



Bureau of Planning and Sustainability
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MEMO

DATE: May 22, 2013
TO: Planning and Sustainability Commission
FROM: Eric Engstrom, BPS
CC: Susan Anderson and Joe Zehnder, BPS; Mike Rosen, BES
SUBJECT: West Hayden Island Work Session: Amendments to Amended Proposed Draft

On April 9, 2013 BPS released the WHI Amended Proposed Draft for public review. On May 7, 2013 PSC held a public hearing on the amended proposed draft. The record was held open until May 14 for additional written testimony. Since the hearing, BPS staff has been working on responses and drafting potential amendments to public testimony, comments from City Bureaus and Port comments. In addition, some Commissioners provided questions and potential amendments for staff review and comment. The purpose of this memo is to transmit staff-recommended amendments, and responses to issues raised.

The following attachments are enclosed:

- A. General staff-recommended amendments list
- B. Amendment to take the forest mitigation package back to the 110% standard
- C. Amendment to add more specific floodplain performance standard
- D. PSC Questions and staff responses
- E. Issues identified from public testimony, and staff responses
- F. Summary of Port of Portland comments, and staff responses
- G. Summary of Bureau of Development Services comments, and staff responses
- H. Summary of Bureau of Environmental Services comments, and staff responses
- I. Summary of Portland Parks and Recreation comments, and staff responses

Attachment A is a list of amendments recommended by staff, including those already offered in the errata sheet published on April 29, 2013. Staff recommends voting first on this general list of amendments. Attachments B and C are two specific additional amendments, related to the environmental commitments in the draft IGA. Because these two amendments have



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significant cost impacts, we recommend individual consideration by the Commission. After that, we recommend consideration of any additional Commissioner-sponsored amendments. The order of discussion would be as follows:

Item #	Amendment Package	Decision, Choices
1	General staff-recommended amendments	<p>Yes, or No (for the whole package)</p> <p>Treat this as a consent agenda list - Commissioners who would like to delete or amend individual items in the package may pull items from this package and move them to the follow up (item # 4).</p>
2	Forest proposal	<p>Establish performance standard to measure benchmark for increase in “net ecological function”, related to the forest actions, in IGA Section 5.5.3. See Attachment E to the IGA for a more complete description of this methodology.</p> <ul style="list-style-type: none"> - Option 2A: Set benchmark at 101% - Option 2B: Set benchmark at 110% <p>Under Option 2A the forest actions are estimated to cost \$15 million, under Option 2B \$16 - \$19 million.</p>
3	Floodplain proposal	<p>Add more detailed performance standard for the proposed floodplain actions (IGA Section 5.5.4).</p> <ul style="list-style-type: none"> - Option 3A: Leave floodplain proposal as written (no change from April 9 draft) - Option 3B: Add specific recipe for levels of flooding the floodplain project should accommodate: 2-year event = 16 acres; 10-year event = 95 acres; 30-year event = 136 acres; 100-year event = 179 acres. <p>Under Option 3A the floodplain action is estimated to cost <i>roughly</i> \$18 million, under Option 3B \$16 - \$32 million (wider uncertainty).</p>
4	Commissioner proposals	<p>TBD (as proposed)</p> <p>Review deletions or amendments removed from Item #1 package first.</p> <p>Review additional commissioner amendments second.</p>



While the recommended agenda above calls out two specific amendments for individual discussion, there are a variety of other substantive amendments contained within the “General staff-recommended amendments” package (Attachment A), including:

- Some refinements to the legal language contained in IGA Sections 9.3 (non-appropriation of funds) and 9.6 (reprioritization of funding).
- Changes to IGA Section 2.3 and Section 9.4 to elevate the role of the proposed business planning effort.
- Revised description of the NEPA process connections in IGA Section 2.3.
- Adding “full grants for home purchase” to the list of possible uses of the Manufactured Home Community Housing Fund (IGA Section 6.5.1).
- Refinement of SB 766 language in IGA Section 6.6.
- Refinement to IGA Section 8.2 (Role of the WHI Advisory Committee), in response to questions about public involvement.

It is important to note that staff recommended amendments have not resolved/alleviated cost concerns raised by a variety of stakeholders. Staff recommends further discussion of cost implications of current draft and proposed amendments at the work session. Staff will provide an updated cost summary at the meeting for the discussion.



Attachment A
General staff-recommended amendments list

Who	IGA / Code Section	Comment	Response
Summary of Proposal			
1. US Fish and Wildlife Service	Natural Resources on West Hayden Island	The staff report should add that federally-listed salmonids and eulachon occur in the area and Fish and Wildlife Service has designated critical habitat for bull trout throughout the Lower Columbia River.	Agree. Pg 7, staff will add this information to the background information on the staff report
2. Errata	West Hayden Island as a Regionally Significant Industrial Area	Correct Columbia Slough to read Columbia River	Agree. Page 9, Paragraph 2. "That said, sites along the Willamette do not have access to the 43-ft deep navigation channel of the Columbia River Slough, which allows access for a greater variety of ocean-going vessels used in international trade."
Zoning Code			
3. Port	33.595.100	Because the mooring of boats is a listed use in the IH zone and not in the OS zone, it appears the mooring of boats will not be permitted within OS zoned waters. Is that the City's intent?	Agree. We agree that this should be made clearer. Mooring of ships and barges is intended to be permitted in both the IH and OS. The OS allowed uses will be updated.
4. BES	33.595.200	The extremely limited list of exemptions in these setbacks might be a problem.	Agree. Staff will cross reference, as needed, the exemptions in the environmental development standards and appropriate exemptions to the setbacks.
5. Port	33.595.200.A.2	Development will occur on both land and water. Some clarification is needed that this setback applies only to the landward side of the OHWM. Add the following to 2 "100 feet landward of the Ordinary High Water Mark of the Columbia River."	Agree. This is consistent with the other two setbacks' explanation of where the regulation applies.
6. BDS	33.595.100.A.8	RF Facilities. Change language to "These facilities are also subject to the standards of Chapter 33.274."(dch)	Agree. A.8 to read as: Radio Frequency Transmission Facilities. Some facilities are allowed by right and are subject to the standards of Chapter 33.274.
7. BDS	33.595.100.A-B	How do we evaluate whether the Limited Uses have "a	Agree.

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Who	IGA /Code Section	Comment	Response
8. BDS	33.595.110 A.2	<p>functional and economic reliance upon the deep water marine terminal that is located in the plan district?" What characteristics or criteria would we use? Does 33.920.030 have enough evaluation tools within that section? Should that section be referenced? (kf)</p> <p>Change "or" to "and" in list of uses. (dch)</p> <p>Basic Utilities allowed (listed a, b, c,) The Commentary says "allows utilities and small scale energy systems that serve an allowed use on the site, which is similar to the base zone",</p> <p>However, there is no mention of small scale energy production in the list of allowed uses (while it is specifically described as allowed in the OS base zone footnotes).</p> <p>I do not understand 33.595.110 A.2.c. . "Basic Utilities that serve a primary use are considered accessory to the primary use being served." What primary use does this refer to?(smc)</p> <p>Should water conveyance systems be referenced in 33.595.110.A.2.b? (dch)</p>	<p>Proposed alternative language: B. Limited Uses. Manufacturing and Production, Industrial Service or Warehouse and Freight are allowed uses if they handle, produce, or use materials that are shipped through a deep water marine terminal located within the plan district.</p> <p>"and" is currently used in list.</p> <p>Agree. Will remove commentary reference to small scale energy. This is a type of Basic utility, but doesn't have to be specifically noted.</p> <p>For the other two issues, proposed alternative wording: a. Water and sewer pump stations and conveyance systems; b. Sewage disposal, <u>pump stations</u>, and conveyance systems; and c. Basic Utilities that serve an allowed primary use are considered accessory to the primary use being served.</p>
9. Errata	33.595.110.A.2.c.	<p>Primary uses is not the correct term to use in this circumstance, since the plan district code specifies allowed uses. Changing the terminology will make it clear that the utilities must be associated with the allowed uses.</p>	<p>Agree. Basic Utilities that serve an <u>allowed primary</u> use are considered accessory to the <u>allowed primary</u> use being served.</p>
10. BDS	33.595.110.A.4	<p>There should not be a reference to allowed development in a section talking about uses. This might be changed to "Exterior improvements areas accessory to allowed uses." Or that sentence could be included with the reference to the allowed use. As this sentence stands, it sounds like it refers to uses that are allowed anywhere in the plan district and not just uses allowed in the OS zone. Are driveways for uses allowed in the IH zone allowed in the OS zone? (dch)</p>	<p>Agree. See alternative language. 4. <u>Parking and other accessory uses</u> Driveways to intended to provide <u>access to allowed uses in the plan district.</u></p>

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Who	IGA / Code Section	Comment	Response
11. BDS	33.595.200. A.4, B.4 and C.4	These sections list Exemptions from the setback area regulations; however, the commentary indicates the noted "exempt" development is subject to the environmental standards. If the development is subject to standards, the code language needs to indicate that (i.e. <i>Exception: The following development is allowed in the setback, subject to the environmental standards of _____</i>) (kg) (smc)	Agree. 33.595.200.A.4. Exceptions from the river setback are exceptions to is exempt from the river setback; 33.595.200.B.4. Exceptions from the setback area regulation are exceptions to is exempt from the setback area regulation; 33.595.200.C.4. Exceptions from the setback area regulation are exceptions to is exempt from the setback area regulation;
12. Port	33.595.200.C.1	"The purpose of this setback area is to limit the location of recreational improvements and environmental mitigation activities to ensure that they are not located too close to the adjacent industrial area." The italicized text conflicts with the requirement that mitigation of activities within the OS setback occur with the OS setback or the IH setback. Also, there needs to be some clarity between "mitigation activities" and "enhancement projects". This is a new concept and given that mitigation of activities within the OS setback can only occur with the OS setback or the IH setback, the limitation on mitigation seems unreasonable and infeasible.	Agree. The intention is that environmental mitigation and enhancement can occur within the Setback from IH. C.1. The purpose of this setback area is to limit the location of recreational improvements and environmental mitigation activities to ensure that they are not located too close to the adjacent industrial area. Also add: C.4.c. Resource enhancement projects, and tree and vegetation replacement.
13. Port	33.595.200.C.2	Is there some significance between the use of the term zone vs. area? If not, seems to be a consistency problem here.	Agree. This will be made more consistent.
14. Port	33.595.200.C.4.a	"A driveway that provides maintenance access to allowed outdoor recreation or to existing or enhanced natural areas or nature preserves; and" As written, this is now the only use permitted in the IH setback making this area much more restricted than the base OS zone. We understand that BES has also raised this as an issue.	Agree. A driveway that provides maintenance access to uses allowed in the Open Space zone outdoor recreation or to existing or enhanced natural areas or nature preserves ; and
15. BDS	33.595.210.B.2	Add "in the month" to the end of the sentence before the	Agree.

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Who	IGA /Code Section	Comment	Response
16. Port	33.595.210	semi-colon. (dch) Commentary - This language should be amended to be consistent with code language, if the threshold is exceeded it is a code violation, to amend the thresholds is a legislative plan amendment.	Agree.
17. Port	33.595.210	The word "heavy" should be included before truck for clarity and consistency	Agree.
18. Port	33.595.210.B	This is a code structure issue. "Adjustments are prohibited;" does not seem to be an appropriate lead in to the list.	Agree to make clarification to structure, but language prohibiting adjustments will be retained.
19. Port	33.595.210.B.2	Add "heavy truck" in clarify what kind of trips are addressed.	Agree.
20. Port	33.595.210.C	Presumably this is referring to industrial development rather than development of open space facilities?	Agree.
21. BDS	33.595.300	The third bulleted "Purpose", "Provide opportunities for natural resource mitigation, remediation, and enhancement;" really should include the term "conservation". (smc)	Agree.
22. Port	33.595.320.D.3	Map 595-1 - Limitations on future expansion of the dredge material placement and handling site are already addressed by the IGA. The boundary of the DMMA are controlled by the state permit, not city code. Change "facility" to "area" to match the map.	Agree with word change.
23. Port	33.595.320.E	Some clarification is needed between "mitigation" and "enhancement." Why is mitigation resulting from development impacts on WHI subject to resource review?	Agree. Language will be added to the commentary.
24. BDS	33.595.320.E.1	This exemption doesn't work from the standpoint of Environmental Reviews required off of West Hayden Island, for impacts to resources in other environmental	Accept. Natural resource enhancement or remediation projects performed <u>within</u>

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		<p>zones throughout Portland. Approval Criteria in 33.430.250, applied throughout Portland, requires review of the proposed mitigation plan (regardless of where it is proposed to be implemented) to ascertain that all unavoidable impacts are compensated for by the mitigation plan. LUS would need to review the mitigation in order to determine if <i>city identified</i> resources and functional values, lost at the other site, were compensated for by the proposed mitigation. The Corps, DSL, and ESA administrators (NOAA Fisheries and US F&WS) do not manage city identified natural resources other than those below OHW or in a wetland. The City regulates resources and functional values identified in the 8 Natural Resource Inventories and ESEE Analyses adopted by City Council to provide protections to natural resources significant, and sometimes, unique to Portland. They include: Forest habitat, forest wildlife (whether ESA listed or not), creek headwaters, seasonal creeks, floodplain areas above OHW, non-ESA listed fish and wildlife, and unique geologic formations such as the lava domes (smc)</p>	<p>the West Hayden Island Plan District as mitigation for impacts outside the Plan District when it meets the following: a. The enhancement is required to offset impacts to natural resources located within the city limits of Portland outside of the West Hayden Island Plan District; and</p> <p>The commentary will be updated to explain that when an environmental review is completed for impacts to an e-zone outside the plan district the review will consider both the impacts and the mitigation. When the land use is approved, it is approved for both the impacts and mitigation; no additional review is necessary.</p>
25. Port	33.595.320.E.1	<p>As noted in the commentary, West Hayden Island may be used as a receiving site for mitigation or enhancement related to natural resource impacts elsewhere in Portland. Mitigation banks are one way of doing this, but they may be established in advance of an impact. This section should clarify that mitigation banks would be acceptable.</p>	<p>Agree. Language will be added to the commentary.</p>
26. Port	33.595.320.E.2.b.	<p>Add the underlined words. "The enhancement project has been <u>granted</u> a permit from the US Army Corps of Engineers or ..."</p>	<p>Agree.</p>
27. Errata	33.595.425	<p>The environmental standards apply in the IH zone, in the setback from the OS zone (Map 595-2). The purpose of the setback from the OS zone is to be flexible and</p>	<p>Agree. 33.595.425. Standards for Rail and Security. The following standards apply to railroad spur, lead lines, railroad yard, security facilities and</p>

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		allow for some encroachment of the rail and security facilities with appropriate mitigation of the impacts to the forest. This development is exempt from the setback. It is intended that this development only have to meet two environmental standards: 1) avoid wetlands or city review of wetland impacts; and 2) replace trees that are removed. This has always been the intention and was an oversight when staff were attempting to simplify the zoning code. Adding the standards back in will ensure flexibility for rail engineering.	associated clearing, grading and fill located in the IH zone. All standards must be met. a. There is no filling or grading with wetlands or land within 50 feet of wetlands; and b. The standards of 33.595.490 Tree and Vegetation Removal, must be met.
28. BES	33.595.430 – Introduction	Intro might want to include the cross reference to the 480 pipe and outfalls standards. As worded it makes you wonder where those are since they do not immediately follow 430.	Agree.
29. Port	33.595.440.A.4	This is a new requirement; presumably this is not meant to mean at all times.	Agree In addition, staff will refine the setback standard to meet the intent that the trail not be blocked for more than 90 consecutive days in a calendar year.
30. BES	33.595.440.B.2., B.3, B.5.a	-One boat launch per what? Property, tax lot, zone? Same issue with C.2. on the same page	Agree. Will add “within the Plan District” to the end of the standard.
31. BDS	33.595.480.A	This may be a tracking challenge to know what the cumulative width of all outfall pipes, armoring, and support structures. Have you already documented the existing outfalls in the PD? This information would be helpful to establish a baseline.	Agree. Add the following to the permit application requirements: 33.595.410.A.1. Outline of any existing disturbance area, including existing utility locations and existing outfalls and associated armoring.
32. Port	33.595.490.B.4	Is this a permitted activity in the IH Setback?	Agree. This will be corrected (see 33.595.200.C.).
33. BDS	33.595.530.B.1.a(2)	1.a (2) please describe in the commentary why no analysis required here.	Agree.
34. BDS	33.595.530.B.1.a(2)	If the regulations do not provide for an alternatives analysis to consider wetlands or dock facilities, what will be considered in an impact evaluation?	Agree. The analysis will document the impacts on the resources. Clarify in the commentary for B.1. that the impact evaluation is also used for the

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			mitigation or remediation plan.
35. BES	33.595.530.B.1.a[3]	There is a creation of an odd word "signification" in 33.595.530.B.1.a.[3]. I think significant is correct.	Agree. The typo will be fixed.
36. Port	33.595.530.B.1.a.3	Add "significant". Unless the City intends to regulate insignificant impacts, the word "significant" should be included here and DIRECT needs to be defined.	Agree.
37. Port	33.595.530.B.1.a.4	There is a structural problem with the hierarchy. This submittal requirement applies even when no alternatives analysis is required as for wetlands per 1.a.2 above It is unclear how this determination can be made when no alternatives analysis is required as for wetlands per 1.a.2 above	Agree. Add "When required under (2) above, determination of the alternative ..."
38. Port	33.595.530.B.5	Add "significant". Unless the City intends to regulate insignificant impacts, the word "significant" should be included here and DIRECT needs to be defined.	Agree.
39. Port	33.595.540	Commentary – [Alternative locations within the IH zone] The prior section says that alternative locations do not need to be considered. [Forest fragmentation in IH zone] Does this change based on the errata sheet? [last paragraph] The vast majority of these "indirect impacts" will be resulting from marine terminal development in the IH zone which is not subject to these regulations. Please clarify this section to explain the meaning/difference between direct and indirect.	Agree. This will be fixed. Agree. This will be removed. Agree. Agree.

Attachment A
General staff-recommended amendments list

Who	IGA / Code Section	Comment	Response
40. US Fish and Wildlife Service	33.595.540	pg 94. Please clarify that the state and federal requires will still need to be met.	Agree. This will be added to the commentary.
41. Port	33.595.540.A.1	Delete " Proposed development and mitigation plan results in no net loss ..." And add "minimizes loss" instead. The prior draft used the phrase "minimizes loss" and did not include a reference to the mitigation plan. Combining the development and mitigation plan together is confusing. The language in the prior draft should be restored.	Agree. The original language regarding minimization will be restored. The language regarding no net loss will be moved to A.4 as a qualifier to the objective of the mitigation plan.
42. Port	33.595.540.A.3	Why was the word "significant" deleted and replaced with "direct"? How is "direct" defined?	Agree.
43. Port	33.595.540.A.4	The word "significant" was deleted here. Unless the City intends to regulate insignificant impacts, it should be included.	Agree.
44. US Fish and Wildlife Service	33.595.540.A.5.e	The wording under 5.e "Any other site-specific issue or constraint" that may be considered is of concern. Recommend that WHI impacts be mitigated on WHI whenever possible.	Agree. Staff recommends deleting 5.e.
45. Port	33.595.540.B.2	The word "significant" was deleted. Unless the City intends to regulate insignificant impacts, it should be included.	Agree.
46. Port	33.595.600	Commentary – Check cross references.	Agree.
47. Port	595-2	This is an error. It appears the labels on the map for the OS and IH setbacks are reversed.	Agree.
48. Errata	Zoning Map 595-2	Labeling is incorrect for IH and OS.	Agree. Swap the callouts to correctly label the setback from IH and setback from OS.
49. Errata	Zoning Map 595-3	This map is intended to show where the environmental regulations apply which includes the setback areas.	Agree. Change the subtitle from "Natural Resources Area" to "Application of Environmental Regulations" and update the map to include the setback areas.

Attachment A
General staff-recommended amendments list

Who	IGA /Code Section	Comment	Response
IGA			
50. Commissioner	IGA Sections 2.3 and Section 9.4	Make changes to IGA Sections 2.3 and Section 9.4 to elevate the role of the proposed business planning effort.	<p>Agree.</p> <p>Section 2.3: Milestone 1: Staff will list the completion of the business plan as a component of this milestone.</p> <p>Section 9.4: Business plan. A WHI project consultant (Worley Parsons) prepared a preliminary cost estimate of necessary public infrastructure associated with development of WHI as part of the Concept Plan final report. The City (Office of Management and Finance – OMF, PBOT and BPS) and the Port will work together, with the State of Oregon and Metro, to develop a business plan for WHI marine terminal development. This plan will include refined project lists, cost estimates, and timelines; and will identify more specific financing tools and funding sources that could support the anticipated public investments. The City and the Port agree to develop this plan by July 1 2016. <u>The Port will not seek permits to place fill outside the federally-designated Dredge Deposit Management Area until such time as this business plan is complete.</u></p>
51. US Fish and Wildlife Service	IGA Sections 2.3.3, 5.6.1	Recommend that this section be expanded to include more inclusive discussion of the Federal regulations, approvals and permits and that a statement be added about the intent to address actions related to WHI comprehensively in NEPA documents.	<p>Agree.</p> <p>Federal Permits. This is defined as the date the Port obtains a necessary federal permit approval under that comes with the National Environmental Policy Act (NEPA) process is concluded and related permits <u>are</u> issued from the appropriate federal agency or agencies for <u>the</u> first development action on WHI, including any authorizations required for filling within jurisdictional wetlands. “Development” includes fill, rail or marine terminal structures or related docks and causeways below ordinary high water in the Columbia River. “Permit” includes those submitted by entities acting as agents of the Port or any lessee of Port property on WHI.</p> <p>Section 5.6.1.... Marine terminal development will require compliance with <u>federal and state regulations</u> and the Environmental Regulations of the WHI Plan District. <u>One or more of the federal regulations will also trigger a NEPA process.</u> These regulations and processes involve opportunities for public comment,</p>
52. Doug Kolberg	IGA section 3.2.2	Change site size to 2.57 not 3 to correspond to property	Agree.

Attachment A
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Who	IGA /Code Section	Comment	Response
		east of railroad or amended document to reflect that the 3 acres need not be one property or contiguous property, and does not need to be acquired and conveyed to the City at one time.	Staff recommends changing the language to indicate that the 3 acres is an approximate number, and need not be one property. The actual size could range from 2.5 to 3.5.
53.Commissioner	IGA section 4.5	Should strike the first sentence or at least strike the word "persons".	Staff agrees that the word "person" should be removed from the sentence.
54. US Fish and Wildlife Service	IGA section 4.6	We recommend adding a statement to clearly require that any lands in the proposed open space that may be used to fulfill on-site mitigation needs will not be used to meet off-site requirement or will be held back from meeting on-site mitigation needs in order to preserve other options.	Agree. One purpose of the Open Space Strategy described in Section 4.6 is to develop a more specific understanding of how different areas within the open space will be used – for example, to satisfy on-site mitigation, for recreation, or to satisfy off-site obligations (such as NRDA, if approved). Language can be added to Section 4.6 to make this clearer.
55.Commissioner	IGA section 5.2	Add clarity to the "intent" of this section.	Intent. The Port and City will intend to : <ul style="list-style-type: none"> • fully replace the natural resource features and functions impacted <u>both directly and indirectly</u>, by marine terminal development, and document how replacement in <u>quality and quantity of habitat has been achieved, with</u> concurrence of state and federal natural resource agencies. • reach a net increase in overall ecosystem functions, • provide certainty to the Port, City and public regarding mitigation actions and costs, • allow flexibility to respond to federal, state and local regulatory requirements, and
56. Errata	IGA section 5.3	Staff inadvertently listed the anticipated mitigation acres in place of the impact acres for shallow water habitat. The anticipated impacts of shallow water habitat are 0.3 acres.	Agree. Change impact acres of shallow water habitat from 1.5 to 0.3.
57. Chris Hathaway	IGA section 5.5.3.4	Return to 110%, require some mitigation on WHI, need to require mitigation—not open to future negotiations	Agree. See Attachment B
58. Bob Sallinger	IGA section 5.5.3.4	Proposal does not represent a net increase in ecosystem function. Return to 110%, 100 yr monitoring on forest	Agree. See Attachment B
59. OR	IGA section 5.5.3.4	101% net benefit gain is not significant and not even	See Attachment B. Staff is recommending a return to the 110% goal.

Attachment A
General staff-recommended amendments list

Who	IGA /Code Section	Comment	Response
Department of Fish and Wildlife		measurable. ODFW recommends a goal of at least 125%--this would account for margin of error and anticipated challenges with any mitigation effort.	
60. Errata	IGA Section 5.5.3.5	Two typos need to be fixed to correctly cross referenced the previous section. Sentence one should read "In order for these actions to achieve a net increase in forest functions, the specific acreage of forest actions described in Paragraphs 5.5.3.1 and 5.5.3.2 are based on the assumption that...."	Agree. Typos will be corrected
61. CRITFC/Nez Perce	IGA Section 5.5.2	Need to prioritize on site mitigation	Agree. Additional language will be added to section 5.5.2 to indicate an on-site priority for wetlands and shallow water mitigation.
62. Chris Hathaway	IGA Section 5.5.4	Add the 2-yr flood to the floodplain mitigation	Agree. See Attachment C
63. Bob Sallinger	IGA section 5.5.4	specify # of acres available to 10, 30 & 100yr floods	Agree. See Attachment C.
64. Chris Hathaway	IGA Section 5.5.8	Geography: if on site cannot be accommodated then off site should conform with hydrogeomorphic reaches F and G in Columbia River Estuary Ecosystem	Agree. Refine Geographic language in Section 5.5.8 to reference the reaches of the Geography noted by LCREP.
65. BES	IGA Section 5.5.10	Because of the long term nature of this agreement, we recommend a re-opener clause in section 5.5.10 (Adaptive Management) to require a mandatory reexamination of the terms of the agreement in the event of significant changes in regulatory context (e.g., additional ESA listings), natural resource conditions or improved scientific understanding. This would require review and would not be dependent on the agreement of both parties.	Agree. Recommendation for new language: Adaptive management, as described in Section 2.4 will be used as natural resource conditions, regulatory requirements, and scientific understanding evolve over time. It is not the intent of this agreement to require an inflexible mitigation approach that cannot respond to these changes. The Port and City may agree in writing to deviate from these objectives if such changes are necessary to respond to significant changes in regulatory context (for example, additional ESA listings), natural resource conditions, or improved scientific understanding. The requirements and objectives of Section 5 of this Agreement may be modified or waived only upon the express written agreement of the City and Port, and only after consulting with the West Hayden Island Advisory Committee described in Section 8 of this Agreement.
66. Errata	IGA Section 6.4.2	Change "may" to "will" in text of section	Agree. Supplemental HIAs for additional terminal developments. The scope of the HIA will focus on the specific Port development proposal(s). A baseline health study of the local island population will be conducted as part of

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Who	IGA / Code Section	Comment	Response
67. Pam Ferguson	IGA Sect. 6.5	Down payment assistance under housing fund options "not real". Staff needs to include full grant to buy homes for individuals who cannot afford a loan or down payment	the HIA. The HIA process will be lead by a HIA practitioner and member of the Society of HIA practitioners, to be selected by the City (BPS) and MCHD. The HIA practitioner will design and lead the study in consultation with the City (BPS), MCHD, and the Port. Supplemental HIAs or addenda to the assessment will not be required if additional terminal facilities are proposed and development permits are submitted within the IH zoned area.
68. Bob Sallinger	IGA Section 6.6	Requested change to 766 language: "The Port and its assignees will not utilize SB 766 related designations on WHI to bypass local or state public processes that would apply in the absence of SB 766 designation, including rights to notice and comment, public hearings, complete (non expedited) comment and review periods, and all existing causes of action for appeal"	Under section 6.5.1 staff highlighted some potential uses of the housing grant funds. This list is not comprehensive because we do not want to limit future discussions of how these funds will be used during the planning process. However, staff understands the concerns raised about the payment assistance option. Staff recommends adding "full grants for home purchase" to the list of potential uses.
69. Errata	IGA Section 8, Attachment F	WHI AC Membership. 8.3 says the City (Mayor) and Port will appoint members. Attachment F says that "Each of the specific membership interest groups shall appoint a member..." - Which is it?	Agree. Staff recommends changing the IGA to add this language.
70. Commissioners	IGA Section 8.2	Recommendations have been made by Commissioners to add provisions for more public involvement in the IGA implementation.	Agree. Staff will clarify the language: Attachment F will be corrected to state that the City (Mayor) and the Port will collaborate to appoint a member from each interest group that has been identified.
			Agree. Recommendation for new language: 8.2, Role of West Hayden Island Advisory Committee. The Port, in collaboration with the City will establish an ongoing WHI Advisory Committee (WHI AC) consistent with Attachment F. The role role of the WHI AC will be to: (a) comment on the development and implementation of an OS Strategy; (b) advise the Port and City during recreational facility design and development; (c) negotiate a Good Neighbor Agreement to be implemented during the construction and subsequent terminal operations; (d) provide an ongoing forum for discussion of neighborhood impacts associated with ongoing recreational and marine terminal uses on WHI; (e) review truck traffic

Attachment A
General staff-recommended amendments list

Who	IGA /Code Section	Comment	Response
71. Errata	IGA Multiple references	All references to the Manufactured Home Park corrected to read Manufactured Home Community.	Agree.
72. Errata	IGA Section 9: Funding Table	These amounts are only included as estimates of the costs. They are not intended as a cap. Remove the “up to” language	Agree. Remove the terms “up to” in the estimated amounts for North Hayden Island Drive and Ecosystem Values and Functions.
73.Commissioners	IGA Section 9.3	In testimony some have indicated that certain clauses are a fatal flaw in the agreement because they seem to offer an escape clause.	Staff agrees that the following edits will improve this clause: 9.3 Nonappropriation of Funds. All specific funding obligations of the Port and City contained in this Agreement (summarized below) are contingent upon funding being available and appropriated by the Port Commission and City Council. The Parties acknowledge there are a variety of uncertainties, including future market conditions, that will affect the availability of funds, and these uncertainties may affect the parties unequally. The parties will strive work diligently to attain funding necessary to meet their respective obligations under this Agreement to the maximum extent feasibly possible. If, despite these efforts, the City and/or the Port determine that insufficient funds are available to meet their obligations under this Agreement, the City Council and/or the Port will adopt a written decision describing: (a) the efforts undertaken to identify funding to perform their obligations under this Agreement; (b) why sufficient funding is currently unavailable; and (c) when sufficient funding is anticipated to be available. The party adopting the decision will send a copy of this decision to the other party within 7 days of the date the decision is adopted consistent with the notice provisions in Section 22 of this Agreement. Additionally, a copy of the decision will be sent to the City’s Mayor and the Port’s Executive Director. Following receipt of the decision, the City and Port will first initiate and complete the process to reprioritize funding pursuant to Section 9.6 before pursuing any other remedy permitted by this Agreement.
74.Commissioners	IGA Section 9.5	Concern expressed that donations would be a possible	Agree.

Attachment A
General staff-recommended amendments list

Who	IGA /Code Section	Comment	Response
75.Commissioners	IGA Section 9.6 Reprioritization of Funding and Section 10.4 Reporting	<p>funding source for future development.</p> <p>In testimony some have indicated that certain clauses are a fatal flaw in the agreement because they seem to offer an escape clause.</p>	<p>Staff will add language further clarifying that the Port does not intend to seek external funding for environmental restoration or natural resource actions.</p> <p>Staff agrees that the following edits will improve this clause:</p> <p>9.6 Reprioritization of Funding. If the Port Commission and/or City Council do not appropriate funding or anticipated External Funds are not committed when and as required adopt a written decision that insufficient funds are available consistent with Section 9.3 of this Agreement, the Port and City will initiate negotiations within 14 days of receipt of the written decision described in Section 9.3. The Port and City will immediatelynegotiate in good faith in an effort to agree on an amendment to this Agreement that will identify : (a) a time frame within which sufficient funds may be available to meet the obligations specified in this Agreement; and/or (b) a reprioritization of the sources and uses of funding set forth in this Agreement and negotiate an amendment to this Agreement to reflect that reprioritization. If the Port and City agree to amend this Agreement, the Port Commission and City Council will adopt the amendment within 30 days of the date agreement is reached. If after at least ninety (90) days of good faith negotiations the Parties are unable to agree on the terms of an amendment, then either Party may elect to terminate this Agreement in the manner specified in Section 21 of this Agreement.</p> <p>Staff recommends modifying section 10.4 Reporting to identify and capture in writing information that may result from the implementation of sections 9.3 and 9.6.</p> <p>10.4 Contents of Reports. Each report required by Section 10 will describe specific projects completed during the previous year and anticipated to be accomplished during the next year, including relevant cost and budget information. <u>Additionally, the report will describe whether the Port anticipates sufficient funds will be available to meet its obligations under this Agreement, and, if not, the Port's actions to comply with Sections 9.3 and 9.6 of this Agreement.</u></p>

Attachment A
General staff-recommended amendments list

Who	IGA /Code Section	Comment	Response
76. Bob Sallinger	IGA Section 10.2 & Att. G	Insert stronger BMPS into document – Principle 8 for example, sets a lower standard for Natural resources than are outlined in IGA.	Agree. Staff recommends that Port strengthen principle #8 in the attachment to align with IGA natural resource requirements
77. Bob Sallinger	Att. G	BMPS for wildlife: City's new bird-safe Building Guidelines should be explicitly referenced), wildlife friendly practices for minimizing collision and electrocution hazards associated with power lines, and limiting exposure of wildlife to toxins and pesticides	Agree. Staff recommends adding the reference to the bird-safe building guidelines.
78. CRITFC	IGA: New section 24	Just meeting state/fed regulations is not sufficient (construction impacts, source control, SWM all need to be strengthened)	Agree. BPS and the City Attorney's office have developed a new clause to add to the agreement that clarifies that nothing in the agreement implies exemptions from applicable state, federal and local requirements. All state and local sewer, stormwater and outfall requirements will apply. Add a new section 24: 24. OTHER CITY, REGIONAL, STATE, AND FEDERAL LAWS AND REGULATIONS 24.1 References to Other Laws and Regulations. All references in this Agreement to other City, regional, state, or federal laws or regulations are for informational purposes only, and do not constitute a complete list of the laws or regulations applicable to future development on WHI by the Port. These references do not imply any responsibility by the City for enforcement of regional, state, or federal laws or regulations. References also do not preclude exceeding minimum requirements. 24.2 Compliance Required. In addition to the requirements of this Agreement, all uses and development on WHI must comply with all other applicable City, regional, state, and federal laws and regulations.

Attachment B:

IGA Amendment to return to a forest mitigation goal of 110%

Description:

Establish performance standard that results in a “net increase in ecological function”, related to the forest actions, in IGA Section 5.5.3.4. See Attachment E to the IGA for a more complete description of the forest mitigation methodology.

- Option 2A: Set performance standard at 101%
- Option 2B: Set performance standard at 110%

Under Option 2A the forest actions are estimated to cost \$15 million; under Option 2B \$16 - \$19 million. The reason for the increase is that maximizing forest actions at WHI and Government Island gets to over 101% but does not reach not 110%; therefore a third site is needed.

Replacement IGA Language:

5.5.3.1 Performance Standards. The Port will implement actions that achieve 110% functional replacement of the impacted bottomland hardwood forest, consistent with the City (BES) *WHI Forest Mitigation Framework* (March 22, 2012) and other performance standards in Attachment E.

5.5.3.2 West Hayden Island Actions. The Port will protect 272 acres of existing forest on WHI and within that protected area the Port will enhance 187 acres of cottonwood-ash forest. In addition, the Port will re-establish 22-acres of cottonwood-ash forest on the south side of the island. The WHI forest actions are shown on Attachment E

5.5.3.3 Government Island Actions. Pending agreement by the FAA and Metro, the Port will re-establish 174 acres and enhance 296 acres of cottonwood-ash forest on Government Island, for a total of 470 acres, as shown on Attachment E.

5.5.3.4 Additional Forest Actions. The specific forest actions described in Paragraphs 5.5.3.2 and 5.5.3.3 would achieve approximately 103% of the required bottomland forest replacement. In addition the Port will perform additional bottomland cottonwood/ash forest re-establishment within the geography described in Section 5.5.8, as necessary to reach the 110% performance standard stated in Paragraph 5.5.3.1.

5.5.3.5 Port Payment. In lieu of performing the additional actions described in Paragraph 5.5.3.4, the Port at their discretion may make a one-time payment to the City (BES) for the purpose of bottomland cottonwood/ash forest re-establishment within the geography described in Section 5.5.8. The amount of the payment will be based on the estimated cost of specific actions that would reach the 110% performance standard stated in Paragraph 5.5.3.1. The payment will occur when Milestone 1 has been completed.

5.5.3.6 Alternative Forest Actions. The specific forest actions described in Paragraphs 5.5.3.2 through 5.5.3.4 represent only one possible package of forest actions.

Notwithstanding Paragraphs 5.5.3.2 through 5.5.3.4, in order to achieve 110% replacement of the bottomland hardwood features and functions, the Port, City or other designated entity may at their discretion use the performance standards referenced in Paragraph 5.5.3.1 to determine alternative actions that create the equivalent level of ecological function and replacement.

5.5.3.7 Timing of Forest Actions. [No Change, other than renumbering]

Attachment C:

IGA Amendment to add more specific floodplain performance standard

Description:

Add more detailed performance standards to the proposed floodplain actions (IGA Section 5.5.4.1).

- Option 3A: Leave floodplain proposal as written (no change from April 9 draft)
- Option 3B: Refine the total floodplain restoration acres and add specific recipe for levels of flooding the floodplain project should accommodate (see attached map):
 - o 2-year event = 16 acres;
 - o 10-year event = 96 acres;
 - o 30-year event = 135 acres;
 - o 100-year event = 179 acres.

Note: City GIS staff are still finalizing the floodplain acreages; however, these are acres are very close. The acres are not additive; they overlap.

Under Option 3A the floodplain action is estimated to cost \$18 million, under Option 3B \$16 - \$32 million (wider uncertainty).

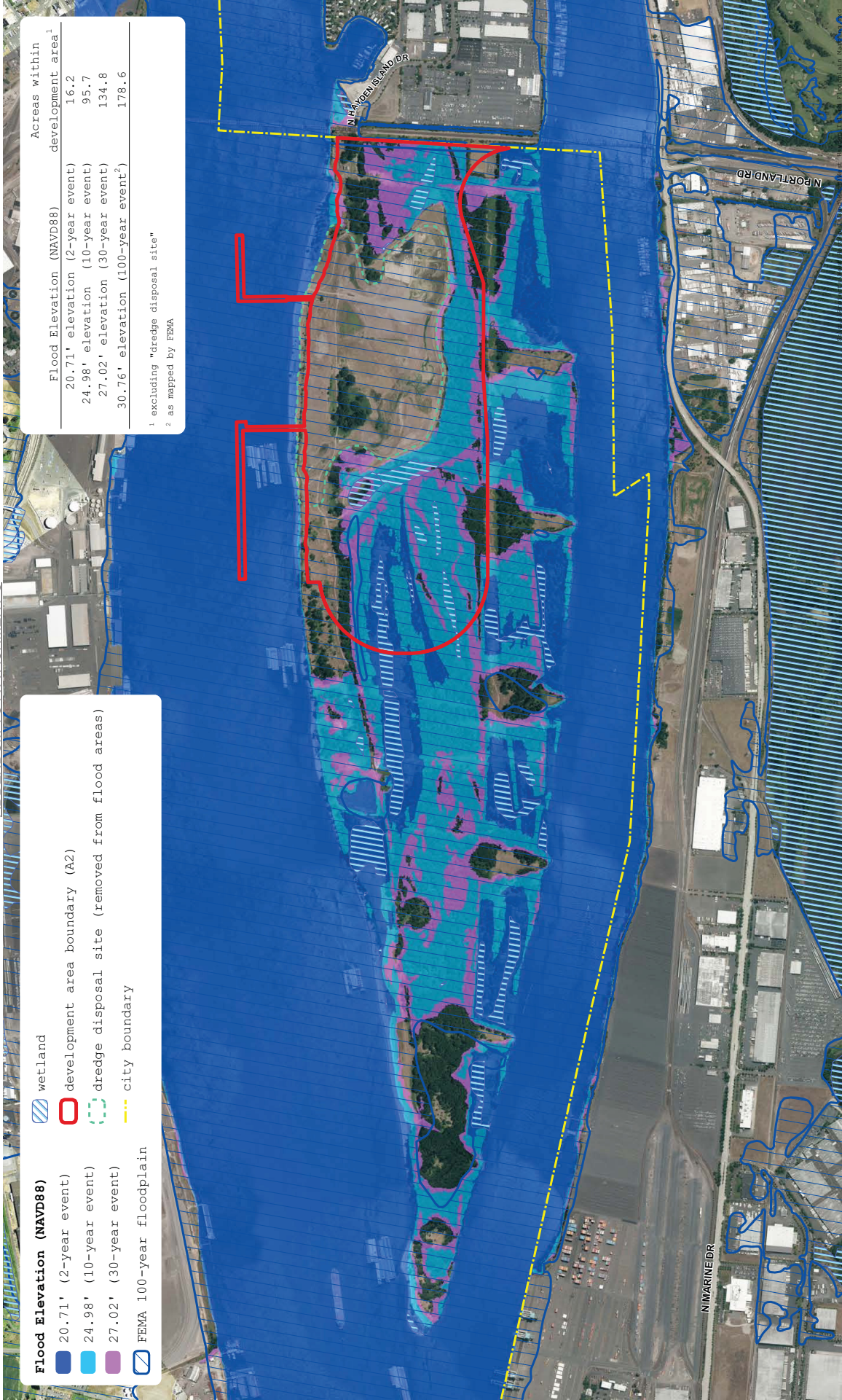
IGA Language:

The flood mitigation performance standard in the IGA could read:

The Port will implement actions to restore a 100-year flood event to at least 179 acres of land within the historic Columbia River floodplain. Within the 179-acre restoration site, at least X acres will be inundated during a 2-year flood event, at least Y acres will be inundated during a 10-year flood event, and at least Z acres will be inundated during a 30-year flood event. The Port may choose at its discretion to co-locate other actions described in Section 5 with floodplain action.

Staff will plug in the final acres when the GIS analysis is complete.

APPENDUM TO ATTACHMENT C



Flood Elevation (NAVD88)

- 20.71' (2-year event)
- 24.98' (10-year event)
- 27.02' (30-year event)
- FEMA 100-year Floodplain

Legend:

- wetland
- development area boundary (A2)
- dredge disposal site (removed from flood areas)
- city boundary

Flood Elevation (NAVD88)	Areas within development area ¹
20.71' elevation (2-year event)	16.2
24.98' elevation (10-year event)	95.7
27.02' elevation (30-year event)	134.8
30.76' elevation (100-year event) ²	178.6

¹ excluding "dredge disposal site"
² as mapped by FEMA

Chris Smith

1. I think we need to get a handle on the floodplain definition question. 100-year floodplain seems too long (even though the 100-year flood is probably more frequent now due to climate), 2-year may be too extreme. What's reasonable, what are the cost implications?

Staff response: Staff recommends adding the 2, 10 and 30 year flood events to the floodplain performance standard. We are working with GIS staff to finalize the acres of 2, 10 and 30 year events within the impacted development footprint, and we will use a 1 : 1 ratio to determine the mitigation acres. Initial calculations show that within the 179 acres of 100-year floodplain, approximately 16 acres of area would be inundated during a 2-year flood event, 96 acres of inundation during a 10-year flood event and approximately 135 acres of inundation during a 30-year event¹ would be impacted (see attached map).

The flood mitigation performance standard in the IGA could read:

The Port will implement actions to restore a 100-year flood event to at least 179 acres of land within the historic Columbia River floodplain. Within the 179-acre restoration site, at least X acres will be inundated during a 2-year flood event, at least Y acres will be inundated during a 10-year flood event, and at least Z acres will be inundated during a 30-year flood event. The Port may choose at its discretion to co-locate other actions described in Section 5 with floodplain action.

It will be difficult to estimate cost implications of this change without further technical work, and identification of a specific site. Staff's initial estimate of the range of possible floodplain costs was \$18 to \$64 million. The actual cost would depend on our ability to find a site that had these characteristics, and what specific actions would be necessary to re-introduce flooding. The cost change could be minimal if we could find an existing site with these characteristics, and if the project involved removal of some barrier that was keeping floodwaters out. The costs could be much higher if excavation was required to establish these characteristics. A reasonable (very rough) cost range for this revised project would be \$16 to \$32 million.

2. The Parks & Rec letter on timing probably needs some response even though I think I understand why the IGA is the way it is.

Staff response: The staff's response to Parks is included with the response to all bureau comments.

3. I would be interested in staff's response to issues 1, 2, 5, 7 [both #7 issues :-)] and 11 in the Audubon letter.

Staff response: The staff's response to Audubon testimony is included with our response to other testimony.

¹ The acres are not additive; the areas of inundation overlap.

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4. I think there is at least a 50% chance the CRC will be effectively dead before our recommendation gets to Council. And even if it continues to move (or limp) forward, the initial construction package is subject to change. I'm sympathetic to the idea that there should be some kind of public process for alternatives if the assumed obligations are not going to be met by the CRC (versus just City/Port negotiation).

Staff response: Mayor Hales has publicly stated that he does not intend to bring the WHI annexation question to a City Council vote until the CRC issue is resolved. If it is determined that the project is not moving forward, BPS will be working with PBOT to evaluate the impact of that decision on the city's entire transportation system. That would be done as part of the Comprehensive Plan project, and revisions to the Transportation System Plan.

5. I agree with testimony that the IGA should have more detailed definition of expected outcomes for the NHID/Main/Pavilion intersection (Mike Conner's letter).

Staff response: Attachment C to the draft IGA provides cost estimates for this roadway segment should CRC not provide the funding, and a rough cost for the intersection signalization at Pavillion. Intersection design is not a land use or planning-level determination. That decision is more appropriately made at the project design level, when all design options can be more fully explored. PBOT has a specific public involvement process that will be followed to refine the project design.

6. The question of whether the truck cap should have a specific nighttime limit is one I would like to see explored.

Staff response: PBOT and BPS staff have discussed this and recommend against a specific nighttime limitation as part of the IGA. The IGA does mandate a good neighbor agreement (Section 8.2). Hours of operation is typically something that would be negotiated in such an agreement, in this case probably with the terminal operator. We are reluctant to set that in stone through an IGA, at this time, for several reasons.

- Once an investment in a Port facility is made, it may be desirable to maximize use of the facility through the use of multiple shifts.
 - Ships and trains do arrive into port at varying times of the day and night. Restricting this in the IGA at this time, without the involvement of the terminal operator, would be problematic.
 - There is also 80+ acres of other industrial land located between the Port and the nearest residential zone, and that land has no time-of-day restriction. That would likely create enforcement confusion, because some trucks associated with other nearby industrial property would be using the street at night.
7. I'd like to see a community park east of the manufactured home community represented in the IGA somehow (even if just a commitment that the City and Port will support it). I realize that the opportunity is very dependent on the CRC staging area choice/post-project disposal. There's an interesting nexus between the desire expressed Tuesday to expand the size of the boat-launch

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park. Perhaps we could define a 'base parks' package for the 3-acre park in the IGA today and an 'expanded parks' package that would include both the expanded boat launch area and the community park?

Staff response: Parks and BPS staff do not support specific discussion of the Thunderbird site as an element of the City-Port IGA. Inclusion of this in this West Hayden Island IGA will complicate other efforts to consider the future of that site in conjunction with CRC or through other avenues. The adopted neighborhood plan contemplates a park at both of the sites discussed by the Commission, so both parks remain as adopted goals of the City, regardless of what we say in the IGA. Naming this specific park as a City priority in the IGA could short-circuit any citywide process to determine what neighborhood park improvements to prioritize. We also prefer not to name specific property in the IGA, because it will hinder acquisition negotiation.

8. What would be the cost impact of taking the forest mitigation back to the 110% target?

Staff response: Approximately \$1 to \$4 million. The current proposal, slightly above no-net-loss, maximizes available forest enhancement and restoration opportunities on Government Island and WHI. Going to 110% implies incorporating a third site, which has additional acquisition and logistics costs. In the November draft of the proposed IGA, we had recommended an additional \$4.1 million off-site grant to BES, to make up this difference (though, at the time the proposal had not quite maximized on-site opportunities on WHI).

The 110% standard could be restored by adding an additional third site to the forest mitigation section of the IGA (5.3.3), with an in-lieu payment option. Staff recommends this approach.

9. I would appreciate staff perspective on the Fish and Wildlife Service letter.

Staff response: The staff's response to USFWS is included with the response to other testimony.

Andre Baugh

1. In Bernie Bottomly testimony he stated according to the meeting notes that the Port could apply for assistance through SB 246. I was told by Keith (Port of Portland) they could not apply for assistance because of the size of WHI. I would like to know if it is true that the port can apply through SB 246?
2. From notes regarding SB 246: liability stays with the organization that takes out the loan. The bill as currently structured (if it passes) has no loan funds allocated in it. In this instance, if it were to apply, the Port would make the expenditure and would be reimbursed by the State. The bill was brought by the Oregon Business Plan Coalition, which includes the PBA."

Staff response: The Portland Business Alliance letter accurately describes the way that SB 246 would work. Our understanding is that it could apply to WHI, in theory,

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but is unlikely - because the Port development timeframe and multi-staged nature would not easily fit the parameters of the program. See additional information in our response to Karen's question below.

Our understanding is that liability is not transferred by SB 246. Keep in mind that the port of Portland is a public sector entity, and is itself funded by taxpayer money, along with business revenue. The Port has a financial relationship to the taxpayers regardless of SB 246.

3. Two Amendments related to external funding:

- Add a provision to the IGA that requires the City if the Port does not apply for State assistance in development of WHI.
- Add provision that requires the City to apply for assistance at USDOT, Department of Labor and EPA for assistance if the Port fails to apply for assistance.

Staff response: The IGA already includes provision stating mutual intent to develop a funding approach that includes seeking state and federal sources. Staff interprets this as a request to strengthen Section 9.4, to include more specific weight to the plan.

Staff recommends doing this by listing the completion of the business plan as a component of Milestone 1 in Section 2.3.3

- 4. Add provision that requires all applications to be reviewed by citizens and environmental community.**

Staff response: Section 8 of the IGA creates an advisory committee that serves this purpose. Among other things, it provides an ongoing forum for the City or Port to share information about the development process. Staff recommends some refinement of the advisory committee language in the IGA to clarify this role.

- 5. Require the business development agreement first before the City approves any permits.**

Staff response: Staff interprets this as a request to ensure no development is permitted until the financial planning contemplated in Section 9.4 of the IGA is concluded. The stated deadline for completing that action is July 2016. As a practical matter, issuance of permits is very unlikely before that date, for several reasons:

- The proposed city zoning is unlikely to go into effect until 2014 or 2015, because appeals to the annexation are anticipated (see Milestone 1 in Section 2.3 acknowledges that).
- A 12 month advance notice of state or federal permit applications is required in Section 22.3. Even if annexation was in effect in 2014, it would be a year before any permit could be submitted.
- A clause in Section 5.6.6 requires a NEPA process before fill occurs outside the existing Dredge Deposit Management Area. This process will take time. It will

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take a year or more to prepare a permit application to state and federal authorities, even if a development partner emerged tomorrow. The NEPA process itself will also take time.

The language in the IGA under Section 9.4 could read:

Business plan. A WHI project consultant (Worley Parsons) prepared a preliminary cost estimate of necessary public infrastructure associated with development of WHI as part of the Concept Plan final report. The City (Office of Management and Finance - OMF, PBOT and BPS) and the Port will work together, with the State of Oregon and Metro, to develop a business plan for WHI marine terminal development. This plan will include refined project lists, cost estimates, and timelines; and will identify more specific financing tools and funding sources that could support the anticipated public investments. The City and the Port agree to develop this plan by July 1 2016. The Port will not seek permits to place fill outside the federally-designated Dredge Deposit Management Area until such time as this business plan is complete.

Mike Houck

1. I feel the “escape clauses” in the IGA are a fatal flaw, particularly ...

Staff response: Sections 9, 13 and 21 contain several clauses that have been referred to as “escape clauses” in testimony. This includes “non-appropriation” language in 9.3 and 9.6, “waiver of default” language in Section 13.5, and “termination” language in Section 21. While it is understandable that some may view these provisions as “escape clauses,” they are designed to protect the City’s interests as described below.

An IGA is a contract between two public entities. State law allows public entities, including cities and special districts, to enter into IGAs to facilitate intergovernmental cooperation. State law also requires IGAs to contain certain key terms that address, among other topics, the apportionment of financial responsibilities between the parties, how long the contract will be in effect, and the parties’ rights to terminate the contract. Consistent with this requirement and to protect the City’s interests, bureau staff and the city attorney’s office make sure that each IGA to which the City is a party contains language that addresses: (1) what happens if the City Council is unable to appropriate funds necessary for the City to perform its obligations under the contract (called a “nonappropriation clause”); (2) the City’s rights to terminate the contract (a “termination” clause); and (3) the City’s right to elect to continue on with a contract, rather than terminate it, when the other party does not or cannot fulfill one or more obligations under the IGA (a “waiver of default” clause).

The nonappropriation provisions in the proposed IGA protect the City in the event that circumstances unforeseen at the time of contract signing make it impossible for the City to carry out its contract obligations. For example, a decline in property tax or other revenues could create a situation in which a future city council is unable to appropriate sufficient funds to carry out the IGA. If that occurs, the nonappropriation language in Sections 9.2 and 9.6 allow the City to negotiate a potential solution with the Port, rather than simply terminate the IGA.

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The language in Section 21 describing the City's and Port's ability to terminate the IGA is required by state law.

Finally, the "waiver of default" provision in Section 13.5 protects the City as well. It applies only when the other party has not adhered to the letter of the contract (i.e., is in default), potentially triggering contract termination. The "waiver of default" language gives the City the option to excuse the noncompliance and enables both parties to continue implementing the contract, rather than terminating it, when it is in the City's best interests to do so. This is a *permissive* contract provision. That is, the City may choose to waive the other party's failure to carry out a contract term, but is not required to do so. Similarly, the Port may choose to excuse any City noncompliance with the IGA, rather than terminate it.

Staff has consulted with the City Attorney and these provisions are viewed as essential elements of the IGA. The City Attorney would not recommend that the Mayor sign the IGA without them.

If members of the commission are uncomfortable with this language, it suggests that you are uncomfortable with using an IGA as a tool to memorialize responsibilities related to this annexation. There are other tools, such as taking a more unilateral regulatory approach. For example, the City could impose environmental mitigation requirements through an additional layer of zoning code requirements. That said, several elements of the proposed IGA may enable the City to address topics and obtain community benefits that are not currently possible through zoning regulations. For example, we have no direct path to regulate air quality, ask for housing mitigation funds, or require an HIA through our existing Comprehensive Plan or other City Codes. We can get to these things through an IGA only because an IGA is a mutual agreement, and presumably both parties gain from the IGA. That is, there are obligations imposed on the City in this IGA. In exchange, the Port may be willing to agree to certain other obligations.

Staff recommends that the following edits to Sections 9.3, 9.6 and 10.4 to improve clarity:

9.3 Nonappropriation of Funds. All specific funding obligations of the Port and City contained in this Agreement (summarized below) are contingent upon funding being available and appropriated by the Port Commission and City Council. The Parties acknowledge there are a variety of uncertainties, including future market conditions, that will affect the availability of funds, and these uncertainties may affect the parties unequally. The parties will ~~strive~~ work diligently to attain funding necessary to meet their respective obligations under this Agreement to the maximum extent ~~reasonably possible~~. If, despite these efforts, the City and/or the Port determine that insufficient funds are available to meet their obligations under this Agreement, the City Council and/or the Port will adopt a written decision describing: (a) the efforts undertaken to identify funding to perform their obligations under this Agreement; (b) why sufficient funding is currently unavailable; and (c) when sufficient funding is anticipated to be available. The party adopting the decision will send a copy of this decision to the other party within 7 days of the date the decision is adopted consistent with the notice provisions in Section 22 of this Agreement. Additionally, a copy of the decision will be sent to the City's Mayor and the Port's Executive Director. Following

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receipt of the decision, the City and Port will first initiate and complete the process to reprioritize funding pursuant to Section 9.6 before pursuing any other remedy permitted by this Agreement.

9.6 Reprioritization of Funding. If the Port Commission and/or City Council ~~do not appropriate funding or anticipated External Funds are not committed when and as required~~ adopt a written decision that insufficient funds are available consistent with Section 9.3 of this Agreement, the Port and City will initiate negotiations within 14 days of receipt of the written decision described in Section 9.3. The Port and City will immediately negotiate in good faith in an effort to agree on an amendment to this Agreement that will identify : (a) a time frame within which sufficient funds may be available to meet the obligations specified in this Agreement; and/or (b) a reprioritization of the sources and uses of funding set forth in this Agreement ~~and negotiate an amendment to this Agreement to reflect that reprioritization. If the Port and City agree to amend this Agreement, the Port Commission and City Council will adopt the amendment within 30 days of the date agreement is reached.~~ If after at least ninety (90) days of good faith negotiations the Parties are unable to agree on the terms of an amendment, then either Party may elect to terminate this Agreement in the manner specified in Section 21 of this Agreement.

10.4 Contents of Reports. Each report required by Section 10 will describe specific projects completed during the previous year and anticipated to be accomplished during the next year, including relevant cost and budget information. Additionally, the report will describe whether the Port anticipates sufficient funds will be available to meet its obligations under this Agreement, and, if not, the Port's actions to comply with Sections 9.3 and 9.6 of this Agreement.

2. The floodplain mitigation needs to be spelled out more clearly, specifically with regard to addressing the range of flood events, from 2-year to 100-year as referenced by Chris Hathaway and the Lower Columbia River Estuary Partnership at our last hearing. I also believe strongly that the mitigation should be for 300 acres, not 200.

Staff response: See response to Chris Smith's question above.

Staff arrived at a 200 acre proposal because, within the development footprint, approximately 100 acres of the Dredge Deposit Management Area is already filled to an elevation beyond the 100-year floodplain. Asking for new mitigation for fill related to a pre-existing industrial use on the site that was permitted legally by federal and state authorities is beyond the scope of this project.

3. Net Increase in Ecological Function. I do not believe the proposed mitigation gets us to Net Increase. Both the change to 101% and reduction of monitoring from 100 years (in perpetuity) to 30 years are problematic. Oregon Department of Fish and Wildlife and others question both whether a net gain will be possible with these two changes.

Staff response: See response to Chris Smith's question above, related to the 101% and 110% goals.

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Staff recommended a change from 100 to 30 years of formal monitoring because most of the physical actions associated with monitoring would occur in the first 30-year period - for example, replacing dead trees to ensure canopy coverage targets are being reached, and controlling invasive to ensure survival of native species. Beyond that time, the new forest is more established, and monitoring becomes indistinguishable from general good stewardship of that property. On-going maintenance is part of the site's long-term maintenance. Many regulatory monitoring periods are only 10 years. The typical monitoring required for mitigation in the City through environmental review is 5 years. The estimated un-adjusted cost of an additional 70 years of monitoring is approximately \$11.5 million (in addition to the estimated \$15 million unadjusted cost of the current forest mitigation proposal). This is based on BES cost estimates summarized in an EcoNorthwest memo transmitted to the Commission for the March 26 meeting.

The Port has ongoing expenses associated with managing any property it owns. As a public sector land manager, the Port is responsible to the taxpayers of Oregon to manage its assets appropriately. There are other accountability mechanisms in place outside this IGA that the public can use to effect how the Port operates, if there is a concern about the Port's willingness or ability to properly manage land it owns. The Port Commission ultimately reports to elected officials (the Governor and the State Senate).

4. If the CRC does not move forward it seems to me the entire package is compromised or jeopardized. And, there seems to be a good chance CRC will not be funded or will take considerably longer to be constructed. Is this a fatal flaw?

Staff response: See response to Chris Smith's question above.

5. The entire funding package is extremely problematic. For example, 9.5, Additional Funding Sources includes "donations" as one possible funding source. If we're down to soliciting donations, seems to me it's a pretty sketchy proposition we're considering!

Staff response: This is a standard list of funding sources that might be explored with any large project. Donations have been successfully used in parks and open space development in the past - The Portland Parks Foundation for example.

Mike Houck's Specific comments:

6. Page 119, S. Does this statement lead to less mitigation on West Hayden Island? The Trustees (tribal representatives) made it clear they did not want NRDA obligations to negate or reduce mitigation on WHI for impacts related to marine development.

Staff response: This is a statement of context for the agreement. It reflects the position of the Mayor's Office at the time this clause was written. Because it is in the

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recitals, it has no specific impact on the agreement, other than to provide background as to why we entered into it.

7. Page 120. 2.4 Five Year Reviews, Adaptive Management: There seems to be no role for citizens, NGOs, the broader community or federal/state agencies. Suggested Amendment: “The Port, city and other stakeholders, including state and federal natural resource agencies, will comprehensively review the work performed.....”

Staff response: Section 10.3: Reporting by Port already includes the Advisory Committee review of a report on a yearly basis that details the progress on environmental activities, truck traffic, sustainability policy, open space strategy and any other specific projects related to WHI that have happened over the course of that year.

Staff recommends the following edits to Section 2.4 to add clarity:

Adaptive management, as described in Section 2.4 will be used as natural resource conditions, regulatory requirements, and scientific understanding evolve over time. It is not the intent of this agreement to require an inflexible mitigation approach that cannot respond to these changes. The Port and City may agree in writing to deviate from these objectives if such changes are necessary to respond to significant changes in regulatory context (for example, additional ESA listings), natural resource conditions, or improved scientific understanding. The requirements and objectives of Section 5 of this Agreement may be modified or waived only upon the express written agreement of the City and Port, and only after consulting with the West Hayden Island Advisory Committee described in Section 8 of this Agreement.

8. Page 122, 3.1.4 Columbia River Crossing: Several people have stated, either during hearings, or outside our process (Mayor Hales), that if the CRC does not proceed or is significantly delayed it would be a fatal flaw for the proposed WHI development. Is that accurate and is this statement sufficient to address that possibility?

Staff response: See response to Chris Smith question above.

9. Page 124, Open Space---Use, Ownership and Further Planning: 4.2, Restoration Vision: We have heard testimony from numerous sources that the stated objective of achieving net improvement of ecosystem function will not be achieved with the current mitigation package. Is it disingenuous to include this statement if that is the case? How does staff in BPS and BES respond to NGOs (Audubon Society of Portland, LCREP, Willamette Riverkeeper), Tribes (CRITFC and others) and natural resource agencies who have testified (US Fish and Wildlife Service and Oregon Department of Fish and Wildlife) respond to the assertion that net increase in ecological function will not be met? Suggested Amendment: If we cannot demonstrate that net increase in ecological function will result from the mitigation package we should delete that statement or spell out very explicitly how a net increase will have been achieved, qualitatively and quantitatively.

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Staff Response: See response to Chris Smith’s question above, related to the 101% and 110% goals. Staff is proposing a return to the 110% goal.

10. Page 125, 4.4 Prohibition of Rezoning: Who will the third party be? Suggested Amendment: This commitment will survive the termination of this Agreement and continue in perpetuity unless modified with the consent of the City and a third party representing natural resource oriented NGO stakeholders who have been engaged in the West Hayden hearings process or West Hayden Island Advisory Committee. Note that I specified a natural resource oriented NGO, not a community group. My reason for that recommended amendment is because the 500 acres are supposed to be managed for its natural resource values, first and foremost.

Staff Response: Staff believes this language is too specific. It is premature to select a specific entity, or preclude an entity because they have not yet been engaged in the WHI process. We expect the City Council to select the entity, in consultation with the Port Commission, if the IGA is signed.

11. 4.5, Future Ownership of OS-Zoned Area. Suggested Amendment: strike the first sentence, “~~The Port may, at its discretion, transfer ownership of the OS-zoned acreage to another person or entity.~~” At a minimum, the word person should be deleted as it contradicts 4.5.1 and 4.5.2, both of which describe entities not “persons.”

Staff Response: We agree that the word “person” should be struck. Please see previous work session notes regarding the Port’s intention to retain the open space as an asset at least through completion of the mitigation. The Port also retains ownership of Vanport Wetlands.

12. 4.5.3, Mandatory Conference: I see no role for the public in this language. Suggested Amendment: “Within 1 year of reaching Milestone 3, the City, the Port and stakeholders including NGOs and community groups, will hold a mandatory meeting.....”

Staff Response: Section 8 of the IGA creates the West Hayden Island Advisory Committee which will have representation from environmental, community and economic stakeholders. This section of the IGA can be updated to include consultation with and representation by the Advisory Committee at the mandatory conference.

13. Page 126: 4.6.3, Funding. Is \$200,000 adequate? Does Portland Parks and Recreation agree to this figure?

Staff Response: Yes, Portland Parks and Recreation staff has agreed with this figure. The IGA states that the Port will prepare the written strategy in consultation with PP&R and BES. The current amount of \$200,000 is to support staff participation in the process from each agency.

14. Section 5. Measures to Improve Ecosystem Values and Functions

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5.2, Intent The Port and City intend to. Suggested Amendments: Intent, The Port and City will:

Fully replace the natural resource features and functions impacted, both directly and indirectly, by marine terminal development and document how replacement in quantity and quality of habitat has been achieved, with concurrence of state and federal natural resource agencies

Staff Response: We agree with this suggestion. It adds clarity to the intent.

15. Reach a net increase in overall ecosystem functions, with concurrence of state and federal natural resource agencies

My reasoning for these amendments is I do not feel it reasonable for the Port and City to make the assertion that all resources have been replaced and ecosystem function has experienced a net gain without outside, objective concurrence.

Staff Response. The concurrence statement should be included earlier, as noted above.

16. Page 127: 5.3 Anticipated Impacts: Suggested Amendment: ~~200~~ 300 acres of floodplain

Staff Response: Staff removed the dredge deposit management area because it is a pre-existing permitted use that inherently involves placing fill within the floodplain. Asking for new mitigation for fill related to an existing industrial use on the site that was permitted legally by federal and state authorities is beyond the scope of this project. This fill could continue to occur with or without WHI annexation.

17. Page 128: 5.5.34 Alternative Forest Actions, Suggested Amendment: Substitute 110% for 101%. Reduction to 101%, as discussed by the Commission and staff is one of the reasons given by natural resource agencies that we will not achieve net gain in ecological function. The point the Commission made during our deliberation was that we were not able to distinguish between 101% and 110% and that the important point was the outcome should be net gain in ecological function.

Staff response: See response to Chris Smith's question above.

18. 5.5.4 Floodplain Actions: What does "at least 200 acres mean?!" And, 100 year floodplain mitigation is not sufficient. It should include 2, 10 20 30 and 100 year flood events. Suggested Amendment: "The Port will implement actions that restore at least 300 acres of land within the historic Columbia River Floodplain. This will assure mitigation that will provide ecological functions of 2-year, 10-year, 20-year, 30-year and 100-year flood events that will contribute to a goal of achieving net gain of ecological function."

Additionally, as per my experience with Ross Island fill, there is a major issue with the quality of fill. The last thing we want to encourage is filling WHI with contaminated sediments from the Portland Superfund Site. At least I hope

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that's not the plan. Suggested Amendment: "The quality of the fill should be Class A, non-contaminated material as defined by the Oregon Department of Environmental Quality. The DEQ will determine whether fill material meets the Class A standard."

Staff response: See response to Chris Smith's question above. DEQ will regulate the quality of fill, and existing codes already ensure the fill will be appropriately clean. The existing Zoning Code also regulates fill quality by classifying certain fill as a "waste related use", which is not identified in the current draft zoning code proposal as an allowed use on WHI. Also, see Zoning Code section 33.920.340. That existing city code will apply on WHI upon annexation. That section of the code refers to OAR 340.100-110. Fill that requires permitting under that OAR section would be a "waste-related-use".

19. Page 129: 5.5.9 Monitoring Periods and Continuing Obligations

Thirty years is not sufficient to monitor impacts to a resource as significant as WHI! Suggested Amendment: The monitoring period for any actions taken under Section 5 of this Agreement shall be for 100 years or such time as state and federal agencies determine that mitigation actions have replaced the lost ecological values and functions that West Hayden Island currently provides."

Staff Response: See response to your question #3 above.

20. Page 134: 6.5.4 and 6.5.4.1 Partnerships and Development of Fund; Match Commitment: What happens if the match doesn't materialize?! Amendment Suggestion: add, "If no match is found the Port will be obligated to fund the project."

Staff Response: Staff does not support the suggested amendment because it is not clear what additional specific project this new language would obligate them to fund. Staff feels that the stated goal to leverage the \$3.6 million that they already would be obligated to deliver with additional state and federal funds in the future is sufficient.

21. 6.6 Local Permitting Process: SB 766 continues to be an issue. We need to adopt language that nails down this issue. Both staff and the Commission committed to addressing the issue as per the Audubon Society of Portland and other testimony requested. The language in the current draft doesn't seem to do that in my opinion. This needs to be clarified.

Staff Response: See our response to Audubon's testimony. We have agreed to further clarify this language.

22. Page 136, Funding: Chart, Obligation, Summary of Obligations, Timing Suggested Amendment: delete (estimated up to \$44 million) in Ecosystem values and Functions (Section 5). The estimate for "balanced cut and fill" is more than \$100 million. There is no basis for "capping" floodplain mitigation at \$44 million.

Staff Response: The words "up to" were already deleted in the errata memo delivered to you last week. This is not a cap, but a summary - \$44 million represents our

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estimate of the cost of the mitigation specified in Section 5 as of the March 2013 draft. If any changes are made to the environmental mitigation Section by the PSC, this number would be updated again to reflect whatever the estimate is at the time of the next draft.

23.9.4 Business Plan. This reads like “pie in the sky” to me. I don’t see this happening realistically. Just sayin.

Staff response: Staff believes that identifying a responsibility and deadline to develop a more detailed funding strategy will make it more likely to happen. The City’s Office of Management and Finance has reviewed and helped craft this language.

24.9.5 Additional Funding Sources. “Donations?” Seriously? There must be a more realistic and iron-clad assurance that the Port will be held responsible for funding the project beyond seeking “donations” and other unlikely sources of funding. In the end the Port should not seek funding that will compete with other regional priorities for restoration of natural resources and should be held accountable if “additional” funding sources do not emerge, which in the current funding environment is unlikely.

Staff Response: The proposed IGA includes a clause describing how the City and the Port would seek some state, regional, and federal funding for some aspects of the anticipated infrastructure development - for example reconstruction of North Hayden Island Drive, site preparation, some parks-or open space improvements, and installation of utilities. There has been no proposal to seek external funding for environmental restoration or natural resource actions - in fact Section 9.5 specifically cites Section 3, which described transportation, parks, and utility infrastructure, and does not cite the environmental actions described in Section 5. Staff will add the following language to this section:

The Port does not intend to seek external funding for environmental restoration or natural resource actions identified in Section 5.

25. Page 138: Continuing Obligations: 11.1.2: The third party issue, again. As noted above (Page 125, 4.4 Prohibition of Rezoning: Who will the third party be?) my Suggested Amendment: This commitment will survive the termination of this Agreement and continue in perpetuity unless modified with the consent of the City and a third party representing natural resource oriented NGO stakeholders who have been engaged in the West Hayden hearings process or West Hayden Island Advisory Committee.

Staff Response: Staff believes this language is too specific. It is premature to select a specific entity, or preclude an entity because they have not yet been engaged in the WHI process.

26. 11.1.3 Suggested Amendment: As noted previously, (Page 129 5.5.9 Monitoring Periods and Continuing Obligations), thirty years is not sufficient to monitor impacts to a resource as significant as WHI. Suggested Amendment: The monitoring period for any actions taken under Section 5 of this Agreement shall be for 100 years or such time as state and federal agencies determine that

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mitigation actions have replaced the lost ecological values and functions that West Hayden Island currently provides.”

Staff Response: See Staff response above.

27. Page 139: Dispute Resolution, 12.2: There is no provision for public involvement in dispute resolution. It is unacceptable to cut the public out in this process. Suggested Amendment: City, Port Staff, and stakeholders from the community and NGOs will meet.....”

Staff Response: This is a standard clause for an IGA. As noted earlier, if the commission is uncomfortable with this language, then the IGA may not be the tool to memorialize responsibilities related to the annexation. Again, it is important to note that the WHI Advisory Committee will be made aware, and given an opportunity to discuss, through required project reporting and meetings, of all activities and issues that may arise in implementation of this agreement.

Staff recommends the following edits to Section 8.2:

8.2, Role of West Hayden Island Advisory Committee. The Port, in collaboration with the City will establish an ongoing WHI Advisory Committee (WHI AC) consistent with Attachment F. The ~~mission~~role of the WHI AC will be to: (a) comment on the development and implementation of an OS Strategy; (b) advise the Port and City during recreational facility design and development; (c) negotiate a Good Neighbor Agreement to be implemented during the construction and subsequent terminal operations; (d) provide an ongoing forum for discussion of neighborhood impacts associated with ongoing recreational and marine terminal uses on WHI; (e) review truck traffic volumes on a monthly basis; (f) recommend projects for funding under the Community Benefit Grant Program; (g) review of the HIA(s); and (h) review and comment on implementation of and amendments to this Agreement, including the Port’s annual report required by Section 10.3, as requested by the City and/or Port.

28. 12.3 Termination of Dispute Resolution: Interested third parties should be involved in this process to ensure the public interest is upheld.

Staff Response: Again, the WHI Advisory Committee is intended to serve this purpose.

29. Page 140: 13.5 Waiver of Default: I cannot decipher what this means. It sounds like the Port can simply walk away from the agreement. If that is the case, this should be eliminated from the IGA.

Staff Response: See response to your question #1 above.

30. Page 141: Termination. Same comment as 13.5. Where does the public involvement come in? This is an unacceptable “escape clause.”

Staff Response: See response to your question #1 above.

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Karen Grey

1. Please provide clarity on SB 246 for us. Is it true that if the Port defaults the funding for the project, that the Oregon Taxpayer would be responsible for the repayment of any loans or moneys owed? What are the facts?

Staff response: SB 246 requires the Oregon Business Development Department to establish and administer an “Oregon Industrial Site Readiness Program” to enter into tax reimbursement arrangements with, or to make loans to, qualified project sponsors for development of certified regionally significant industrial sites. The purpose of the program is to provide loans, including forgivable loans, to qualified project sponsors to allow for the development of state and regionally significant industrial sites certified under this section. Basically, loans could be made under this program for development of significant traded sector related development. The state can agree to forgive the loans if a certain level of income tax revenue is created by the development. The program is based on a tax increment principle - that the state receives additional revenue from the additional jobs generated by this kind of development. It allows the state to channel some of that gained revenue back to pay for the development. Because it is being paid from the new revenue that results from the development, it is not a diversion of existing taxpayer revenue. There would be no revenue if the jobs do not occur. It is also important to note that the port of Portland is a public sector entity, and is itself funded by taxpayer money, along with its business revenue. The Port has a financial relationship to the taxpayers regardless of SB 246.

2. Please provide clarity on the reasons why it is now becoming difficult (if not impossible) for the Port to afford the ever rising mitigation costs of this project. Where did we start on mitigation costs and where have they risen to and WHY? I have been at the meetings so I mostly know the answer but maybe you could provide a short answer.

Staff response: Below is a rough summary of cost changes as the proposal has evolved. The numbers will not totally add up because I’m rounding off and leaving out many smaller items.

July 2012 AC Draft

Cost of mitigation and site prep = \$95 to \$101 million

August 2012 BPS Draft

Cost of mitigation and site prep = \$102 to \$115 million

- Added \$5 million + in additional forest mitigation on WHI and GI
- Added \$1.5 million grassland habitat grant
- Added \$1 million to community fund

November 2012 Mayor Adams Draft

Cost of mitigation and site prep = \$120 to \$132 million

- Added \$10 million for parks capital improvements on Hayden Island.
- Added \$3.6 million for housing fund.
- Added \$4 million for additional forest mitigation, to reach 110% goal.
- Added \$1 million + in HIA related costs

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March 2013 BPS/PSC Draft

Cost of mitigation and site prep = \$129 to \$146 million

- \$18 million in added floodplain cost.
 - \$10 million in reduced forest cost due to change from 100 year to 30 year monitoring period.
 - Several million added cost of North Hayden Island Drive, to ensure adequate funds for sound buffer, signalization, and extra block near Target.
 - Several other small adjustments to parks related O&M assumptions.
3. How far IS the Port willing to go outside of the "marketable costs" of the land? It started at \$5 per square foot and is now twice that or more. Why? Is that due to the mitigation cost increases required in the IGA? Does the Port have a bottom line they won't cross?

Staff response: Yes, the cost increases are related to requested mitigation in the IGA, as noted above. The Port's proposals have total mitigation (environmental, community and transportation) and site prep costs near the \$100 million mark, or the equivalent of \$7 to \$8 per square foot. So, yes, they have already proposed to go beyond what could be supported in a private market. The Port is a taxpayer-supported governmental entity with a mission to produce economic development projects that would not otherwise be provided by the private sector alone. They are also willing to go beyond the market because some costs can be shared with other governmental entities - such as federal transportation dollars, state economic development funds, possible regional assistance with open space expenses. That said, there is a limit to how much the Port or any other government entity can finance.

4. Is there any truth to the comment that the Port refuses to put up any of its own money for this project? I heard that comment over and over again. This needs to be cleared up.

Staff response: The Port would be putting a significant portion of its own funds into this project. I believe this is the primary reason the Port can't accept the current proposal - the amount of total mitigation (environmental, community and transportation) being requested exceeds the balance of what is available in their capital development fund. In order to implement the project as proposed, they would potentially have to drain their entire bank account, which would prevent them from doing other economic development work in the region for some time.

5. Does the current mitigation plan go far enough or too far and is it reasonable for all parties? Does it meet the standard of the "triple bottom line" of: Protecting natural resources, is it economically viable and are there community benefits? How do you see this? Or is this the quintessential question for each PSC member?

Staff response: With Resolution 36805, City Council set expectations that an agreement should holistically address environmental and community needs. The current April 2013 draft was informed by extensive public input, and community discussion. Portlanders have high expectations for environmental quality and livability,

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PSC Questions and Staff Responses

as well as economic prosperity. This draft strives to satisfy those expectations.

If successful, the proposed annexation agreement can:

- Solidify Portland's role as a trade gateway, consistent with the City's adopted Economic Development Plan and the Regional Export Strategy.
- Create much needed family wage job opportunities in North Portland, strengthening the middle class.
- Add a significant asset to the regional network of open space, increasing access to nature and recreation.
- Bring new parks and recreational opportunities to Hayden Island, a park deficient neighborhood.
- Make a significant investment in housing conditions for low-income residents of Hayden Island.
- Help make Hayden Island a more walkable community, by making significant investment in North Hayden Island Drive.

The adopted Portland Plan emphasizes partnerships among government, private and nonprofit sectors, and communities. It focused on developing shared priorities, and acting in coordination to get more from existing resources. No one government entity can act alone - not the City, not the Port. In that spirit, the annexation and development of West Hayden Island must be a multi-objective effort.

If the City Council and Port Commission choose to move forward with annexation, and this agreement, they will do so with the understanding that the responsibility to implement the agreement is shared with the wider community. The draft agreement is not intended as a set of demands by the City of the Port. It is a proposal with a strong commitment to a multi-agency business plan, with federal, state and regional partners sharing a work program, as well as significant private sector involvement.

6. Why does the Port of Vancouver keep coming up as THE answer to not having development on WHI? I thought we already covered the fact that this was not a viable option.

Staff response: This was addressed in our March 26th memo, and in the Harbor Lands Analysis Report completed by ECONorthwest. The short answer is that Vancouver's land supply is not enough unless we lower our economic growth goals.

The Port of Vancouver has about 350 acres of vacant land in reserve for future marine terminal growth, although some of this land may have environmental constraints. ECONorthwest estimates that the regional need for new marine terminals will be 570 acres through 2040 (assuming the mid-range in the cargo growth forecasts). Unless cargo volume growth is on the low end of the expected range, there is not enough land in Vancouver to meet the regional need by itself.

The Port of Vancouver's lands are currently zoned for Industrial Use, and the Columbia Gateway sites have had preliminary environmental review. The Port of Vancouver has stated that they expect a need for lands on both sides of the Columbia to be developed, although their lands will have similar issues with mitigating for shallow water habitat and wetlands removal.

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Testimony from Brian Campbell also offered some additional testimony related to the Columbia Gateway site, pointing out some site-related challenges.

7. Why do people keep stating there will be no jobs if WHI is developed as a deep channel port? Are there economic reports with viable predictions on the number of jobs these kinds of projects produce that we could see? People want guarantees and I don't think that that is how this type of project works. If you don't build it, you can count on there being no jobs.

Staff response: Studies done to date estimate that WHI development would lead to roughly 2,300 to 3,600 jobs, including direct, indirect, and induced. This does not include jobs associated with terminal construction. The projected job total was estimated by EcoNorthwest from Portland Harbor estimates reported in several studies by Martin & Associates. EcoNorthwest and Martin & Associates are both well respected internationally-known firms that have considerable expertise in this area.

Gary Oxman

1. The EcoNW analysis cited creation of ~2,300-3,600 jobs associated with WHI. The majority of these jobs are induced or indirect. Is there any evidence that creation of induced and indirect jobs has changed in association with the recession? During the deepest parts of the recession and at least early in the recovery, employers were creating fewer full-time jobs, relying on increased work hours and temporary workers. Is there evidence that this would be expected to impact the WHI job situation?

Staff response: There is no evidence that employment multipliers for indirect and induced jobs have changed.

2. The March 15 staff report cites equity and creation of family wage jobs as an important outcome of WHI development. The Draft IGA in the April 9 Plan Draft (Section 6.7) creates a North Portland hiring preference with outreach to WHI residents. However, the preference is limited by "law and labor contracts existing at the time of development...." What are some of the current laws and labor agreement factors that would impact a North Portland hiring preference if it was to be implemented today?

Staff response: This statement was include to acknowledge that many aspects of this kind of program would have to be negotiated with labor unions. Most marine terminal labor is unionized, and existing labor contracts govern how hiring occurs. That said, labor organizations participating in the Advisory Committee process have indicated support for such a program, and a willingness to discuss details in the future.

3. Is it possible to have someone from Bay Area Associates to discuss their ideas around economic viability and their recommendations about "business planning" and economic management?

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Staff response: Bay Area Associates participated in the 3/26 PSC work session, and was available for questions and answers at that time. BAE's analysis is available as Attachment G to our March 15 memo to the PSC.

http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5585783/view/whi_packet_1.PDF

Notes from the Mach 26 PSC meetings are here:

http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5614316/view/minutes_26march13.PDF

Attachment E
Issues identified from public testimony, and staff responses

Name	IGA or Code	Comment	Response
<p>1. CRITFC</p> <p>A) Mitigation: Sect. 5, pgs 126-131</p> <p>B-C) Sewer/ Stormwater: Sect. 3.3, pg 124</p> <p>D) Tribal participation: Sect. 7, pg 134</p>	<p>A) Where and when environmental mitigation will take place needs to be better defined</p> <p>B) Just meeting state/fed regulations is not sufficient (construction impacts, source control, SWM all need to be strengthened)</p> <p>C) ID/cite sewer facility standards/stormwater plan in document</p> <p>D) With each development permit active tribal participation through the Resource Review process (how do we guarantee this—does it require adding something to the IGA language?)</p>	<p>A) The natural resource actions specified in Section 5 of the IGA already identified specific locations and timeframes (for example Section 5.5.3). Additional language will be added to Section 5.5.2 to indicate an on-site priority for wetlands and shallow water mitigation. It is not desirable to implement all grassland or floodplain actions on-site because that would involve habitat conversion.</p> <p>B) BPS and the City Attorney's office have developed a new clause to add to the agreement that clarifies that nothing in the agreement implies exemptions from applicable state, federal and local requirements. All state and local sewer, stormwater and outfall requirements will apply (see C).</p> <p><u>New Section 24</u></p> <p>24. OTHER CITY, REGIONAL, STATE, AND FEDERAL LAWS AND REGULATIONS</p> <p>24.1 References to Other Laws and Regulations. All references in this Agreement to other City, regional, state, or federal laws or regulations are for informational purposes only, and do not constitute a complete list of the laws or regulations applicable to future development on WHI by the Port. These references do not imply any responsibility by the City for enforcement of regional, state, or federal laws or regulations.</p> <p>24.2 Compliance Required. In addition to the requirements of this Agreement, all uses and development on WHI must comply with all other applicable City, regional, state, and federal laws and regulations.</p> <p>C) Existing city and state standards provide strong guidance for sewer and stormwater controls See the City's Stormwater Management Manual, which includes source control requirements. See the list of other Source Control Requirements See DEQ Stormwater Discharge program</p> <p>D) Section 7 of the IGA establishes a commitment to tribal consultation as the IGA is implemented. The specific areas of consultation can vary by tribe, according to their interests. This can include consultation during the permitting process. Staff welcomes further work with the tribes to identify those points of consultation.</p>	

Attachment E
Issues identified from public testimony, and staff responses

Name	IGA or Code	Comment	Response
2. Nez Perce	IGA A) Sect. 5, pgs 126-131 B) Sect. 9, pgs 135-137	A) Prioritization of on-site mitigation needs to be better defined B) Section 9 – lack of certainty about mitigation	See #1 above, and #11 below.
3. Chris Hathaway	IGA A) Sect. 5.5.3.4, pg 128 B) Sect. 5.5.9, pg 129 C) Sect. 5.2, pg 126 D) Sect. 5.5.4, pg 128 E) Sect. 5.5.8, pg 129 F) Sect. 9, pgs 135-137	A) Return to 110%, require some mitigation on WHI, need to require mitigation—not open to future negotiations B) Back to 100 yrs monitoring C) This proposal is not a net increase D) Add the 2-yr flood to the floodplain mitigation E) Geography: if on site cannot be accommodated then off site should conform with hydrogeomorphic reaches F and G in Columbia River Estuary Ecosystem F) Section 9 clauses- reprioritization of projects- remove	A) See response to PSC questions (Smith Q#8). Staff is recommending a return to the 110% standard. B) Returning to 100 yrs of monitoring would add approximately \$11.5 M to the environmental mitigation costs. Further, staff feels that it is appropriate to require monitoring through the establishment period, covered through the 30-year agreement. On-going maintenance is part of the site's long-term maintenance. In addition, the typical monitoring required for mitigation in the City is 5 years; this far exceeds that requirement. C) See A above. D) Staff recommends adding the 2-year, 10-year, and 30-year floodplains to the floodplain mitigation performance standard in Section 5.5.4. E) Staff supports refining Geographic language in Section 5.5.8 to reference the reaches of the Geography noted by LCREP. F) Section 9 clauses represent standard language for any IGA. City Attorney does not support removal.
4. General comment	IGA Sect. 9, pgs 135-137	Mitigation costs too high for development to pencil out; square footage cost too high with current package; financial feasibility gap; need more certainty	See response to PSC questions (Gray, Q#5).
5. General comment	N/A	Clarify SB 246, how it can be used, is WHI eligible?	See response to PSC questions (Gray, Q#1).
6. Victor Viets	N/A	A) Tonnage growth not documented?	A) Historical tonnage amounts have been documented in technical reports by BST Associates and ECONW. Fluctuations in amounts have been due to additions and

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Name	IGA or Code	Comment	Response
		<p>B) Panama Canal and other port competition will change the need on the Columbia River – why is this needed?</p>	<p>subtractions at some Portland terminals, such as removal of grain operations from T4 and the movement of Suburu from Portland to Vancouver. Growth has occurred in instances where new land has been made available, such as with the Potash terminal at T5. Additionally, other Columbia River Ports, including Vancouver, Kalama and Longview have recently captured a higher percentage of regional growth than they have in the past, in part because land for those facilities has not been available in Portland. These ports are also experiencing limits to capacity and increased environmental constraints to development.</p>
<p>7. Bev Booken</p>	<p>IGA Sect. 9, pgs 135-137 Code 33.595.300-610, pgs 63-104</p>	<p>The mitigation is not proportional to the impacts. Dolan v. Tigard</p>	<p>B) Impacts from the Panama Canal are not anticipated to effect the Port of Portland to a large extent due to the existing origins and destinations of the materials shipped out of the port. In many cases, the expense of a longer rail trip would exceed the savings of using a larger ship. In addition, not all ships will be built to the maximum draft provided by the canal deepening. Many ports in the US will not be set up for maximum draft ships, and markets will continue to use a variety of ships to move goods such as wheat, dry bulk, and autos. Other factors such as transit time and cost, and toll pricing may further affect the distribution of goods through the Panama Canal.</p> <p>The IGA is a proposal for mutual agreement between two public agencies therefore, if both parties sign the agreement Dolan does not apply.</p>
<p>8. Laurie Wall/ Kevin Flanagan</p>	<p>A) IGA Sect. 3.2, pgs 122-124 B) Sect. 3.1, pgs 120-121 C) Sect. 5.54, pg 128</p>	<p>A) Clarify city position on Schooner Creek boat ramp concept proposal. PSC needs to understand the need to expand the parking area if a motorized boat ramp is developed at this site. This entails moving Hayden Island Drive. See attached concept plan. Commission needs to see the proposal again with an understanding of the properties involved, design layout with the need for relocation of Hayden island drive. B) Need the WHI bridge to address traffic. C) Concerned about not requiring balanced cut and fill</p>	<p>A) Staff recommends maintaining the language that the Port will acquire approximately 3 acres of land for future park development in the IGA. The motorized boat ramp proposal, east of the railroad tracks, has been proposed by Inland Sea Maritime Group (see March 26, 2012 work session packet, Attachment H). The plan encompasses approximately 6 acres and creates a local park and a motorized and non-motorized boat ramp. The plan calls for a realignment of N. Hayden Island Drive (NHID) to expand the parking lot. The proposal suggests that this design could accommodate the necessary parking for West Hayden Island recreational trail development.</p> <p>PP&R is interested in park land development on the approximate 3 acres property</p>

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		and if that will have flood impacts immediately upstream	<p>along the Columbia River, but is not interested in operating or maintaining the proposed motorized boat facility. The proposed boat ramps could add significant traffic to NHID, which has not been evaluated. BPS staff have not recommended a motorized boat launch at this location for the same reasons noted by PP&R and potential conflicts with the industrial sanctuary</p> <p>B) Staff is not recommending a WHI bridge and it is being removed from the TSP. However, a policy has been added (Policy 6.36, Objective U) stating that in the event that North Hayden Island Drive is not improved, the WHI bridge will be considered as a potential replacement.</p> <p>C) Potential flood impacts to properties upstream of a WHI development are reviewed by the Bureau of Development Services, Site Development office. The Port will be required to submit a “No Rise Analysis” before permits are issued. Existing law (implementation of the FEMA flood insurance program) will require engineering analysis to demonstrate no significant rise in floodwaters.</p>
9. Marine Board	IGA Sect. 3.2, pgs 122-124	Supports a motorized boat ramp	BPS does not support a motorized boat ramp because of the potential for increased traffic along Hayden Island Drive and conflicts with the industrial sanctuary, and marine terminal operations. A non-motorized boat ramp should be considered somewhere along the Oregon Slough as part of the future open space planning process.
10. Bob Sallinger	IGA Sect. 9, pgs 135-137	Risk to the public and taxpayers may ultimately be responsible for costs to mitigate for development.	The port is a public agency, which is partially supported by taxpayers.
11. Bob Sallinger	IGA Sects. 9.4-9.6, pgs 136-137	Remove subsections 9.4, 9.5 and 9.6 from the IGA and replaced with provisions that make the Port and its assignees fully and solely liable for completing the environmental, site prep and community mitigation via their own. Internal funding mechanisms as was done in the Airport Futures IGA.	The proposed IGA includes a clause describing how the City and the Port would seek some state, regional, and federal funding for some aspects of the anticipated infrastructure development – for example reconstruction of North Hayden Island Drive, site preparation, some parks-or open space improvements, and installation of utilities. There has been no proposal to seek external funding for environmental restoration or natural resource actions, or the community mitigation – in fact Section 9.5 specifically cites Section 3, which described transportation, parks, and utility infrastructure, and does not cite the environmental or community actions described in Sections 5 and 6. Staff will add language further clarifying that intent.
12. Bob Sallinger	IGA Sect. 21.2., pg	Eliminate the Port's ability to unilaterally withdraw from this agreement in subsection 21., insert a requirement	This is a standard clause in agreements such as this. The conflict resolution sections have been written by our City Attorney's office to address conflicts between the parties.

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	141	that unresolved disagreements must go to binding arbitration, and insert a provision that gives the community standing to enforce the provisions of the IGA.	Through Section 8 of the agreement, the WHI Advisory Committee will have community representation. This committee will provide guidance/input on monthly and yearly reports of Port activities. They will also develop a good neighbor agreement with the Port and Community to identify construction impacts and subsequent terminal operation activities that may impact the community.
13. Bob Sallinger	IGA A-C)Sect. 5.5.4, pg 128	A) Require floodplain mitigation for full 300 acres; B) specify # of acres available to 10, 30 & 100yr floods; C) use ratio for mitigation 1.5:1	A) New mitigation for fill related to an existing use (the Dredge Deposit Management Area) that was permitted legally by federal and state authorities is beyond the scope of this project. B) Agree – See response to PSC questions (Smith Q#1 and attached map). Staff recommends adding the 2-year, 10-year, and 30-year floodplains to the floodplain mitigation performance standard in Section 5.5.4. C) A 1:1 ratio mimics the generally accepted balance cut and fill approach.
14. Bob Sallinger	N/A	should not use goal 9 as excuse for annexation	Goal 9 requires an adequate land supply to meet the employment forecast, which is a mid-range projection of job growth by land type. The flexibility in Goal 9 allows the City to use some discretion in determining how to meet the land need in the EOA. Annexing and zoning WHI for a marine terminal is one option for addressing the need for land that is suitable for marine terminals. Other options would require the city to readdress how we plan to grow our jobs, essentially adjusting job growth from traded sector industries to other industries. This change is not consistent with other City goals, such as the export strategy, and the City's adopted economic development strategy, which emphasizes traded sector employment. There are also equity goals related to creation of more family wage jobs, especially those that can offer increased opportunity to those without access to higher education. The other WHI studies show that there are very limited options for large sites (100 acre minimum) that could satisfy this marine terminal need. Therefore, if WHI is not annexed then the City would have to re-evaluate the EOA and the traded sector facilities needs. Based upon our current policies and background documents, annexing WHI is a major component of the Goal 9 strategy. Other programs such as providing incentives for the reuse of brownfields are also very important but do not provide enough capacity, especially for the marine terminal needs.

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15. Bob Sallinger	Background Reports (port coordination)	bi-state collaboration necessary	The Port of Vancouver has been a collaborative partner at the staff level on this planning project, and has been willing to answer many BPS staff questions. The two Ports work together on a regular basis in marketing the ports, and sharing in facilities such as the Suburu dock.
16. Bob Sallinger	IGA Sect. 5.5.3.4, pg 128	Proposal does not represent a net increase in ecosystem function. Return to 110%, 100 yr monitoring on forest	See responses to PSC questions (Smith Q#8, Houck Q#3). Staff support an return to the 110% goal.
17. Bob Sallinger	Background Reports (Harbor Lands)	Economic argument for developing WHI -other locations not fully explored	The City did an analysis through EcoNorthwest which explored Vancouver's capacity and then also looked at the gap and what existing facilities could handle. The analysis looked at both Port facilities and private industrial land. See Harbors Lands Inventory . These studies concluded that locations in both Vancouver and Portland will be needed if moderate growth in marine shipping is expected.
18. Bob Sallinger	IGA Sect. 3, pgs 120-122	Irresponsible to move forward with this project, including eliminating the potential for a WHI bridge from the Regional Priority list. Wait to annex until CRC is completely resolved	The IGA does state that CRC needs to be resolved first. If the CRC is not constructed, it re-opens the agreement. The Mayor has publicly stated is intent to hold off on annexation vote until more is known about the future of the CRC project.
19. Bob Sallinger	IGA Sect. 6.6, pg 134	Requested change to 766 language: "The Port and its assignees will not utilize SB 766 related designations on WHI to bypass local or state public processes that would apply in the absence of SB 766 designation, including rights to notice and comment, public hearings, complete (non expedited) comment and review periods, and all existing causes of action for appeal"	Staff recommends changing the IGA to add this language. It is a little more specific than the existing language.
20. Bob Sallinger	IGA A) Sect. 10.2 pg 137-138 & Att. G, pgs 167-178 B) Att. G, pgs 167-178	A) Strike Port's vision statement from package and insert stronger BMPs into document – Principle 8 for example, sets a lower standard for Natural resources than are outlined in IGA. B) BMPs - short, vague lists of BMPs that are no more than a commitment to meet the minimum standards required under law. In addition, no construction	A) Staff recommends that Port strengthen principle #8 in the attachment to align with IGA natural resource requirements B) A majority of the BMPs from the health report are in the appendices to the Sustainability document (Attachment G to the IGA). The draft agreement and policy states that these BMPs and the west coast initiatives will be revisited once the type of development is known so that the list can be updated and tailored to the a

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	C) Att. G, pgs 167-178	<p>impact commitments</p> <p>C) BMPS for wildlife: City's new bird-safe Building Guidelines should be explicitly referenced), wildlife friendly practices for minimizing collision and electrocution hazards associated with power lines, and limiting exposure of wildlife to toxins and pesticides</p>	<p>The construction impacts will also be further addressed by the WHI Advisory Committee, discussed in Section 8 of the IGA.</p> <p>C) Staff recommends adding the reference to the bird-safe building guidelines.</p>
21. Bob Sallinger	IGA N/A	IGA should define the quality of the fill that can be deposited on WHI in the IGA	The fill placed on the dredge material site is tested before placement and must be approved by DEQ to meet certain standards. This site is not a contaminated waste site. Existing zoning provisions also protect against this site being used to handle hazardous wastes. See response to PSC questions (Houck Question RE fill quality).
22. Bob Sallinger	IGA Sect. 6.5.4.1, pg 134	Section 6.5.4.1- uncertain because requires 1:1 match.	This section refers to the community fund which is not dependent on a match commitment. The housing fund has a goal of finding match commitment, but it is not dependent on receiving a match.
23. Bob Sallinger	IGA N/A (Sect 6)	No net reduction of air quality on WHI	Air quality regulation at that level of detail is beyond the limits of the City and Port's sphere of control. Ships and trains travel internationally, and neither the Port nor the City can directly regulate those emissions. Federal and State law is a more appropriate means to respond to this issue, rather than trying to control it through special conditions on a site-by-site basis. The City and Port have used their authority to minimize the air quality impacts related to what we do have control over – such as local street improvements, or the kind of equipment that is used on-site.
24. Bob Sallinger	IGA Sect. 4.5, pg 125	Do not delay ownership determination (500 acres) and open space planning	The Open Space strategy would take place within the first 5 years, and is likely one of the first actions that will occur under the IGA. The future ownership can either remain with the Port or with a 3 rd party. Staff feel this provides for enhancement flexibility, while the prohibition on rezoning ensures future preservation. The Port has successfully managed other natural resource lands.
25. Bob Sallinger	IGA Sect. 11.1.2, pg 138	Audubon wants to be 3 rd party in 11.1.2	The 3 rd party organization will be selected by the City. It is premature to select a specific entity.
26. General Comment	IGA A) Sect. 9, pgs 135-138	<p>A) Deferring costs to later, Port would have more options to use tax payer \$.</p> <p>B) Break down how tax revenue is used – what portion</p>	<p>A) The Port is a governmental entity partially funded by taxpayers. Mitigation funded by taxpayer money is expected. We see this with other similar public works projects such as CRC and Trimet.</p>

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	B) Sect. 9, pgs 135-138, and background reports	does city get from Port	B) While the Port, as a public agency, does not pay property tax for its land, terminal operators who lease the property from the Port will pay property taxes. These taxes are split out to various regional and local agencies, with the top three receivers being the City of Portland (34%), Portland School District (31.5%) and Multnomah County (26.0%). The dollar amount would need to be calculated based on the assessed value of improvements, and these values have not been estimated for the range of terminals proposed. In addition, state statute provides for reduced tax treatment for cargo operations. The total estimated local and state tax revenue anticipated from development of WHI is \$18 to \$30 million annually, and the City would get some portion of that.
27. Ron Schmidt/ Marty Slapikas	IGA & Background Reports A) Sects. 3 & 6, pgs 120-124 & 131-134 B) N/A, Sect. 6 C) Background report (port coordination)	A) Hinoon resolution remains valid—discusses need for construction impact mitigation measures, need for WHI bridge B) Air quality concerns – need monitoring – cites City Club report C) There needs to be better Port coordination. It is not enough to just say “it’s too hard” in the report. HiNoon recommends that the PSC encourage City Council to work with the Port to look at all available alternatives for a joint bi-state regional port expansion.	A) Section 8 of the IGA discusses the creation of a WHI Advisory Committee. This committee will be charged with negotiating a good neighbor agreement which will focus on construction impacts and terminal operations. B) There are a number of air quality related BMPs that were recommended as part of the WHI Health Analysis. These BMPs are part of the Port’s Sustainability Vision (Attachment G of the IGA) and will be revisited and updated once a development proposal is submitted. The WHI Advisory Committee could also recommend using some of the community benefit grant fund to support future air quality monitoring. C) The Port of Vancouver has been a collaborative partner at the staff level on this project. The two Ports work together on a regular basis in marketing the ports, and sharing in facilities such as the Suburu dock.
28. U.S. Fish and Wildlife	Staff Report background, pg 7	The staff report should add that federally-listed salmonids and eulachon occur in the area and Fish and Wildlife Service has designated critical habitat for bull trout throughout the Lower Columbia River.	Staff will add this information to the background information on the staff report
29. U.S. Fish and Wildlife	Comp Plan Amendments, pg 18	page 18. Note that State and Federal agencies and others have made major investments in fish and wildlife species conservation and recovery efforts in the Lower Columbia River. We recommend additional related goals and objectives to the Watershed Health and Environment chapter of the City’s Comprehensive Plan.	This section refers to the existing Comp Plan goals and objectives. The WHI project is not amending those goals for the purpose of annexing the land. This suggestion will be forwarded to the City’s Comprehensive Plan Update team, who are updating the Comprehensive Plan.

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30. U.S. Fish and Wildlife	Code 33.595.320.E.1 Pgs 66-67	pg 67, E.1. It is not clear why only enhancement required to offset impacts to natural resource located within the city limits of Portland outside of WHI plan district would be exempt, and not enhancement to offset impacts with the WHI plan district. We support on-site mitigation.	The intent of this provision is to support the concept plan intent that we fully implement all restore and enhancement opportunities available on WHI, which go beyond mitigation necessary to offset development on WHI. For example, there could be additional shallow water or wetland enhancement opportunities beyond what is required to mitigate WHI development. Examples might include projects related to NRDA, or projects to mitigate development elsewhere in the Portland Harbor. On site projects are not exempt because such mitigation is subject to WHI review.
31. U.S. Fish and Wildlife	Code 33.595.460.D, pg 79	pg 79, 33.595.460.D. We recommend changing the requirement to achieve "90 percent vegetative cover" for replanted areas to a standard for achieving 90 percent, or appropriate minimum, <i>native</i> vegetation cover to minimize the allowance for invasive plants.	The existing non-native seed bank will make achieving 90 percent native cover within one year very difficult if not impossible.
32. U.S. Fish and Wildlife	Code 33.595.540, pg 94-commentary	pg 94. Please clarify that the state and federal requires will still need to be met.	Agree. This will be added to the commentary.
33. U.S. Fish and Wildlife	Code 33.595.540.A.5.e, pg 97	pg 97. The wording under 5.e "Any other site-specific issue or constraint" that may be considered is of concern. Recommend that WHI impacts be mitigated on WHI whenever possible.	Staff recommends deleting 5.e (zoning code). The natural resource actions specified in Section 5 of the IGA already emphasizes on-site locations (for example 5.5.3.1). Additional language will be added to Section 5.5.2 to indicate an on-site priority for wetlands and shallow water mitigation. It is not desirable to implement all grassland or floodplain actions on-site because that would involve habitat conversion.
34. U.S. Fish and Wildlife	Code 33.595.610.B.3 & C.2, pgs 103-105	pg 103, B.3 and pg 105, C2. The planting densities are low. There should be additional mitigation for illegal development that will be retained and legalized.	The planting densities are based on the BES Revegetation Program's standards for riparian planting and consistent with the recently adopted Airport Future Plan District.
35. U.S. Fish and Wildlife	Code N/A - reference is to map 595-1	pg 107. Recommend that the proposal address the potentially significant environmental consequences that may result from relocating the dredge deposit area.	This is already addressed because if the dredge area were to relocate on WHI and impacted regulated resources then an environmental review would be required. Movement of the dredge area off of the island will be subject to the regulations of the area it is moved to. In addition, it is not clear that a replacement site would be required. There are other dredge management sites in the Lower Columbia.
36. U.S. Fish	IGA	pg 119, item S. We recommend adding a statement to	One purpose of the Open Space Strategy described in Section 4.6 is to develop a more

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and Wildlife	Recitals – Item S, pg 119	clearly require that any lands in the proposed open space that may be used to fulfill on-site mitigation needs will not be used to meet off-site requirement or will be held back from meeting on-site mitigation needs in order to preserve other options.	specific understanding of how different areas within the open space will be used – for example, to satisfy on-site mitigation, for recreation, or to satisfy off-site obligations (such as NRDA, if approved). Language can be added to Section 4.6 to make this clearer.
37. U.S. Fish and Wildlife	IGA Sect. 2.3.3, pg 120 Sect. 5.6.1, pgs 129-130 Att. G, Env #4, pg 172	pg 120, 2.3.3 and pg 129, 5.61 and pg 172, 4. Recommend that this section be expanded to include more inclusive discussion of the Federal regulations, approvals and permits and that a statement be added about the intent to address actions related to WHI comprehensively in NEPA documents.	Agree. Rewrite: Federal Permits. This is defined as the date the Port obtains a necessary federal permit approval under that complies with the National Environmental Policy Act (NEPA) process is concluded and related permits are issued from the appropriate federal agency or agencies for the first development action on WHI, including any authorizations required for filling within jurisdictional wetlands. “Development” includes fill, rail or marine terminal structures or related docks and causeways below ordinary high water in the Columbia River. “Permit” includes those submitted by entities acting as agents of the Port or any lessee of Port property on WHI.
38. U.S. Fish and Wildlife	IGA Sect. 3.2.3, pg 123	pg 123, 3.2.3. Recommend provision for voluntary natural areas restoration and enhancement	Revise 5.6.1. to read: Marine terminal development will require compliance with federal and state regulations, and the Environmental Regulations of the WHI Plan District. One or more of the federal regulations will also trigger a NEPA process. These regulations and processes involve opportunities for public comment, Voluntary enhancement is allowed if it meets the standards in the zoning code (Section 595.460 and 595.540.B).
39. U.S. Fish and Wildlife	IGA Sect. 4.3, pg 125	pg 125, 4.3. Please add an exemption to the statement that the Port doesn't have to take action in the OS. There should be a requirement to fulfill mitigation needs for WHI impacts on-site in the OS whenever possible.	See response to 33 above.
40. U.S. Fish and Wildlife	IGA Att. G, Env #2, pg 172	pg 172, 2. Recommend specifying that the priority in the OS is to preserve options for on-site mitigation.	See response to 33 and 36 above.
41. Mike Connors	IGA A-B) Sect. 6.5, pg 133-134 C) Sect. 3.1.4, pg 122 D) Sect. 3.1.1,	A) Housing fund language in IGA should explicitly note that funds cannot be used for relocation of residents B) Adequacy of funds- should make Port more responsible to increase fund amt if it is not sufficient C) CRC needs to be more clearly discussed—currently not adequate—CRC too scaled back at this point –	A) BPS recommends maintaining the existing language in section 6.5.1 of the IGA. Relocation is not noted in the list of example uses of the funds. However, we feel that this should be part of a future discussion when the grant program is designed. B) BPS recommends maintaining the base amount of \$3.6 million for the housing fund. There is a provision (6.5.4.2) to negotiate if the HIA finds that additional base

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	<p>pgs 120-121 & Att C, pg 147</p>	<p>city needs to evaluate the changes to the project and review the definition of "complete" D) need signalization of off-set intersection</p>	<p>funding is needed. Also, the community fund is another source of funding of which the WHI Advisory Committee will determine its potential uses.</p> <p>C) If the CRC does not receive funding, not only would a new traffic impact analysis for WHI have to be conducted, the City would also likely need to revisit the adopted Hayden Island Plan (HIP), The HIP and associated land uses assumed new regional traffic capacity and safety improvements and new high-capacity transit facilities and access provided by the CRC. With no CRC project it is likely that expectations about future commercial and residential development on the Island would have to be scaled down.</p> <p>Under the WHI concept plan a majority of materials would be arriving and departing via barge and rail instead of trucks. The Port's impact on road traffic is very small, relative to other traffic sources on the island, such as the mall. If there is no CRC project, there would be a greater impact on the other existing and currently planned commercial, industrial and residential uses on the island, which are expected to generate much more traffic.</p> <p>D) Attachment C of the IGA describes the North Hayden Island Drive improvements. This includes funding for the Pavillion street intersection referenced in the testimony letter.</p>
<p>42. Oregon Dept. of Fish and Wildlife</p>	<p>IGA Sect. 5.59, pg 129</p>	<p>Length of Mitigation Monitoring (10 yrs and 30 yrs) – should equal life of project. Minimum 50 years, but could be extended up to 100 years.</p>	<p>See response to PSC questions (Houck Q#3).</p>
<p>43. Oregon Dept of Fish and Wildlife</p>	<p>IGA Sect. 5.5.3.4, pg 128</p>	<p>101% net benefit gain is not significant and not even measurable. ODFW recommends a goal of at least 125%--this would account for margin of error and anticipated challenges with any mitigation effort.</p>	<p>See response to PSC questions (Smith Q#8). Staff is recommending a return to the 110% goal.</p>
<p>44. Oregon Dept of Fish and Wildlife</p>	<p>IGA Sect. 5.5.4, pg 128</p>	<p>Floodplain mitigation: entire WHI is in 100-year floodplain and entire 300 acres should be included in mitigation not just 200 acres.</p>	<p>New mitigation for fill related to an existing use (the Dredge Deposit Management Area) on the site that was permitted legally by federal and state authorities is beyond the scope of this project.</p>
<p>45. Deborah Heckhaus</p>	<p>Code 33.595.210, pg</p>	<p>Need to address employee traffic, not just heavy truck traffic.</p>	<p>PBOT's traffic analysis analyzed all traffic impacts from the terminal, including employee traffic and heavy trucks, with and without a WHI bridge.</p>

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en	60-61 IGA Sect. 3.1.3, pg 122		
46. Pam Ferguson	IGA Sect. 6.5, pg 133-134	Down payment assistance under housing fund options "not real". Staff needs to include full grant to buy homes for individuals who cannot afford a loan or down payment	Under section 6.5.1 staff highlighted some potential uses of the housing grant funds. This list is not comprehensive because we do not want to limit future discussions of how these funds will be used during the planning process. However, staff understands the concerns raised about the payment assistance option. Staff recommends adding "full grants for home purchase" to the list of potential uses.
47. Carhart	TSP/Comp Plan amendment Pgs 20-31	Do not remove bridge from TSP	Staff has recommended that the bridge be removed from the TSP. Because funds are limited, maintaining the bridge project on the TSP and RTP will impact our ability to fund other transportation projects throughout the City. However, it is important to note that the current draft has a new policy which indicates that in the event that North Hayden Island cannot be improved, consistent with street designations, a new bridge connecting the WHI industrial area to North Marine Drive will be re-considered.
48. Howell	A-B) IGA Sect. 3.1.5, pg 122 C) N/A D) TSP/Comp Plan amend. pgs 20-31 E) IGA Sect. 3.1.4, pg 122	A) Vancouver Gateway won't impact BNSF but WHI will. B) Need to invest in a new BNSF bridge and lift span C) ODOT passenger rail study needs to be completed before annexation D) No edits to TSP E) Let CRC be resolved	A) The Concept Plan established a rail loop and rail junction to handle speeds that exceed current speeds allowed on the Columbia River bridge. This layout should not affect operations on the mainline. B) Investing in a new rail bridge and/or lift span is a decision made by BNSF, a private company, and will depend on their forecasts for rail traffic. The proposed IGA does indicate continued City and Port advocacy for such a project. C) Rail studies have indicated that there are several areas within the Rail corridor that will impact the potential for future express passenger rail. It is likely that a separate, dedicated track will need be built along the entire corridor to enable true high-speed rail. The WHI project does not have any more impact on this project than all the other areas along this freight corridor. The City is participating in bi-state efforts to plan for the future of high speed rail. That future corridor could be identified in the City's Comprehensive Plan and TSP. D) These edits are to enable future funding requests for N Hayden Island Dr, while allowing for consideration of a separate bridge if the N Hayden Island Dr improvements are not made. E) See response to PSC questions (Smith Q#4).
49. Doug	IGA	A) PI23- change site size to 2.57 not 3 to correspond to	A) Staff recommends changing the language to indicate that the 3 acres is an

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Kolberg	A) Sect. 3.2.2, pg 123 B) Sect. 3.2, pgs 122-123	property east of railroad or amended document to reflect that the 3 acres need not be one property or contiguous property, and does not need to be acquired and conveyed to the City at one time. B) Change timing to purchase park land east of railroad upon annexation Many comments on the potential for WHI to house a coal facility.	approximate number, and need not be one property. The actual size could range from 2.5 to 3.5. B) Staff recommends keeping the timing of the purchase to align with Milestone 2. The funds for park development will not be available at the time of Milestone 1.
50. General comment	Code 33.595.100, pgs 50-51	public investment tied to jobs target—need to add target back to IGA?	33.595.100 C: Uses in the IH zone: prohibits deep water marine terminals at this site that transport or process coal or liquefied natural gas.
51. General comment	IGA Sect. 6.7, pg 134	Ordinary High water level reference – clarify what the city uses and why.	Employment and Economic Goals have been incorporated into Attachment G of the IGA, which is intended as a triple-bottom-line sustainability policy for WHI development.
52. Jones	Code 33.595.200 & 310, pgs 55 & 63 IGA Sect. 5, pgs 126-131	Lists several existing large developed industrial sites in Portland and surrounding area—no need to develop WHI	See attached memo below which details the City’s methodology/process for determining the Ordinary High Water Mark.
53. Jones	Background Reports – Harbor Lands		Staff notes RE alternate sites: -Port of Vancouver: The Port of Vancouver has about 350 acres of vacant land in reserve for future marine terminal growth, although some of this land has environmental constraints. ECONorthwest estimates that the regional need for new marine terminals will be 570 acres through 2040 (assuming the mid-range in the cargo growth forecasts). -McCormick Baxter/Riedel Site: 50 – 70 acres in size. This site was excluded from the City’s analysis, primarily because it was recently proposed to be rezoned as EG2 in the River Plan, which (although it allows industrial development) does not allow rail yards, and requires greater setbacks and landscaping than other industrial zones. City’s analysis has indicated that the level of toxicity of the land and river bed precludes the ability to place docks, and the geographic constraints with the bluff reduce accessibility. A portion of this property has been purchased by Univ of Portland for expansion. - T4 A portion of Terminal 4 has been vacated with the removal of the grain elevator.

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Issues identified from public testimony, and staff responses

Name	IGA or Code	Comment	Response
<p>54. Tax Fairness</p>	<p>IGA Sect. 9.6, pg 137</p>	<p>Section 9.6 Additional Funding Sources. These costs should be borne by the developer not the taxpayer including transportation infrastructure, water, sewer, environmental mitigation and mitigation</p>	<p>This area is approximately 40 acres and does not provide adequate land for a rail loop or staging for a modern grain terminal. It is more likely to be used for a smaller terminal or for expansion of existing facilities.</p> <p>-Sauvie Island is not inside the urban growth boundary.</p> <p>-T-5 Potash facility- the Potash facility is expanding its facilities with a planned construction of a second building for potash storage. It is not clear whether adequate land will remain for an additional full-service terminal. Any future co-location of a second terminal would require the integration of joint rail loops into both facilities.</p> <p>- Troutdale/Reynolds Aluminum site – The deep water channel ends at the WHI site.</p> <p>The developer in this case is the Port, which is a public agency, serving the taxpayers of Oregon. The public mission of the Port is to enhance the region's economy and quality of life by providing cargo and air passenger access to national and global markets. The Port is governed by a 9 member commission, appointed by the Governor, and ratified by the state Senate. A portion of the Port's operating revenue stream is from property taxes paid in a four county metro area.</p> <p>Studies by Martin and Associates estimate that marine terminal development on WHI could generate \$18 to \$30 million in new tax revenue for local and state government annually. This would occur, for example, through property taxes paid by private terminal operators, and income tax paid by employees and companies that support port operations.</p> <p>The IGA does include intent to seek additional (non-Port) public funding for transportation, parks, and site infrastructure. This additional public cost will likely total up to tens of millions of dollars. As noted above, however, the successful development of WHI could generate tens of millions in additional tax revenue annually. The EcoNorthwest public cost-benefit analysis concluded that the project would likely have a net economic benefit for the public.</p>



Bureau of Planning and Sustainability
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MEMO

DATE: May 16, 2013
TO: Memo to File
FROM: Bureau of Planning and Sustainability
CC: City Attorney's Office
SUBJECT: Columbia River Ordinary High Water Mark at West Hayden Island

The purpose of this memo-to-file is to document the Ordinary High Water Mark (OHWM) elevation the City is using for the West Hayden Island.

The US Army Corps of Engineers (USACE) determines the OHWM, which forms one of the jurisdictional boundaries under Clean Water Act Section 404 permitting. In 2004, USACE set the OHWM at 17ft NGVD29. The documentation for that determination is found in the *Portland-Vancouver Harbor Information Packet, Second Edition, Reservoir Regulation and Water Quality Section* (USACE, 2004). In 2006, USACE reevaluated the OHWM determination and adjusted it to 15ft NGVD29. The documentation for that determination is found in a memo from USACE to File, After the Fact Permit No. 200100062 on August 15, 2006.

In 2010 the City began working on Phase II of the West Hayden Island (WHI) project. Part of that work was to update the Natural Resources Inventory (NRI). Existing data was documented in the NRI including a map of shallow water habitat, which was based on GIS mapping of OHWM. The GIS mapping was done by the City of Portland, Bureau of Planning and Sustainability (BPS), using the USACE 2004 determination, 17ft NGVD29. The GIS mapping of OHWM using the USACE 2004 determination was done for the entire Portland Harbor, including the Willamette and Columbia Rivers, and was completed in 2011.

In early 2012, it was brought to staff's attention that the OHWM elevation at WHI was reevaluated in 2006 by the USACE in response to a specific Section 404 permit for wetland fill. Staff reviewed the information and decided that:

- 1) The 2006 determination included no survey points, which are necessary to map the OHWM (the 2004 determination did include survey points);and



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- 2) The 2004 elevation is more conservative than the 2006 elevation because it is protective of more beach and in-water habitat. The 2004 elevation was determined by BPS to be sufficient to use in a conceptual and long-range planning effort. In addition, the USACE in their 2006 memo stated that “the examination of data for 2006 and subsequent years may result in the Corps revisiting this determination in the future.”
- 3) The NRI therefore uses the 2004 elevation as the OHWM.

The *Amended Proposed Draft West Hayden Island Plan* (April, 2013) zoning code and Intergovernmental Agreement do not specify an OHWM elevation that must be used during local permitting. The zoning code establishes a 100 foot setback from the OHWM, where the OHWM is determined by the USACE. To avoid any unlawful delegation of the Council's authority, as a practical matter the OHWM that will be used for purposes of measuring setbacks will be whatever OHWM the USACE has determined on the date the zoning code amendments become effective.

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Summary of Port of Portland comments, and staff responses

Page	Code Section	Comments	Response
48	33.595.100	Because the mooring of boats is a listed use in the IH zone and not in the OS zone, it appears the mooring of boats will not be permitted within OS zoned waters. Is that the City's intent?	Agree. We agree that this should be made clearer. Mooring of ships and barges is intended to be permitted in both the IH and OS. The OS allowed uses will be updated.
55	33.595.200.A.2	Development will occur on both land and water. Some clarification is needed that this setback applies only to the landward side of the OHWM. Add the following to 2 "100 feet landward of the Ordinary High Water Mark of the Columbia River."	Agree. This is consistent with the other two setbacks' explanation of where the regulation applies.
55 & 57	33.595.200.A.4 & 33.595.200.B.4	The IH zoned portion of WHI should retain an "allow" as previously proposed, and is required by OAR 660-023-0090(7)(a)(A) and (b)(B). The allow designation is supported by the City's own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission.	Staff is working with the City Attorney's Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.
59	33.595.200.C.1	"The purpose of this setback area is to limit the location of recreational improvements and environmental mitigation activities to ensure that they are not located too close to the adjacent industrial area." The italicized text conflicts with the requirement that mitigation of activities within the OS setback occur with the OS setback or the IH setback. Also, there needs to be some clarity between "mitigation activities" and "enhancement projects". This is a new concept and given that mitigation of activities within the OS setback can only occur with the OS setback or the IH setback, the limitation on mitigation seems unreasonable and infeasible.	Agree. The intention is that environmental mitigation and enhancement can occur within the Setback from IH. C.1. The purpose of this setback area is to limit the location of recreational improvements and environmental mitigation activities to ensure that they are not located too close to the adjacent industrial area. Also add: C.4.c. Resource enhancement projects, and tree and vegetation replacement.
59	33.595.200.C.1	"The setback area, in conjunction with a corresponding setback in the industrial zone, will also help establish a	That is correct. The Setback from IH Zone was rezoned to OS to keep the IH zoned area under 300

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59	33.595.200.C.2	<p><i>transitional forested buffer</i> between conflicting land uses.” In the City’s initial proposal, there was a 200’ setback within the IH zone to provide a buffer for the adjacent natural resource. The outer 100’ was more strictly limited than the inner 100’. The entire 200’ was not intended to be a resource only a buffer. Then the City changed the outer 100’ to OS with the understanding that it was a buffer. In this draft the outer 100’ is now considered a resource, zoned OS and subject to the environmental standards in addition to the standards of this section. As a result it is the most strictly regulated resource area on all of WHI.</p>	<p>acres in accordance with Council resolution. The setback from IH zone is intended to be a forested buffer between uses in the IH and uses in the OS. The buffer can be enhanced to improve the functions, or used for tree planting. Impacts should be limited to a driveway that crosses the setback to access uses in the OS.</p>
59	33.595.200.C.4.a	<p>Is there some significance between the use of the term zone vs. area? If not, seems to be a consistency problem here.</p> <p>“A driveway that provides maintenance access to allowed outdoor recreation or to existing or enhanced natural areas or nature preserves; and” As written, this is now the only use permitted in the IH setback making this area much more restricted than the base OS zone. We understand that BES has also raised this as an issue.</p>	<p>Agree. This will be made more consistent.</p> <p>Agree. Changed with the errata sheet to: A driveway that provides access to uses allowed in the Open Space zone.</p>
60	33.595.210	<p>Commentary - This language should be amended to be consistent with code language, if the threshold is exceeded it is a code violation, to amend the thresholds is a legislative plan amendment.</p>	<p>Agree.</p>
61	33.595.210	<p>The word “heavy” should be included before truck for clarity and consistency</p>	<p>Agree.</p>
61	33.595.210.B	<p>This is a code structure issue. “Adjustments are prohibited.” does not seem to be an appropriate lead in to the list.</p>	<p>Agree to make clarification to structure, but language prohibiting adjustments will be retained.</p>
61	33.595.210.B.2	<p>Add “heavy truck” in clarify what kind of trips are addressed.</p>	<p>Agree.</p>

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Page	Code Section	Comments	Response
61	33.595.210.C	Presumably this is referring to industrial development rather than development of open space facilities?	Agree.
63	33.595.310.B	Delete - Areas within the Heavy Industrial zone that: <ol style="list-style-type: none"> 1. Are located below the ordinary high water mark of the Columbia River and Oregon Slough; 2. Contain wetlands or land within 50 feet of wetlands; 3. Are within the River Setback area; or 4. Are within the Setback from OS Area shown on map 595-2. <p>The IH zoned portion of WHI should retain an “allow” designation as previously proposed , and is required for riparian corridors by OAR 660-023-0090(7)(a)(A) and (b)(B) The allow designation is supported by the City's own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission. This change, which is new to this draft, is unacceptable.</p>	Staff is working with the City Attorney's Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.
65	33.595.320.D.3	Map 595-1 - Limitations on future expansion of the dredge material placement and handling site are already addressed by the IGA. The boundary of the DMMA are controlled by the state permit, not city code. Change “facility” to “area” to match the map.	Agree with word change.
67	33.595.320.D.7.a	Shouldn't this be “and” instead of “or”?	Both are not required; meet the first or the second is appropriate.
67	33.595.320.E	Some clarification is needed between “mitigation” and “enhancement.” Why is mitigation resulting from development impacts on WHI subject to resource review?	Agree. Language will be added to the commentary.

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67	33.595.320.E.1	As noted in the commentary, West Hayden Island may be used as a receiving site for mitigation or enhancement related to natural resource impacts elsewhere in Portland. Mitigation banks are one way of doing this, but they may be established in advance of an impact. This section should clarify that mitigation banks would be acceptable.	Agree. Language will be added to the commentary.
67	33.595.320.E.1.a	The idea of limiting this exemption was introduced in Mayor Adam's draft. Enhancement projects to offset impacts to resources on WHI would not be exempt, so onsite mitigation (e.g., within the River setback) would potentially require environmental review. Given that on-site mitigation is preferred by the City, requiring resource review for it is counterproductive and penalizing the preferred action. We recommend that enhancements be exempt, regardless of if the triggering impact occurs on WHI or off site.	Impacts to resources on WHI in the IH (wetlands and below OHWM) would go through environmental review and the mitigation would be part of that review.
67	33.595.320.E.2.b.	Add the underlined words. "The enhancement <u>project</u> has been <u>granted</u> a permit from the US Army Corps of Engineers or ..."	Agree.
69	33.595.320.E.7	Now that the mooring of barges is a regulated use, does this exemption also need to address activities in IH waters for dredging operations?	This is already covered in 33.595.320.D.7.a.
69	33.595.320.E.9	Two years is too short to protect some plantings. In addition should there be a provision to allow for permanent fencing to protect resources, similar to Balch Creek split rail fencing in Forest Park.	This is an appropriate threshold; if the fencing needs to stay longer or be permanent then it could go through review.
71	33.595.410	Check cross-references. "When a proposal cannot meet a standard, or when there are no applicable standards, the proposal ..." This should be corrected as per the errata sheet. The Port feels that the IH zoned portion of the WHI should retain an "allow" as	Language for meeting the standards is similar to other sections of code, and general code protocol directs development to review if there are no applicable standards

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71	33.595.410.A.2	<p>previously proposed.</p> <p>Check definition of site to ensure that this language will not unintentionally include all of the POP ownership.</p> <p>The code should clarify how the definition of “site” will be applied. The City’s definition of “site” states that: “If a proposed development includes only a portion of an ownership, and the balance of the ownership is vacant, then the applicant may choose to define the site as the portion of the ownership that is proposed for development.” In the case of WHI, it is the Port’s understanding that the “site” for the marine terminal would be limited to the IH zoned area and adjacent waters and that the rest of the Port’s ownership would be considered “vacant” for the purposes of development review.</p>	<p>The Port’s interpretation is correct. The term “site” includes several options for how site is defined (33.910.030). One option is to not include portions of the site that are vacant, and not proposed for development.</p>
73	33.595.420.A	<p>Suggested additional language underlined “There are no more than XX square feet of footings per ramp located within shallow water habitat. Shallow water habitat is defined as the area between the ordinary high water mark and elevation - 14 feet (NAVD88) in accordance with the by the US Army Corps of Engineers definition and protocol;”</p> <p>This requirement is new to this draft and will be impossible to meet. Thus, it is inconsistent with the intent to allow development of a marine terminal, and does not comply with OAR 660-023-0090(7)(a)(A) and (b)(B). At a minimum, a limited amount of area should be allowed for footings in order to make this a reasonable standard.</p>	<p>Staff is working with the City Attorney’s Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.</p>
75	33.595.430.A	<p>For consistency with the first sentence, “or right of way” should be added to the end of the last sentence. Alternatively, this sentence could be deleted entirely since utilities installed above or below portions of public rights-</p>	<p>Agree.</p>

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75	33.595.430.B	of-way or within existing utility easements as shown on Map 595-1 are exempt. This conflicts with A if the existing utility easement or right of way is closer than 100' from a stream channel or wetland.	Utilities installed within existing easements and ROW are exempt per 33.595.320.E.5.
75	33.595.430.D	The tree and vegetation removal requirements of this section would only impact the River setback, however, the tree replacement ratio in 33.595.490 is higher than the 1:1 ratio previously proposed, without explanation. The Port requests that the 1:1 ratio be reinstated.	The tree and vegetation standard is consistent with other environmentally sensitive areas of the plan district, using tree diameter to determine number of replacement trees.
75	33.595.440.A.4	This is a new requirement; presumably this is not meant to mean at all times.	Agree In addition, staff will refine the setback standard to meet the intent that the trail not be blocked for more than 90 consecutive days in a calendar year.
75	33.595.440.B.4	The prior draft allowed a 480 sf dock.	That has been removed. Staff recommends further land use review for in-water structures.
75	33.595.440.C.3	This increase from 50' to 100' may make it more difficult to site the parking area within the OS.	Intent is to discourage recreation parking area from locating close to wetlands, etc.
78	33.595.460	Commentary - The code should clarify that mitigation activities for WHI impacts are exempt and are not considered "resource enhancement projects". Otherwise, onsite mitigation, which is preferred (and in some cases required), could be regulated by this section. And, as it may be impossible to meet these standards, a NRR would likely be required potentially resulting in the requirement to mitigate the impacts of the mitigation. Creating regulatory barriers to the preferred approach is contrary to the City's stated policies.	Impacts to resources in an environmental zone (outside the Plan District) would go through environmental review and the mitigation would be part of that review. Commentary will be added.

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79	33.595.460.A	Is some sort of threshold missing here? Given the amount of existing native vegetation, this seems as though it would be impossible to achieve. Also, it might be helpful to clarify that these don't apply to mitigation projects (e.g., meeting the standards for tree and veg replacement is not an "enhancement" project).	Standard is similar to environmental zones for resource enhancement, and no problems have arisen in those situations.
79	33.595.460.C.1	Why was the permitted slope reduced from 33% to 20%? Shouldn't final slope mirror natural conditions in the area?	The change is to be consistent with River Plan. It applies only if earth movement is proposed below OHW. If the threshold cannot be met then environmental review is needed.
79	33.595.460.C.3	Is it always appropriate to use large wood to stabilize the bank? Is this necessary even with very gentle slope?	Agree. The code will be revised to not require large wood or bioengineering; however, if either will be used they must be placed below the OHWM.
79	33.595.460.D	This is a new requirement. We believe the one year requirement is unrealistic. The vegetated area should be replanted in the manner prior to disturbance.	This is not a new requirement and one year is standard in all environmental zones.
80	33.595.490	Commentary - The IH zoned portion of WHI should retain an "allow" designation as previously proposed, and is required for riparian corridors by OAR 660-023-0090(7)(a)(A) and (b)(B) The allow designation is supported by the City's own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission. This change, which is new to this draft, is unacceptable.	Staff is working with the City Attorney's Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.
81	33.595.470.B	This is a new requirement. Is it reasonable given the location of the access road to the IH area?	There is plenty of room to site the driveway and parking.
81	33.595.470.C & D	Do these standards meet PBOT requirements?	PBOT's cross section for N Hayden Island Dr in the area directly east of R/R tracks included a 60-foot right-of-way with 35-feet of paving curb to curb,

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81	33.595.480.A	Code is missing some key information about how much total width of outfall pipes already exists within the Plan District? It is impossible to judge whether this standard can be met given that the amount of existing outfall pipes and armoring within the plan district is unknown. However, the City of Portland's facilities currently use some of this capacity and may use more in the future. Requiring the Port to compete with the City on a first-come, first served basis is a conflict of interest.	This is a total that would include any existing outfalls. The submittal requirements will include a requirement to show all outfalls and associated armor. This is a threshold for review. If more than 120 feet of outfalls and associated armoring is needed, then the additional facilities would go through resource review.
81	33.595.480.D	The City's facilities are not within the River Setback and therefore may presumably block or preclude the trail.	The trail is intended to be located within the river setback so there is no conflict.
81	33.595.490.A	Resource enhancement is excluded from this list and is instead subject to a 90% coverage requirement. Construction of the rail loop and placement of security equipment in the OS setback are not included in the development standards, so it's not clear how this standards would be applied.	Resource enhancement is already addressed under a different standard. Per the errata a standard for the rail loop and security facilities will be added.
83	33.595.490.B.1	The code should clarify that "replacement planting" is not in itself a regulated activity such as "resource enhancement".	This is not necessary. This is a standard to be met and not an activity in itself. It is how the code is implemented throughout the city.
83	33.595.490.B.4	Is this a permitted activity in the IH Setback?	Agree. This will be corrected (see 33.595.200.C.).
83	33.595.490.C	This [within one year] may not be practical unless the option including grass and forb seed mix is used. The percent cover should reflect prior coverage amounts or the like.	This is the standard throughout the city and can be achieved.
85	33.595.520	To avoid a regulatory "loop" where mitigation is required	A resource review will include analysis of the

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85	33.595.520.A	<p>for mitigation, the code should clarify that required onsite tree and vegetation replacement and approved mitigation are not regulated as either “resource enhancement” or “other uses and development”.</p> <p>Deleted “wetland removal and fill within the IH zone and ...”</p> <p>The IH zoned portion of WHI should retain an “allow” as previously proposed. The allow designation is supported by the City’s own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission. Therefore this should not apply to the IH.</p>	<p>impacts and the proposed mitigation. The approval through a resource review will address both actions. No additional resource review is necessary.</p> <p>No change is recommended – inconsistent with PSC direction.</p>
85	33.595.520.B	<p>This [other uses and development] would include rail and security improvements within the OS setback and would be inappropriate for those uses.</p>	<p>Per the errata, rail and security facilities will be covered with standards.</p>
87	33.595.530.A.1.a	<p>See prior discussion of “site” esp. given the use of “that have been disturbed”.</p>	<p>The Port’s interpretation is correct. The term “site” includes several options for how site is defined (33.910.030). One option is to not include portions of the site that are vacant, and not proposed for development.</p>
91	33.595.530.B	<p>Even a relatively minor project (e.g., resource enhancement that disturbs any native vegetation) would be required to submit a substantial amount of additional information. We recommend expressly providing the City authority to waive some narrative requirements.</p>	<p>This is already included in 530.A. We will move the sentence up to the introduction to supplemental site plan requirements.</p>
91	33.595.530.B.1.a.2	<p>Delete “an alternatives analysis is not required for impacts to wetlands located with the Heavy Industrial (IH) zone; and”</p> <p>The IH zoned portion of WHI should retain an “allow” as</p>	<p>Staff is working with the City Attorney’s Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.</p>

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91	33.595.530.B.1.a.3	<p>previously proposed. The allow designation is supported by the City’s own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission.</p> <p>If the placement of footings in shallow water cannot be avoided, then WHI RR is required and alternative designs for the footings would still need to be considered even if alternative locations are not. Regulations of the footings is not compliant with OAR 660-023-0090(7)(a)(A) and (b)(B). As previously stated a certain square footage disturbance area for pilings should be allowed for their association with dock ramps.</p>	Agree.
91	33.595.530.B.1.a.4	<p>There is a structural problem with the hierarchy. This submittal requirement applies even when no alternatives analysis is required as for wetlands per 1.a.2 above</p> <p>It is unclear how this determination can be made when no alternatives analysis is required as for wetlands per 1.a.2 above</p>	<p>Agree.</p> <p>Add “<u>When required under (2) above, determination of the alternative ...</u>”</p>
93	33.595.530.B.2	This should be a subsection under impact evaluation.	This is an alternative to the impact evaluation.
93	33.595.530.B.5	Add “significant”. Unless the City intends to regulate insignificant impacts, the word “significant” should be included here and DIRECT needs to be defined.	Agree.
94	33.595.540	<p>Commentary –</p> <p>[Mitigation should occur on WHI] Mitigation for impacts on WHI is not listed as exempt. If the mitigation disturbs native vegetation, then could mitigation be required for the</p>	This is not how the code is implemented.

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		<p>mitigation</p> <p>[Alternative locations within the IH zone] The prior section says that alternative locations do not need to be considered.</p> <p>[Forest fragmentation in IH zone] Does this change based on the errata sheet?</p> <p>[last paragraph] The vast majority of these “indirect impacts” will be resulting from marine terminal development in the IH zone which is not subject to these regulations.</p> <p>Please clarify this section to explain the meaning/difference between direct and indirect.</p>	<p>Agree. This will be fixed.</p> <p>Agree. This will be removed.</p> <p>Agree.</p> <p>Agree.</p>
95	33.595.540.A	<p>No explanation has been provided about why the criteria differ from those in PCC 33.430.250 (approval criteria for Environmental overlay zones. The approval criteria in PCC 33.595.540 should align with PCC 33.430</p> <p>Add “projects, docks and related structures within the IH zone, and corrections ...” Regulation of water-dependent and water-related uses in the riparian corridor does not comply with OAR 660-023-0090(7)(a)(A) and (b)(B). The general criteria are too broad and discretionary for wetlands in the IH area and shallow water impacts where the only issue is mitigation. Separate approval criteria are needed. WE believe that approval criteria should exist in the IGA, not the code. The suggested criteria is in section C below.</p>	<p>The approval criteria are similar to the River Plan resource review which is more applicable to the Portland Harbor.</p> <p>Staff is working with the City Attorney’s Office to craft a response. Generally, this OAR pertains to conflicting uses in a riparian area, not wetlands and wildlife habitat.</p>
95	33.595.540.A.1	<p>Delete “ Proposed development and mitigation plan results in no net loss ...” And add “minimizes loss” instead. The prior draft used the phrase “minimizes loss” and did not include a reference to the mitigation plan. Combining the</p>	<p>Agree. The original language regarding minimization will be restored. The language regarding no net loss will be moved to A.4 as a qualifier to the objective</p>

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95	33.595.540.A.2.a	development and mitigation plan together is confusing. The language in the prior draft should be restored. For this approach to be functional, separate approval criteria are needed. See new language 33.595.540.C as proposed by Port.	of the mitigation plan. Staff believes the current language is a reasonable approach.
95	33.595.540.A.2.b	The IH zoned portion of WHI should retain an “allow” as previously proposed. The allow designation is supported by the City’s own initial ESEE analysis and should not simply be altered to achieve a different outcome preferred by the Planning and Sustainability Commission. Therefore this should not apply to the IH.	Inconsistent with PSC direction.
95	33.595.540.A.3	Why was the word “significant” deleted and replaced with “direct”? How is “direct” defined?	Agree.
95	33.595.540.A.4	The word “significant” was deleted here. Unless the City intends to regulate insignificant impacts, it should be included.	Agree.
97	33.595.540.B.2	The word “significant” was deleted. Unless the City intends to regulate insignificant impacts, it should be included.	Agree.
97	33.595.540.B	Suggest adding a C. <u>Docks and Related Structures.</u> <u>Docks and related structures will be approved if the applicant’s impact evaluation demonstrates that all of the following are met:</u> <ol style="list-style-type: none"> There will be no significant detrimental impact on resources and functional values in areas designated to be left undisturbed, including mitigation sites in the plan district; The mitigation plan must demonstrate that all significant detrimental impacts on identified 	The approval criteria as currently worded in the proposed zoning code provide enough guidance to the resource review.

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		<p>resources and functional values, and the interim loss of functional value will be compensated for. The amount of mitigation due as compensation will be based on the amount and relative condition of the resources and functional values impacted by the proposal, the extent to which the project design minimizes impacts, the uniqueness of the resources and functional values, and the time lag between when the resources and functional values are lost due to the impacts and the point when the mitigation site will achieve full function. To the extent practicable, the resources and functional values restored or enhanced as mitigation must be the same kind of resource, performing the same functional value as the lost resource;</p> <p>3. Mitigation must occur within the West Hayden Island Plan District when practicable, and ecologically beneficial. Factors to be considered when evaluating this criterion include:</p> <ul style="list-style-type: none"> a. The potential for the long-term success of the restored resources and functional values in the mitigation area; b. The amount, size, shape, and connectivity potential of on-site mitigation areas; c. The location of the mitigation area in relation to existing, proposed or future development on the site, and the impact development may have on the mitigation area; d. Contamination; and e. Any other site-specific issue or constraint. <p>4. The applicant has obtained permits from the Oregon Department of State Lands and/or the U.S. Army Corps of Engineers for in-water work. The mitigation required for those permits can count toward meeting this mitigation requirement as long as that mitigation is found to adequately compensate for impacts to the</p>	

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Summary of Port of Portland comments, and staff responses

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		<p>identified natural resources and functional values.</p> <p>5. The applicant owns the mitigation site; possesses a legal instrument that is approved by the City (such as an easement or deed restriction) sufficient to carry out and ensure the success of the mitigation program; or can demonstrate legal authority to acquire property through eminent domain.</p> <p>6. If other regulatory approvals have been obtained from the Oregon Department of State Lands or the U.S. Army Corps of Engineers, the conditions of approval for this review must not contradict, circumvent or otherwise undermine decisions made by those agencies.</p>	
102	33.595.600	Commentary – Check cross references.	Agree.
109	595-2	This is an error. It appears the labels on the map for the OS and IH setbacks are reversed.	Agree.

**Attachment G:
Summary of Bureau of Development Services comments and staff responses**

Page	Code Section	Comment	Response
51	33.595.100.A.8	RF Facilities. Change language to “These facilities are also subject to the standards of Chapter 33.274.”(dch)	Accept. A.8 to read as: Radio Frequency Transmission Facilities. Some facilities are allowed by right and are subject to the standards of Chapter 33.274.
51	33.595.100.A-B	How do we evaluate whether the Limited Uses have “a functional and economic reliance upon the deep water marine terminal that is located in the plan district?” What characteristics or criteria would we use? Does 33.920.030 have enough evaluation tools within that section? Should that section be referenced? (kf) Change “or” to “and” in list of uses. (dch)	Accept. Proposed alternative language: B. Limited Uses. Manufacturing and Production, Industrial Service or Warehouse and Freight are allowed uses if they handle, produce, or use materials that are shipped through a deep water marine terminal located within the plan district. “and” is currently used in list.
?	33.595.110 A.2	Basic Utilities allowed (listed a, b, c,) The Commentary says “allows utilities and small scale energy systems that serve an allowed use on the site, which is similar to the base zone”, However, there is no mention of small scale energy production in the list of allowed uses (while it is specifically described as allowed in the OS base zone footnotes). I do not understand 33.595.110 A.2.c. . . “Basic Utilities that serve a primary use are considered accessory to the primary use being served.” What primary use does this refer to?(smc) Should water conveyance systems be referenced in 33.595.110.A.2.b? (dch)	Accept. Will remove commentary reference to small scale energy. This is a type of Basic utility, but doesn’t have to be specifically noted. For the other two issues, proposed alternative wording: a. <u>Water and sewer pump stations and conveyance systems;</u> b. <u>Sewage disposal, pump stations, and conveyance systems;</u> and c. Basic Utilities that serve an <u>allowed</u> primary use are considered accessory to the primary use being served.
53	33.595.110.A.4	There should not be a reference to allowed development in a section talking about uses. This might be changed to “Exterior improvements areas accessory to allowed uses.” Or that sentence could	Accept. See alternative language. 4. <u>Parking and other accessory uses</u> Driveways to intended to provide access to <u>allowed</u> uses in the

**Attachment G:
Summary of Bureau of Development Services comments and staff responses**

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		be included with the reference to the allowed use. As this sentence stands, it sounds like it refers to uses that are allowed anywhere in the plan district and not just uses allowed in the OS zone. Are driveways for uses allowed in the IH zone allowed in the OS zone? (dch)	plan district.
57-58	33.595.200.B.4 and C.4	These sections list Exemptions from the setback area regulations; however, the commentary indicates the noted “exempt” development is subject to the environmental standards. If the development is subject to standards, the code language needs to indicate that (i.e. <i>Exception: The following development is allowed in the setback, subject to the environmental standards of _____.</i>) (kg) (smc)	Accept. Language noted on errata.
61	33.595.210.B.2	Add “in the month” to the end of the sentence before the semi-colon. (dch)	Accept.
?	33.595.300	The third bulleted “Purpose”, “Provide opportunities for natural resource mitigation, remediation, and enhancement;” really should include the term “conservation”.(smc)	Accept.
65	33.595.315	To clarify, we will not regulate non-native, non-invasive plant removal. Right? (kfl)	Yes, we do plan on regulating this as these plants perform a function. This is the same policy as 33.430, environmental zones.
66	33.595.320.D.7.a	Dredging above -14 feet (NAVD88) is subject to review. Reduce complexity of the exemption. (kfl)	Dredging above -14 NAVD88 is exempt per 33.595.320.D.7.b., if done as berth or channel maintenance. Other dredging is subject to further review.
67	33.595.320.D.12	“Structures on an existing dock, wharf, or pier” that do not increase the coverage over the water. (Please add this language.) (kfl)	Agree, though we may need to refine language to be clear that replacement of cranes or other standard ship-to-shore dock equipment is not subject to this.
67	33.595.320.E.1	This exemption doesn’t work from the standpoint of	Accept.

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Page	Code Section	Comment	Response
		<p>Environmental Reviews required off of West Hayden Island, for impacts to resources in other environmental zones throughout Portland. Approval Criteria in 33.430.250, applied throughout Portland, requires review of the proposed mitigation plan (regardless of where it is proposed to be implemented) to ascertain that all unavoidable impacts are compensated for by the mitigation plan. LUS would need to review the mitigation in order to determine if <i>city identified</i> resources and functional values, lost at the other site, were compensated for by the proposed mitigation. The Corps, DSL, and ESA administrators (NOAA Fisheries and US F&WS) do not manage city identified natural resources other than those below OHW or in a wetland.</p> <p>The City regulates resources and functional values identified in the 8 Natural Resource Inventories and ESEE Analyses adopted by City Council to provide protections to natural resources significant, and sometimes, unique to Portland. They include: Forest habitat, forest wildlife (whether ESA listed or not), creek headwaters, seasonal creeks, floodplain areas above OHW, non-ESA listed fish and wildlife, and unique geologic formations such as the lava domes (smc)</p>	<p>1. Natural resource enhancement or remediation projects performed <u>within the West Hayden Island Plan District as mitigation for impacts outside the Plan District</u> when it meets the following:</p> <p>a. The enhancement is required to offset impacts to natural resources located within the city limits of Portland outside of the West Hayden Island Plan District; and</p> <p>The commentary will be updated to explain that when an environmental review is completed for impacts to an e-zone outside the plan district the review will consider both the impacts and the mitigation. When the land use is approved, it is approved for both the impacts and mitigation; no additional review is necessary.</p>
67	33.595.320.E.3	<p>Clarify if “existing public right-of-way used by truck or automobile traffic” refers to the <i>developed</i> portions of the ROW or the entire ROW. (kg)</p>	<p>No change recommended. This language is consistent with 33.430.080.D.2.</p>
69	33.595.320.E.7	<p>Temporary structures located in the IH zone River Setback that are used for construction staging and access, or conveyance of dredge materials. <u>These temporary structures cannot impeded public trails for more than 90 days.</u> (kf)</p> <p>Provide standards for temporary structures to address size, impacts, vegetation removal, duration, etc. (kg)</p>	<p>The restriction on how long the temporary structures can be in place is in 33.595.200.A.4.e.1. That section states that temporary structures can be in place for no more than 180 days. A structure that crosses a trail can be in place for no more than 90 days unless access to the trail is provided.</p>

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Page	Code Section	Comment	Response
71 & 72	33.595.410	<p>Permit application requirements need to include mapping features that are specifically regulated, or specifically exempted by the regulations in Chapter 33.595.</p> <p>Application of the regulations depends on the location of the proposal relative to zone lines, setback lines, and top of bank. This information needs to be provided by the applicant on the site plans:</p> <p>33.595.410 A and B: Include all the WHI zone lines and River setback lines, OS setback lines, and IH setback lines. Include top of bank line. Existing utility easements and utility lines</p> <p>33.595.410 B. only: Include location of all proposed permanent development including buildings, retaining walls, trails, walkways, utilities, etc. Include a grading plan showing proposed and existing contour lines. (smc)</p>	<p>Agree – the application requirements will be refined to include this.</p>
81	33.595.480	<p>Standards for outfalls. There is no mention of a maximum width (or area) for disturbance area, to construct outfalls. This is inconsistent both with the WHI standards for rights-of-way, and with the outfall standards in 33.430. There is no incentive to the contractor to minimize impacts, or to delineate any sort of construction area in the field. (smc)</p>	<p>Agree. A. The total width of all permanent disturbance including outfall pipes, supporting structures, and rock armoring associated with the outfall pipe may not exceed that 120 feet;</p>
81	33.595.480.A	<p>This may be a tracking challenge to know what the cumulative width of all outfall pipes, armoring, and support structures. Have you already documented the <u>existing</u> outfalls in the PD? This information would be helpful to establish a baseline.</p> <p>Having limits for each pipe is easier to implement,</p>	<p>Agree. Add the following to the permit application requirements: 33.595.410.A.1. Outline of any existing disturbance area, including existing utility locations and <u>existing outfalls and associated armoring</u>.</p> <p>The standard is additive. The existing outfalls</p>

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Page	Code Section	Comment	Response
83	33.595.490.B.1.b.	Standards for Tree & Vegetation Removal. B.1: materials and labor for seeding is way cheaper than material and labor for physically planting “four other plants” for every tree removed. They will ALWAYS select B.1.b. we should delete B.1.a. Figure 595-1 is nice! (smc)	Either option can be chosen. They may want to do “plugs” of wetland plants instead of seeding.
85	33.595.510	When West Hayden Island Resource Review is Required: can you please include if this applies only in the OS zone on WHI, or within the entire Plan District? It needs to be clear. (smc)	This is already covered in 33.595.310. Where These Regulations Apply. As shown on map 595-3, the regulations of Section 33.595.300 through 33.595.610 apply within: A. The Open Space zone; and B. Areas with the Heavy Industrial zone that: 1. Are located below the ordinary high water mark of the Columbia River and Oregon Slough; 2. Contain wetlands or land within 50 feet of wetlands; 3. Are within the River Setback; or 4. Are within the Setback from OS Area as shown on map 595-2.
87	33.595.530.A.1.a(2)	Is there a specific methodology to confirm the applicant has determined the ordinary high water mark and shallow water habitat area in accordance with US Army Corps of Engineers definition and protocol? (kg)	No additional methodology or documentation will be needed. The USACE determines the OHWM and it is documented in a report. Any work below OHWM will require a permit from USACE so they will be involved.
87	33.595.530.A.1.a(9) and B.2.d	Trees installed for mitigation may be smaller than 6 inches for a period of time. Add an item about Prior Mitigation Plantings. (kg)	Agree. Add areas of prior mitigation to the supplemental site plan requirements.
87	33.595.530.A	Application Requirements A.1.Site plans: a. all site plans: PLEASE include: property lines, boundaries	Agree.

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Page	Code Section	Comment	Response
		of the "site", Official City of Portland Zone lines, All WHI required setbacks (from OS, from IH, from Columbia River). (smc)	
87	33.595.530.A.1	Add an item about Prior Mitigation Plantings. (kg)	Agree. (see above about prior mitigation)
89	33.595.530.2	Application Requirements A.2.CM plans: Please include: location of proposed development (buildings, pathways, utilities, retaining walls, bridges, etc.), temporary and permanent disturbance areas, trees to be removed shown with a bold "X", disturbance area noted in square feet, areas to be left undisturbed.(smc)	Agree.
89	33.595.530.A.3.d	Add shrubs and groundcover. (kg)	This is already included in c.
90	33.595.530.B.1.a(2)	1.a (2) please describe in the commentary why no analysis required here. (smc)	Agree.
91	33.595.530.B.1.a(2)	If the regulations do not provide for an alternatives analysis to consider wetlands or dock facilities, what will be considered in an impact evaluation? (kg)	The analysis will document the impacts on the resources. Clarify in the commentary for B.1. that the impact evaluation is also used for the mitigation or remediation plan.
92	33.595.530.B.1.b(2)	Functional Assessment: must include city-identified resources. (smc)	Agree.
93	33.595.530.B.2	Functional assessment replacing the some or all of the impact evaluation could be worrisome. (kf)	BPS feels this is a reasonable substitute, and the provision is intended to minimize the cost of City regulations, considering extensive analysis is already required for state and federal permit process..
93	33.595.530.B.2	The city, state and federal agencies are each charged with regulating resources for different purposes. A functional assessment for non-city agencies may not cover issues of import to the city. (kg)	Yes, that is why the function assessment may replace some or all of the impact evaluation.

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Page	Code Section	Comment	Response
93	33.595.530.B.1.b.3	Review process to “challenge” the information in the City’s inventory? (kg)	Yes, natural resources change over time. A site assessment could challenge information in the inventory. This would be part of the land use review. Staff will add some commentary.
94	33.595.540.A.2.a	Commentary: Para 3: Sentence 2 “applicants do not need to evaluate alternative locations...” Sentence 3 “The alternative analysis should evaluate alternative locations...” which? (smc)	Agree. The evaluation does not need to include analysis of off-site location; however, the location of docks, ramps, etc. within the IH zone should be analyzed.
95	33.595.540 A.4	Approval Criteria: A.4. “The mitigation plan must...” This criterion is overwhelmingly long. Please simplify it for our use and for the applicant’s use. Please do not include, “ ...based on... the extent to which the project design minimizes impacts...” as this is already to be addressed in A.2 which requires an alternatives analysis that must include efforts to minimize impacts through project location, design, and construction methods. Please provide us planners with some guidance as to how to quantify (and mitigate for) the “time lag between when the resources are lost and when the site will achieve full function” AT a minimum give us an example of what is intended here. (smc)	Agree. The paragraph will be split into a. and b. It is intended that the City use Best Available Science when determining the adequacy of mitigation, including the time lag between impacts and a functioning mitigation site.

Attachment H
Summary of Bureau of Environmental Services comments and staff responses

Page	IGA / Code Section	Comments	Response
55	33.595.200 – intended to provide buffer areas between the open space and industrial use zones.	<ul style="list-style-type: none"> -The extremely limited list of exemptions in these setbacks might be a problem. -The current commentary wording says exempted activities in the setback may still have to meet Environmental regs of Section 320, but the reverse is not necessarily true. Items exempted in Environmental regs could be, and because of the limited allowed list in the setback chapter, usually are, prohibited "development" in the IH, OS and River setbacks of the 200 section. -This issue is complicated by BPS' very broad definition of what is "development". A restoration project within these setbacks would not be allowed because it is considered "development" and other than a very limited list, development is not allowed in the setback areas. -It seems like exemptions similar to the Environmental areas (33.595.320.D) - including exemptions for facility maintenance, invasive plant removal, temporary procedures, maintenance / replacement of infrastructure and existing paved surfaces, etc could all be occurring in the 200' setback swath (100' IH + 100' OS setbacks) between these zoning boundaries. -More exemptions should be considered in all 3 setbacks (River, OS and IH). Maybe adding a reference to exempted activities in the environmental regulations of section 320 would work. 	<p>Staff will cross reference, as needed, the exemptions in the environmental development standards and appropriate exemptions to the setbacks.</p> <p>The setback standards are general and pertain to what development is allowed in the setback and what is not. For that development that is allowed in the setback, the other regulations do apply.</p> <p>Per the errata sheet, enhancement and planting has been added as exempt from the setback standards.</p> <p>Maintenance is not development and does not need to be addressed in the setback.</p>
75	33.595.430 – Introduction	Intro might want to include the cross reference to the 480 pipe and outfalls standards. As worded it makes you wonder where those are since they do not immediately follow 430.	Agree.

Attachment H
Summary of Bureau of Environmental Services comments and staff responses

Page	IGA / Code Section	Comments	Response
77	33.595.440.B.2., B.3, B.5.a	<p>-One boat launch per what? Property, tax lot, zone? Same issue with C.2. on the same page</p> <p>- what permanent disturbance is allowed below OHW that is not a trail for access? A pull out boat storage site? B.3 seems redundant to B.5.a.</p>	<p>Agree. Will add “within the Plan District” to the end of the standard.</p> <p>Clearing of vegetation.</p>
91	33.595.530.B.1.a[3]	<p>There is a creation of an odd word "signification" in 33.595.530.B.1.a.[3]. I think significant is correct.</p>	<p>Agree. The typo will be fixed.</p>
P 139	IGA 12, 13	<p>The Bureau of Environmental Services remains concerned about the potential for the Port to fail to meet obligations under the draft Agreement. The City's ability to enforce provisions of the Agreement hinges on the dispute resolution process (section 12) and the remedies in section 13. Neither of these ensures the Port's performance of obligations.</p> <p>We are particularly concerned about the possible application of section 9.3, which refers to the nonappropriation of funds. This section seems to provide a loophole that allows Parties to not meet their obligations by providing only that "The parties will strive to attain funding necessary to meet their respective obligations under this Agreement to the extent reasonably possible." It is not clear if the failure to identify funding triggers section 12 (dispute resolution) or 13 (remedies),</p>	<p>Staff has consulted with the City Attorney and these elements are standard language used in all IGAs. Staff is recommending edits to sections 9.3, 9.6 and 10.4 to clarify some of this language. See response to PSC questions (Houck Q#1).</p>
P 138	IGA 11	<p>We are concerned about enforcement of the continuing obligations outlined in Section 11. These are obligations that survive the termination of the Agreement and extend into the future. While supportive of the language in section 11.1.3 stating that the Port's continuing obligations to maintain natural resource mitigation sites will survive the termination of this Agreement and</p>	<p>Section 11.2 describes the mechanism for ensuring the continuing obligations will be met.</p>

Attachment H
Summary of Bureau of Environmental Services comments and staff responses

Page	IGA / Code Section	Comments	Response
P 129	IGA 5.5.10	<p>continue for a 30--year period, we are concerned about the City's ability to ensure performance of these obligations.</p> <p>Because of the long term nature of this agreement, we recommend a re-opener clause in section 5.5.10 (Adaptive Management) to require a mandatory reexamination of the terms of the agreement in the event of significant changes in regulatory context (e.g., additional ESA listings), natural resource conditions or improved scientific understanding. This would require review and would not be dependent on the agreement of both parties.</p>	<p>Agree. Change language to read: <u>Adaptive management, as described in Section 2.4 will be used as natural resource conditions, regulatory requirements, and scientific understanding evolve over time. It is not the intent of this agreement to require an inflexible mitigation approach that cannot respond to these changes. The Port and City may agree in writing to deviate from these objectives if such changes are necessary to respond to significant changes in regulatory context (for example, additional ESA listings), natural resource conditions, or improved scientific understanding.</u>The requirements and objectives of Section 5 of this Agreement may be modified or waived only upon the express written agreement of the City and Port, and only after consulting with the West Hayden Island Advisory Committee described in Section 8 of this Agreement.</p>



CITY OF PORTLAND
ENVIRONMENTAL SERVICES



1120 SW Fifth Avenue, Room 1000, Portland, Oregon 97204 ■ Charlie Hales, Mayor ■ Dean Marriott, Director

May 21, 2013

To: Planning and Sustainability Commission

From: Dean Marriott, Director

CC: Susan Anderson, Director
Bureau of Planning and Sustainability

Re: Bureau of Environmental Services Comments on 4/9/13 West Hayden Island Amended Proposed IGA

Introduction

For the last 4 years the Bureau of Environmental Services (BES) has provided technical support to the Bureau of Planning and Sustainability (BPS) as they have evaluated the feasibility of annexation into the City of Portland, the Port of Portland owned West Hayden Island (WHI). BES has evaluated the quality and quantity of natural resources on WHI, and in the surrounding areas. BES staff has determined the functional value of the island's natural resources, and the best approaches to mitigate any adverse impacts to, or loss of, those associated functions.

Providing robust and meaningful mitigation for development of a new marine terminal is essential to maintaining the ecological baseline in the Columbia and Willamette Rivers, or for any potential net gain in ecosystem function.

REQUIRED ENVIRONMENTAL MITIGATION

The environmental mitigation package, as specified in the Draft Intergovernmental Agreement between the City and the Port, will need to meet several mitigation objectives in order to achieve the Council directed goal of a net gain in ecosystem function:

- Adequate replacement of floodplain function
- Replacement of 150 acres of Western Meadowlark habitat
- 110% replacement of floodplain forest
- Future City review of wetland & shallow water mitigation

Provided that these elements are retained within the IGA, BES believes that a net environmental gain can be achieved with the proposed development.

Specific mitigation details are provided below.

FORESTS

WHI is home to one of the largest and oldest contiguous patches of rare, cottonwood-ash, and floodplain forest in the Lower Columbia River. BES, BPS, and the Office of Healthy Working Rivers developed the City's forest mitigation framework using established science to quantify mitigation needed to return this high quality habitat back

ADDENDUM TO APPENDIX H

to baseline function. The forest framework provides flexibility and options for mitigation. The forest framework draws on existing standard mitigation practices from the Washington Dept of Ecology, The Oregon Department of Fish and Wildlife, Clean Water Services, the US Army Corps of Engineers, and scientists at the EPA. The Oregon Department of Fish & Wildlife biologists have formally endorsed the City's mitigation approach for WHI forests.

In the fall of 2012, the City set the policy goal of a 110% target for forest mitigation. It is essential that the City maintain the 110% forest target in combination with the above mitigation actions if the desired outcome is a net gain in ecosystem function.

FLOODPLAINS

Throughout our region, rivers and their floodplains have been disconnected through filling and the construction of levees. The result is degraded river systems with impaired ecological functions, especially for threatened and endangered fish and wildlife species. Providing meaningful replacement of floodplain function lost to future development on WHI is essential to maintaining and improving the health of our river system. It is also a key strategy for adaptation to climate change.

During flood events on WHI, the Columbia River flows through an intact riparian forest, where flow is slowed significantly as it winds through a thick path of trees, shrubs, and wetlands. The slowed velocity attenuates flood hazard on adjacent properties by soaking up water instead of sending it downstream. The slowed velocity provides respite for juvenile fish, particularly during the February to June high water period so critical to juvenile salmon out-migration, by protecting them from flushing downstream prematurely. In addition, the slowed velocity affords the deposition of nutrients, sediment, wood, and other materials integral to the geomorphic, habitat-forming processes necessary to create and maintain valuable estuarine habitat. Increasing the period of connection between the river and its floodplain increases flood storage capacity and moderates stream flow through the retention of water, providing groundwater recharge that supplies the river with cold water during the summer low-flow season.

The two-year flood event [20.7 feet, (NAVD88)] on the Columbia River at the USGS flow gage in Vancouver provides all of the elements necessary to engage the island's floodplain and retain all of the benefits described above. The two-year flood standard was developed by regional scientists and is used by the Bonneville Power Administration as their design standard, typical for mitigation projects that preserve or restore lower Columbia River habitat.

The WHI floodplain mitigation plan should re-establish a floodplain connection with the frequency and acreage extent outlined in the City's analysis.

Thank you for considering our comments.

Attachment I
Summary of Portland Parks and Recreation comments and staff responses

Page	IGA Section	Comments	Response
122	3.2	Change Milestone from 2 to 1- Parks wants park infrastructure tied to annexation	BPS recommends leaving the parks improvements tied to Milestone 2. The annexation by itself is not creating any immediate additional demand for parks services. In addition, the funds to enable parks development will not exist until more definitive development plans emerge. Connecting this requirement with Milestone 2 was intended as a way to create more financial certainty for both the City and the Port in the IGA. Obligations are phased according to reaching certain development milestones. This helps make the IGA implementation more financially feasible.
123, 136	3.2.2	Purchase of property (3 acres), no later than 5 years after Milestone 1 Change chart on 136 “timing of recreation improvements obligation” to read no later than 5 years after Milestone 1.	BPS suggests leaving the parks improvements tied to Milestone 2.
123	3.2.3	3 rd sentence: A portion of this amount, up to 35%, will be available to PP&R for design and engineering upon completion of the Open Space Strategy described in Section 4.6, with the remainder available no later than <u>five years</u> after the completion of the <u>Open Space Strategy</u> (<u>underline is new text</u>)	BPS recommends no change. We have tied the remainder of the funds to Milestone 2 consist with over all timing of recreational improvements.
123	3.2.2	Add the following sentence: If the City dollars are not available at the appropriate time, the park development would either be phased until such time as the funds are available, or the scope of the park improvements would be adjusted downward to reflect the budget resources available at the time of design and construction.	Section 9 of the agreement already says this, in effect. BPS does not think adding this sentence to 3.2.2 is necessary.
138	11.1.1	Update section to include Port’s obligation to fund transportation, sewer, water and recreational improvements. Parks recommending this addition because park, trail and open space infrastructure is just as	BPS does not feel that parks services should be tied to annexation, as noted above. We agree that parks services are important, but the annexation by itself does not create demand for those services, and the funds to enable parks development will not exist until more definitive development

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Summary of Portland Parks and Recreation comments and staff responses

Page	IGA Section	Comments	Response
		important as other City infrastructure	plans emerge.
	Sect 3.2 & 4.6	Light water craft access—City should continue to explore options for this on the south side of the island (along the slough). South side is preferable due to river currents and shipping conflicts on the north side.	BPS agrees that the City should continue to explore light water craft access along the Slough and this will be part of the future open space discussions (Section 4.6 of the IGA).