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

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

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

GENERAL COMMENTS

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

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

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

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

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

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

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

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

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

NEED FOR PROGRAM (Section 2)

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

OBJECTIVES (Section 3)

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

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

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

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

PROGRAM SCOPE (Section 4.2)

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

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

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

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

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

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

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

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

REGULATORY AUTHORITIES (section 4.3)

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

MITIGATION SEQUENCING (Section 4.4)

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

SPONSOR QUALIFICATIONS (Section 4.5)

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

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

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

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

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

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

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

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

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

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

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

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

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

PROGRAM ACCOUNT (Section 5)

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

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

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

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

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

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

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

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

LEDGER (Section 6)

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

METHOD FOR DETERMINING CREDITS AND DEBITS (Section 7.1)

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

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

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

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

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

CREDIT FULFILLMENT/RELEASES (Section 7.3)

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

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

ADVANCE CREDITS (Section 7.4)

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

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

PRE-CAPITALIZATION (Section 7.5)

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

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

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

THE NISQUALLY RIVER WATERSHED – WRIA 11 (Section 8.3)

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

STAKEHOLDER INVOLVEMENT STRATEGY (Section 9)

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

SITE SELECTION CRITERIA (Section 10.2)

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

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

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

IRT APPROVAL (Section 10.3)

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

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

SITE ACQUISITION AND PROTECTION (Section 11)

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

PRESERVATION STRATEGY (Section 12)

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

MITIGATION PROJECT IMPLEMENTATION (Section 13)

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

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

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

EVALUATION AND REPORTING (Section 14)

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

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

LIST OF COMMENTERS AND THEIR AFFILIATIONS

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