered locally and integrated into the communities that it would serve. Fees that are collected and administered at the local level are apt to be used more efficiently because there are fewer parties involved in the transaction and accounting and procurement processes are already established. Moreover, local programs are more likely to have relevant expertise and land-use familiarity, which will promote projects that are better coordinated and more sensitive to community needs.

2. The PSP program will rely on "pre-capitalization" using state funds. This could be perceived as a public subsidy that risks creating an unfair playing field for entrepreneurial programs and/or programs administered by local

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jurisdictions. Federal rules require that an ILF programs adhere to the principles of "true cost accounting" and pass all associated costs through in the fee or credit price, including: program administration costs, overhead, site selection, planning, design, permitting, construction, monitoring, maintenance, long term stewardship, and any/all other costs associated with running the an ILF program. PSP should disclose how it intends to adhere to true cost accounting principles in the establishment of its fee schedule, particularly in light of its proposed use of public funds to pre-capitalize the program.

3. The Port of Seattle is currently engaged in identifying cleanup remedies and potential compensatory actions related to resolving remediation and natural resource damages (NRD) claims for the Lower Duwamish Waterway (LDW) and Harbor Island Superfund sites and Elliott Bay. NRD claims can be brought by designated Natural Resource Trustees (Trustees). For the LDW and Harbor Island sites, the Trustees are using a damage assessment methodology based on Habitat Equivalency Analysis (HEA), which is structured very differently than the King County tool that is proposed for use by PSP. The output of the HEA is expressed in discounted Service Acre Years, or dSAYs, which are quite dissimilar from the output of the King County model. The PSP prospectus should comment on other widely-used functional assessment tools such as the HEA, and note the degree to which they are, or are not, compatible with the King County tool and PSP fee schedule. The PSP prospectus should also be clear about whether its ILF program is intended to be available for use in addressing NRD liability claims.

4. For several years, the port has been engaged in dialogue with the Trustees regarding a potential NRD settlement. Further, the LDW and Harbor Island site Trustees recently notified over 40 parties of their potential NRD liability and invited them to enter into settlement discussions. The Trustees approach to these claims is to ask parties to settle their NRD liability by either creating new habitat restoration projects or paying for their creation by others. As such, there are active efforts to evaluate restoration project options being undertaken by multiple parties. Further, entrepreneurial mitigation bankers such as Bluefield Holdings, Inc., have already obtained approval to generate and sell dSAY credits for the LDW, and Harbor Island restoration market. Likewise, the Trustees themselves intend to offer opportunities for PRPs to buy dSAY credits produced through a NOAA-managed restoration program. Based on the high level of involvement by various parties that are all capable of creating restoration projects, it would appear that the PSP ILF program does not fill a need for the LDW, Harbor Island, and Elliott Bay areas. As such, PSP should clearly state in its prospectus and instrument that it will defer to any IRT-authorized or Trustee-authorized ILF or mitigation bank program for the LDW and Harbor Island Superfund sites and Elliott Bay.

Please do not hesitate to contact me if you have questions regarding the Port of Seattle's comments.

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|                                                   | <p>Sincerely,<br/>Stephanie Jones Stebbins<br/>Sr. Manager, Seaport Environmental Programs</p> <p>cc Brad Murphy, Washington State Department of Ecology<br/>Susan Ridgley, Port of Seattle<br/>Tom Newlon, Stoel Rives<br/>Kathy Bahnick, Port of Seattle<br/>Jon Sloan, Port of Seattle</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
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| <p>June 11, 2010<br/>Margen Carlson,<br/>WDFW</p> | <p>To: Kim Harper, U.S. Army Corps of Engineers Regulatory Branch<br/>Brad Murphy, WA Department of Ecology</p> <p>CC: Patricia Johnson, Puget Sound Partnership</p> <p>From: Margen Carlson, Puget Sound Policy Lead, on behalf of the Washington Department of Fish and Wildlife</p> <p>Date: June 11<sup>th</sup>, 2010</p> <p>Re: Comments on the Puget Sound Partnership ILF Mitigation Program NWS-2010-654</p> <p>Thank you for the opportunity to review the Puget Sound Partnership's In-lieu Fee (ILF) Mitigation Program prospectus and provide feedback about the program aspects that should be addressed during development of the ILF instrument.</p> <p>ILF programs are one beneficial tool to improve the results of mitigation, and Washington Department of Fish and Wildlife, or WDFW, would like to see it become available and successful in Washington. The Puget Sound, with intense pressures to balance the development with the maintenance and recovery of important natural resources, is a good place to test and refine this approach. WDFW appreciates that the Final Rule for Compensatory Mitigation for Losses of Aquatic Resources sets a high bar for accountability and performance of both ILF and mitigation banking programs.</p> <p>WDFW offers the following suggestions, and looks forward to participating in the process that incorporates this and other feedback into the final instrument.</p> <p>Interagency Review Team<br/>In order to ensure the ILF program eventually becomes a tool for meeting the compensatory mitigation needs of a variety of natural resources, and in light of significant detail that must be resolved in the ILF instrument, WDFW would like to participate in the Interagency Review Team, or IRT. It will be important for a variety of the potential regulatory authorities listed in section 4.3 of the</p> |

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prospectus to participate in order to assure that the ILF instrument can meet the compensatory mitigation needs of multiple natural resources, as anticipated.

This is an important role and could represent a significant time commitment, particularly up front. As pilots are extended to additional natural resources and geographic areas, we look forward to working together to identify funding support for IRT participants. Please consider whether a portion of the ILF program fees could support this function to assure appropriate resource representation into future.

**Multiple Natural Resource Objectives**

WDFW and others who participated in an early “steering committee” regarding a Puget Sound ILF program support the eventual inclusion of multiple aquatic resources, and even terrestrial resources. Despite this desire, alternative mitigation concepts in Washington have largely been applied to aquatic resources, and particularly wetlands. As a result, much of the existing mitigation guidance is wetland-centric. In light of this, it is reasonable to initiate the ILF program with a “proof of concept” for wetland resources, while preserving the intention of expanding to other resources.

The details required in the instrument (e.g., crediting metrics, ratios, performance milestones), however, are likely to be very different for terrestrial or even fish or nearshore/shoreline resources than they would be for wetland classes. Hence, WDFW suggests that the scope of the instrument be clarified to include only wetland resources, or the scope of the instrument be clarified to include a broader range of resources, and resolving the attendant detail made an explicit part of developing the ILF instrument.

Regardless of the outcome of the scope of the current ILF instrument, WDFW would appreciate a discussion among IRT members regarding credit “layering”, to assure all agencies are in agreement. WDFW suggests that while parts of an ILF mitigation receiving site may be appropriately identified to confer multiple kinds of mitigation credits, a particular acre or portion thereof is taken “off the books” once credits of any kind are purchased from that areal extent, thus avoiding selling multiple kinds of credits for a single acre.

**Connecting Impacts and Mitigation**

Washington is rich in understanding of, and plans for, the conservation and restoration of our natural resources. Therefore, WDFW appreciates the intent expressed in section 4.7 of the prospectus to look across a comprehensive list

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|                                                | <p>of plans and planning processes to develop a multi-resource list of mitigation receiving sites.</p> <p>At the same time, the prospectus offers very little discussion regarding the mechanism to maintain a connection between the kind of impacts being experienced and the kind of benefit conferred by the mitigation receiving sites. In some cases, the prevalent impact types in a watershed may not be the same as high priority resources for conservation and restoration. WDFW is not comfortable trading impacts to one natural resource for gains in another, potentially very different natural resource. There is currently too much uncertainty about overall effect on ecosystem of doing so.</p> <p>It would be helpful to conduct an analysis of mitigation need in pilot areas in order to tailor mitigation receiving sites to the appropriate, anticipated impacts. In addition, WDFW hopes that the intent to implement some of the identified conservation and restoration needs as ILF receiving sites is balanced with a continued commitment to identify other funding sources for restoration and protection. Only by doing so can we assure that recovery moves beyond no-net-loss of functions toward Puget Sound ecosystem recovery.</p> |
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| <p>June 11, 2010<br/>Cyrilla Cook,<br/>DNR</p> | <p><b>From:</b> Cook, Cyrilla (DNR) [Cyrilla.Cook@dnr.wa.gov]<br/><b>Sent:</b> Friday, June 11, 2010 4:42 PM<br/><b>To:</b> Harper, Kimberley A NWS; Murphy, Brad (ECY)<br/><b>Subject:</b> Re: Puget Sound Partnership ILF Mitigation Program, NWS-2010-654</p> <p><b><i>Re: Puget Sound Partnership ILF Mitigation Program, NWS 2010 654</i></b></p> <p>Dear Ms. Harper and Mr. Murphy:</p> <p>Thank you for the opportunity to review the Puget Sound Partnership ILF Mitigation Program. The Washington Department of Natural Resources (DNR), Aquatic Resources Division is the proprietary manager of 2.6 million acres of state-owned aquatic lands. DNR manages these state-owned aquatic lands for a balance of public benefits. Our comments on the proposed mitigation program follow:</p> <p><b>Page 3, Section 4.1, Overview</b><br/>The first paragraph states that payments into the funds will be based on the extent and severity of environmental impacts. How will project construction, monitoring, adaptive management, and long-term maintenance be funded? These costs should be included in the calculations of payments into the funds.</p>                                                                                                      |

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**Page 6, Section 4.3 Regulatory Authorities**

DNR recommends the following addition under the list of regulatory authorities: Aquatic Lands Act (Chapter 79.105).

DNR is responsible for authorizing proposed uses on state-owned aquatic lands, including mitigation projects. Mitigation projects must receive DNR authorization through an appropriate agreement, and DNR must be provided appropriate monetary compensation for the use of these public lands for the life of the impacting project.

**Page 7, Section 4.4, Mitigation Sequencing**

DNR recommends that the last paragraph in this section be modified to include the underlined phrase:

*In order to qualify for this in-lieu fee program, a project applicant would have to demonstrate that all practicable avoidance and minimization measures have been taken before compensation is allowed, and that in-lieu fee compensation offers the most ecologically preferable option for offsetting losses.*

**Page 9, Section 4.6, Interagency Review Team**

DNR should participate on the interagency review team when projects are proposed on state-owned aquatic lands. This will ensure consistency of projects with state statutory requirements and facilitate timely DNR review of projects proposed on state-owned lands.

**Page 9, Section 4.7, Mitigation-Receiving Site Selection Process**

DNR recommends the following be included in the list of resources to be utilized in developing an inventory of candidate sites:

State owned aquatic lands identified as priorities for conservation and restoration under DNR's current landscape prioritization process.

**Page 10, Section 4.8, Site Stewardship**

The last paragraph in this section states that for projects on private lands, the sponsor must require that a site protection mechanism, such as a conservation easement or restrictive covenant, placed on the land.

DNR requests that a similar statement be added for public lands. Specifically, the proposal should state that projects proposed as mitigation sites on state-owned aquatic lands shall be required to be placed under a DNR approved conservation easement or lease, and that this protection mechanism must remain in place for as long as the impacts are in place.

**Page 35, Section 10.1, Development of Inventory of Candidate Sites**

Please include the following in the recommendations for resources to develop an inventory of candidate sites:

DNR managed state owned aquatic lands identified under DNR's landscape

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|                                                                                     | <p><u>prioritization process.</u></p> <p><b>Page 38, Section 11, Site Acquisition and Protection</b><br/>The first paragraph states: “The ILF sponsor will secure project sites primarily through conservation easements, fee simple purchase, or long-term management and facility plans (for publicly owned land).”</p> <p>The statement is unclear with respect to publicly owned land. DNR authorizes mitigation projects located on state-owned lands through long term agreements such as leases or easements; a long-term management and facility plan may supplement the agreement but cannot substitute for one. This easement or lease would also ensure the proponent legal access to state-owned lands to monitor ecological performance, ensure long-term viability of the mitigation, and remedy any failures.</p> <p>The second paragraph states conservation easements will be negotiated individually based on specific attributes of the property, and a template or model easement will be developed to use as a starting point. DNR requires easements for projects proposed on state-owned aquatic lands, and can provide the Partnership with the information required for DNR easements to support development of the model easement.</p> <p>Page 39 describes the actions that will be taken in the event that the site is not adequately protected. These actions include requiring the landowner to pay for restoration, or filing a civil suit against the landowner. For projects occurring on state-owned aquatic lands, burdens associated with site management must be borne by the entity wishing to conduct the mitigation, whether it’s a single mitigation site or a bank. DNR should not be responsible for long term management of the site, except when projects located on state-owned aquatic lands include appropriate land management accounts with sufficient resources for DNR to manage and monitor the mitigation site for the life of the impacting project (i.e., the life of the mitigation bank)).</p> <p>Please do not hesitate to contact Cyrilla Cook, Policy Unit Supervisor, at (360) 902-1080, should you have questions about these comments.</p> |
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| <p>June 18, 2010</p> <p>Glen R. St.<br/>Amant,<br/>Muckleshoot<br/>Indian Tribe</p> | <p>MUCKLESHOOT INDIAN TRIBE<br/>Fisheries Division<br/>39015 - 172nd Avenue SE<br/>Auburn, Washington 98092-9763<br/>Phone: (253) 939-3311<br/>Fax: (253) 931-0752</p> <p>18 June 2010</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |

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U.S. Army Corps of Engineers  
Regulatory Branch  
P.O. Box 3755  
Seattle, WA 98124-3755  
ATTN: Kim Harper, Regulatory Branch

Washington State Dept. of Ecology  
P.O. Box 47600  
Olympia, W A 98504-7600  
ATTN: Brad Murphy, IRT Member

Re: Puget Sound Partnership In-lieu Fee Mitigation Program Joint Public Notice  
(Reference Number NWS-2010-654)

Dear Ms. Harper and Mr. Murphy,

The Muckleshoot Indian Tribe Fisheries Division (MITFD) has reviewed the Joint Public Notice for the establishment of the Puget Sound Partnership In-lieu Fee (ILF) Mitigation Program.

Whereas we understand some of the potential benefits in-lieu fee mitigation programs or mitigation banks in general, we do not feel that the Public Notice or the ILF Prospectus contain the detailed information about this program to evaluate whether it will be successful. We also believe that there can be potentially significant adverse habitat impacts from such programs if not implemented carefully. As acknowledged in the ILF Prospectus (page 8) referenced in the Public Notice, the Puget Sound Partnership lacks experience in developing or successfully implementing such a program. Due to these factors, we believe that approving this Puget Sound- wide program is premature at this time.

The Public Notice and ILF Prospectus both reference WRIA 10 as one of the pilot service areas for this project. The ILF Prospectus (Page 4) further states that proposed service areas will need approval from tribal entities, among others. At this time, MITFD does not support such an action by the Partnership in WRIA 10.

Although not the intent of the Program, we believe that the establishment of large ILF Mitigation Banks may further facilitate development throughout sensitive aquatic areas by offering a readily available option for offsetting habitat impacts. Without a proven track record that these banks will function as intended, there is no assurance that this additional development won't be accompanied by additional, deficient mitigation. This highlights the importance of developing a successful track record at individual sites before implementing an entire regional program.

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|                                                       | <p>ILF Mitigation Banks also have the potential to result in mitigating impacts to smaller habitats over broad areas by contributing to the construction of a larger habitat in one area. These 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. For example, there may be the tendency to allow impacts to coho streams to be mitigated in banks that primarily benefit Chinook. The proposed Partnership's ILF Mitigation Program does not provide the details on how it would be managed to avoid this net loss of certain habitat functions.</p> <p>In summary, we feel that the Public Notice and Prospectus lacks sufficient information regarding methodologies or assurances that the proposed Puget Sound Partnership's regional ILF Mitigation Program will be successful towards achieving goals of restoring Puget Sound habitat conditions. We also do not support the Partnership's proposal to develop a pilot study in WRIA 10.</p> <p>Thank you for the opportunity to comment on this important issue. Please feel free to contact me at (253) 876-3130 with any questions you may have on this issue.</p> <p>Sincerely,<br/>Glen R. St. Amant<br/>Habitat Program Manager</p> |
|                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>June 29, 2010<br/>Michael Murphy,<br/>King Co.</p> | <p>To: Kim Harper, US Army Corps of Engineers, Seattle District</p> <p>From: Michael Murphy, King County Department of Natural Resources and Parks</p> <p>RE: King County comments on the Puget Sound Partnership's <i>In-Lieu Fee Prospectus</i></p> <p>King County submits the following comments on the Puget Sound Partnership's <i>In-Lieu Fee Prospectus</i>. We understand these comments are being submitted after the close of the official public comment period, and as such will not be included in the official public record. However, we request these comments be added to the administrative record.</p> <p>We also request to be invited to participate on the Interagency Review Team for review of the Puget Sound Partnership's in lieu fee program.</p> <p>The following comments assume the Partnership will develop a program instrument which will provide much more detail about the program than the prospectus. The intent of these comments is to highlight specific suggestions</p>                                                                                                                                                                                                                                                                                                           |

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for additional information, clarifications, or changes we recommend for the program instrument.

If you or any Partnership staff have any questions about these comments or would like to discuss them further, please contact Michael Murphy at [michael.murphy@kingcounty.gov](mailto:michael.murphy@kingcounty.gov) or 206-296-8008.

Overall comments

- King County supports the in-lieu fee model and believes the program being proposed by the Partnership will improve mitigation in the pilot watersheds, and also provide a model for other watersheds around the region.
- The prospectus is well-written and well-organized
- Many aspects of the proposed program (and content of the prospectus) are very much modeled after King County prospectus and instrument. (This is acknowledged in the prospectus.)
- The introduction states “the ILF program will focus primarily on wetlands,” however, as written, aquatic resource goals and objectives outlined in Section 8.0 of the prospectus focus on more than just wetland restoration. King County understands the need for and supports the use the proposed program to mitigate for non-wetland impacts and when appropriate in a watershed context, to implement non-wetland mitigation projects. We suggest acknowledging in the introduction that the program will work toward restoration of multiple resource types – both aquatic (e.g. wetlands, rivers, and riparian areas) as well as non-aquatic resources (e.g. oak prairie lands).
- Indications of support by local jurisdictions and tribes should be featured prominently in the instrument.

Comments and recommendations by section

- 4.1 The instrument should provide further explanation of the process and funding sources for projects planned to be initiated in advance of payment.
- 4.2 The prospectus identifies pilot areas, but also states, “the ultimate goal of the...program is to include all watersheds draining into Puget Sound.” When the program expands beyond initial pilot areas, will the Partnership’s ILF program defer to other entities’ ILF programs, or is there intent to compete with other programs?
- 4.4 This section provides clear guidance related to requirements for applicants to comply with the “mitigation sequence” outlined in

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|     |                                                                                                                                                                                                                                                                                                                                                                                                                               |
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|     | <p>SEPA implementing rules. We suggest making the last paragraph of this section very prominent in the program instrument, perhaps including this language (or at least the concept) in multiple places throughout the instrument.</p>                                                                                                                                                                                        |
| 4.5 | <p>The instrument should provide a very clear description of the roles and responsibilities of the Partnership and the management entity, as well as qualifications of the management entity.</p> <p>It is unclear whether the Partnership will implement the pilot mitigation project or whether this will be completed in collaboration with the management entity; this should be clarified in the program instrument.</p> |
| 4.6 | <p>Related to IRT member agencies “play[ing] a role in reviewing permits”: this should be clarified to state that permit review staff will likely be different people than agency representatives sitting on the IRT. In other words, clarify that permit review is not a function of the IRT, even if the same agency has representatives participating in both processes.</p>                                               |
| 4.7 | <p>The instrument should list specific plans (i.e. document titles) used in formulating watershed context for each service area.</p>                                                                                                                                                                                                                                                                                          |
| 4.8 | <p>The instrument should clarify when (and by whom) long-term stewardship guidelines will be developed.</p> <p>All sites – public and private – will require site protection mechanisms. Public ownership in-fee may not be enough to satisfy the IRT.</p>                                                                                                                                                                    |
| 5.0 | <p>Timing of project implementation should be clarified in the instrument. Simply obligating funds does not meet the requirements of the rule. The rule states, “Land acquisition and initial physical and biological improvements must be completed by the third full growing season after the first advance credit in that service area is secured by a permittee.” [332.8(n)(4)]</p>                                       |
| 7.1 | <p>Instrument should clarify that the Credit/Debit method is a starting point for mitigation decisions, and that initial recommendations derived from application of the tool can be amended if the sponsor provides adequate justification for changes in mitigation requirements.</p>                                                                                                                                       |
| 7.2 | <p>Submitting a plan within three growing seasons does not meet</p>                                                                                                                                                                                                                                                                                                                                                           |

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|                                                                                           | <p>requirements of the rule. See comment on Section 5.0 above.</p> <p>7.4 Consider basing advance credit request on projected volume of development activity <i>and</i> sufficient opportunities for restoration to allow sponsor to earn back credits sold.</p> <p>8.0 Comments on Section 8.0:</p> <ul style="list-style-type: none"> <li>• This section is generally well-researched and thorough</li> <li>• We recommend revising the stated goal in the introduction to “focus primarily on wetlands” to acknowledge use of the program in mitigating impacts to a variety of resource types, and likewise for restoring multiple resource types. (See comment in ‘Overall Comments’ section above.</li> </ul> <p>8.1 For portions of the Puyallup/White watershed in King County, does the Partnership intend to defer to the King County’s proposed in-lieu fee? King County requests that the Partnership defer to King County’s program for impacts within King County. This should be clarified in the instrument.</p> <p>10.2 This section suggests the site selection process will be initiated for each impact. We recommend the instrument acknowledge that multiple impacts may occur prior to initiating the site selection process.</p> <p>cc: Jane-Lamensdorf-Bucher, King County Department of Natural Resources and Parks<br/>Darren Greve, King County Department of Natural Resources and Parks</p> |
|                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <p>September 24, 2010 (?)</p> <p>Scott M. Hansen,<br/>Puget Creek Restoration Society</p> | <p>Puget Creek Restoration Society<br/>702 Broadway Suite 101,<br/>Tacoma, Washington 98402<br/>Phone: (253) 779-8890<br/>Fax:(253) 779-8890<br/>Email: pugetcreek@yahoo.com<br/>WebPage: www.pugetcreek.org</p> <p>September 24, 2010</p> <p>Kimberley A. Harper-Corps Regulatory Branch<br/>Brad Murphy-Ecology SEA Program</p> <p>RE: Puget Sound Partnership ILF Mitigation Program</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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NWS-2010-654

Dear Ms. Harper & Mr. Murphy:

The Puget Creek Restoration Society (PCRS) protects, enhances and restores the Puget Creek Watershed and similar streams, wetlands and green spaces. We serve the South Puget Sound communities and invite their participation through hands-on restoration, research, education, advocacy, and by promoting a sense of stewardship.

Our organization represents over 3,000 members and volunteers located in the City of Tacoma and who are deeply concerned with wetland, stream, green space and nearshore issues in the City.

Thank you for allowing us to provide input into this project. We request the following conditions be incorporated into the project and response to our questions be developed:

PCRS feels that the project shouldn't be allowed unless the amount assessed for mitigation is based on it being able to meet the cost of purchasing, restoring and long-term monitoring of proposed mitigation site costs for replacing damages incurred.

We are very familiar with attempts to compensate damages through in-lieu fees and there are numerous problems with using mitigation fees for damages incurred. One concern is that when the original fee was assessed if it is not used immediately to develop appropriate mitigation work then the future costs to replace damages originally occurred are more than the original assessed fee. This then makes it impossible to get the same amount of habitat restored as was originally damaged.

The fees need to be sufficient to incorporate future costs and permitting issues.

A major problem and issue is that by allowing mitigation fees then the watersheds or wetland systems where the impacts will happen will be further degraded if the restoration work isn't in close proximity to where the impacts will happen. This means that some systems will be further degraded at the expense of a fee being restored. So on a landscape picture the species are being concentrated into fixed locations while losing diversity and spatial spreading out. This means that in the future a major wetland that is developed for mitigation fees could be severely impacted thus losing its functions and now we have no wetlands to replace the ones originally destroyed. The optimal situation would be to require mitigation to take place where or close to where the impacts happen thus protecting diversity and spatial continuity.

Without further clarification of the impact that the project has on the natural

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|--------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                        | <p>systems, the Puget Creek Restoration Society cannot support this project; however, if the plan were to incorporate our comments, questions and concerns into this proposal we would reconsider our position.</p> <p>I write as an officer of the Board of Directors of Puget Creek Restoration Society, which has evaluated the proposed project. We will appreciate your office's full consideration of our position, and we look forward to working with you in making Tacoma a better place for everyone.</p> <p>Thank you for your consideration in this matter. You can reach us at (253) 779-8890 if you have any questions.</p> <p>Sincerely,<br/>Scott M. Hansen-B.S., M.A., M. S., (Ph.D.-student)<br/>Ecologist/President Board of Directors</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <p>June 30, 2010</p> <p>Nancy Brennan-Dubbs, USFWS</p> | <p>From: [mailto:Nancy_BrennanDubbs@fws.gov]<br/>Sent: Wednesday, June 30, 2010 2:56 PM<br/>To: Terzi, Gail M NWS<br/>Subject: PS Partnership ILF</p> <p>Gail, I was taking a quick look at the prospectus that was sent out for this ILF. Based on a really quick glance at it, although it states that it is primarily focused on wetlands, the goals, at least for the White/Puyallup watershed, seem very focused on providing better riparian habitat/fish habitat and flood storage. Am I missing something?</p> <p>Also, is this being considered for use to minimize impacts to listed fish species? The reason I ask is that the upper watershed provides different habitat functions (it is where bull trout spawn and rear) vs the lower watershed (where bull trout forage, migrate, overwinter). Based on my quick review, it looked like most of the proposed restoration effort would be in the lower watershed (for this WRIA) This is probably where most future impacts may occur, but perhaps not all of them. Are they considering restoration actions that are higher in the watershed to use for project impacts that occur higher in the watershed? This would benefit wildlife that also occurs in these higher watersheds vs down in the low lands.</p> <p>Currently, I don't plan on attending the meeting. That could change. Trying to figure out if we have any issues. Will let you know if it does. Nancy</p> <p>Nancy Brennan-Dubbs<br/>Fish and Wildlife Biologist<br/>Federal Activities Branch<br/>US Fish and Wildlife Service<br/>510 Desmond Dr. SE Suite 102<br/>Lacey, WA 98503</p> |

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|  |                                  |
|--|----------------------------------|
|  | 360-753-5835<br>Fax 360-753-9008 |
|--|----------------------------------|

**Puget Sound Partnership ILF Mitigation Program NWS-2010-654  
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**Appendix A**

**Attachment to Diane Freethy's Comment:**

**Washington State Auditor's Office  
Accountability Audit Report  
Puget Sound Partnership**

**Washington State Auditor's Office**  
**Accountability Audit Report**

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**Puget Sound Partnership**

Audit Period  
**July 1, 2007 through June 30, 2009**

**Report No. 1003598**

Issue Date  
**May 12, 2010**



WASHINGTON  
**BRIAN SONNTAG**  
STATE AUDITOR



**Washington State Auditor  
Brian Sonntag**

May 12, 2010

Mr. David Dicks, Executive Director  
Puget Sound Partnership

***Report on Accountability***

We appreciate the opportunity to work in cooperation with your Partnership to promote accountability, integrity and openness in government. The State Auditor's Office takes seriously our role to advocate for government accountability and transparency and to promote positive change.

Please find attached our report on the Puget Sound Partnership's accountability and compliance with state laws and regulations and its own policies and procedures. Thank you for working with us to ensure the efficient and effective use of public resources.

Sincerely,

**BRIAN SONNTAG, CGFM**  
STATE AUDITOR

# **Table of Contents**

## **State of Washington Puget Sound Partnership**

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# **Audit Summary**

## **State of Washington Puget Sound Partnership**

### ***ABOUT THE AUDIT***

This report contains the results of our independent accountability audit of the Puget Sound Partnership for the period from July 1, 2007, through June 30, 2009.

We evaluated internal controls and performed audit procedures on the activities of the Partnership. We also determined whether the Partnership complied with state laws and regulations and its own policies and procedures.

In keeping with general auditing practices, we do not examine every transaction, activity or area. Instead, the areas examined were those representing the highest risk of noncompliance, misappropriation or misuse. The following areas were examined during this audit period:

- Personal service contracts
- General disbursements
- The Foundation For Puget Sound

### ***RESULTS***

In the areas we examined we identified conditions significant enough to report as findings:

- The Puget Sound Partnership circumvented state contracting laws, exceeded its purchasing authority and made unallowable purchases with public funds.
- The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation it created, incurring costs without clear public benefit.

## **Related Reports**

### **State of Washington Puget Sound Partnership**

#### ***FINANCIAL***

We perform an annual audit of the statewide basic financial statements, as required by state law (RCW 43.09.310). Our opinion on these financial statements is included in the Comprehensive Annual Financial Report (CAFR) prepared by and available from the Office of Financial Management. The CAFR reflects the financial activities of all funds, organizations, institutions, agencies, departments and offices that are part of the state's reporting entity. That report is issued by the Office of Financial Management in December of each year and can be found at [www.ofm.wa.gov](http://www.ofm.wa.gov).

#### ***FEDERAL PROGRAMS***

In accordance with the Single Audit Act, we annually audit major federal programs administered by the state of Washington. Rather than perform a single audit of each agency, we audit the state as a whole. The results of that audit are published in a report issued by the Office of Financial Management in March of each year.

# **Description of the Partnership**

## **State of Washington Puget Sound Partnership**

### ***ABOUT THE PARTNERSHIP***

The Puget Sound Partnership was established as an independent state agency on July 1, 2007, to lead efforts to restore the Puget Sound, replacing its predecessor the Puget Sound Action Team and the Puget Sound Water Quality Authority before it.

The law that created the Partnership states: "Leadership, accountability, government transparency, thoughtful and responsible spending of public funds and public involvement will be integral to the success of efforts to restore and protect the Puget Sound." (RCW 90.71.200 (d)) In December 2008, the Partnership released the Puget Sound Action Agenda, a strategy for cleaning up, protecting and restoring the Puget Sound by 2020.

The Partnership is led through the direction of a Leadership Council, an Executive Director, an Ecosystem Coordination Board and the Puget Sound Science Panel. For the 2007-2009 biennium, the Partnership was authorized 34 full-time employees and had a budget of \$16.1 million.

### ***PARTNERSHIP CONTACT INFORMATION***

Address: Puget Sound Partnership  
P.O. Box 40900  
Olympia, WA 98504-0900

Phone: (360) 725.5444

Web site: <http://www.psp.wa.gov>

### ***AUDIT HISTORY***

This is our first audit of the Partnership.

# Schedule of Audit Findings and Responses

## State of Washington Puget Sound Partnership

1. **The Puget Sound Partnership circumvented state contracting laws, exceeded its purchasing authority and made unallowable purchases with public funds.**

### **Background**

The 2007 Legislature established the Puget Sound Partnership to lead efforts to restore the Puget Sound. The Partnership is a stand-alone agency that replaced the Puget Sound Action Team, a group that had been under the Office of the Governor. The Partnership began operations on July 1, 2007. The law that created the Partnership states: "Leadership, accountability, government transparency, thoughtful and responsible spending of public funds and public involvement will be integral to the success of efforts to restore and protect the Puget Sound." (RCW 90.71.200 (d))

The law set a goal of 2020 for the restoration of the health of Puget Sound. In December 2008, as required by the law, the Partnership released the Puget Sound Action Agenda, which identified the work needed to accomplish this goal.

The Partnership consists of a Leadership Council, an Executive Director, an Ecosystem Coordination Board, a Puget Sound Science Panel and support staff.

For 2007-2009, the Partnership had an operating budget of \$16,147,000. Its sources of funding are general fund appropriations from state, federal and private/local sources, the aquatic lands enhancement account, the water quality account and the state toxics account.

This is our first audit of the Partnership. We focused our audit on contracting and purchases of information technology and other goods and services. These represent the areas in which the Partnership spent the most money.

### **Description of Condition**

During our audit we found:

#### **Contracts**

The Partnership contracted for \$6.5 million in services in 2007-2009. We reviewed competitively procured contracts and sole source contracts.

#### **Sole Source Contracts**

We reviewed four sole source contracts totaling approximately \$278,000. In order to award a sole source contract, agencies must demonstrate only one vendor is able to

meet their contracting needs. State procurement law requires sole source contracts of \$20,000 or more be advertised for at least one day in a state or regional newspaper. We noted this did not happen for two of these contracts.

The Partnership awarded a sole source contract for \$33,300 for project management related to the Action Agenda without advertising to the public. The Partnership stated it was complying with a federal mandate to use this specific contractor, which exempted it from the advertising requirement. Partnership management stated this was a verbal mandate; it could not provide written documentation to that effect.

We contacted a representative of the Partnership's federal grantor, the Environmental Protection Agency (EPA), who stated the agency would not have required the Partnership to use a specific contractor. We were also provided with the agreement the Partnership signed with the EPA that states the Partnership is responsible for conducting its own procurement process. Federal grantors require state agencies to use the same procurement process they use when spending state dollars.

The Partnership also awarded a sole source contract to a law firm for legal support in establishing the Foundation for Puget Sound to assist the Partnership with fundraising and promotional support. We reviewed this contract and found:

- The contract originally was filed with the Office of Financial Management (OFM) for \$19,999, one dollar below the threshold for advertising or conducting a competitive procurement. We found no cost detail to show how the Partnership determined this amount.
- After OFM questioned the amount, the Partnership revised the contract for \$19,950. The contract was signed January 31, 2008.
- Between February 1, 2008, and January 16, 2009, the contract was amended three times. The first increased the contract amount to \$27,500, the second to \$35,000. These amendments also extended the contract deadline twice.
- The contract stated the Partnership would pay for the work of two of the law firm's employees. Documentation shows it paid for the work of three additional employees without amending the contract to include the work and/or how much would be paid for it.

It appears the Partnership structured the dollar amount of the contract to avoid advertising or following competitive procurement requirements. Additionally, nothing in the contract or other documentation supported the legitimacy of the sole source designation. The scope of work, establishing a not-for-profit foundation, would be within the capabilities of many law firms.

State law requires agencies to use the state Attorney General's Office for all legal business. In special circumstances, that Office will appoint a special assistant attorney general to perform legal assignments on behalf of the agency. Agencies must seek counsel and sign a contract with the attorney general to receive a special assistant attorney general assignment. The Partnership did not consult with the attorney general or receive special assignment prior to contracting with the private law firm.

We further noted that payments to the law firm continued after the amended contract maximum had been reached. In reviewing the financial activity between the Partnership and the Foundation for Puget Sound (see Finding 2), we determined that the law firm continued to perform work which exceeded the \$35,000 contract amount. In November

2008, the firm began invoicing the Foundation, which then submitted an invoice to the Partnership for payment. The Partnership paid the Foundation, who in turn paid the law firm. Total paid the firm was \$51,498.

The Partnership stated the additional legal services provided to the Foundation were not performed under the contract with the Partnership; that the Foundation had entered into its own agreement for legal services. However, these services were paid for by the Partnership. See Finding 2 regarding payments made by the Partnership in excess of the agreed-upon amounts.

### Convenience Contracts

In the fall of 2007, the Partnership assembled a roster of vendors to assist in the development of the Action Agenda. Specific tasks included project management and support, cost/benefit analysis, environmental research and marketing and communication services. Vendors submitted proposals to the Partnership with their costs and qualifications in response to a published solicitation. The Partnership evaluated these proposals and signed contracts with 35 of the vendors, establishing a roster of qualified contractors. The roster allowed the Partnership to select contractors for work as services were needed.

In the original solicitation, the Partnership stated it would send a notice to the roster, asking the vendors to respond with their availability, hours and estimated costs when specific services were needed. After evaluating the responses, the Partnership would select a vendor and sign an agreement called a task order for the work to be performed.

We reviewed these convenience contracts for 22 of the 35 vendors, totaling \$4.8 million in payments. Although management established the process noted above, we found no evidence it was consistently adhered to or enforced. The Partnership could not provide sufficient documentation to show notices of work were distributed to all vendors. Therefore, the opportunity to perform work was not fairly and equitably provided to all vendors on the roster in accordance with state procurement requirements.

Although a signed contract did not guarantee a vendor would receive work, we noted some contracts were amended several times and these vendors received multiple task orders; other contractors were not used at all. The 13 vendors we did not review did not receive any task orders to perform work for the Partnership. Because the Partnership did not solicit work from all vendors on the roster as originally indicated, it is possible these vendors were not provided opportunity to bid on specific task orders.

We also noted:

- Fourteen proposals did not have at least three separate score sheets on file.
- No score sheets on file for two proposals.
- None of the proposals were stamped with the time and date received to show they met the deadline specified in the solicitation.
- We could not review two of the 22 proposals selected because they were not retained in the files and the Partnership was unable to locate them.
- No Conflict of Interest and Confidentiality certifications on file for two of the reviewers who scored the proposals.

## Information Technology purchases

The Information Services Board (ISB) develops the standards governing the acquisition of information technology (IT) goods and services for all state agencies. State agencies are prohibited from acquiring IT goods and services unless the ISB has delegated them the authority to do so. In order to receive and maintain this authority, an agency must comply with the ISB's policies and standards. The Department of Information Services (DIS) works with agencies to ensure compliance and to meet IT needs. These policies promote and facilitate electronic information sharing and access on a statewide level.

We worked with the Partnership and DIS to determine if the Partnership complied with policies and standards pertaining to the acquisition of IT equipment. We found:

- Between July 1, 2007, and January 1, 2009, the Partnership did not have delegated authority from ISB to purchase IT equipment.
- According to ISB meeting minutes dated November 13, 2008, the Partnership did not comply with ISB policies relating to security, business resumption, disaster recovery and IT management. The Partnership had not performed an IT security audit.
- The Partnership did not submit an investment plan to DIS prior to purchasing IT equipment as required by the IT Investment Policy established by ISB.
- The Partnership did not obtain IT equipment through the use of open, vendor-neutral specifications and standards.

In 2007, the Partnership reported to DIS it had budgeted \$114,600 for IT investments for the 2007-2009 biennium. We were able to determine the Partnership spent at least \$120,000 on IT goods and services. We reviewed these purchases that were made at the direction of executive management and included the following:

- \$48,378.17 spent between December 2007 and June 2008 at a retail store for Apple Macintosh desktops and laptops, video and power adapters, flat screens, software and other accessories.
- \$28,076.29 spent between August 2007 and February 2009 at another retailer on Apple Macintosh desktops and laptops, flat screens, memory drives, a server, a tape autoloader for backup storage of data, external hard drives, projectors and other accessories.
- \$44,056.41 spent between October 2007 and June 2009 at other retailers for geographic information systems software, a server, ethernet switches, e-mail services and broadband services. Approximately \$30,000 of this was paid for broadband services between December 2008 and June 2009. None of these payments included an invoice from the broadband company. Amounts were paid according to e-mails reporting the amount due.

A comparison of costs for 12 desktops and 10 laptops performed by the Partnership on October 9, 2007, determined that Hewlett Packard or Dell would cost \$25,000 to \$28,000. Apple Macintosh costs were determined to be \$42,000. The Partnership began acquiring IT equipment in August 2007 prior to this determination.

Apple Macintosh hardware and software is not compatible with statewide information systems and applications for financial reporting, payroll and travel.

Partnership staff can perform only cursory reviews and approve some documents using the Macintosh computers. However, they are unable to change or edit information, and cannot directly access programs like the Agency Financial Reporting System and the Travel and Expense Management System.

### **Goods and services**

We reviewed purchases of goods and services totaling approximately \$485,000.

We found instances of noncompliance with state law related to gifting of public funds, competitive purchasing requirements and unallowable activities for each of the purchases detailed below:

- \$6,853 for 120 monogrammed fleece vests.
- \$5,044 for 30 monogrammed jackets.

Documentation stated the vests and jackets were given to staff members as thank you gifts and were an attempt at establishing what is known as a “brand” for the agency. The vests were purchased from April to October 2008. The jackets were purchased in January 2009.

These purchases were not competitively procured. The Partnership also gave vests and jackets to elected and appointed officials, which violates state law on recognition awards. Documentation on who received the vests is vague. It stated they were given to “other folks who are making a large contribution to efforts to restore and protect the Puget Sound.” Not all recipients of the vests were listed in the documentation.

- \$3,650 for 5,000 tubes of lip balm.

Documentation stated the lip balm was purchased to hand out as a promotional tool to raise awareness about the Puget Sound. This purchase was not competitively procured.

- \$10,000 for a membership to the Cascade Land Conservancy.

The Partnership stated the contribution was intended to give it public visibility and to promote its efforts and to help it work with the Conservancy on environmental issues. The Partnership’s name appeared on several sponsorship lists for the Conservancy, but the Partnership could not show the public received value commensurate with the amount of funding provided for the membership.

- \$2,474 in catering for a private reception.

State agencies are prohibited from incurring expenditures for meals or refreshments for hosting activities. Hosting activities are defined as social events rather than governmental business events, and include individuals whom agencies are not legally authorized to reimburse. The private reception was attended by 186 people and included local government employees, independent contractors, entertainers and private citizens who were not state employees.

- \$687 for 20 personalized, engraved mahogany gift boxes containing bottles of sparkling apple cider.

These boxes were given to contractors, including individuals representing the Canadian government, elected and appointed officials and others as recognition awards as part of the Puget Sound Georgia Basin Conference. State law allows recognition awards to be given only to state employees. It does not allow recognition awards to be given to elected and appointed officials. Gifts to foreign representatives and contractors are a gift of public funds. The Partnership could not demonstrate state funds were not used to purchase these gifts.

- \$5,109 on printing and reproduction costs for 250 copies of the revised Action Agenda.

The Department of Printing was used to print the original Action Plan; however, the Partnership did not request a bid from the Department of Printing for revised copies. Staff at the Partnership went to a commercial vendor to make copies to be distributed at an upcoming event, even though the Department of Printing is the mandated state printer.

- \$8,638 for a Nikon D300 camera, equipment and accessories including a tripod and lenses.

The Partnership could not provide documentation to show this purchase was competitively procured in accordance with state requirements.

### **Cause of Condition**

Partnership management has not placed a priority on adhering to state rules and regulations over expenditures of public funds.

### **Effect of Condition and Questioned Costs**

Public funds set aside for the restoration of Puget Sound were improperly spent. If the Partnership continues to make accountability over public resources a low priority, additional money will be at risk.

We also are questioning \$33,000 in federal money paid on a contract that was improperly procured.

### **Recommendation**

We recommend the Partnership:

- Adhere to state laws and regulations over expenditure of public funds.
- Work with the federal grantor to determine if it should repay all or part of the \$33,000.

We also recommend the Department of Information Services work with the Partnership to bring it into compliance with state law and policy on information services, including a security and recovery plan.

We recommend the Office of Financial Management work with the Partnership to ensure it understands and follows state administrative policy and accounting procedures.

## **Partnership's Response**

*The agency appreciates your recommendations to improve compliance with state laws regulations and administrative procedures related to the expenditure of state funds.*

*The agency fully recognizes that improvement in the Partnership's compliance and accountability mechanisms must be strengthened. Even prior to your audit, agency staff has been directed to establish the proper procedures and accountability mechanisms that have been recommended. These steps include:*

- *Prior to contracting for outside legal services the agency will confer with and seek authorization from the state Attorney General's Office to avoid duplicating existing capacity and services.*
- *Based upon its experience in using convenience contracts during this audit period the Partnership will no longer use this mechanism to contract for services. Rather the agency will evaluate each potential contract on a case-by-case basis and using the appropriate contracting methods.*
- *The Partnership has taken steps to comply with Department of Information Services policies and standards. Although the Partnership was not considered compliant at the beginning of the biennium, the agency was considered compliant by the ISB in January 2009. This includes obtaining delegated purchase authority. An information technology security audit was completed on February 17, 2010. Although the Partnership had not completed a security audit during the audit period, the agency continued to implement security, business resumption and disaster recovery programs required by ISB policies.*
- *In the future the agency will acquire IT equipment through the use of open, vendor neutral specifications.*
- *Regarding purchasing goods and services, the Partnership has put in place policies designed to ensure that state contracting requirements are fully met.*

## **Auditor's Remarks**

We appreciate the Partnership's commitment to resolving the identified weaknesses. We will follow up with the Partnership at a later date to determine what corrective actions have been taken.

## Applicable Laws and Regulations

### Washington State Constitution

Article 8, Section 7: No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

### Code of Federal Regulations

#### **40 CFR 31.36 states, in part:**

- (a) When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non- Federal funds.
- (b) Grantees and sub-grantees will use their own procurement procedures which reflect applicable State and local laws and regulations.

### Revised Code of Washington

#### RCW 39.29.018 states, in part:

(1) . . . Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed, and must include evidence that the agency posted the contract opportunity on the state's common vendor registration and bid notification system. For sole source contracts of twenty thousand dollars or more, documented justification shall also include evidence that the agency attempted to identify potential consultants by advertising through statewide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable.

#### RCW 43.10.040 states:

The attorney general shall also represent the state and all officials, departments, boards, commissions and agencies of the state in the courts, and before all administrative tribunals or bodies of any nature, in all legal or quasi legal matters, hearings, or proceedings, and advise all officials, departments, boards, commissions, or agencies of the state in all

matters involving legal or quasi legal questions, except those declared by law to be the duty of the prosecuting attorney of any county.

RCW 43.10.067 states:

No officer, director, administrative agency, board, or commission of the state, other than the attorney general, shall employ, appoint or retain in employment any attorney for any administrative body, department, commission, agency, or tribunal or any other person to act as attorney in any legal or quasi legal capacity in the exercise of any of the powers or performance of any of the duties specified by law to be performed by the attorney general, except where it is provided by law to be the duty of the judge of any court or the prosecuting attorney of any county to employ or appoint such persons: PROVIDED, That RCW 43.10.040, and 43.10.065 through 43.10.080 shall not apply to the administration of the commission on judicial conduct, the state law library, the law school of the state university, the administration of the state bar act by the Washington State Bar Association, or the representation of an estate administered by the director of the department of revenue or the director's designee pursuant to chapter 11.28 RCW.

RCW 43.78.030 states, in part:

The public printer shall print and bind the session laws, the journals of the two houses of the legislature, all bills, resolutions, documents, and other printing and binding of either the senate or house, as the same may be ordered by the legislature; and such forms, blanks, record books, and printing and binding of every description as may be ordered by all state officers, boards, commissions, and institutions, and the supreme court, and the court of appeals and officers thereof, as the same may be ordered on requisition, from time to time, by the proper authorities.

RCW 43.105.041 states:

Powers and duties of board (Information Services)

- (1) The board shall have the following powers and duties related to information services:
  - a. To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data.
  - b. To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or

disposing of equipment, proprietary software, and purchased services without such delegation of authority.

RCW 43.19.1906 states, in part:

Quotations from three thousand dollars to thirty-five thousand dollars, or subsequent limits as calculated by the office of financial management, shall be secured from at least three vendors to assure establishment of a competitive price and may be obtained by telephone or written quotations, or both.

RCW 90.71.330 states, in part:

The partnership shall condition, with interagency agreements, any grants or funding transfers to other entities from the Puget Sound recovery account to ensure accountability in the expenditure of the funds and to ensure that the funds are used by the recipient entity in the manner determined by the partnership to be the most consistent with the priorities of the action agenda. Any conditions placed on federal funding under this section shall incorporate and be consistent with requirements under signed agreements between the entity and the federal government.

State Administrative and Accounting Manual

Chapter 20.15.30 states, in part:

Who is responsible for internal control?

Each agency, regardless of size, is required to adopt methods to periodically assess risk and to develop, implement, and review its system of internal controls. The methods should be tailored to the specific needs of the agency.

Chapter 85.32.20 states:

Goods and services are not to be ordered, contracted for, or paid for unless they are provided by authorized vendors and within the limitations prescribed by:

- The Department of General Administration, Office of State Procurement, (RCW 43.19.190), or
- The Department of Information Services (RCW 43.105.041), or
- The Office of Financial Management, Personal Service Contracts (RCW 39.29.065) or
- Other statute.

Chapter 15.40.15.f states:

Agencies shall not structure contracts, especially the dollar amounts, to avoid the competitive procurement or other requirements of the contract policies.

It is not appropriate to award contracts in the amounts of \$4,999 or \$19,999 without budget documentation. These amounts give the appearance of avoiding either informal or formal competition, avoiding filing the contract with OFM, or of advertising it as a sole source.

Chapter 15.20.40.g states, in part:

Convenience or "on call" personal service contracts, for the purposes of this policy, are those that agencies competitively award for their own agency use. Typically, convenience contracts are awarded to multiple firms to provide the agency quick access to personal services on an as-needed or on-call basis.

Agencies must first conduct the solicitation in accordance with Subsection 15.20.30. The solicitation document must identify the method by which services will be awarded under the convenience contracts so that work is distributed fairly and equitably among the contractors.

Methods that can be used include rotating through the contractors as services are needed, sending a scope of work to those on the list in a particular category of service and evaluating and selecting the best response, selecting based on specialized expertise if only one firm is qualified and available, or selecting based on geographical area.

Chapter 30.40.10 states, in part:

The following assets are inventoriable assets and must be carried on the property records of an agency:

- Assets with a unit cost (including sales tax and ancillary costs) less than \$5,000 identified as small and attractive assets (refer to Subsection 30.40.20 below),

Chapter 70.15.20 states:

Agencies may not make expenditures for meals in the following situations:

- For anniversaries of agencies, receptions for new, existing, and/or retiring employees or officials, election celebrations, etc.
- Any "hosting" activities. "Hosting" includes, but is not limited to, those activities that are intended either to lobby a legislator or a governmental official, or are to be a social rather than governmental business event, and include expenditures for meals for those whom agencies are not legally authorized to reimburse.

Information Technology Investment Policy, Policy 200.P2

Policy

The Information Services Board (ISB) has authority over the purchase of all information technology (IT) investments made by executive and judicial

branch agencies. The ISB may delegate this authority to agency directors, who are prohibited from making IT investments without it. Agency directors are responsible for the management and use of information systems, telecommunications, and IT equipment, software, and services of their respective agencies.

Except for making any of the investments listed [as exceptions], agency directors are granted a delegated authority of:

- \$50,000 for agencies with 49 or less total agency FTEs, or
- \$250,000 for agencies with 50 to 149 total agency FTEs, or
- \$1,000,000 (or a greater amount determined by the ISB) for agencies with 150 or greater total agency FTEs,

if the agency has complied with the provisions of the portfolio management and investment policies and standards.

Agencies that fail to comply with the provisions of the portfolio management and investment policies and standards, including but not limited to annual portfolio updates, are limited to a maximum delegated authority of \$10,000.

### Information Technology Investment Standards, Policy 201.S3

#### Scope

These standards apply to all executive and judicial branch agencies and educational institutions, as provided by law, that operate, manage, or use IT services or equipment to support critical state business functions.

Acquisitions conducted within delegated authority must comply with the requirements in these Investment Standards, as well as those of the IT Investment Policy. The planning and policy component of the Department of Information Services (DIS) is staff to the ISB and the contact point for investment issues.

If ISB or DIS approval is required, it must be obtained before conducting the acquisitions and before releasing any formal solicitation document. If the solicitation results in investment cost and/or risk assessment higher than the approval authority level already obtained, the investment must receive the appropriate approvals for the revised investment cost and/or risk assessment before moving forward.

#### **Investment Plans**

To obtain ISB or DIS approval, an agency must submit an investment plan to DIS. If an investment requires ISB approval, the investment plan will be presented to the ISB. In addition to the plan, agencies may provide other documentation that contains the required information and will become the basis of the approval recommendation.

# Schedule of Audit Findings and Responses

## State of Washington Puget Sound Partnership

### 2. The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation it created, incurring costs without clear public benefit.

#### Background

The 2007 legislation that created the Puget Sound Partnership included language which gave the Executive Director the authority to create a private, non-profit entity “to assist the partnership in restoring Puget Sound by raising money and other resources through charitable giving, donations and other appropriate mechanisms.” Efforts to create this entity, The Foundation for Puget Sound, began in January 2008.

The Foundation filed its articles of incorporation with the Secretary of State on June 4, 2008, and became registered as a non-profit corporation. The articles define the Foundation’s purpose as “engaging and educating the public regarding Puget Sound’s health, including efforts and opportunities to restore Puget Sound ecosystems; lessening the burdens of government by carrying out, promoting and supporting activities that further the public purposes of the Puget Sound Partnership . . . and raising funds and other resources to support the foregoing purposes.”

Between January 2008 and January 2009, the Partnership contracted with a private law firm to provide services related to establishing the Foundation. (See Finding 1) These services included attending conferences and meetings, drafting, revising and finalizing Foundation documents and submitting forms to government entities. The Partnership paid approximately \$32,000 directly to the law firm for these services.

Additionally, the Partnership paid more than \$167,000 for activities related to the start up and operation of the Foundation from December 2008 through June 2009.

#### Description of Condition

Our audit determined the Partnership created and financed the non-profit with public resources, but failed to enforce the terms of its agreements with the Foundation.

On November 1, 2008, the Partnership signed a cooperative agreement with the Foundation that stated the Foundation initially would focus on public education and would, with the exception of startup costs to be provided by the Partnership, be self-sustaining. The Partnership agreed to pay the Foundation \$64,668 for startup costs through June 30, 2009.

On December 6, 2008, the Partnership signed a grant agreement with the Foundation to provide it with an additional \$500,000 to develop a comprehensive public education program. Payment of these funds was conditional on the Foundation raising matching funds dollar for dollar.

In May 2009, the grant agreement was amended, revising the deliverables and projects undertaken by the Foundation, and reducing the compensation amount by more than \$410,000. The amendment stated the Partnership and the Foundation had developed a comprehensive Public Education and Awareness Plan, but that the plan had been restructured to approach public education and engagement more directly. Changing the approach to the plan delayed its completion, which, according to the amendment, limited the ability of the Foundation to raise matching funds.

By the end of June 2009, the Partnership had paid the Foundation \$167,341, as follows:

- \$77,381 for startup costs, \$12,713 more than stated in the original signed cooperative agreement. Additional costs included \$7,535 in consulting services not included in the budget attached to the cooperative agreement and \$5,178 in legal fees above the amount budgeted for those services.
- \$19,960 for support and promotion of a documentary film on Puget Sound produced for public television.
- \$70,000 to underwrite a program on Puget Sound put on by the Institute for Journalism and Natural Resources for 16 journalists in July 2009. The Partnership could not provide a signed agreement between the Foundation and the Institutes for this arrangement. The payment was based on an invoice submitted by the Institute dated June 8, 2009.

Both the cooperative agreement and the grant agreement stipulated payments would be for activities identified in the Public Education and Awareness Plan. Staff initially indicated such a plan had never been developed. However, staff later provided a draft of the plan, which has not been finalized or adopted by the Foundation Board.

A key component of the enabling legislation was that the Foundation raise money and other resources to support its mission. The grant agreement stated funding was conditional on the Foundation's "successful and continuing efforts to secure and commit matching funds . . . on a dollar-for-dollar basis." We found limited documentation to show the Foundation engaged in fundraising during the audit period. It does appear it collected \$125,000 in late July and August 2009, but the Partnership paid the Foundation \$89,960 prior to receiving the matching funds as required by the grant agreement.

### **Cause of Condition**

The Puget Sound Partnership failed to enforce the terms of its agreements with a foundation created under the authority granted to the Executive Director.

### **Effect of Condition**

The Partnership spent public funds set aside for the protection and restoration of Puget Sound to support a nonprofit foundation without first receiving matching funds or deliverables required by the contract. Payments for startup costs were made in excess of agreed-upon amounts. Expenditures for these projects provided no clear public benefit above and beyond what the Partnership was authorized to provide by state law.

## Recommendation

We recommend the Partnership:

- Ensure all funds spent provide a clear public benefit and are directed at achieving the goals of the Action Agenda.
- Enforce all signed agreements and do not make payments unless deliverables are received.

## Partnership's Response

*The agency fully understands your recommendations intended to ensure that the public benefits from the expenditure of public funds. The information that you received during the audit established that the Foundation for Puget Sound began operations in January 2008. The Foundation was granted \$564,668 in November 2008. The terms of the grant provided \$500,000 in state funds for the development and implement a comprehensive public education program. These state funds were to be explicitly matched by funds raised by the Foundation. As we have previously stated, the Foundation did not raise the required matching funds during the 2007-2009 Biennium. The Partnership closely monitored the status of the match requirement during 2009. Because the Foundation was unable to raise matching funds, the Foundation and Partnership began discussions in March 2009 and formally amend the grant agreement in May of 2009 to remove the matching requirement but to allow the expenditure of funds on important public education efforts. The Partnership also reduced the total grant agreement with the Foundation by \$410,040 to a total of \$154,628 reflecting the revised scope of work. Although the Partnership paid \$19,960 to support the television documentary in April 2009, the Foundation was able to coordinate a \$20,000 match through another foundation to act as match for the agreement in place.*

*The agency is convinced that public benefits resulted from the expenditure of these monies by the Foundation for Puget Sound. Support for the public television documentary on Puget Sound educated citizens both in Washington State and around the country on the very real challenges to the health of Puget Sound. Support for the education of journalists about Puget Sound through the Institute for Journalism and Natural Resources resulted in over 19 news stories both regionally and nationally covering the plight of Puget Sound. The Foundation was also able to raise at least \$125,000 during the summer of 2009 to support education and communication with citizens and Puget Sound.*

*In the 2009-2011 Biennium the Partnership is currently not providing any grant funding to the Foundation for Puget Sound. If a decision is made to provide grant funding to the Foundation in the future, then the Partnership will work to insure that public benefits are received and that terms of its agreements are enforced.*

## Auditor's Remarks

We appreciate the Partnership's commitment to resolving the identified weaknesses. We will follow up with the Partnership at a later date to determine what corrective actions have been taken.

## Applicable Laws and Regulations

Revised Code of Washington

RCW 90.71.240 states, in part:

(5) Upon approval of the council, the executive director may take action to create a private nonprofit entity, which may take the form of a nonprofit corporation, to assist the partnership in restoring Puget Sound by:

(a) Raising money and other resources through charitable giving, donations, and other appropriate mechanisms;

(b) Engaging and educating the public regarding Puget Sound's health, including efforts and opportunities to restore Puget Sound ecosystems; and

(c) Performing other similar activities as directed by the partnership.

RCW 90.71.350 states, in part:

1. The council is accountable for achieving the action agenda. The legislature intends that all governmental entities within Puget Sound will exercise their existing authorities to implement the applicable provisions of the action agenda.

RCW 90.71.340 states, in part:

1. The legislature intends that fiscal incentives and disincentives be used as accountability measures designed to achieve consistency with the action agenda by:

- a. Ensuring that projects and activities in conflict with the action agenda are not funded;
- b. Aligning environmental investments with strategic priorities of the action agenda; and
- c. Using state grant and loan programs to encourage consistency with the action agenda.

2. The council shall adopt measures to ensure that funds appropriated for implementation of the action agenda and identified by proviso or specifically referenced in the omnibus appropriations act pursuant to RCW 43.88.030(1)(g) are expended in a manner that will achieve the intended results. In developing such performance measures, the council shall establish criteria for the expenditure of the funds consistent with the responsibilities and timelines under the action agenda, and require reporting and tracking of funds expended. The council may adopt other measures, such as requiring interagency agreements regarding the expenditure of provisoed or specifically referenced Puget Sound funds.



## **ABOUT THE STATE AUDITOR'S OFFICE**

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The State Auditor's Office is established in the state's Constitution and is part of the executive branch of state government. The State Auditor is elected by the citizens of Washington and serves four-year terms.

Our mission is to work in cooperation with our audit clients and citizens as an advocate for government accountability. As an elected agency, the State Auditor's Office has the independence necessary to objectively perform audits and investigations. Our audits are designed to comply with professional standards as well as to satisfy the requirements of federal, state, and local laws.

The State Auditor's Office employees are located around the state to deliver our services effectively and efficiently.

Our audits look at financial information and compliance with state, federal and local laws on the part of all local governments, including schools, and all state agencies, including institutions of higher education. In addition, we conduct performance audits of state agencies and local governments and fraud, whistleblower and citizen hotline investigations.

The results of our work are widely distributed through a variety of reports, which are available on our Web site and through our free, electronic subscription service. We continue to refine our reporting efforts to ensure the results of our audits are useful and understandable.

We take our role as partners in accountability seriously. We provide training and technical assistance to governments and have an extensive quality assurance program.

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