

Outstanding PSC Questions: West Hayden Island December 3, 2012

Lai-Lani Ovalles

If this annexation and development were passed by City Council - what is the impact on relationships with Tribes - especially those who have Federal Treaty rights on the Columbia and Willamette?

We need advice from someone who is an expert in Indian Law. I would recommend calling Bob Miller at Lewis & Clark - he's a Native professor at the Law School and also calling up the Oregon/WA state Indian Law Association.

Impact on the Flood Plain ?

Impact or connections of this project to the Climate Change Action Plan?

I'd also like to echo Mike Houck's detailed questions - especially around mitigation and loss of ecological function.

also I need more clarity on how the Mayor's proposal fits into all of this?

I'm not even sure of what the key issues are that we should be looking at in relationship to the annexation proposal?

Andre' Baugh

Below are my global comments and then questions or outcomes that I believe need to be addressed in an IGA.

WHI Comments

In my view the WHI port should be a model of a green port. A sustainable WHI Port should create initiatives with a carrot and stick approach that encourage the Port of Portland to go beyond standard compliance of environmental behavior and become exemplary in their approach to WHI port operations and the surrounding environment and community. Additionally we should honor City of Portland's Tribal commitments and responsibilities to engage in effective government-to-government consultation consistent with City of Portland resolution. WHI IGA should support development of WHI, including appropriate mitigation, in a manner that respects and is consistent with tribal rights and obligations and that protects cultural resources. The IGA should contain a mechanism that provides tribal feedback and concerns in project review, design and mitigation through early and continued communication and feedback through any development and management of WHI. There is a significant difference in when revenue starts at WHI reading the IGA, from the community and the schedule I've heard from the Port. We need a realistic schedule of revenue for working WHI port facility PSC and the community can use as a basis to make decisions.

WHI Questions - Outcomes

- Seek grants from EPA, The US Maritime Administration (MARAD) and other agencies for Green port initiatives
- All locomotives meet Tier 4 Emission Rates for Line-haul and switching Locomotives (grams/bhp-hr) that are effective 2015 at a minimum.
- All heavy trucks which enter WHI port meet 2010 EPA engine emission standards.
 - The port should require all heavy trucks to meet a 10 year lag in EHP engine emissions for truck entering WHI. Example: all trucks entering WHI in 2030 meet 2020 EPA diesel engine emission standards

- The Port is required to notify all current heavy trucks and rail carriers each year between now and 2030 of the new standards that are required on WHI ports
- Use of noise reduction strategies in reducing train noise in developing a rail terminal
- Is there a legal reason the Port cannot mitigate on non-port land? And do or will the Port receive credit for the mitigation? Can the 500 acres be sold to a third party with provisions for the Port to mitigate on the land for the next 100 years?
- Provision for cash flow if the Port adds terminal 3 and 4 to the environment and community and expands beyond the car import/export business at WHI. Limited for first 50 years from start of Port revenue or length of first lease whichever is longer.
- Port in acquisition of WHI Division of State lands; will the lands be part of the WHI 500 acres?
- Grants which are received should not diminish the amount of money committed / pledged to mitigation or the community by the Port of Portland.
- The Port of Portland will all support grant applications that, City of Portland, community(s) and environmental groups submit to improve WHI
- If the Port fails to achieve section 4 in the agreed to schedule, what is the penalty?
- If the Port fails to achieve section 5 in the agreed to schedule, what is the penalty?
- Provide a cash flow analysis - Port expected revenue vs. expenditures for 50 years (most likely 2 terminals)
- 6.1.3 add women and minorities of Portland
- Add Port will express aspiration in all construction documents and to the lessee of the any WHI port facility that the Port prefers City of Portland based business and as part of the agreement for WHI a City of Portland Business license is required to work on WHI.
- The Port will fund the development of a grant strategy in the first year after enactment which will identify all potential grants which may apply to WHI and potential sponsors and recipients.
- Require a good neighbor agreement for all construction conducted by the Port or its lessee is signed prior to issuance of NTP.
- Can the “numerous escape clauses” the Audubon Society (Bob) identified be pointed out?
- Please provide the methodology used to calculate net present value for mitigation and community benefits calculations
- The Port will provide adequate review and comment period for an advisory committee in developing a fill strategy of the 300 acres.
- The Port will develop a noise migration strategy for rail transport which incorporates best global strategies practices.
- What is the business cycle duration for potential decision makers on a site? (Looking for number of months or years)
- In the Ports view provide a decision tree of issues that give them a clear path to market ready development?
- What is the impact to the state general fund over 50 years? graph for tax revenue from a development with two terminal and then up to 4.
- Describe per-investment each terminal agreement and car facility the following.
- Number of new jobs on site estimated range.
- What is the global and USA value of the 300 acres as a port facility?

INTEROFFICE MEMORANDUM

TO: ANDRE BAUGH, SUSAN ANDERSON

CC: PLANNING AND SUSTAINABILITY COMMISSION

FROM: CHRIS SMITH

SUBJECT: WEST HAYDEN ISLAND FOLLOW-UP QUESTIONS

DATE: 1 DEC 2012

Below are my follow-up questions/discussion points regarding West Hayden Island. I'm looking forward to the Commission discussion.

- 1) I would appreciate a thorough public briefing on the Mayor's plan.
- 2) The revised IGA references joint City/Port support of a project to improve the Columbia River rail bridges, but does not appear to accurately identify the RTP project involved. Indeed, I'm not clear that there is such a project currently in the RTP. Since this bridge corridor is important to future plans for both High Speed Rail and potential commuter rail service, I'd like to be sure what we're committing to support is consistent with those future opportunities.
- 3) Since the NPV calculations around future mitigation efforts seem to be disputed by some of the people providing testimony, I'd like to understand the methodology a bit better.
- 4) I have proposed a side-underun bar requirement for trucks as a potential traffic safety mitigation. This depends on whether or not the terminal will be regularly serviced by the same trucks. Do we have any data for comparable terminals or estimation on this point?
- 5) While it would appear that WHI and Columbia Gateway (in Vancouver) each have pros and cons for development of terminals with a unit-train scale loop, Columbia Gateway is not contiguous to a much larger piece of habitat. Do we have any policy levers available to ensure that Columbia Gateway is developed first and that WHI is not developed if the economic reality does not reach the forecast levels at which a second terminal is required?
- 6) The advisory committee and Port "triaged" a number of measures to mitigate impacts on human health. Do we have any way to estimate the effect of these measures in reducing impact? Are there additional measures that City staff would recommend from the those considered?
- 7) The Mayor's proposal suggests new park development and a housing fund as measures to offset impacts on human health. Do we have any way to quantify the offsetting benefit? Do staff have other suggestions for potentially offsetting measures?
- 8) As a process point, I'd like to discuss whether we can have reasonably final documents before any future public hearings in our decision process.

Mike Houck - Issues and Questions Regarding West Hayden Island

We were asked to get our issues and questions to staff by noon Today. The following are issues of concern and specific questions that I'd like to be the focus of the PSC discussions and would appreciate staff responses to:

Key IGA Issues:

Frankly, my greatest concerns are with the IGA language. Mayor Adams was quite up front that the IGA represented "his best thinking" and that the IGA was a DRAFT that needed review and editing. Beyond the fundamental question regarding WHI annexation and public policies associated with that decision, the details in the IGA are one of the most critical issues the PSC needs to address. We need to understand the details lest we find in years or decades to come that the IGA was deficient.

1). **Net Present Value Calculations:** What methodology was used to determine Net Present Value? There was testimony at our last hearing questioning the methodology. Has an independent economist weighed in on these calculations? My understanding is, depending on factors used, the outcome could be significantly greater than that contained in the IGA.

2). **Funding uncertainties:** There are huge implications with financing and "funding uncertainties." Moving forward with annexation, predicated on an IGA that has such significant funding uncertainties, including the highly problematic issue of seeking "external funds" and what impact that might have on other city and regional priorities for funding is of great concern. Examples I raised earlier that are in the IGA include:

p. 117; 7.1.4 All specific **funding obligations** of the Port and City contained in this Agreement **are contingent upon funding being available and appropriated by the Port Commission and City Council**. The Parties acknowledge that there are a variety of **uncertainties, including future market conditions**, that **will affect the availability of funds**. The Parties will strive to attain funding necessary to meet their respective obligations under this Agreement to the extent reasonably possible.

7.1.5 "The preliminary cost estimate assumes funding from sources not wholly within the Parties' control, which the Parties may use to meet their respective obligations in this Agreement. The **City and the Port**, individually and collectively, agree to diligently **pursue reasonable funding from non-local public sources, including federal and state allocations, private foundations, grant programs, donations and other appropriate funds or programs** (External Funds).

This sounds like the Port and City will hold back sales to fund the work outlined in the IGA. Seeking funding from "external" sources will undoubtedly compete for funding that the city, Metro, watershed councils and non-profits need for their acquisition, restoration and natural areas management. For example, there is really only one source at the state level for restoration efforts that I am aware of----the Oregon Watershed Enhancement Board (OWEB). Local watershed councils, including the Columbia Slough and Johnson Creek councils rely on OWEB funding. What foundations will be approached? There is only one large local foundation that funds this kind of work, Meyer Memorial Trust, whose focus is the upper Willamette River, above the Oregon City Falls. It's a huge leap of faith to assume foundations will fund the work anticipated in the IGA. Even if these potential sources of funding were realistic, what might the impact be on other local and regional funding priorities?

3). **Potential Impacts to Other Programs and Local or Regional Funding Priorities:** The IGA references significant amounts of work that would be carried out by the city's Bureau of Environmental Services. Unless other programs within the bureau are protected by

sequestering funds intended for work on WHI I fear there might be significant negative impact on other watershed priorities and obligations. Related to funding uncertainties, is the money that is suggested be allocated to pay for BES's services likely to be forthcoming and are they adequate to the tasks they appear to be assigned to? If not, what might the negative consequences be to other watershed health programs? What are the implications for overall BES budget? Will the money be sequestered in a dedicated account to ensure it's actually used for the work described?

4). Killing the IGA:

p. 105 2. Term: This Agreement shall be effective for twenty-five (25) years following the Effective Date unless extended by mutual agreement as provided herein. Notwithstanding any other deadlines described herein, the Port's **obligations set forth in this Agreement are contingent upon:** (a) Port Commission acceptance; (b) City Council's adoption of zoning map, zoning code (Plan District), and Comprehensive Plan amendments consistent with this Agreement; (c) Department of Land Conservation and Development (DLCD) acknowledgment of land use amendments described in (b); and (d) the final resolution of any appeals of land use amendments described in (b).

p. 105, 2.1 The Port and the City agree to meet within the month falling one year preceding the expiration of this Agreement to..... discuss whether the term of the Agreement should be extended, revised on mutually agreeable terms, or **allowed to expire.**

p. 118; 7.1.6 **If funding is not appropriated or anticipated External Funds are not committed any Party may elect to terminate this Agreement in the manner specified in Section 17 of this agreement.**

p 122; 17.2 "Notwithstanding Paragraph 17.1 **either party may terminate this agreement** if the other party fails to fulfill the obligations stated in Section 7.1 with 30 days written notice to the other party.

5). **Potential for Habitat Conversion:** The issue of habitat conversion is a major concern. Most of the forest enhancement and planting is targeted for Government Island. Without a comprehensive, long term management plan for the island it's impossible to know how much of the planting of trees will result in conversion of one important habitat to another and what the net ecological gain is. Furthermore, simply planting black cottonwood on GI will not address the lost of mature, "old growth" Oregon white ash on WHI. An ash forest is not as easy to replace as fast growing black cottonwood. Is the mitigation ration appropriate for ash replacement and is it even possible to replace mature ash on Government Island?

6). **City Jurisdiction over Wetlands:** It's unclear whether the city will exercise jurisdiction on lands below Ordinary High Water as well as wetlands.

7). **Ownership:** While there was testimony to the fact that ownership issues have been "commonly understood" for years during last week's hearing, I do not recall anything in the materials we have seen that refer to Department of State Lands ownership and whether DSL has agreed to mitigation described in the IGA. The same is true for PGE and Bonneville rights of way. Have those issues already been resolved, as stated in public testimony?

8). **Loss of Floodplain Ecological Function:** One of the most significant issues, floodplain mitigation, remains unaddressed in the IGA, other than indirect reference on pp. 112-113; 4.3.7 The Port agrees to not place fill or remove trees outside the federally designated Dredge Deposit Management Area until such time as the Port has completed the NEPA process and obtained necessary CWA 404 permit(s). Further, the **Port agrees to obtain ESA authorization for any FEMA floodplain modification requests (such as a Conditional LOMR-F or a LOMR-F).**

Questions regarding "net rise" or potential for increased flooding aside, floodplain fill is not merely an issue of possible impacts to flooding human structures, but have serious implications for ecosystem function-----including, but not restricted to salmonids. The journal, *Environmental Conservation* / Volume 29 / Issue 03 / September 2002, pp 308-330, reads: "Natural flood plains are among the most biologically productive and diverse ecosystems on earth. Globally, riverine flood plains cover $> 2 \times 10^6$ km², however, they are among the most threatened ecosystems. Floodplain degradation is closely linked to the rapid decline in freshwater biodiversity; the main reasons for the latter being habitat alteration, flow and flood control, species invasion and pollution. In Europe and North America, up to 90% of flood plains are already 'cultivated' and therefore functionally extinct. In the developing world, the remaining natural flood plains are disappearing at an accelerating rate, primarily as a result of changing hydrology. Up to the 2025 time horizon, the future increase of human population will lead to further degradation of riparian areas, intensification of the hydrological cycle, increase in the discharge of pollutants, and further proliferation of species invasions. In the near future, the most threatened flood plains will be those in south-east Asia, Sahelian Africa and North America. There is an urgent need to preserve existing, intact flood plain rivers as strategic global resources and to begin to restore hydrologic dynamics, sediment transport and riparian vegetation to those rivers that retain some level of ecological integrity. Otherwise, dramatic extinctions of aquatic and riparian species and of ecosystem services are faced within the next few decades."

To my knowledge, no one including myself, is arguing that an acre-for-acre balanced cut and fill be required to compensate for the loss of 300 acres of floodplain. However, 300 acres of floodplain should not, regardless of the Metro "exemption" of more than a decade ago, simply be ignored by the city. The loss of ecological functions associated with the Columbia River floodplain must be accounted for and some form of mitigation included in the IGA. There are methods short of balanced cut and fill that would help mitigate for loss of floodplain function---including breaching of levees on the Columbia River system, which is both less costly and more effective than other mitigation measures.

9). **Voluntary Measures:** The natural resource enhancement the Port would be obligated for are not voluntary. On p. 104 T. The purpose of this Agreement is to: (a) describe specific transportation improvements, community and recreational investments, and voluntary natural resource enhancement measures that the Port and the City agree will advance a shared vision for the future of WHI (which includes both open space and maritime related industrial activity);(b) describe steps that will be taken to implement this shared vision; (c) provide the Port with regulatory certainty regarding WHI development; and (d) provide the City and the metropolitan community with certainty regarding the transportation improvements, community and recreation investments, public involvement and natural resource enhancement measures contained in this Agreement.

10). **Recreation Improvements:** pp 107-108, 3.2 Recreation Improvements: There seems to be a huge disparity over funding the planning and development and O & M between the 6-acre park and Open Space. As it currently reads, the IGA commits the Port to purchasing a 6-acre park east of the railroad bridge; giving \$7 million to the city with the city would contributing another \$1 million for design, engineering and capital improvements. At least another \$2 million would be required for O & M for 10 years.

Meanwhile, the Port would contribute \$1.8 million for trail and trailhead development on the 500 acres of Open Space and at least \$1 million for O & M of Open Space recreational facilities. I would question whether enough potential funds have been allocated for Open Space design, construction and O & M.

Regardless of funding issues, there remain significant concerns regarding whether recreational facilities are even appropriate for the Open Space.

11). **Open Space Ownership:** How the Open Space designation would be retained in perpetuity needs to be more certain than leaving it up to the city and an unidentified "third party." The Open Space should be transferred to a public agency, not a "non-profit trust-like organization."

12). **Other Issues:** a). 114; 5.2.1 Best Management Practices for Marine Terminal. Attachment F is referred to, but I do not see an Attachment F.

b). p 118; Coordination and Public Involvement; 7;2.1 Preparation and Review of Open Space Strategy: Why was the development of a written strategy for use of the Open Space area changed from one year to 5 years? Is \$200,000 sufficient compensation to the city for BES and Parks and Recreation work on the development of the strategy? I doubt this is enough to fully cover the city's costs.

c). p 119; 7.4 Continuing Obligations; 7.4.2. A "third party" is referenced again. Who, exactly is the "third party?"

d). p 121; 9.1.4 Waiver of Default. What does this mean?

Non IGA Related Questions:

1). EcoNW Report: There were so many caveats in the report that I would find it helpful to have an outside, independent economist(s) provide another opinion on the cost-benefit of the proposed development.

2). Jobs and Exports: What is the reality regarding job development, given development will not occur for twenty, or more, years? How will future mechanization affect the jobs estimates?

3). Tribal Issues: Staff responded that to our questions regarding city relationship with the tribes but there seems to be a big disconnect between city and tribal perspectives on tribal engagement. All but the Grand Ronde opposed annexation and development of WHI. And, the Grand Ronde have significant concerns about the proposed mitigation, including floodplain impacts. How does the city propose to close the gap between tribal testimony and the proposed annexation and development of WHI? Has there been staff outreach post hearings and are there plans for addressing tribal concerns?

Additional Question/Issue from Mike Houck: Goal 9

At the recent PSC hearing it was asserted by Port lawyers that the city is obligated to annex West Hayden Island as the only means to meet state wide planning Goal 9. They, furthermore, intimated that a lawsuit similar to the suit brought against the city on the North Reach would be a consequence of not annexing West Hayden Island. I have spoken with several highly respected land use attorneys as well as city staff about this issue and have received contrary advice.

While it is true that the city must address Goal 9, it is entirely within the city's prerogative to indicate that it cannot meet the projects for industrial land needs due to the fact that the city is "land locked" an unwilling to classify either environmentally sensitive lands, existing neighborhoods, or other lands that are deemed unacceptable for industrial uses for that purpose. Question: Is it factually correct that the city must annex WHI to meet state wide planning Goal 9? I would like to suggest it is not and I would like the opinion of other land use attorneys that I am happy to recommend to address this issue.

Oregon's Statewide Planning Goals & Guidelines
Goal 9: Economic Development

I think there is far more flexibility to protect natural resources in this language than is generally stated. e. g. "health, welfare, and prosperity of Oregon's [Portland's] citizens" is a pretty broad principle that could/should include greater natural resource protection and management.

"the plan should also take into account the social, environmental, energy, and economic impacts upon the resident population."

5.should consider as a major determinant, the **carrying capacity of the air, land and water resources of the planning area.**

The land conservation and development actions provided by such plans **should not exceed the carrying capacity** of such resources.

Katherine Schultz

FLOOD PLAIN - while balanced cut and fill may not be required, I would like to understand the impact of the development on the flood plain and the potential mitigation costs for balanced cut and fill.

INTER-PORT AGREEMENT- is it possible for a facility similar to the one proposed to be built on the Vancouver side and to come to an agreement between the Port of Vancouver and the Port of Portland to provide economic benefits to Oregon while preserving WHI?

ECONOMIC ANALYSIS - the above point somewhat ties to my question on the economic analysis. The analysis describes the economic benefits as “local.” Is there any analysis as to what benefits are gained in WA by this proposal vs. OR

PORT OBLIGATION FOR LOCAL BENEFITS - in support of the argument of the development creating additional local benefits - as part of the IGA is (or can) the port be required to provide outreach to the community to generate additional local benefits through port investments that attract and induce other investments in the local economy’

TRIBES - does the proposed development violate treaty agreements or not? Does salmon habitat mitigation fall under the federal government since they are an endangered species? If so, should we add local review as well?

PARKS - with recreation being a strong positive benefit to mitigate health impacts a clear understanding with Parks on what is being proposed, how it is funded, who owns the park and who maintains the park etc.

HEALTH IMPACTS - how was the \$3.6M derived? I would like to see a formal agreement that delineates monitoring of the local community air quality, health, etc. to use the funds that are being set aside to directly mitigate the issues as they arise.

MITIGATION - is it possible to meet 100% of the mitigation requirements on WHI and still set 300 acres aside for Port development? If, the quantity is less due to potential NRDA requirements, can there be an agreement on timing for when that obligation needs to be met and if it isn’t then fall back on the requirement for greater mitigation on WHI.

SHALLOW WATER AND WETLANDS - In the AC report that suggests BDS proposed expanding environmental zoning restrictions for shallow water and wetlands in the IH zone. Explain this proposal further and if this language is being included or not?

TRANSPORTATION - CRC and WHI BRIDGE - where do we currently stand with language that covers a fallback position on: (1) what happens if the CRC does not happen as planned and (2) if truck traffic exceeds 205 trips then would/should a WHI bridge be considered?