

## Portland Planning and Sustainability Commission

Tuesday, January 29, 2013

4:00 – 7:00 p.m.

### Meeting Minutes

**Commissioners Present:** Andre' Baugh, Karen Gray, Mike Houck, Lai-Lani Ovalles, Gary Oxman, Katherine Schultz, Howard Shapiro, Chris Smith, Irma Valdez

**Commissioners Absent:** Don Hanson, Michelle Rudd

**BPS Staff Present:** Joe Zehnder, Eric Engstrom, Mindy Brooks, Rachael Hoy, Julie Ocken

#### Other experts in attendance:

- Port of Portland – Susie Lahsense, Jessica Hamilton, Marla Harrison
- BES – Kaitlin Lovell, Mike Rosen, Dave Helzer
- BPS – Mindy Brooks, Rachael Hoy
- Commissioner Fritz' office – Patti Howard
- Office of Healthy Working Rivers – Heidi Berg
- Member and Lower Columbia Estuary Partnership – Chris Hathaway, AC member
- Confederated Tribes of Grande Ronde – Michael Karnosh
- US Fish and Wildlife – Jennifer Thompson
- Portland Audubon – Bob Salinger
- CRITFC – Rob Lothrop

*Chair Baugh* called the meeting to order at 4:03 p.m. and provided an overview of the agenda.

### West Hayden Island

Work Session: Eric Engstrom

#### Presentation:

- <http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5522126/>

#### Documents:

- <http://efiles.portlandoregon.gov/webdrawer.dll/webdrawer/rec/5508898/>  
(includes staff memo, Attachments A-H, and Port documents)

Today's presentation and discussion is about environment, ownership and tribal interests. This is the second worksession for the PSC about WHI annexation. The goal of the worksession is to have the PSC provide direction on the environmental and tribal involvement recommendations.

#### Discussion topics for today's session include:

- Location of environmental mitigation
- Wetland Mitigation
- Floodplain functions
- Ownership of WHI and mitigation implications
- Mitigation Costs and Phasing
- Tribal interests and involvement approach

There is general agreement about this approach from the experts and stakeholder. However, the Port still has some concerns about how the City's framework increases the mitigation ratios based on distance from WHI. While this is "in the weeds", it affects how much forest mitigation will be required.

### Tribal Interests and Approach

Rachael Hoy, BPS and Patti Howard, City Attorney shared information about Tribal involvement on the WHI project. There is an opportunity in the IGA to build in more specific acknowledgement for future coordination with the tribes.

Prior to City Council's resolution for the development of a concept plan for WHI, BPS staff reached out to the City's Government Relations office to see how to involve Sovereign Nations in the WHI process. The Nations include Nez Perce, Grande Ronde, Siletz, Umatilla, Warm Springs and Yakama.

Tribal representatives have continued to work with BPS; outreach has been via phone and e-mail then working with tribes to discuss how they wanted to connect with the project. Some work has included staff-to-staff discussions, input at advisory committee meetings, and periodic check-ins and updates to all tribes. More formal outreach has been done since the PSC hearings in late 2012 to let representatives know where in the process we are. Staff has also worked with CRITFC to facilitate a meeting and discuss the project in more detail.

Additionally, BPS has maintained a relationship with NAYA through many planning processes. For WHI we will continue – there are lots of people in Portland who have a connection to tribes that may not be represented by the six tribes that have a particular role/stake with WHI. We should engage this community further, and staff should work with *Commissioner Ovalles* to further enhance and coordinate this relationship. She noted that working to engage the larger native community has been difficult, but she can help be the point person. A frustration from community members is that this location is very significant culturally (salmon, water rights, native plants and animals). Some did not feel engaged from the beginning, which is a problem, so now we need to have a place for tribal members get to the table.

Resolution #36941 was passed by Council last summer to formalize relationships with tribal partners. The resolution provides three recommendations and provides the first start for more formal discussions.

- Government-to-government relations with tribal partners.
- Internal protocols in support.
- City's interest to enter into IGA at request of tribal government partners

The City wants to build long-term relationships and to develop better communication. City Commissioner Fritz has been working to develop the formal procedures to best work together. The WHI decision-making process will influence how we develop the protocols. We want to make sure appropriate levels of communication are open and at the right time.

With the exception of Grande Ronde, tribes expressed opposition to annexation at the November hearings. This view has not changed, at least at the staff level.

At the project Advisory Committee and sub-committee meetings, a number of technical staff from tribes met with City staff. Draft documents were circulated with tribal members included, who provided input/comments back to BPS staff.

In terms of treaty rights, there are no current or pending allegations.

### **Floodplain Functions**

Staff's floodplain function recommendations

- Balanced cut and fill not an appropriate tool on this site, given annexation objectives.
- Apply baseline FEMA regulations (includes no-net rise standard), and employ ESA consultation.

*Commissioner Houck* noted there is a fundamental difference coming from natural resource agencies than from staff. We are basically blowing off floodplain impact in the

recommendation. If you did balance cut and fill, cost estimates are about \$10 million. One of the most successful types of mitigation is to breach levees. There is still a big question about potential opportunities, and we need to take a look at other options for dealing with loss of floodplain.

Kaitlin Lovell, BES: The difference between balance cut and fill is that it is purely for flood storage; habitat and the biological component are not part of balanced cut and fill and not addressed in this mitigation proposal. Breaching levees is an opportunity to improve flood functions, which is rare in Portland.

These opportunities would be up or down river from WHI, not directly adjacent to off-set WHI. There are potential options at Sauvie Island, which is within the mitigation geography, but it's not clear if these are being pursued.

*Commissioner Houck:* if there are other opportunities on the Columbia, these areas could be considered too. I'm not disagreeing with the option to not apply balance cut and fill; however there is a higher value for mitigation, which is a separate issue.

There is a difference between hydrological and the ecological services. Fully functioning floodplains provide habitat, an opportunity for slower water areas, fish migration and rearing, and resource-rich areas. Balance cut and fill doesn't always achieve this.

There are different areas that could be restored floodplain habitats (e.g. Oaks Bottom). It is difficult to find 300 acres near WHI. But having habitats that are nearby and restored can help alleviate impacts on wildlife. Some species won't forage far away.

Levees are to provide protection for agricultural areas (e.g. Sauvie Island) and some natural areas. You have to get an easement from the land owner to reclaim wetlands by breaching levees. Finding properties to do breaches may be difficult, especially within proximity to WHI.

If we disperse mitigation activities, we end up with less-than-functional ecosystems for some species that are not very mobile. Because we are dealing with an island, the population depends on the habitat and quality left at that location.

*Commissioner Houck:* Without doing more about the ecosystem function, we are not fulfilling the requirements put forward by Council. The resolution states a requirement for a net increase in ecological function.

In staff's comments, there are other options aside from balance cut and fill. Levee breaching is an option. . The other action on-site that staff has looked at is the North Wetland cut off from Benson Pond by a culvert, in the same area where the Port anticipates doing shallow water and wetland mitigation. Perhaps they can increase hydrological connections to those wetlands as part of this work.

Staff proposed a process solution which can be settled once the floodplain impact is more specifically known. We are talking about 150 acres because the existing dredge management, part of the 300 acre floodplain, is already over 100 acres.

Option presented by Joe:

The definition of ecosystem services related to floodplain includes habitat function. This needs to be included in the principles. Floodplain management plan could be in the IGA without specifics of the project. At the end, we need to get some numbers on the mitigation package.

*Commissioner Houck* noted that we need to understand the FEMA lawsuit, where there is still uncertainty. They are setting floodplain development rules with an understanding on impacts on endangered species.

Staff can provide more details for other options. When the options are brought forward, there is ultimately a financial viability test. The PSC will have to make a decision even if the FEMA process is not complete. The Commission will continue this discussion at an additional worksession.

### **Climate Change**

Staff's climate change recommendations

- Investing in water and rail freight infrastructure is consistent with Climate Action Plan (less carbon intensive).
- Some floodplain function loss (resiliency).

There is a trade-off with risk in building the Port at this location.

*Chair Baugh* asked about the decision-making process and if we assume the design of a Port facility takes into account climate change in building codes and infrastructure.

The building codes deal with natural hazards. There is not a specific regulatory review for building permits in terms of planning for climate change, but there are floodplain regulations. Precipitation changes can affect flow of the river, but the Columbia is highly regulated. This site is not immediately threatened by sea level rise in the 100 year timeline.

*Commissioner Smith:* The current expectation is that precipitation will likely be about the same, with more likely to be rain than snow, concentrated in the winter. With this more seasonal precipitation, isn't there a greater flood risk than today?

We don't know this because the greatest unknown is the policy response about river regulation. Treaty rights and managing flows are difficult to know how these will be managed in the (far) future.

*Commissioner Houck:* For a mitigation scenario, we are not concerned only about the resiliency of infrastructure but also about resiliency of ecosystem. Higher river levels may result in need for more fill on WHI, which adds to the uncertainty.

If we're not sure how high the water will come, it gets to how much fill will be required. This would be determined at the time of a building/fill permit.

Mitigation that employs an adaptive management approach is a recommendation in the draft plan. A process solution could further design this.

We are adding a facility with more activity, with development of better rail infrastructure as outlined in the Climate Action Plan. This works for a mode shift from freight to rail, which is less carbon intensive than trucking shipments.

Michael Karnash, Grande Ronde: Mitigation by itself is a last resort. Regulatory agencies talk about avoidance, minimization and then mitigation. This is what we're discussing with WHI. Grande Ronde wants on-site, in-kind mitigation. Where this is not possible, we need to look as close to the area of impact as possible. The tribe agrees with much of the staff recommendations, but there aren't lots of good opportunities nearby the site. If it's possible to find willing landowners to allow levees to be broken, that would be optimal from the tribe's perspective. Direction from the Tribal Council is to push for everything that can be done for the types of habitat important to the tribe. The Sandy River delta and downstream as far as Lewis River (WA), in the absence of other closer alternatives, is viable.

Rob Lothrop, CRITFC: Columbia Basin is a full system. It is the only way to get to the Pacific for the species in the river. We would like to have dialogue with appropriate staff/commission members to fully understand interests of tribes, especially about the aquatic ecosystem. Issues are just starting to move upwards within tribal governments. Not yet mentioned tonight are: (1) the Columbia River Treaty. The largest dams on the river are located in Canada and were built by treaty between US and Canada in 1964. Terms state that flood operations change in 2024, but there isn't yet an understanding what these operational changes may be. We should think about what these implications mean for flood risk in the Portland area. (2) The Estuary Recover Module, which is adopted by NOAA, is a recovery planning document under the Endangered Species Act under the Columbia Estuary. There is lots of guidance in this document about restoring the ecological processes of the estuary.

*Commissioner Houck* noted that the City of Portland committed to recovery as did Metro.

The PSC confirmed staff's recommended approach to Climate Change in the WHI plan.

### **Shallow Water**

Staff's shallow water recommendations

- Mitigation evaluated through local review, in addition to state/federal permits.
- Refine approval criteria (more specific focus on dock design and mitigation, rather than consideration of alternate sites).

Shallow water question are mostly about the Port's disagreement of value-added of the City's review and whether the State permitting process would capture all that value.

When the Port comes in for development permitting during different actions, those will trigger an environmental assessment. NEPA could be triggered one or multiple times and the level of review could be different at different phase; EA versus EIS. A local shallow water review would occur when the Port goes in for site development, it wouldn't be triggered by an EIS.

In the conservation community the concern is for certain instances where you don't get into an EIS but can have smaller incremental phases of development without a full public involvement process. We need to sort out this part of the proposed agreement.

Jessica Hamilton: There will be a full EIS process if development goes forward. Development may be phased or in one large development action. Laws state that you have to do an analysis of all elements for interdependent and cumulative impacts, so the size of this development would push it into an EIS.

### **Wetlands**

Staff's wetlands recommendations

- Emphasis on state and federal permits.
- IGA includes minimum acres and monitoring period.

The wetlands in concern are those within the 300 acre footprint of development. There is a well-defined Federal process for wetlands that BPS staff is comfortable with. They acknowledge from a cost-benefit review the Federal process works (though isn't perfect).

*Commissioner Houck* voiced his concern. The regulatory process doesn't necessarily take into account all impacts from wetland fills. The experts' comments from the state and federal agencies agree with that. We should keep a local hand in this in addition to State and Federal agencies. It is also important to keep in mind that this development process is lengthy (30-100 years). We won't be dealing with the same people and thoughts as today. We should not parse out shallow water from wetland recommendations.

Mike Rosen, BES: There is a difference opinion within the City about whether an EIS is assured. From analysis done in the last few weeks, and as much as the Port is certain an EIS would be triggered, compared to other projects where an EIS has been required, there is still a question. BES is not in agreement with BPS' recommendation to not have local wetland regulation. The City needs to have a role in deciding how the wetlands that are lost will be mitigated. There are issues specific to wetlands that aren't covered by State/Feds. The City provides value-added regarding mitigation.

Heidi Berg, OHWR: The City has not fully analyzed development in these wetlands. There haven't been delineations. We can't just give up the City's assessment review without an understanding of resources. The City can review for wildlife values on the development site and interconnections that may be outside State or Federal jurisdiction. The Natural Resources Inventory completed by the City has included staff time and a level of understanding that outside agencies don't have intimate knowledge of. It doesn't make sense to differentiate policy between shallow water and wetlands regulations.

Marla Harrison, Port: The City doesn't have specific criteria that would require applicants to adhere to. Also, State and Federal processes allow for robust a public comment period and give preference to the local jurisdiction. These comments are given preferential treatment when the permit is granted. An additional local process is overkill from the Port's view. The Port has not yet done a wetland delineation because it is only valid for 10 years and is very expensive.

Mike Rosen: My experience is that the state and feds use the local comments when they can, but there is no requirement for the local comments to be included in the state and federal permits. When the City is in a regulatory role, as with what BES suggests for wetlands on WHI, we don't have to rely on the State to implement City's comments.

Heidi Berg: It may not be the Port going in for permits for development; it could be some entity (like foreign investors) not familiar with local regulations. Also, the state and feds look at soils, plants and hydrology. A quality review would include wildlife species.

Mike Rosen: The shallow water discussions have continued with the Port without resolution. On the wetlands side, the memo in the packet states concerns of just State/Fed review w/out City review. The policy for both shallow water and wetlands should be the same - the City should retain review authority.

Eric explained the rational from BPS about differences of shallow water and wetlands is about the sequence of analysis and the inventory to identify significant natural resources. The BPS/BES difference of opinion is that BPS stopped at the economic decision in the ESEE Analysis concluding the economic benefits believes outweighs the ecological benefits of the wetlands at this location. BPS doesn't disagree that there is value added from local review of impacts to both shallow water and wetlands. But BPS determined that local review of wetland impacts and mitigation is not in the City's best interests given the economic benefits of a marine terminal here.

*Chair Baugh* asked the commissioner if there was general agreement to have the same policy for shallow water and wetlands and have local review. There were head nods.

*Commissioner Smith* said that this is about the goal of net increase. Wetlands need to be addressed.

There is lots of information on the City's perspective of our review process. People within the City disagree, so this will be a policy recommendation. We will need to refine the approval

criteria to have a local review process (in addition to State/Fed) for wetlands. BPS will amend the ESEE document and analysis.

### **Location of Mitigation**

Staff's mitigation location recommendations:

- Maximize on-site opportunities. It's not possible to do all mitigation on-site, especially for forest mitigation. Hence...
- Consolidate off-site mitigation at 1-2 large sites within acceptable geography.
- Reference City Forest Mitigation Framework in the IGA for future flexibility. Staff recommends including the City's Forest Mitigation Framework as an exhibit to the IGA. If approvals are not received or if the Port and NRDA Trustees agree to use some of WHI, then the framework would be used to determine how much forest mitigation is needed at an off-site location.

On-site mitigation is preferable. Some categories of the impacted resources are easier to mitigate on-site than others. Off-site mitigation should be consolidated to 1-2 large sites for forest and grassland mitigation. There may be on- and off-site mitigation for floodplains. From a technical review, there was agreement about the geography of where to mitigate. The outstanding question is the unknown about work on Government Island (which would be pending Metro agreement); amount of needed forest mitigation exceeds the amount of mitigation achievable on-site (in terms of acres and potential ecological lift); and a portion of WHI is under DSL control, which creates some uncertainty.

A ratio is used for credits for maintaining habitat as a means of mitigation. This is based on the Washington State Department of Ecology ratios. This is a tool to provide flexibility for mitigation options that are being reviewed. Some habitats are more easily mitigated than others. Time lag is another item accounted for in the ratio.

Jessica Hamilton, Port: The law informs mitigation ratios on-site and off-site. This will be on the 500 acres of WHI. There shouldn't be qualitative differences in mitigation between WHI and NRDA. It's quite likely that NRDA mitigation will be needed sooner than for WHI development.

*Commissioner Houck:* NRDA has already identified sites in the Portland Harbor and in other areas as close as possible. WHI is outside the primary area for NRDA. The WHI mitigation should be a separate process from NRDA.

A concern trustees may have is what mitigation looks like on WHI versus in the Portland Harbor. Without knowing specifics of potential mitigation packages, there could be different actions. The commitment by Port is to do mitigation on WHI, whether associated with NRDA or WHI mitigation. NRDA opportunities are on the north shore, which doesn't impact what City has proposed for forest mitigation.

Recommendation:

Maximize on-site opportunities. Allow flexibility for the Port to do NRDA first. Then we can provide a framework chart of scenarios, which is preferred, and a process solution if the Port wants to switch tracks. This would entail a process to formally switch tracks if that is what happens in the future.

### **Ownership of WHI**

Staff's ownership of WHI recommendations

- Port ownership during initial mitigation and construction period (define as a 30 year period).

- Negotiate transfer of open space ownership to a public entity with a more focused open-space mission within 30 years. We don't yet know what form this transfer will take.
- 30 years is a refinement from the original 100 years. The bulk of active work and monitoring of trees, for example, is in the first 30 years, so staff suggests we define the monitoring period to a shorter timeline.

When/if property is transferred, it must be to an environmentally-focused organization. Staff can enhance language on the negotiation of open space.

Susie Lahsense, Port: The Port is a public entity and manages a number of other mitigation sites totaling over 800 acres. The transfer of ownership could be discussed, but making it required in the IGA will be problematic for the Port as it is giving up an asset that may be of unique value.

Marla: The Port has achieved vast success in its mitigation efforts. Some have partners to help with mitigation but Port does well in efforts, so that's the question why WHI land needs to be transferred.

*Chair Baugh*: There is public lack of trust in the Port. The concern is managing to the 100 year standard, regardless of what public entity is managing the land. There needs to be an explicit standard outlined in the IGA to be met.

*Commissioner Houck* noted the Port has done good work. But we don't know what will be happening in 50 years or more. Also, rezoning can occur in the future, like what is happening on golf courses right now – rezoning from open space to industrial. We need to make sure that doesn't happen with WHI open space.

*Commissioner Shapiro*: The PSC's responsibility is to protect the City's interests with WHI. We need the flexibility in an agreement to investigate the highest and best use of the land in 30-plus years.

- Susie: The Port did indicate they would look at a future opportunity to transfer ownership. But this would also provide a covenant to a third-party with a conservation interest to provide some certainty about ownership and use.

Staff will return to a discussion about the second bullet point of the ownership recommendation outlining its full intention. The 500 acres need to be mitigated in perpetuity. It doesn't necessarily matter who is responsible for this, but this needs to be clarified. Staff will return with a suggestion/recommendation to achieve this.

The ownership and floodplain conversations will return to the PSC for discussion and recommendations.

## **Adjourn**

*Chair Baugh* adjourned the meeting at 7:35 p.m.