

Washington Department of Ecology
Legacy Pesticides Working Group Virtual Meeting Summary
Thursday, November 5, 2020 | 9:00 a.m. – 12:00 p.m.

Welcome

Facilitator, Joy Juelson with Triangle Associates, welcomed the group (see list of attendees) and requested brief introductions. The facilitator acknowledged the moment of time during the elections and the pandemic and thanked the working group for meeting.

The facilitator reviewed the previous small groups meetings' highlights and summaries and provided a brief overview of the Legacy Pesticides Working Group (LPWG) timeline. The topics the small groups have been working on include the following:

- **Small Group 1 – Mapping, Soil Sampling, & Notification:** Recently met with an attorney to discuss liability and legal limitations regarding notification and sampling efforts.
- **Small Group 2A – Planning:** Has been focused on how to navigate State Environmental Protection Act (SEPA), Model Toxins Control Act (MTCA), and local government jurisdiction policy and process regarding development.
- **Small Group 2B – Construction & Development:** Has been providing insights to Maul Foster Alongi (MFA) regarding the development process and understanding the potential impacts and concerns from the development community regarding legacy pesticides.
- **Small Group 3 – Outreach and Education:** Has been identifying forms and methods of outreach to a variety of impacted audiences. Recently, they have reviewed previously developed Ecology outreach materials and provided feedback.

Final Report Presentation - Lisa Parks with MFA gave a presentation of the Final Report

Small Groups Break-Out Rooms & Discussion

- LPWG members convened into their small groups to provide feedback to MFA on their report in preparation to discuss initial recommendation for Ecology. The following are reports from the small groups reporting back to the larger group on their small group specific topics and potential recommendations to Ecology for moving forward.

Group 1, Mapping, Soil Sampling, & Notification: Report out by Steve Bishop

- Steve noted that Valerie Bound with Ecology shared a draft letter that could be distributed to the public, draft lenders, and others. Group thought it was important to keep letters more general and to read the land as “impacted” vs “contaminated.”
- Do not want to create any liability for the recipient of the letter.
- The maps are simply an indicator that a parcel was or is orchard lands during a particular period of time. The existence of the maps does not mean the seller has knowledge of the maps or any information the seller may need to disclose.
- The notice to the public may be regional and not specific. Do not want to target a homeowner or neighborhood.

- Ensure that as the impact is shared that it is communicated, and the risk is manageable. The letter should not alarm the owner or indicate the property and inhabitants are at risk or in imminent danger or to infer there is any financial liability.
- Once a seller samples the soil, then the property owner or seller must disclose (Consumer Act).
- Create a protocol associated with the notification of the need to sample property that supports the public and professional community, lenders, realtors and especially developers in the pre-application process. Provide opportunities as a part of a feasibility research to obtain accurate information.
- Property Sampling Decision Tree:
 - Public needs to understand the consequences of doing a Tier 1 voluntary sample and the potential liabilities. Important to note in the information that is developed for the public that landowners may want to consult legal counsel prior to sampling. On Tier II sampling, Ecology should provide a step-by-step checklist.
- Remedy Selection Decision Tree:
 - Two kinds of developers, particularly on residential properties.
 - 1) developer/builder = end seller. Will have a great degree of control on mitigation practices (develop cap)
 - 2) developer of lots – there are different implications and developer may need to consult counsel.
 - Performance bonds may need to be posted and need to clarify when the bonds will be released. Developer may have a substantial amount of money tied up if they are selling to other builders.
- MTCA administrative pathway:
 - Important to have a well-documented predictable response. Important to reduce liability for the developer and the homeowner if they follow the appropriate steps. There needs to be a mechanism to acknowledge those steps.

Group 2A, Local Level Planning and Permitting: Report out by Joan Davenport

Joan reported a relevant discussion point which was methods to incorporate mitigation into a development project. The group discussed a hybrid process and/or local development process vs a formal process. They assessed differences around if this an appropriate vehicle to put onto a preliminary plat vs a final plat and the use of CCR's or development agreements? Example: there are very few spec. builders in Yakima. Large share of lots are developed after the final plat or independent builds after they create lots. Other comments included:

- Conversation about incorporating mitigation in the regular process similar to sewer, water, street, stormwater, or other requirements.
- Discussion to install a soil cap as requirement of the final plat and ensuring it is certified and done appropriately so the burden is on the developer vs the homeowner. However, this approach would only work in certain situations.
- Final plat development agreements are another option.
- Discussed local government innovative incentives at the development/permit level.

- It is vital to have information for the developers and landowners up front to make this program work. The pre-app process will be important and incorporating the model remedies into the approval process.
- The intent is not to dampen new construction or affordable housing and so we need to develop a good functional process for people to follow.

Group 2B, Development and Construction: Report out by Paul, Jim Maul/MFA

- Group discussed the MTCA process as it relates to local government and development processes and remediation strategies. Multiple lots and we need to get through documentation and process.
- Concern in Upper Central Washington about areas with thin topsoil including orchard lands.
- Soil Banking Implications: Group members noted current permitting differences between counties. Example, Chelan County does not have “grading and fill” permit and the public could extract topsoil from a slope without a permit and could create secondary effects (erosion, stormwater issues).
- MTCA Administrative Pathways
- Local permittees thinking through different capping options, what kind of other notifications or restrictions need to be associated with that property? Most efficient time to address may be the sub-division stage, however, as Group 2A mentioned, this approach is not going to work in all situations.
- SEPA vs SEPA-exempt sub-divisions, short vs actual subdivisions, how will SEPA-exempt subdivisions be addressed? Noted, not every division of land equal construction (examples: agricultural or family inheritance). Need to think through when a clean-up would be required.

Cost of potential solutions (pre-development remediation situations):

- Developer that will subdivide and develop a neighborhood
- Pre-existing lots that have yet to be developed and sold
- Landowners that want to develop on a lot they currently own
- Consider Grant funding through MTCA for landowners that will need to do remediation and were not informed so could not consider early in the subdivision or development process.

Group 3: Outreach and Education: Report out by Representative Goehner and Kate Elliott/MFA

Introduction from Representative Goehner

- Talked about the web-map that Ecology has as a first step for people to use to identify their properties
 - o Importance of communicating messages to landowners to give them information to make good decisions regarding manageable risks.
 - o Ensure people understand their options if they are on established properties
 - o Ensure the public is informed and we are reaching all audiences
 - o There needs to be transparency so there are no barriers to the dissemination of information
 - o Make sure people can make informed decisions according to the risks

Kate Elliott/MFA

- Talked about developing an ongoing Working Group to work through issues and topics
 - Need to ensure the roll out makes sense and does not overload anyone
 - How do we manage demand for testing and information?
 - Testing messages and materials to ensure they convey important information to all of our audiences
 - Need to rely on many partners to share the messages and information for a broader reach
 - The Working Group will identify those groups and convene them to achieve an ongoing conversation leading up to this broad education and outreach program

The Facilitator opened the discussion to questions or comments:

- Member noted: If you have a process where Ecology is approving a finished product, it will require two things:
 - Staffing to ensure compliance at all construction areas
 - You must have the entire plat before you can have it finalized, and you cannot sell houses until that is done
 - There is a sequential question that I have.
- Member asked: is the final plat / preliminary plat transition the appropriate place for this mitigation? You cannot sell any lot until the plat is final. You cannot sell the first and second lot if you are waiting for all of the lots to be mitigated, and that is a difficult implementation question. That is why we were trying to brainstorm what other vehicles might there be. We have a few recommendations to flush out, and we are trying to come up with some development options that include reduced lot sizes, increased density, increased lot coverage requirements, artificial turf as a mitigation measure – things that would be considered interesting as a carrot in the midst of all of the sticks we are putting out there.
- Phil with MFA noted that phasing could be an option for addressing final plat
- Lisa with MFA stated that a key component of this is understanding what pieces of the remedy (there are multiple pieces that can create capping, such as development of the streets and stormwater facilities and sidewalks) could be verified and approved at the final plat stage. Some of the verification happens and is likely going to need to be done at the building permit stage, so that is something that we need to understand. One of the processes currently being employed is requiring that as part of CCNRs there is also notification as well as plat notes that make people aware as they are building (whether it is a speculative building or someone building a custom home) of what the issues are and the things they need to put in place.
- MFA is working on how to make sure we are not burdening the different steps in the process and that we are phasing the approval and the verification in terms of who provides that verification. We talked about at the final plat stage that there may be an obligation on the developer, but what do you do at the building permit stage? These are all things that we are working on. A member mentioned we are talking about incentives, and perhaps a local government could choose to allow increased densities if it was amenable to communities in these areas. That would lessen the amount of uncovered land that could serve as a pathway for contamination to impact human health. Those are all things we are addressing. Thank you to all for their contributions.

- The best parallel I can think of is what we do with storm drainage. Sometimes we have subdivisions that have an improvement that serves the roads and then there is a requirement for each lot to have infiltration to meet the requirements for drainage. During the plating process we will put a condition on the plat that says the developer will install infrastructure for the plat, and the condition will read that upon issuance of each building permit the builder will then install onsite infiltration for the home. That is carried forward into the building permit, and, in some cases, if it is infiltration, it will require a special inspection by a geotechnical engineer to verify that the infiltration system was put in per the design, and that is submitted to the City.
- We could parallel that example by saying the capping on a particular lot would be delayed until the home was built, a professional would verify that the capping was done per the mitigation that was spelled out in the plat, and then that professional would submit a report to the City or Ecology to verify that it was done. That special inspection would add some additional cost to the builder.
- More discussion to be had on the final plat piece.

The Facilitator encouraged participants to put any remaining questions or comments in the chat.

Follow Up and Next Steps:

The Facilitator reviewed the Decision Process and invited participants to share any remaining concerns with the team. The next step is to plan for the final large group meeting. MFA will be finalizing the path forward. At the final meeting, the group will do a deep dive into what the path forward will look like and participants can make recommendations to Ecology.

Valerie Bound with Ecology thanked all participants and stated the groups have been very straightforward in their feedback. There are some details that need to be worked out regarding implementation, and we look forward to continuing to work with everyone.

Lisa Parks with MFA concluded that MFA is working on ongoing research and additional tasks. Our goal is to have a draft of this document by early December and be able to share it out one week before the next meeting.

Small Group Attendance (in alphabetical order by last name)

- Stephen Bishop, Realtor for Premier 1 Properties
- Jim Blair, Title/Escrow for North Meridian Title & Escrow
- Joseph Calhoun, City of Yakima Planning Manager
- Joan Davenport, City of Yakima Community Development Director
- Jon DeVaney, Washington State Tree Fruit Association
- Dean Emanuels, Banker for Washington Trust Bank
- Doug England, Commissioner of Chelan County
- Craig Gildroy, City of Chelan Planning Director
- Keith Goehner, Representative of the 12th Legislative District
- Phil Hoge, Yakima County Project Planner
- Rob Jammerman, City of Wenatchee Public Works Director
- Paul Jewell, WA State Association of Counties Policy Director
- Curtis Lillquist, Douglas County Principal Planner
- Ryan Mathews, Fulcrum Consultant

- Jake Mayson, Central WA Home Builders Association Government Affairs Director
- Deb Miller, Action Health Partners
- Don Mounter, Pipkin Construction Project Manager
- Judy Warnick, Senator of the 13th Legislative District

Ecology Staff/Consultants/Facilitation Team:

- Joy Juelson, Triangle Associates
- Katrina Radach, Triangle Associates
- Valerie Bound, Ecology
- Jill Scheffer, Ecology
- Jeff Newschwander, Ecology
- Rebecca Lawson, Ecology
- Jim Maul, MFA
- Kate Elliott, MFA
- Lisa Parks, MFA
- Phil Wiescher, MFA
- Mike Kaputa, Chelan County Natural Resources (MFA Contract Manager)