



August 13, 2012

From: Audubon Society of Portland
To: Planning and Sustainability Commission
Re: West Hayden Island Update Hearing (August 14, 2012)

Dear Members of the Planning and Sustainability Commission,

I am writing on behalf of Audubon Society of Portland regarding the West Hayden Island process. We would like to put the following issues before you in advance of Tuesday's commission briefing:

Process Concerns: We appreciate that the City has recognized that major issues including community health impacts, transportation issues, and environmental mitigation all remain fundamentally unresolved and require a significant extension of the WHI process. We particularly appreciate several Commissioner's role in insisting that an HIA be conducted prior to a recommendation by the Planning and Sustainability Commission. However, we remain fundamentally concerned that the City appears to attempting to remedy the process challenges to date by overwhelming the community with ineffective meetings rather than establishing a reasonably sequenced process with adequate notice and spacing to allow for real stakeholder participation. In short we feel that the City continues to conduct process more for show than for substance, an approach that is fundamentally at odds with the commitments made in the Portland Plan. Specifically we would raise the following concerns:

1. **The environmental community was given inadequate notice that it would be allowed to testify at this hearing:** We were told repeatedly that there would be no opportunity for testimony and then at the last minute we were informed that the environmental community would be invited to testify. While we appreciate the opportunity to testify, less than three business days notice is not sufficient for us to confer with our constituencies. Unfortunately this has become an ongoing pattern in this process despite repeated requests for reasonable notice.
2. **We were not provided with updated planning documents prior to this hearing:** We were originally assured that we would receive updated planning documents by August 10th. Last Thursday at the same time that the environmental community was informed that it would be allowed to testify, we were informed that Planning documents would not be made available until at or after the PSC meeting. It is a poor use of public resources and stakeholder resources to ask us to participate in meetings and hearings and not make vital documents available for advance review. Unfortunately this too has become an ongoing pattern.
3. **The Schedule going forward appears highly unrealistic:** The challenges facing this process in terms of being over schedule and over budget are the direct result of poor planning and management on the part of the city and its failure to adequately address legitimate public concerns. However the city's

current approach seems to be to compensate for bad process with more bad process. We are concerned that the city continues to schedule meetings before key documents will be available for discussion. We are also concerned that BPS has scheduled five different meetings totaling more than 18 hours over the course of 18 business days in September and early October. This is not a reasonable schedule, especially coming after and even more brutal schedule in June and July. The city is clearly already seeing a reduction in the participation of key stakeholders and agencies because of the unrealistic schedule to date. We once again ask the city to provide a reasonable schedule that ensures that information will be made in a timely manner and that meetings will be spaced to allow for stakeholder participation.

Environmental Concerns: It is difficult to provide the PSC will substantive comments on environmental issues beyond those we have already provided because the city has not made updated planning documents available. However, we remain very concerned about the following issues:

1. **Meeting the goal of net increase in ecosystem function:** One of the primary goals of this process was to develop a mitigation package that would ensure that environmental impacts of this project would be fully internalized and compensated for by the Port in a way that results in a "net increase in natural resource function." Neither the proposal by the Port nor the proposal by the city achieves this objective. We would note that while inadequate, the city's proposal is far superior to the one submitted by the Port. We would urge the Commission to take a hard look at the Audubon proposal which we believe comes far closer to achieving the natural resources objective of this process (see attached).
2. **The City Should Retain Its Jurisdiction over any natural resources which are not addressed through this process:** Some natural resources such as wetlands, floodplains and shallow water habitat are not addressed under either the Port or the City's proposals. Rather they are deferred to later planning processes. It is critical that the City retain jurisdiction over these resources through environmental overlays unless they are fully addressed through this process.
3. **The City should require balanced cut and fill for floodplain impacts:** The city requires this for all other developers who impact floodplains. It should certainly require it of a public agency like the Port of Portland. Balance cut and fill protects natural resources values, prevents flooding and has become even more important in an age of global climate change.
4. **The City should ensure that natural resources are not destroyed until development is certain.** The drafts we have seen appear to allow the Port to destroy forests and fill floodplains as soon as the island is annexed. Given that development, by the Port's own admission, is uncertain and likely more than a decade away, natural resources should be protected until development is certain.
5. **Any fill placed on the island should be clean fill:** We are deeply concerned that the island is being used as a waste disposal site for superfund contaminated fill. This is inappropriate given its proximity to the residential development and critical natural resources.
6. **Best management Practices:** The drafts we have seen for updated BMPs remain inadequate. Despite expanded text, they continue to basically require the Port to meet minimum requirements under law. This is a far cry from the state of the art "green" facility the Port and City repeatedly assured the community would be constructed.

7. **Senate Bill 766:** The Port and City continue to refuse to address 766 concerns. If the Port seeks 766 designation for WHI, the community would be effectively precluded from participating in many future decisions and the city would be severely limited in its ability to update environmental regulations. Given how many issues have been deferred to the future for resolution, the city should specify that application of SB 766 on WHI is unacceptable. Flexibility cuts both ways--if the Port wants flexibility to change its development outcomes, the city and community need flexibility to remain active members of the decision-making process.
8. **Funding and structure for Management of Open Space:** The council resolution specified that these issues should be substantively addressed in this process. Instead they were deferred to the future.

5) **Economic Issues:** The ECONorthwest report raised a variety of significant concerns about the need for and economic viability of this project. These have never been substantively addressed by the city. We urge the Commission to take a hard look at the ECONorthwest Reports and address the multiple concerns that are raised.

Conclusion: Finally, we challenge the assumption that West Hayden Island is the right place for Port development given the huge environmental and community impacts and the questionable economic benefits. Contrary to some assertions, the annexation and zoning process is exactly the right time to be asking these questions. The Port bought WHI with full knowledge that these types of issues would be seriously considered during the annexation and zoning process--in fact, they have a long history of avoiding serious community concerns by deferring those concerns to future phase of the planning process. That is a risk that any developer takes when they speculate on land that is not annexed or zoned for the purpose for which they are purchasing it. Given the high negative impacts of this project, the questionable economic benefits, the Ports apparent unwillingness or inability to address these concerns, and the apparent availability of alternative sites, we would urge the PSC to seriously consider whether this project should move forward at all. Our attached comments to BSP dated July 26, 2012 go into far more detail about our economic, environmental, community and transportation concerns including citations to the ECONorthwest reports.

We appreciate your consideration of these concerns.

Respectfully,



Bob Sallinger
Conservation Director
Audubon Society of Portland

Attachments:

- 1) Audubon mitigation proposal
- 2) Audubon Comments to BPS (July 26, 2012)

Attachment # 1:



Audubon Mitigation Proposal
July 19, 2012 (updated)

I have tried to outline what Audubon believes would be a reasonable mitigation/enhancement package in exchange for development of 300 acres on West Hayden Island. We have tried to keep it simple and clean in terms of what would be expected. This proposal is based on a number of conversations with natural resources agencies, conservation organizations, land trusts and other stakeholders as well as looking at other relevant mitigation projects in the Metro Region. It is driven by the adopted WHI Planning Process objective of achieving a net increase in natural resource function both in terms of habitat quality and habitat quantity.

Our proposal also tries to capture all natural resource values on the island in a single package. The expectation is that the City and Port would work with State and Federal Agencies to sign an advance agreement for credit towards state and federal mitigation obligations.

Finally our proposal attempts to recognize that size, location and complexity of the WHI site result in a situation where the whole is greater than the sum of the parts and therefore needs to be replaced by large, complex, local mitigation project(s). The city and Port both break the natural resource elements into discrete parts and mitigate for them individually and in isolation--an approach we believe that fails to replace what is actually being lost.

Audubon continues to oppose development on WHI--We believe that river islands in general, but especially one located at the confluence of the Willamette and Columbia Rivers, are unique and irreplaceable resources for which there is no adequate mitigation. They should be given the highest level of priority for permanent protection and restoration. However if the City is inclined to proceed forward to annex and rezone up to 300 acres for marine industrial development activity, we believe that the package outlined below would be sufficient to say that the City/ Port have made a good faith effort to mitigate to the degree possible for the impacts that will occur.

Audubon Mitigation/ Enhancement Proposal for West Hayden Island

1. **Complete protection for the 500 acres:** This needs to be permanent protection that will give confidence to the community that it will not be undone or incrementally infringed upon in the future. Zoning and overlays are not sufficient to accomplish this objective. We would be looking for fee simple ownership or permanent easement held by a third party.
2. **Restoration of the 500 acres with commitment to maintain and monitor restoration in perpetuity:** The loss of size, complexity and habitat types combined with an increase in disturbance factors and edge effects impacts the overall functionality of the entire island. In order to compensate for direct, indirect and cumulative impacts, all of the entire remaining undeveloped acreage, including all habitat types, should be restored to a

baseline level of environmental health. This would leave credits available on the island for additional NRDA related restoration or other mitigation liabilities. However mitigation obligations related to WHI development could not be counted towards other mitigation obligation (ie no double counting). The end result of this agreement on the island would be 500 acres of habitat permanently protected, restored to a baseline level of environmental health and maintained and monitored in perpetuity.

3. **Financial Contribution to a local conservation organization of \$30 million for land acquisition along the Columbia main stem:** On island restoration will not be sufficient to compensate for the loss of habitat in this critical confluence area. After conversations with natural resource agencies, conservation groups and other stakeholders, Audubon recommends a transfer of \$30-\$40 million to a conservation group or land trust with a strong track record of natural resource land acquisition and restoration on the Lower Columbia. These funds would be used primarily to acquire rather than restore natural resource lands since WHI development will result in the loss of habitat acreage. We would also note that acquisition dollars are currently much more scarce than restoration dollars along the Lower Columbia. The specific geography, timeframe and other details of how this fund would be managed would need to be negotiated as part of this agreement. However we would want to see this funding spent along the main stem of the Columbia River and potentially on the Lower Willamette River within 10 miles of the confluence since that is where the primary impacts will occur. We believe that \$30-\$40 million is a justifiable sum for the mitigation/ enhancement/ package based on the irreplaceable nature of the resource, discussions with natural resource agencies, land trusts and restoration focused conservation groups, as well as the cost of recent mitigation and enhancement agreements along the industrialized portion of the Columbia and Willamette Rivers.
4. **Credit towards other Natural Resource Obligations:** Audubon would oppose allowing mitigation/enhancement associated with the annexation/ zoning process to be utilized for other unrelated natural resource obligations (for example: NRDA, Superfund, mitigation associated with North Portland Harbor development activities, etc). We would not oppose the Port using this package for mitigation obligations associated specifically with permitting development proposals on the 300 acre development area on WHI. In other words, the Port would be free to negotiate with state and federal agencies to have this mitigation package applied to any state and federal mitigation obligations associated with development on WHI, but not towards other unrelated natural resource mitigation obligations.
5. **Recreation Impacts:** This package does not address concerns about recreation activity in the protected 500 acres. This impacts will need to be integrated into this proposal.
6. **Community Impacts:** This package does not address community/ social impacts. It is focused specifically on natural resource impacts. Impacts to the community should be addressed through a separate agreement. Audubon's agreement to this proposal would be contingent on adequate addressing of community concerns as well as other aspects of the annexation, zoning and IGA document.

Thanks for your consideration of this proposal.

Attachment # 2



Date: July 26, 2012

From: Audubon Society of Portland

To: Bureau of Planning and Sustainability

Re: Comments on June 15, 2012 Annexation Documents and Supporting Materials

Please accept the following comments from the Audubon Society of Portland regarding the Annexation Materials that were distributed on June 15, 2012. Where possible we have attempted to incorporate new materials and information that have been developed since that time.

Process: We would urge the city to take a hard look at significant failures of the West Hayden Island public process over the course of the last several months. There are many at the city who are quick to suggest that we need to "move on and focus on substantive issues." However, we believe that the events of the past several months have severely eroded public confidence in any agreement that will ultimately be forged regarding West Hayden Island regardless of its substance. Perhaps even more importantly, the events of the past several months have severely undermined public confidence in the City's overall commitment to equity and inclusivity as articulated in the recently adopted Portland Plan. When it mattered most, the City failed to translate words on the page to actions on the ground and turned its back on one of its most vulnerable communities.

We believe the facts are clear: despite having spent more than two years and hundreds of thousands of public dollars on this process, the City went behind closed doors and allowed the Port to write a one-sided agreement that failed to address the public's economic, social or environmental concerns, and then tried to fast track that agreement through the adoption process. It was only after Audubon took the unprecedented step of walking out of the process and under intense pressure from the community and ultimately the Planning Commission, that process concerns began to be addressed. We would urge the City to seriously consider a formal independent public review of the West Hayden Island Process by the City Auditor's Office, the new Office of Equity and Diversity or ONI. It is important that the City use the WHI experience as an opportunity to learn how to better achieve equity, inclusivity and transparency going forward, especially in cases where the city's most disenfranchised communities are pitted against its most powerful and well-funded development interests.

Timeline: While the new timeline does represent a modest improvement over the timeline outlined in May and June of 2012, we still believe that it is insufficient to allow

the City and Community to adequately consider the major issues that remain unresolved in this process. Continuing to push an unrealistic timeline will continue to result in inefficient and ineffective meetings, limited participation from the community, NGOs and natural resource agencies, and inadequate time for review, comment and meaningful integration of those comments into the ultimate decision package. In short it is a recipe for intentionally excluding the community from the most critical portions of the process.

We would note that despite massive public interest in this process, meetings are increasingly poorly attended by both committee members and the general public. We believe that this is a direct reflection of the fact that the city continues to schedule multiple, marathon length meetings on extremely short notice with virtually no opportunity to review materials or issues in advance. It is also a reflection of the shabby manner in which the public has too often been treated at these meetings with public comment too often delayed until after the meeting's stated completion time and after committee members and staff have already begun to depart. We are concerned that the City continues to schedule serial, marathon meetings (at least four in the month of September) and also that these meetings appear to be coming in advance of baseline data such as the HIA which is necessary to meaningfully inform the proceedings. We continue to urge the City to take a hard look at the work that remains to be done and then lay out a reasonable timeline for moving forward. Specifically we would recommend the following:

- Complete all baseline studies and information gathering before initiating more advisory committee meetings. Specifically the city should complete work on the Health Impact Assessment, Bridge/ Transportation Issues and Mitigation Plan. We believe that subcommittees rather than full committee meetings would be the most effective way to complete this work.
- Revise ESEE and Annexation Documents accordingly as per the results of the baseline studies and plans with adequate time for public notice, comment and review before initiating the Planning and Sustainability Commission adoption Process.
- Schedule no more than one meeting in any given two week period and provide at least two weeks public notice of meetings.
- Schedule meetings in locations that are accessible to the impacted community and at times of the day that allow for the greatest participation.
- Ensure adequate time for public comment during meetings

The proposed Zoning Code and IGA reneges on the city's on city's commitment to permanently protect and enhance at least 500 acres of open space in perpetuity:

At the core of the current West Hayden Island process is the city council resolution stating "The primary feature of the proposal should be permanent protection and enhancement of at least 500 acres as openspace, to be managed primarily for the benefit of the regional ecosystem" and "no more than 300 acres of land in an industrial designation" (City Council Resolution 36805). In fact, Section 4.1 of the IGA functionally allows the Port to seek re-zoning of the openspace for industrial use when the agreement expires after 25 years. If the Port utilizes the IGA termination clause in Section 7.1(d), it could potentially seek rezoning much sooner. In addition the agreement provides for no enhancement of the island's habitat as required under the resolution. It also fails to achieve the "no more than 300 acres for industrial/ at least 500 acres of openspace" objective specified in the council resolution. Despite repeated assurances that this objective was achieved, the ESEE analysis states the in fact only 487 acres of

land are being set aside as openspaces and 315 acres are being designated for industrial use (ESEE at 66, 67). Finally in direct contradiction of the Council Resolution which specifies that all development including railroad tracks much be included within the 300 acres of industrial land, the zoning code allows for railroad tracks to intrude up to 1000 feet into the openspace. We would make the following Recommendations:

- The Documents should remove any and all language that could be interpreted as allowing for rezoning of the openspace area at some future date. It is absolutely critical that the City require that a legally binding instrument such as fee simple transfer of title, easement of covenant agreement be placed on the property at the time of annexation and zoning. Zoning alone is not a sufficient mechanism to give the public confidence that the openspace will not be converted to industrial use at some future date. The Port's argument that its aspirations to conduct Superfund related mitigation on the island at some future date in no way validate its refusal to date to place meaningful and legally binding protections on the 500 acres.
- The annexation documents should clearly and unambiguously achieve the council mandate of "no less than 500 acres" for openspace and "no more than 300 acres" for development. This means that if the island is currently estimated to have less than 800 total acres of land base, that at least 500 acres of the total should be openspace and potentially available for industrial development.
- The Development footprint needs to be fixed immediately adjacent to the BNSF railroad tracks. Current proposals allow "flexibility" in terms of where the 300 acres are located. To the degree that the facility is allowed to shift westward, this would result in isolated, ecologically meaningless fragments of openspace being designated in the area between the facility and the railroad tracks. This fails to meet the objective of protecting natural resources, as these areas would be highly compromised with access roads, fences, security gates, parking lots, and railroad spur tracks as well as excessive impacts from noise, light and vibration. To the degree that any areas between the development area and the BNSF railroad tracks are currently designated as "openspaces" these should be reclassified as "industrial" and counted toward the 300 acre allotment. The lost of these acres from the openspace column needs to be compensated by expanding the contiguous area designated as openspace west of the facility.
- Industrial uses such as access roads, bridges, parking lots, railroad tracks, etc. need to be classified as industrial uses and counted toward the 300 acres consistent with the City Council resolution. The City should utilize the impact area rather than the footprint area as the impacts of these types of uses go far beyond the actual footprint.
- The Buffer Area needs to be contained inside of the 300 acres. The City seems to have turned the concern of a buffer between the development area and the openspace on its head. Instead of ensuring a gradual transition inside the development footprint to keep industrial activities from adversely affecting natural resource values, the city appears to have instead allowed the Port to encroach directly into the openspace effectively expanding the size of the development footprint. It is critical that the Port and city recognize that a transition zone needs to occur within the 300 acre development footprint such that heavy industrial uses such as elevated railroad tracks and heavy machinery and truck traffic are not directly abutting the openspace.

Natural Resource Mitigation: The IGA reneges on the City's commitment to require mitigation that achieves a net increase in ecosystem function (Public Involvement process @ 116 incorporated by reference into City Council Resolution 36805 at 107): Despite months of subcommittee discussion regarding the natural resource mitigation package, the issue was never brought to the Advisory Committee for substantive discussion and recommendation. The IGA includes the Port of Portland mitigation proposal, a proposal that the city has repeatedly identified as inadequate. In fact by the City's analysis, the Ports proposal would at best address 43% of the tree loss. It does not address loss of wetlands, shallow water habitat, grasslands or floodplains. Some of these values are deferred to future processes while others are ignored altogether. The City's own proposal which while more substantial than the one put forward by the Port, still fails to address floodplain impacts, defers consideration of wetlands and shallow water habitat to future federal processes, and according to analysis conducted by EcoNorthwest would result in a net decrease in ecosystem value of \$27.1-\$30.2 million. (EconNorthwest Report at 3-35). Again the city presents the Port's proposal in the text of the IGA while relegating its own proposal to a sketch in the margin notes and ignores recommendations made by independent consultants and stakeholders such as Audubon altogether. We question how the City could develop an ESEE analysis let alone a preferred development option and related zoning, comp plan amendments and IGA when this core issue remains unresolved. Other natural resource related concerns include the following.

We continue to believe that the Audubon Mitigation proposal (appended to this letter) comes the closest to achieving the City's objective of no net loss/ net increase in natural resource function. We believe that the City has squandered an inordinate amount of time reviewing the Port of Portland proposal which fails to address any natural resource values other than forests and which severely underestimates the value of those forests by utilizing a model that is based on impacts to salmonid species. We support the City's methodology in terms of valuing the individual habitat types and believe that it is based on a sound scientific basis. However, beyond the specific methodology as applied to individual habitat components, we would note the following deficiencies:

- The City's model, by its own admission, does not attempt to achieve a net increase in natural resource function. The model needs to be reset in order to achieve the objective of "net increase."
- The City's model fails to incorporate the loss of floodplain values on West Hayden Island. The model should be expanded to include loss of floodplains. We would specifically suggest incorporating "balanced cut and fill" to remedy this situation.
- The City's model fails to recognize that the whole is greater than the sum of the parts when it comes to natural resource mitigation on WHI. The size, location and complex mosaic of habitat types found on WHI increase the value of the individual components. For example many of the species utilize more than one habitat type during their life cycle---the proximity of grasslands, wetlands, forest and riverine habitats allows for far more wildlife value and species diversity than those same types of habitats found in isolation. In order to truly replace the functionality of the natural resources on Hayden Island, the City should seek holistic solutions that result in the protection and restoration of large, complex, floodplain habitats in close proximity to the confluence area. Instead, as currently proposed, the city's mitigation proposal would break West Hayden Island natural resources into individual components and allow them to be mitigated in a

geographically and temporally dispersed manner---an approach that we believe will lose much of the value of WHI.

We would also note the following additional natural resource concerns in the annexation documents:

- The tree replacement ratios proposed in the zoning documents are insufficient. The city should use the mitigation ratios in the city's new tree code
- The City should not give-up its jurisdiction below ordinary high water and wetlands. We would have preferred a holistic approach to mitigation which addressed all habitat types in a single package, but given the city's decision to defer wetlands and shallow water habitat values to future federal processes, we believe that it is critical that the city retain jurisdiction and full review over wetland and shallow water habitat types.
- Environmental overlays should be applied to the entire island

Funding of Mitigation: It should be made explicitly clear that funding for mitigation will come directly from the Port of Portland and not from external grants or piggybacking on the efforts of third parties. The mitigation being proposed is meant to replace natural resource values that will be lost to Port of Portland development and it should be fully funded by the Port. Allowing the Port to utilize external sources of funding such as grants reduces the limited existing pool of funds available for restoration and improvement. The goal of the mitigation agreement should be to leave the landscape better than it is today (no net loss/ net improvement). Allowing the Port to raid external funding sources or double dip by claiming applying the work of external parties to its own mitigation obligations is inconsistent with the concept of mitigation---it would amount to draining limited conservation resources to cover its own liabilities. This was a significant issue during the Airport Futures process which was resolved in Audubon's favor. We urge you to take a look at the language in the Airport Futures IGA:

To the extent that it is not possible to use airport revenue the Port will use other unrestricted Port funds. The Port will not seek competitive grant funding for the purpose of implementing any element of this Agreement. The Port will meet its obligations under this Agreement. (AF IGA at 9)

The Best Management Practices (BMPs) Outlined in the IGA are vague, weak and insufficient and fail to meet commitments made to the advisory committee:

Throughout the advisory committee process, the City and Port have repeatedly pointed to incorporation of best management practices into the IGA as a way to address concerns about development impacts on the environment and the community including light, sound, vibration, dust and pollution. We were led to believe that BMPs contained in the IGA would be specific, robust, detailed and binding. Instead the BMPs outlined in Attachment B hardly fill half a page and for the most part require only that the Port meet minimum regulatory standards. For example, vessel emissions which currently contribute upwards of 6% of regional diesel emissions and which were a topic of extensive discussion are addressed in a total 10 words, "Vessel emissions shall meet North American Emission Control Area requirements." Noise generated by the facility, another topic of extensive discussion is addressed in 13 words requiring only that the Port monitor noise generation. These can hardly be considered BMPs. Rather the

document, in the vast majority of instances, simply requires that the Port meet the minimum standards required by law, or worse yet simply monitor its impacts with no substantive standards at all.

We consider the Port's frequently repeated public statements that setting specific, measurable standards now would preclude the Port from adopting even higher standards that might be developed in the future offensive and disingenuous. This argument is often the last refuge of those who are simply trying to avoid making any commitments at all. The concern articulated by the Port can easily and obviously be remedied by setting clear and measurable obligations in the IGA and/or related documents and also including language allowing that requirements can be modified by mutual agreement by the Port and City if in the future new strategies or technologies are developed that have clearly been determined in peer reviewed scientific literature to achieve superior results.

We also reject the argument that it is not possible to lock in BMPs until the Port actually determines what types of facilities it intends to develop. In our opinion this is exactly the reverse of the approach we need to take in order to protect our community and environment. It suggests that the Port will determine what it wants to develop and then work backwards to what sort of health, safety and livability standards it will be able to meet. We urge the city to take the reverse approach by setting clear, measurable and binding best management practices in advance and requiring the Port to either meet these standards or not proceed forward with development.

We consider the two documents put out by the Port and the City since the June 15th meeting updating the BPM proposal to be at best very limited improvements on the abysmal June 15th document. The Port's West Hayden Island green performance Goals (6-26-12) while somewhat more detailed than the June 15th IGA, is still riddled with the same types of non-committal language as was found in the June 15th document. Read closely, the document fails in most instances to commit the Port to doing anything more than meeting the regulatory minimums. The first line of the document provides exactly the type of escape hatch that has become all too prevalent with the Port of Portland:

The following measures are to be implemented where technologically feasible and practicable based on the specific type of facility that may ultimately be designed and constructed on West Hayden Island in accordance with City/Port IGA.

The rest of the document is riddled with similar language such as "meet or exceed regulatory requirements," "balance with facility needs," "strive for," etc. In short this document provides a variety of topics that should in fact be incorporated into BMPs but virtually no certainty as to what will actually be implemented should development move forward.

Similarly the City's "Ideas to Strengthen BMPs" also contains a variety of concepts worthy of inclusion, but very little detail or measurable specificity as to what would actually be required. Audubon believes that it is critical that the City and Port commit to a variety of specific measurable baseline BMPs and impact levels as part of this annexation process. These would include but are not limited to the following:

- Shore to Ship Electricity and a requirement that vessels utilize this resource.
- Specific limits on particulate emissions from the facilities
- Specific noise and vibration limitation contours surrounding the facility
- Specific restrictions on use of pesticides in open areas of the facility

- Specific requirements for green roofs, % impervious surfaces, 15% canopy cover and other stormwater strategies.
- Wildlife friendly fencing and underpass/ overpass opportunities

Intergovernmental Agreement: Recitals Section: It appears from a review of successive drafts of the IGA obtained under a public records request that the Port was allowed to load the recitals section with a variety of superfluous, self-serving and in some cases inaccurate information. The extensive verbiage devoted to the interests of the Port of Portland stands in stark contrast to the limited language devoted to environmental concerns which appears more as an afterthought, and the community, which is virtually non-existent. The Port and especially the City should be embarrassed to have put forward an agreement that is framed in terms that are so utterly dismissive of any interests other than those of the Port of Portland. The recital section should be revised for accuracy and balance. Specifically it should accomplish the following:

- Include a meaningful section on the affected community that recognizes that this agreement in large part is designed to protect the affected community and maintain/improve their quality of life in the face of development.
- In Section D, provide balanced, accurate information regarding both natural resource and economic development decisions that preceded this process.
- Remove language that suggests that the City's obligation is to harmonize development and protection such that neigh is excluded (there is no basis for this claim and it undermines the integrity of zoning and annexation process)
- In Section G, remove language regarding the "Port yielding acreage that would otherwise be available for uses permitted by current zoning, use for dredge material placement, and other uses consistent with the Port's statutory mandates." This statement makes conclusions that we do not believe are supported by fact or law. It is far from clear that the area beyond the current dredge deposit area could be utilized for dredge deposits under current county zoning. The Counties natural resource overlays would provide significant protection for the majority of the island. The Port does not own significant portions of the remainder of the island. Finally the provisions of the contractual agreement which resulted from the Port's use of its powers of condemnation to take WHI from PGE places limitations on the activities which are allowed.
- In Section H, remove language regarding the EOA. This is superfluous for the purposes of this document. The city is currently working through how to deal with industrial land deficiencies identified in the EOA document via its comprehensive planning process. Inclusion of this section is inappropriate and premature. To the degree that the City does include this type of economic information, it should be balanced by extended sections about the city's obligations to meet mandates under the Endangered Species Act, Clean Water Act, FEMA Floodplain regulations, Climate Change Action Plan, etc.
- Section J, on the Portland Plan to the degree it is included, should provide a more balanced summary. Natural Resource goals are written as an afterthought and equity and community objectives are left out altogether.
- In Section H, we recommend against designating North Hayden Island Drive as a "priority truck street."
- In Section M, we the term "voluntary" should be removed as applied to natural resource requirements. The natural resource actions are a condition of annexation and zoning and may also be conditions of future state and federal permitting. They serve as mitigation for impacts to the environment that will

result from development activity. It should be made explicitly clear that these actions are in fact mitigation and that the costs will be borne directly by the Port of Portland. Incorporating language such as "voluntary" opens the door to allowing the Port to seek grants that are otherwise not available for mitigation efforts, to double count completely separate mitigation obligations such as NRDA, and to claim credit for actions conducted by third parties that would otherwise not count towards a mitigation obligation.

- In Section N, the language regarding this agreement not being required under Statewide Planning Goals 9 and 5 should be removed. This agreement is being forged to meet the requirements laid out by Metro in Title 13. While the City has latitude to determine who to meet these obligations, suggesting that this is not required" is misleading and confusing.

Senate Bill 766: The IGA and covenant agreement should include language explicitly prohibiting the Port of City from seeking protection for West Hayden Island under the provisions of SB 776. The community was repeatedly assured during SB 766 Hearings by both the Port, the governor's office and the legislators behind the bill that West Hayden Island was not going to be targeted for SB 766 protection. Designation of WHI as a "regionally significant industrial area" or WHI related projects as "Projects of Statewide Significance" under SB 766 would dramatically change the Port's obligation to provide notice and comment on projects, would preclude public hearings on projects, would limit the public's ability to appeal some permits to situations involving malfeasance and unconstitutionality, limits the application of future local environmental regulations, fast tracks permit approval processes in manner that limits public review and public involvement, and requires compensation for any future zoning, development standards or comp plan changes that limit development potential. In short it would remove many of the mechanisms that are in place to protect specifically to protect our communities and our environment. Proponents' of 766 will note that there are exemptions from 766 for projects involving NEPA. While this is correct, the fact is that the vast majority of permits applied for over the lifespan of the WHI development will not involve NEPA review but could have significant impacts on the community and the environment. It is critical that the City ensure that opportunities for public notice, review, comment and appeal not be circumvented and that it retain its ability to put in place future regulations the community deems necessary to protect our health, safety, environment and livability.

The West Hayden Island ESEE and Planning Documents fail to address legitimate community concerns including repeated requests for a Health Impact

Assessment: The City has known since the start of this process that health and livability impacts were of primary concern to the community, especially the Hayden Island Manufactured Home Community which is located less than 1/2 mile from the proposed development and which is home to approximately 1000 residents many of whom are low income, elderly and in declining health. This community qualifies as an environmental justice community. City Council Resolution 36805 specifies that "The Plan District should incorporate and build on information from the Local Impacts Report....The plan should consider air quality impacts (dust and emissions), noise, light and traffic impacts." The Reports submitted by EcoNorthwest repeatedly note a lack of sufficient information to assess these impacts but do include information that "the life expectancy of residents living near the (Port of Oakland) is more than ten years shorter than residents living in other nearby areas" and a variety of other highly alarming information

(EcoNorthwest Report at 5-22) to "illustrate the potential magnitude of some of these effects" (EcoNorthwest Report at 5-28). The report specially points to a "HIA as a means to identifying quality of life effects of the Development Scenario" (EcoNorthwest Report at 5-28).

Despite this long stated concern, the city failed to conduct an HIA during the information gathering stage and proceeded forward with producing an ESEE and draft annexation documents without the benefit of an HIA. At a May 8, 2012 Planning and Sustainability Commission Hearing staff effectively delayed consideration of the need for an HIA until June 27th over the objections of the community and at the June 27th meeting, staff attempted to establish a timeline for completing phase I of the HIA until after the Planning and Sustainability Commission is scheduled to vote on the West Hayden Island annexation in the fall. The June 15th draft of the IGA appears to attempt to postpone the HIA altogether until the WHI NEPA process and cedes complete control of this process to the Port of Portland. It states that while the city and county are allowed to "comment" on the HIA, they will only be allowed to directly participate in the HIA at the sole discretion of the Port. (IGA at 91). We are deeply troubled that the community has had to fight so hard to get an issue as basic as community health on the table. We are pleased that members of the Planning and Sustainability Commission, especially Commissioner Smith, have made strong and clear statements that the HIA has preceded and inform the Commission's decision-making process.

The City has now proposed a two phased HIA process with the first phase being conducted as part of the current process and the second phase occurring as part of the development permitting process post annexation. We have several concerns with this proposal that we hope the city will address:

- Timing: Phase I of the HIA must be conducted in a manner that allows it to be effectively integrated into the WHI annexation process. This means that there needs to be adequate time to collect the necessary data, put that data out for public review and comment, meaningfully respond to those comments, integrate the HIA into the ESEE analysis, and modify or reconsider the annexation documents as appropriate BEFORE the package goes to the Planning and Sustainability Commission. On the timeline that is currently proposed the HIA appears to continue to be treated as the afterthought, something to append to the process but which will have little bearing on the outcome.
- Substance of the HIA: The data collected in the HIA needs to be sufficient to meaningfully inform the annexation process regarding the current levels of risk faced by the community and whether WHI development is likely to significantly add to those risks. We are deeply concerned that the City and Port are using the lack of certainty about what types of facilities will be developed on WHI as an excuse to conduct a relatively insipid HIA. West Hayden Island development is limited to a few types of marine terminals and there is no reason why the city cannot take the worst case scenarios for issues such as traffic, dust, pollution, noise, light, etc. and use these for evaluation of potential impacts.
- Phase II of the HIA: The City seems to be predicating its approach to an HIA on the expectation that an HIA will be required as part of the NEPA process. This is a fundamentally flawed assumption as HIAs are not a standard part of an EA or an EIS. In addition there are many aspects of development that are likely to come after the NEPA process which may have considerable impact on the local community--the facility is likely to be constructed in multiple phases and only those with a federal nexus would be subject to NEPA. It is likely that many

aspects of the project would escape a phase II analysis. Finally, should the Port seek SB 766 protections for WHI, the City and local community would likely be precluded from either establishing new regulatory standards to address emerging threats or effectively participating in the decision-making process for aspects of this development that do not fall under a NEPA process.

- Restore language from May 22, 2012 Draft of the IGA regarding post annexation phases of the HIA: It was deeply troubling that the City allowed the Port to modify the original draft of the IGA to take primary responsibility for post annexation phases of the HIA away from the City and give exclusive control to the Port. In doing so the City abdicated its fundamental responsibility to protect its citizens and effectively put the fox in charge of the henhouse. We urge the city to restore language from the May 22, 2012 draft of the IGA:
 - **May 22, 2012 City of Portland Draft:** "The Port agrees to fund (up to \$50,000) a Health Impact Assessment to be carried out by Multnomah County and the Bureau of Planning and Sustainability, prior to the submittal of the first federal permit application for marine terminal development on WHI. The intent of the study is to inform an assessment of community impacts related to marine terminal construction and operations prior to the submittal of the anticipated Environmental Impact Statement (EIS)." Page 5 section 6)
 - **June 15 Port Modified Draft:** "5.3.2 The parties acknowledge that consideration of health impacts will likely be required as part of federal permit approvals for marine terminal development. A Health Impact Assessment (HIA) may be one mechanism to provide that information. In the event that an HIA is not prepared as part of the federal permitting process, the Port agrees to perform a substantially equivalent assessment. The Port agrees to provide the City and the Multnomah County Health Department with advance notice of this assessment, and to give both agencies a reasonable time in which to provide the Port with comments. The Port may, at its option, invite the City and County Health Department's participation in that assessment." (page 91 section 5.3.4)
- Outcomes: The City must be committed not only checking off the HIA box but also ensuring that the Port of Portland fully addresses potential impacts to the community through legally binding obligations.

West Hayden Island Bridge: The IGA removes entirely the option for a bridge to West Hayden Island to address local transportation impacts despite the fact that the community has repeatedly reiterated its desire to see a bridge. The ECONorthwest report also clearly points to a bridge as a potential solution for many of the concerns identified by the community. We are pleased to see that the City is now revisiting this issue and applaud the decision to contract with David Evans and Associates to do this work. However the recent report which significantly lowers the cost estimate raises some very significant issues that now need to be fully investigated. It is unfortunately that the City waited until this late in the game to seriously consider the communities concerns in this arena but that should not preclude full and complete consideration of the implications of the project component. While Audubon fully supports the communities insistence on a bridge in order to minimize community impacts, this structure would have very significant impacts on the natural resources on and around West Hayden Island and those need to be fully identified and mitigated. We would make the following recommendations:

- If a bridge is deemed necessary to address community impacts, it needs to be a legally binding condition of development. We are concerned that the City will simply attempt to kick the can down the road and defer this decision to a later date after the community loses its most significant opportunities to impact the final outcomes.
- The bridge needs to be defined by its impact area rather than its footprint. We know from examples such as the Sellwood Bridge and the Light Rail Bridge that the impact area is far greater than the actual footprint.
- The Bridge and all of its auxiliary components (roads, ramps, rights of way, clearing area, parking lots, utility corridors, etc) need to be applied toward the 300 acres of industrially zoned land.
- The Bridge needs to be fully mitigated. This includes the bridge itself, all auxiliary components, as well as the disturbance area impacts by light, noise and vibration and the increased fragmentation of the openspace. We expect that the natural resource impacts will be very substantial given that its location over shallow water habitat and also its bifurcation of the openspace.
- In considering a WHI Bridge, the City should give weight to the ECONorthwest Report which states the following:
 - "The WHI Bridge would also benefit the Q of L of EHI residents by minimizing the amount of Port related traffic that travels through or near their neighborhoods, and by offering another route on or off the island when I-5 becomes congested. Minimal truck traffic on NHID would also be more compatible with the proposed growth and development of EHI as described in the Hayden Island Plan." (EcoNorthwest at 5-27)
 - "The bridge would significantly reduce the traffic and related noise effects on EHI to traffic to and from the WHI port because the large majority of the traffic would cross the WHI bridge rather than travel NHID through EHI...By reducing the port-related traffic that travels through EHI, the bridge would also help protect the livability and proposed developments on EHI as envisioned in the Hayden Island Plan. To the extent that NHID is the main access for the WHI port...it may limit the interest of prospective developers to make investments that would support the type of growth and development envisioned in the Hayden Island Plan. The risk is because of Port traffic, EHI develops the feel and reputation of an industrial area, rather than a residential or retail area" (EcoNorthwest at 1-8)
 - West Hayden Island bridge would save trucks and cars using the bridge \$493,480 per year in travel time. EcoNorthwest AT 5-27

Transportation Upgrade Requirements in the IGA: The IGA fails to secure legally binding commitments to upgrade Hayden Island Drive despite the fact that it reclassifies Hayden Island Drive to a major truck route. In fact even pedestrian safety improvements are not secured--the IGA caps Port liability as "not to exceed \$2 million" for pedestrian crossings but establishes no floor and no specific outcomes that need to be achieved. (IGA at 87). In short, the IGA as written includes no binding commitment to improve the

transportation infrastructure on Hayden Island. We would make the following recommendations:

- The transportation impact analysis should be updated to include a more realistic assessment of the CRC. As written, the transportation analysis is predicated on the CRC being built as planned in 2011. That assumption is simply not credible. Transportation upgrades should be based on the most likely scenario with provisions for amendment should circumstances change.
- The transportation analysis should be updated to include potential impacts marine industrial traffic on N Hayden Island Drive under a variety of realistic scenarios that were not considered in the current draft. This is particularly important given the fact that the facility will be located on an island with very limited access. These should include:
 - Impacts under emergency evacuation conditions
 - Impacts during high volume periods such as the Christmas shopping season
 - Impacts during frequent traffic jams on Hayden Island
- The Transportation upgrades should be based on what is needed to protect the community's health and livability and should be binding as a condition of development. A step down approach based on cost, funding, Port of Portland, City and Regional priorities, etc is not acceptable. If the Port cannot achieve what is necessary to protect the community, then it should not be allowed to build.

Community Benefits: The IGA provides for a total of \$25,000 year for an unspecified number of years for community grants--a number that is miniscule in relationship to the permanent impacts this facility is likely to have and the relative overall costs associated with this type of facility.

For comparison it is worth noting that the City of Portland provided in excess of \$1 million in community benefit grants for communities impacted by the Big Pipe for a much more limited time span. The proposed amount is less than half the amount that the Port Commission recently voted to increase the Port Director's annual salary in part for his ongoing efforts to develop West Hayden Island. The ECONorthwest report indicates that just the cost of traffic impacts alone will result in a cost of \$23,500 to the community. In short, \$25,000 works out to approximately \$12 per resident per year and this funding could potentially disappear altogether if the Port avails itself of various escape clauses contained in the IGA. We recommend increasing this amount to something far more substantive in the neighborhood of \$1 million per year

Security Funding: The IGA indicates that the Port will provide \$70,000/ year for 10 years for island security. However the city's own margin notes indicate uncertainty as to whether this funding is new funding or just a continuation of the Port's existing security contract for WHI (IGA at 91). We recommend that the Port be required to provide adequate security to deal with any and all impacts related to Port development on WHI in perpetuity. In the event of a strike or slowdown as is currently occurring at T-6 or even just dealing with Christmastime congestion exacerbated by Port related traffic, this could easily exceed \$70,000. This section needs to be clarified to ensure that the Port will provide adequate security to cover all Port related impacts on the island. This should include an ongoing commitment of at least \$70,000 for ongoing patrols on the island.

ESEE Analysis

Audubon is deeply concerned that the ESEE analysis is being treated as a cursory exercise rather than the true balancing process that it was intended to accomplish. We do not see how the city can possibly have developed a credible ESEE analysis in advance of resolving foundational issues such as the mitigation that will be required, clear and binding BMPs, the potential for a WHI access bridge and public health impact assessment. City staff have made repeated comments that they are in fact working backwards from a pre-determined outcome. It will be critical that the city provide a complete and thoughtful revision of the ESEE with public notice and comment once all of the foundational materials are developed. We believe that doing anything less would expose the city to potential appeals to LUBA should the annexation and rezoning proceed forward.

In addition, we are disappointed that the City did such a poor job of incorporating the ECONorthwest Reports into the ESEE analysis. The ECONorthwest Reports include a plethora of important information on the economic, social and environmental impacts of this project, but the ESEE appears disregard this information. We would note in particular the following information that we believe should be addressed in the economic sections:

- The development scenario "results in a net decrease in economic value (of natural resources) of approximately \$27.1-\$30.2 million." (EcoNorthwest Report at 1-3)
- "In recent years, port's role in local economies changes and thus the economic effects associated with port development are more uncertain." 1-9
- "Many of the benefits created by port development are enjoyed globally--by firms and consumers outside Portland; however, many of the costs of developing and operating the port are concentrated locally." (ECONorthwest at 1-9)
- "Historically , ports played a significant role in local economic development -- firms found it advantageous to locate near ports because locating near a port meant substantially lower transportation costs; however significant declines in transportation costs have diminished the effects of ports on firm location and local economic development." (EcoNorthwest Report at 1-9)
- "A West Hayden Island port will likely generate few local user benefits." (EcoNorthwest at 1-10)
- "Growing volumes do not necessarily imply that a WHI port will be utilized. Other capacity exists to satisfy some potential demand elsewhere in the region. For example analysts from ENTRIX concluded in a 2010 study of WHI "If WHI is not developed , it appears that existing and planned terminals at Ports located on the Washington side of the Columbia River may be able to meet forecasted cargo demand." (EcoNorthwest at 1-13)
- "The goods currently expected to flow through West Hayden Island (autos, grain or dry bulk) will not come from local firms or end up in local stores. Instead West Hayden Island would serve as a convenient transshipment point in part of a much longer supply chain. For instance, if a Canadian firm ships potash from Saskatchewan to China through Portland, the user benefits from this transaction will be captured by the Canadian company or the Chinese consumers (or other middlemen). While the benefits to these parties are real, they are global in scale. Important for our analysis, most of these benefits do not occur in the Portland metro area." (EcoNorthwest at 6-4)
- "Competition from ports increased (due to the fact that port hinterlands now frequently overlap) and greater competition typically reduces port profits. Given

- that port owners are local but users frequently are global, more competition may increase the share of port-generated benefits accruing to parties outside the port's community." (EcoNorthwest at 6-5)
- "...Technological change has decreased the labor intensity of port activities and increased capital intensity.....technological changes have reduced the number of workers required to provide port services. Given that benefits enjoyed by workers typically remain in the port community but benefits to capital owners frequently leak outside the port community (because capital owners can live anywhere), this change has potentially reduced the benefits of ports to their local economies." (EcoNorthwest Report at 6-5)
 - "The spread of port benefits across a larger area creates tension around port development. The benefits created by ports are increasingly global, but the costs remain concentrated locally. Many of the costs associated with investment and operation (particularly those paid by public ports), the environmental costs and the other negative local spillover remain concentrated in the port's local community. The decline in local benefits generates more scrutiny for port development as members of the port's community want to know if the local benefits of port development are sufficient to justify local costs." (EcoNorthwest at 6-5)
 - "As currently envisioned, a WHI port will generate few local user benefits." (EcoNorthwest Report at 6-6)
 - "The greater Portland Metro Export Strategy describes a plan to help *local* businesses access global markets and increase local employment. That strategy does not, for the most part, affect the commodities at issue in this analysis--autos imported from Asia and exports of bulk material and grain. These commodities do not originate or benefit local businesses, except for the possibilities described above." (EcoNorthwest report at 6-6)
 - "Given the most recent forecasts of demand, and reasonable assumptions on current capacity and the likely size of new terminals, it would appear that the Port of Vancouver has a surplus of vacant industrial land to accommodate their likely future demand, and should the Port of Portland be unable to accommodate forecast growth, the Port of Vancouver could accommodate some (and perhaps all) of that growth." Eco at 38
 - "From 2002 to 2008, developed industrial land with the Portland Harbor increased from 2757 acres to 2863 acres, an average of 18 acres per year. Value added, real market value, and cargo tonnage all grew at a faster pace than developed industrial acres....Employment in the Portland Harbor, however, declined over that period." (Eco at 39)
 - 2002-2008 Harbor employment declined from 17,134 to 16,446, This is a decline of 111 jobs/ year or -0.7% year. If you add in developed acres it is a decline of -1.3% year
 - 2002-2008 Real market value in Portland Harbor grew less than the rate of inflation (ECO at 41)
 - 2002-2008 value added in Portland Harbor grew less than the rate of inflation (ECO at 42)

The IGA fails to address long-term ownership and management of the Openspace on WHI. City Council Resolution 36805 requires that the BPS develop alternatives for how natural resource lands could be managed over the long term, including proposals for long term ownership, and strategies to pay for land management activities. The IGA

and related documents basically ignore these issues. It is important that the annexation documents provide recommendations on funding and managing the 500 acres of openspace and not defer these issues to future processes.

Jobs: The WHI development has been largely predicated on job generation. However there is nothing in June 15 annexation documents to assure the community that the employment objectives will actually be achieved. It was disappointing to see that the City acquiesced to Port demands to remove language requiring reimbursement of public financing if in fact job targets are not achieved. The following language could be found in the May 22, 2012 internal City draft that was shared with only the Port, but was eliminated entirely in the June 15, 2012 draft that was released to the community.

"1. Job targets. The City has agreed to funding portions of several infrastructure elements as described above, and subject to paragraph 16 below. The City and the Port mutually agree to a goal of 3,000 jobs associated with WHI development at full build-out. This includes direct, indirect and induced jobs and is based on analysis conducted by Martin Associates, "The Local and Regional Impacts of the Portland Harbor", (2010). If this target is not met at full build out, as determined by a third party consultant chosen by mutual agreement, using a comparable methodology, then the Port agrees to reimburse the City for public funds contributed by the City to the infrastructure elements described in Section 1."

It is also important to note that the ECONorthwest Report states that while land consumption and cargo through the Portland Working Harbor increased between 2002 and 2008, the number of jobs actually decreased. Increased land consumption does not necessarily lead to more jobs.

"From 2002 to 2008, developed industrial land with the Portland Harbor increased from 2757 acres to 2863 acres, an average of 18 acres per year. Value added, real market value, and cargo tonnage all grew at a faster pace than developed industrial acres...Employment in the Portland Harbor, however, declined over that period." (Eco at 39)

We recommend the following:

- Include specific provisions requiring that a specific percentage of WHI development construction and operations jobs go to the community on East Hayden Island.
- Restore language specifically tying public investment to the achievement of job targets.

The Intergovernmental Agreement contains language in multiple locations that allows the Port of Portland to avoid fulfilling the commitments outlined in the IGA once the island is annexed and rezoned: We are surprised that the City would put its name on a contract that is so blatantly unfavorable to the communities it is supposed to represent and protect. For example, in Section 3.1 (Transportation) the IGA presents a series of scenarios in which the Port is allowed to reduce transportation infrastructure upgrades if funding does not become available. In several locations the contract specifies that Port'd liability "it not to exceed" certain limits but provides no minimum contribution or specific performance that needs to be accomplished. This creates a

situation in which the Port Section 7.1(d) (funding) specifies that if funding does not become available, the city and Port will negotiate a reprioritization of contractual obligations and if an agreement cannot be reached within 60 days either party may elect to terminate the entire agreement, effective as of the date of giving of the notice. The city has basically forward an agreement in which once the Port could proceed forward with development and all of its associated environmental and community impacts, and then decline to nullify or reduce individual obligations outlined in the IGA on a case by case basis or potentially nullify the entire IGA. The City should remove these escape clauses and ensure that the commitments in the annexation documents are clear, specific and legally binding. In addition the city should restore language from the original city drafted IGA that required binding mediation in the event of disagreements. Wherever possible the city should seek to codify the elements of the IGA in the zoning document, comp plan amendments and. or covenant agreements.

Conclusion:

This is not the first time that the West Hayden Annexation Process has gone off the tracks. At the conclusion of the 1999-2000 annexation process the Business Journal of Portland editorial board wrote "We are not convinced that the plan to develop the island acreage shouldn't be permanently scrapped, but at least by putting it on the shelf for a while, it can be given further study from cost-benefit and environmental standpoints." (Portland Business Journal--December 17, 2000). At the conclusion of the 2009-2010 annexation process, the Portland Tribune called out the City and Port for what it described as a "curiously close relationship between a developer and the city bureau which must review its development proposal" and for "squelching" unfavorable findings. The Tribune wrote that a "messy process clouds West Hayden Island process" and that a "review of record shows questionable activities behind the scenes." (Portland Tribune--March 3, 2011).

We have heard some suggest that this process has gone on too long and cost too much. We would respectfully suggest that the reason it has taken so long is that the City and Port have consistently failed to address legitimate community concerns. As long as that remains the case, the right decision is in fact to reject the Port's development ambitions.

It may simply be the case that a high value natural resource site located in close proximity to residential and commercial development with major transportation constraints is in fact the wrong place to build a major marine industrial facility. Those who rely on prior land use decisions in order to justify pushing ahead now regardless of the cost to the community or the environment fail to grasp the iterative nature of our land use planning process. Each step of the process is supposed to be given real meaning and involve substantive public involvement. The annexation and rezoning process represents a major step in this process--one where the local impacts are considered in much finer detail, and it is absolutely legitimate for the community to determine that the proposal fails to meet community needs and expectations. The Port was well aware of this process when it chose to use its powers of eminent domain to speculate on West Hayden Island.

Thank you for your consideration of our comments.
Respectfully



Bob Sallinger
Conservation Director
Audubon Society of Portland

Supplemental information for July 26, 2012 letter submitted by email on July 29th:

Two other areas I want to highlight that I don't think were adequately addressed in the documents:

1) Quality of Fill Material: The use of contaminated fill has been a major concern for the community. It is important that the Port characterize what has previously been dumped on the island and address any threats to the community or environmental that may exist. In addition the Port should commit to using clean fill on the island going forward. We are very concerned about adding to the contamination load on the island. Specifically we would request the following:

- Characterize the fill that is currently on West Hayden Island and develop a plan for addressing any risks to wildlife or people
- Commit to using only clean fill on the island going forward
- Given the fact that development may never be needed on the island, there needs to be a policy in place for limiting additional fill placement until a development is more certain (ie the island should not be allowed to be filled and raised out of the floodplain until there is a demonstrable need for this activity to occur--otherwise it is easy to envision a scenario in which the islands natural resource functions are unnecessarily destroyed for development that never materializes.)

2) The City needs to recognize that there is ongoing litigation from Mikey Jones regarding illegal filling and improper delineation of wetlands that could dramatically impact the natural resource values identified on the island and the mitigation that may be warranted.

3) Land ownership on the island remains unresolved when it comes to lands owned by the State of Oregon. Until these issues are fully resolved it is impossible to quantify the natural resource mitigation that will be necessary. The Port regularly argues that it is giving-up 500 acres of development potential. In fact much of the land that will remain on the island is not developable and a significant (and as yet unresolved) number of acres belong to the people of Oregon, not the Port of Portland. We encourage the City to take a hard look at what lands the Port actually acquired from PGE and become directly involved on behalf of the people of Portland in any conversations with DSL.