

Attachment A: PSC Work Session #2 Summary Staff Answers to PSC Questions

Environmental Questions	Staff Summary Answer
<p>Location of Mitigation</p> <p>1 Describe the rationale behind on site mitigation vs. off site. Timing relationship to NRDA? Is it appropriate to reserve mitigation opportunities on WHI for NRDA mitigation for the Portland Harbor, or is the first priority for on-island mitigation of terminal development impacts?</p> <p>2 Has the exact location and acreages of forested, shallow water, wetland and grassland habitats been agreed to by all parties, including state and federal agencies?</p> <p>3 Piecemeal nature of mitigation. Too many small bits?</p> <p>4 Does the "net gain" in ecological function depend on off-island mitigation work?</p> <p>5 Describe the unique ecosystems value of size and contiguity of WHI habitat.</p>	<p>The City's long-standing mitigation policy is to prioritize on-site, in-kind mitigation actions. This policy is shared by multiple regulatory agencies.</p> <p>No. It is not necessary to gain approval from all parties prior to adoption of the Plan District and signing the IGA.</p> <p>No. The plan consolidates mitigation at two locations: on WHI, roughly 175 acres of mitigation actions including forests, shallow water and wetlands; and Government Island, roughly 470 acres of forest mitigation actions. Another site is needed to accommodate grassland mitigation and potentially needed to fully mitigate for forest impacts.</p> <p>Yes.</p> <p>The geographic location of WHI at the confluence of the Columbia and Willamette Rivers is entirely unique (see Map 3). WHI is the third largest natural area in Portland next to Forest Park and Smith/Bybee Wetlands. It is a fully functioning mosaic of habitat features and is designated a Special Habitat Area by the City, consistent with Metro's designation of the island as a Habitat of Concern. There are 19 at-risk wildlife species that use a combination of habitats at WHI. The shallow water habitat is federally Critical Habitat for 13 ESA-listed populations of salmon and trout, and the shallow and</p>

		deep water habitats are federally designated Critical Habitat for one species of eulachon.
6	Is the mitigation ratio appropriate for ash replacement and is it even possible to replace mature ash on Government Island?	Yes.
7	Will the proposed mitigation amount to habitat conversion?	Overall no, but in some areas habitat conversion is proposed.
	Ownership of WHI	
8	How many acres does DSL own vs. Port ownership? Why hasn't the state (DSL) been involved in the conversation? Have they signed off on the proposed mitigation? The same is true for PGE and Bonneville rights of way. Have those issues already been resolved, as stated in public testimony?	Based on the Multnomah County tax lot GIS data, DSL owns 68 acres and PGE owns 6 acres for a substation. PGE also has an easement over 18 acres and BPA has an easement over 14 acres. The Port owns the rest of WHI above ordinary high water.
9	Is there a legal reason the Port cannot mitigate on non-port land? And do or will the Port receive credit for the mitigation?	No, there are no legal barriers to mitigation on land owned by other entities as long as the mitigation is protected via a deed restriction, conservation easement or some other restrictive measure. There may be management complexities introduced when additional ownership entities are involved with a project, but these are not legal barriers.
10	Can the 500 acres be sold to a third party with provisions for the Port to mitigate on the land for the next 100 years?	Yes. However, generally a third party is unlikely to want to make an agreement considering the significant legal restrictions that would be required in conjunction with the mitigation.
11	Who will ultimately own and manage the protected open space? Long term Port management and ownership of the 50 acres not acceptable. My overarching concern is the "custody" of the 500 acres that the Port will continue to control.....I am hoping for an unaffiliated group to be the ultimate authority	The Port is a public agency and is likely to retain ownership until mitigation obligations related to development on WHI are fulfilled.
12	Who will be the third party to the IGA to protect the open space interests?	We don't know at this stage.

	<u>Tribal Interests, Treaties</u>	
13	Assertion of the Tribes that treaty rights come into play either with respect to fish issues or with respect to treatment of the island itself.	Some of Tribes involved in the project have expressed concern about the effect that developing a port facility may have on their fishing rights. The City Attorney's office continues to research Tribal treaty rights, but at this time staff is not aware of any treaty violation related to this annexation project. Concept planning has required development be set back 100ft from the Ordinary High Water Mark on the north shore. This is to avoid impacts to shallow water habitat to the maximum extent possible.
14	If this annexation and development were passed by City Council - what is the impact on relationships with Tribes - especially those who have Federal Treaty rights on the Columbia and Willamette?	The passage of Resolution 36941 is moving forward to formalize government-to-government relationships with Tribal Government Partners. The City of Portland will need to defer to Tribal Governments individually regarding their expectations for consultation for this project and other important projects in the City.
15	How does the city propose to close the gap between tribal testimony and the proposed annexation and development of WHI? Has there been staff outreach post hearings and are there plans for addressing tribal concerns?	There has been staff outreach post -November 2012 hearings with Tribal representatives and CRITFC. There are City efforts underway to formalize government to government relationships. BPS staff outreach to Tribal staff continues to determine interest in the project and desired level of involvement moving forward.
16	Can the IGA contain a mechanism that provides tribal feedback (design, mitigation, continued communication through development and management)?	BPS recommends consideration of more specific coordination mechanisms in the proposed IGA, to ensure ongoing consultation as the project progresses, after annexation.
17	Describe the tribes role in process - how did we involve them?	The City's Government Relations Office has assisted BPS since 2010 to reach out to Tribal representatives for the six federally designated tribes. Involvement for each tribe has been different depending on their level of interest. Involvement has included project updates to reviewing technical reports and participating in project meetings.

	Floodplain Functions	
18	How can the Port and City achieve net gain in ecological function while ignoring 300 acres of floodplain fill?	Unless out-of-kind mitigation is considered, it is not possible to achieve a net gain in ecologic function without mitigating for fill within the floodplain.
19	Has Planning and Sustainability and BES sorted out concerns that the city might face significant liability if it allows filling of the floodplain without mitigation? Relationship to FEMA lawsuit?	Staff has addressed this in the IGA by requiring that the Port obtain federal ESA authorization prior to requesting FEMA mapping modifications.
20	Describe the technical basis for a balance cut and fill requirements?	Please see detailed response.
21	The loss of ecological functions associated with the Columbia River floodplain must be accounted for and some form of mitigation included in the IGA. Are there are methods short of balanced cut and fill that would help mitigate for loss of floodplain function?	Yes, impacts to flood functions can be mitigated by actions other than cut and fill. For example, breaking through a levee and allowing the river to inundate areas that were historically flooded. However, unless an equal amount of volume for flooding is created to compensate for the fill then full mitigation will not be achieved
22	Can we provide some more scientific evidence to counteract fears that the fill will increase flooding up or down stream?	Yes. See detailed response.
23	What are the potential mitigation costs for balanced cut and fill?	Staff does not have an answer to this question at this time. Staffs have generally estimated the cost of balanced cut and fill on WHI to be in the tens of millions of dollars.
	Climate Change	
24	With Climate Change, is the island likely to flood more frequently in the future? How does this impact terminal development or floodplain management?	We cannot answer this question definitively at this time.
25	Impact or connections of this project to the Climate Change Action Plan?	This project relates directly to two key components of the Climate Action Plan (2009): 1) Improving the efficiency of freight movement within and through the region; and 2) Maximizing the benefits of natural systems, particularly tree canopy, to mitigate against climate change impacts.

	<p>What are the climate benefits of rail and water transportation? How does the siting of rail/marine terminals in the lower Columbia impact greenhouse gas emissions?</p> <p>Shallow Water and Wetlands</p>	<p>Locating a marine/rail terminal in the lower Columbia will reduce greenhouse gas emissions in the long run, though there are localized impacts.</p>
26	<p>In the AC report that suggests [BPS] proposed expanding environmental zoning restrictions for shallow water and wetlands in the IH zone. Please explain the differences in approach between wetlands and shallow water.</p>	<p>The current proposal is recommending application of local environmental regulations to shallow water habitat. Wetland impacts would be addressed in the IGA; and through state/federal permitting, but no local land use review.</p>
27	<p>Does salmon habitat mitigation fall under the federal government since they are an endangered species? If so, should we add local review as well?</p>	<p>Yes, impacts to Critical Habitat for ESA-listed species would require permitting through federal and state regulatory agencies. State and federal agencies focus closely on biological systems, particularly listed species; however, local review is necessary.</p>
	<p>Other</p>	
30	<p>Does the mitigation plan achieve the "net ecosystem benefit" objective yet?</p>	<p>No, not unless out-of-kind mitigation is considered.</p>
31	<p>Does the City have a response to ODFW's letter RE city mitigation?</p>	<p>See detailed response.</p>
32	<p>Timing of natural resource loss and mitigation? What is the timing of mitigation efforts with respect to development?</p>	<p>The intent is that mitigation actions be implemented before (in the case of forests and grasslands) or concurrent with (in the case of shallow water and wetlands) development impacts.</p>
34	<p>Is it possible to meet 100% of the mitigation requirements on WHI and still set 300 acres aside for Port development? If, the quantity is less due to potential NRDA requirements, can there be an agreement on timing for when that obligation needs to be met and if it isn't then fall back on the requirement for greater mitigation on WHI.</p>	<p>No, it is not possible to meet 100% of the mitigation requirements on WHI, because WHI's remaining 500 acres are already functioning as fish and wildlife habitat.</p>
35	<p>Status of Jones lawsuit RE wetland fill on WHI? Does it impact this?</p>	<p>No. The current draft IGA requires that impacts to <i>all</i> wetlands be mitigated.</p>

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Is the money that is suggested to be allocated to pay for BES's services likely to be forthcoming and are they adequate to the tasks they appear to be assigned to? If not, what might the negative consequences be to other watershed health programs? What are the implications for overall BES budget? Will the money be sequestered in a dedicated account to ensure it's actually used for the work described?

We are still working on this question. More discussion of this will occur at the last February 26th work session.