



Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

MEMO

DATE: January 22, 2013
TO: Planning and Sustainability Commission
FROM: Eric Engstrom, BPS
CC: Mike Rosen, BES
SUBJECT: West Hayden Island Work Session #2

Background

On November 27, 2012 the Planning and Sustainability Commission (PSC) asked staff to develop a work plan and timeline to further examine major unresolved topics related to the November 21st WHI draft plan. On December 11, 2012 PSC approved a work plan and timeline which includes a series of work sessions and hearings through April 2013.

You asked that staff prepare written responses to all PSC questions with the assistance of technical experts and core stakeholders. One week prior to each work session you will receive a packet which will contain: 1) answers to PSC questions to be discussed at the session, 2) all feedback received from technical experts and stakeholders, 3) significant outstanding issues, and 4) staff recommendations. This is the second such packet and covers questions related to natural resources, ownership and tribal treaty interests and project involvement.

Work Session Discussion Topics

The discussion topics for the 2nd session on January 29, 2013 will include:

- 1) Location of environmental mitigation
- 2) Wetland Mitigation
- 3) Floodplain functions
- 4) Ownership of WHI and mitigation implications
- 5) Mitigation Costs and Phasing
- 6) Tribal interests and involvement approach



City of Portland, Oregon | Bureau of Planning and Sustainability | www.portlandoregon.gov/bps
1900 SW 4th Avenue, Suite 7100, Portland, OR 97201 | phone: 503-823-7700 | fax: 503-823-7800 | tty: 503-823-6868

Printed on 100% post-consumer waste recycled paper.

Partner and Stakeholder Input

We have also initiated communication with a number of technical experts and stakeholders related to the above topics. Over the past four weeks we have consulted with:

Susan Barnes, Oregon Department of Fish and Wildlife
Brent Haddaway, Cascade Environmental Group
Chris Hathaway, Lower Columbia River Estuary Partnership
Michael Karnosh, Confederated Tribes of Grand Ronde
Robert Miller, Professor of Law, Lewis and Clark
Roy Sampsel, PSU Hatfield School of Government, Institute for Tribal Government
Rose Longoria, Yakama Nation, Yakama Nation Fisheries
Kaitlin Lovell, City of Portland Bureau of Environmental Services
Doug Morgan, City of Portland Bureau of Development Services
Bob Sallinger, Portland Audubon Society
Gregg Thiesen, Port of Portland
Jennifer Thompson, US Fish and Wildlife Services
Kathryn Beaumont, City Attorney
Patti Howard, Commissioner Fritz's Office, Policy Advisor

Significant issues rose during this consultation, including:

- Flexibility in determining the location of mitigation actions
- Shallow water habitat local review criteria
- Floodplain functions and net increase in ecosystem services
- Local review of wetland impacts and mitigation
- Certainty of ownership transfer in the future
- Options for paying for mitigation actions
- Tribal notification and consultation

Discussion and Recommendations

Location of Mitigation

Mitigation for impacts to natural resources that result from marine terminal development should occur on WHI to the maximum extent practicable. If there are not sufficient on-site opportunities, any off-site mitigation should be consolidated at no more than one to two other large sites located within the Columbia River floodplain between the Sandy River and East Fork of the Lewis River and the Willamette River to its confluence with the Multnomah Channel, including Sauvie Island. A key objective is to create a large-scale contiguous habitat mosaic.

The Port anticipates that wetland and shallow water mitigation will occur on-site. Staff agrees with that direction. For grassland, there is limited on-site opportunity because much of the remaining area is forested. Staff continues to recommend a grant to enable off-site mitigation for impacts to grassland habitat.



For forest mitigation, there are several factors that have been discussed:

- 1) On-site opportunities. The amount of needed forest mitigation exceeds the amount of mitigation achievable on-site (in terms of acres and potential ecological lift).
- 2) Ownership. A portion of WHI is under DSL control, which creates some uncertainty.
- 3) Superfund. The Port may prefer to use some mitigation opportunities on WHI to meet mitigation obligations they may have to the Portland Harbor Trustees. Ultimately, this decision is not the Ports or City's to make, but it has been a point of discussion. Staff doesn't know if more ecological lift would result from using the Trustee's mitigation criteria or from the City's mitigation approach.
- 4) Government Island. This site is being considered because it is in Port control, within the agree-upon geography, and it is large enough to create an opportunity for a large habitat mosaic (both in terms of size and potential ecological lift). That said, work on Government Island is subject to FAA or Metro approval, which is not certain.

Given the uncertainties noted above, and in order to facilitate adaptive management, staff recommends specifically referencing the City's Forest Mitigation Framework as an exhibit to the IGA. If the desired forest mitigation actions on WHI and/or Government Island cannot be completed as stated in the IGA, the Framework could be used to determine how many acres of actions are needed elsewhere to still achieve 110% forest mitigation. The IGA should state that these alternative actions must occur at one or two large sites within the geography stated above. In addition, the IGA should state that a minimum amount of forest mitigation should occur on WHI no matter what. Maximizing on-site forest mitigation should be the first priority, regardless of the superfund considerations noted above. Staff believes that on-site forest mitigation can be done in a way so as to not preclude additional shallow water or wetland actions in the future.

Shallow Water and Wetlands

General: The IGA and code should continue to prioritize areas within the proposed Open Space zone for shallow water, wetland and forest protection, mitigation and enhancements.

Shallow Water: As stated in the current draft proposal, mitigation for impacts to shallow water habitat should be evaluated through a local environmental zoning review and in coordination with state and federal regulatory agencies. Staff will work with the Port of Portland and other stakeholders to draft refined approval criteria specific to review for shallow water habitat. Approval criteria should be clear that alternative locations for marine terminal development do not need to be evaluated in that future local review (given that WHI if annexed, would be annexed for the purpose of marine terminal development); however, minimizing the impacts through evaluation of dock designs and mitigating for all unavoidable impacts should be reviewed by the City to ensure no net loss of features or functions.

Wetlands: BPS staff continues to recommend allowing wetland fill within the industrial footprint without local discretionary review. BPS staff believes that the established state/federal permit process is adequate to ensure mitigation occurs and the design of fill is largely an engineering concern. The draft ESEE provides additional background and reflects



this recommendation. The rationale is that, in the context of State Land Use Goal 5, the economic benefits of marine terminal development in this specific location outweigh the ESEE benefits of wetland resources located inside the development footprint.

BES and OHWR staff does not agree with BPS's recommendation and would like to see local land use review of impacts to wetlands within the marine terminal footprint (see BES/OHWR comments in Attachment C). Their rationale is:

- a. There is uncertainty associated with extent of wetland coverage;
- b. The lack of detailed information on wetland functions and species use; and
- c. It is unknown exactly how much mitigation will be required by state and federal agencies.

BES and OHWR staff believed that a local environmental review to evaluate mitigation alternatives for impacts to wetland would add value by ensuring no net loss of wetland functions. In particular state and federal agencies: may choose to not take jurisdiction over some wetlands; do not consider wildlife use of the wetlands; and do not evaluate the relationship of the wetlands to the surrounding habitats. The City can address these issues through local review.

BPS agrees that by not requiring local review there is a risk that not all impacts to wetlands or wetland functions may be addressed by the stated and federal agencies. However, BPS feels that this is an acceptable risk when weighed against the benefits of marine terminal and the economic value of establishing long term certainty with regard to the industrial land supply. To reduce some of the risk that not all wetland impacts will be compensated for, the IGA should continue to require mitigation for *all* wetlands; specify minimum acreage for wetland mitigation and the length of the monitoring period; and require a review of annual monitoring reports by BES.

Floodplain Functions

The City should continue to follow a path consistent with the regional policy to not require balanced cut and fill for marine terminal development on WHI. It is not financially or physically feasible to implement balanced cut and fill on-site and also construct a functional marine terminal. The city would continue to apply baseline FEMA regulations to ensure the anticipated fill does not create any significant increase in flood risk on Hayden Island and in the surrounding area. The City should maintain the draft language in the IGA requiring the Port to consult with state and federal agencies to obtain ESA authorization prior to requesting any floodplain mapping changes.

By not replacing impacted floodplain functions there will be impairment to the river ecosystem, particularly the synergistic relationships between floodplain and other habitats on WHI would not be fully mitigated.



Net Increase in Ecosystem Functions

The proposal should continue to include mitigation actions that compensate for impacts to shallow water, wetlands, forests and grasslands and strive to achieve a net increase in functions associated with those habitat types. There will be some floodplain functions lost.

Ownership of WHI

The IGA should not require ownership transfer of WHI from the Port to a third party until all of the Port's mitigation obligations are completed. In the long-term (probably 30-years +), the IGA should establish a process for transfer of the open space ownership to another public agency with a mission more directly focused on managing a public open space that has significant natural resource value.

The IGA should specify that mitigation obligations related to forest impacts are fulfilled in year 30. This allows the ownership to be transferred by the end of the term of the IGA.

Climate Change

Prioritizing barge and rail modes of transportation above truck transportation is the correct strategy for the region to aide in reducing greenhouse gasses. Additional BMPs should be included in the IGA to ensure that the Port uses the most efficient and least polluting technology available at the time of development. Potentially loosing floodplain functions by not requiring balanced cut and fill will reduce the regional ecosystem resiliency and ability to respond to climate conditions.

Costs

The primary concern with the natural resource costs is the amount and timing of forest mitigation. Staff should work with the Port of Portland to consider phasing the forest mitigation actions to correspond with anticipated development triggers. The City's Forest Mitigation Framework should be used as a framework for adaptive management. Staff will make additional recommendations related to the financial structure of the forest mitigation proposal in conjunction wit the final work session on February 26th.

Tribal Interests

Since the last PSC meeting staff has continued to communicate with tribal representatives, working with the City's Government Relations Office. We have also worked with the City Attorney's Office to consider questions related to treaty interests. Some of that research is ongoing, and our answers may evolve as we learn more.

Regarding tribal and indigenous outreach, there have been several distinct efforts, at different levels.

- In July 2012City Council passed Resolution 36941, which aimed to establish more formal consultation agreements between the City and Tribal Government partners. This resolution is particularly focused on higher level (City Council and Tribal



leadership level) dialog and relationship building. Although the WHI project pre-dates this resolution, there has been communication at this level - for example WHI project staff have participated in talks between then Mayor Adams and Grand Ronde leadership, where the project was discussed. Staff is working with Council staff to provide a more detailed a briefing on this Resolution during the 29th work session.

- Many of the Tribes have natural resource offices and technical staff. BPS staff has continued to work with those staff to collect technical input on the natural resource reports and proposed mitigation framework. Tribal Government staff have offered technical feedback over the course of this project, and will be in attendance on the 29th. Staff recommends the Commission invite their comments.
- Staff has contacted the Columbia River Inter-Tribal Fish Commission (CRITFC) to determine how CRITFC would like to be involved in the project moving forward. BPS has been informed that CRITFC will continue to monitor this project and would like to receive regular updates.
- Staff also understands that there is a large indigenous or Native American population in Portland, who may or may not be affiliated with recognized tribes. BPS maintains a relationship with the Native American Youth Family Center (NAYA), as a component of our larger outreach work on all planning issues. Project staff have discussed WHI with NAYA staff on several occasions, and NAYA has been involved with BPS staff education and training on Native American concerns.

Given the level of tribal government interest, staff recommends consideration of more specific coordination mechanisms in the proposed IGA, to ensure ongoing consultation as the project progresses, after annexation.

Attachments

- A) Summary Table of PSC Questions and Staff Responses
- B) Details - PSC Questions and Staff Responses
- C) Partner/Stakeholder Comments
- D) WHI Natural Resource Mitigation Staff Report
- E) NRDA Trustee's November 6th, 2012 to the WHI Advisory Committee
- F) City Forest Mitigation Framework
- G) WHI Tax Lot Area and Ownership Map
- H) Resolution 36941

