

ANALYSIS OF ESSB 5273

House Agriculture & Ecology Committee

March 20, 1997

BACKGROUND:

Modification of wetlands and aquatic habitats is regulated at the state level by the Department of Ecology (DOE) and the Department of Fish and Wildlife (DFW).

The DOE issues a water quality certification for federally permitted activities that may result in a discharge to state water, or in a modification to a wetland. The most common federal permit is one that is issued by the Army Corps of Engineers for activities in the nation's waters. The DOE also has some permit authority to regulate water bodies and wetlands under the Shoreline Management Act.

The DFW issues Hydraulic Project Approval (HPA) permits to protect fish from impacts associated with work that will use, divert, obstruct, or change the natural flow or bed of any salt or fresh waters of the state. Dredging or other work involving contaminated sediments typically requires an HPA permit.

As part of the permitting process, these agencies generally require mitigation to compensate for the impacts that will be caused by a development project. These agencies generally require that the compensatory mitigation occur at the site of the project's impacts.

SUMMARY:

Legislative findings are made relating to the benefits of allowing greater flexibility in designing compensatory mitigation proposals.

The DOE and DFW are required to consider compensatory mitigation that is proposed in a development plan. The development plan must be consistent with the local comprehensive land use plan and any other plans in effect for the area. The departments are not required to approve a compensatory mitigation proposal if the proposal does not provide equal or better resource functions as compared to functions lost as a result of the development. The departments must use specified criteria in determining if the equal or better requirement is met. Local governments may consider compensatory mitigation proposals when making permitting decisions.

The departments may schedule review of compensatory mitigation proposals continued in a

development plan to conform to available budgetary resources. Mitigation proposed as part of the development plan must contain provisions to guarantee the long-term viability of the proposed mitigation.

The DFW may not require mitigation for sediment dredging actions that are required by state or federal clean-up requirements or for dredging to maintain existing channels or berths.