

WEST HAYDEN ISLAND ADVISORY COMMITTEE
MITIGATION WORK SESSION
SEPTEMBER 28, 2012
BPS, 4TH AVENUE BUILDING 7A, 8:30-12:00 P.M.

Draft Notes

Attendees: Chris Hathaway, LCREP; Ann Beier, Rivers Office; Marla Harrison, Port of Portland; Carly Riter, Portland Business Alliance; Susie Lahsene, Port of Portland; Brian Owendoff, Capacity Commercial Group; Sam Ruda, Port of Portland; Kelly Brooks, Metro Regional Solutions Team; Micah Meskel, Audubon Society; Andy Cotugno, Metro; Tom Dana, Hayden Island Resident; Eric Engstrom, Phil Nameny and Mindy Brooks, Bureau of Planning and Sustainability, Mike Rosen, Dave Helzer, Melissa Brown Bureau of Environmental Services, Emily Roth, Portland Parks, Heidi Berg, Office of Healthy Working Rivers, Bob Tackett, Oregon AFL-CIO, Tim Helzer, Hayden Island Resident, Mike Houck, PSC Commissioner, Barry Manning.

Goal of meeting: provide an opportunity for the Advisory Committee to review the City's mitigation proposal, and counter proposal by the Port and Audubon, ask questions of staff and discuss.

Desired Meeting Outcome: a straw vote asking Advisory Committee members

1. What about the City's mitigation proposal do you support?
2. What about the City's mitigation proposal would you revise?

(Note: the first part of meeting not captured in the notes; note-taker arrived at 9:00 a.m. instead of 8:30.)

Emily Roth asked if the methodology used for the natural resource inventory is the same as elsewhere in the city. Mindy responded that it does follow the same methodology which is also similar to Metro's methodology.

Impacts to WHI's Natural Resources

Chris Hathaway raised concerns about an area on the map located between the proposed development footprint and the existing railroad, near the north shore of the island. It is counted as open space but the reality is that it will not function that way. There will be recreational and other impacts (roads) due to location and planned development. How are those impacts being address?

Mindy: We address impacts to resources in the open spaces areas through the zoning code. Any recreation (e.g., trail head, parking) or other impacts would need to meet the environmental standards of the plan district or go through environmental review.

There was follow-up discussion about potential impacts to recreation in OS zones depending on its popularity. There was also concern that funding intended for community benefit would instead be used to mitigate for recreation impacts instead of for the community. Staff noted that the design of the recreation will be worked out in the future. The city can consider this concern with any IGA language updates.

The City's Mitigation Proposal

Mindy reviewed the Mitigation Proposal summary, noting that recreation is dealt with in City Code, so while it is important, it is not part of today's discussion. She explained that if the concept plan were to happen, there is the potential for 38% land reduction and that's what the City has been basing their mitigation plan on - not including recreation and access roads; they would thus be in *addition* to the 38%. The IGA has a number of components related to terminal impacts and how the City wants to get those mitigated; there are additional impacts that will be accounted for through a different process with the City.

Re-stated: all we are talking about here is *terminal impacts*, and this is not to say there are no other impacts.

Comments, questions for clarification, discussion:

Emily Roth: no net loss or net gain – there is still no agreement on that. We need to have that conversation.

Tom Dana: referred to the financial data from last session; would like to see it updated.

Mindy agreed that money is very important, and at this point, they are focusing on specific actions that need to be done; then we will have to address costs.

Sam Ruda: comment about protection of 234 acres. If the zoning does not allow for any development outside the footprint, what does that 234 acre protection really mean?

Eric Engstrom: credit for open space application for permanent protection.

Marla Harrison: only for the 234 acres?

Eric Engstrom: yes, and there is still the outstanding question of DSL ownership.

Emily Roth: when looking at the development footprint, we used WorleyParsons to develop concept. Similarly, one could look at the mitigation proposal as though the City hired BES to develop that concept. The Advisory Committee did not have the same opportunity to weigh in on the Port's concept plan as we are with their mitigation proposal development. We took the City's hired consultant and went forward with the development footprint, and since BES is essentially the City's hired consultant, she feels we should go forward with their mitigation proposal. She is not sure why we are going to spend the time studying the Port's mitigation proposal. ODFW is the other expert in this room, and they said the Port used the wrong methods to determine what mitigation should be. We should not even be looking at their proposal.

Sam Imperati: you are entitled to that view. Today's agenda gives everyone their chance to present their proposal, and everyone has the right to argue.

Chris Hathaway: does it really matter what the cost estimate is for forest mitigation? It is all going to be function based.

Mindy Brooks: yes, that's true under the current version of the IGA, but we need to understand it and consider costs, even if no cap is set. Right now the City's proposal is function based.

Sam Imperati: need to talk about both as the negotiations continue. The committee has a right to know what the pieces are.

Victor Viets: clarification, 45 acres of enhancement is part of the 234?

Staff: yes.

Slide: City's Proposal: How close to Net Increase are we?

- Current draft IGA accounts for 88% of mitigation obligation (30-year timeframe)
- 100% would be getting back to baseline
- 100% + more would equal net increase

Chris Hathaway: the Metro decision years ago to waive cut and fill requirements was a big gift to the Port; if you put in Balanced Cut and Fill, do you have an estimate?

Dave Helzer: we don't have that; but if all mitigations were all combined, it would be a different package.

Brian Owendoff: if a regional policy decision was made, why would WHI have to pay for it? And, when he looks at City's proposal, it's roughly \$33.9 million.

Mindy explained that developers will have to meet the "no net rise" standard, so there could be cut that has to happen. From a natural resources perspective, we are not addressing with that in this proposal.

Sam Ruda: how does the City get to 100%?

Eric Engstrom: we ended at 88%, taking the capacity at WHI and Government Island. We are discussing how to get to 100% in our framework and in alignment with CWG principles, which involves cost feasibility.

Emily Roth: also think about Smith & Bybee lakes for the next 12%.

Eric Engstrom: yes, leads to the question if you go out of kind, which is a policy decision.

Mike Houck, PSC Commissioner, from the audience: he can assure folks there will be a conversation about balanced Cut and Fill at the PSC, regardless of Metro's decision.

Chris Hathaway: have you looked at Sandy River Delta or Stegerwald Lakes, etc.?

Mindy Brooks: not that far yet.

Victor Viets: have you talked to BPA about their ROWs? You could get some value out of the right of way.

Mindy Brooks: have not yet done so. She knows we cannot forest those, but talking about how they manage the ROWs and removing the invasives would be a good conversation.

Chris Hathaway: why cut off maintenance after 25 years? And what's regular maintenance?

Mindy Brooks: we look at the period of time to establish the forest, which has been 30 years. Five years of aggressive work and 25 years of maintenance. Then the restoration is established. After that the costs is subsumed into regular property maintenance.

Marla Harrison: currently we do not do invasive control; the numbers the City has applied are very small; the Port estimates about \$1,000 per acre per year for management; per the IGA we need to keep invasives at 20% or less, which will require physical removal.

Mike Rosen: the Port's perspective is completely counter to his many years of experience with invasives control and what will happen in the first 30 years. After that, it is a maintenance operation. It would be a small amount to leverage the previous investment. It is highly impractical to disinvest after 30 years of work.

Mindy Brooks: we are working with our Invasives Management team to look at costs.

Port Mitigation Proposal Summary

Mindy continued the presentation, reviewing the current Port proposal. She reminded folks again that money is important but we must come to agreement on the functions first.

Marla Harrison, Port of Portland, passed out documents, and the group took a moment to review them. The Port came at their mitigation proposal from a HEA perspective, and the City came at it from a wetlands mitigation perspective. She summarized areas where the Port's proposal differs from the City's,

which include involvement in the Federal and State permitting process, grassland mitigation, and forest enhancement on WHI.

There were several questions about how the Port's financial numbers compare to the City's especially as it relates to the forest mitigation and to the value of protecting the OS land on WHI.

Brian Owendoff: To summarize the overall costs, I come up with the city proposal at \$33.9M and the Port at \$23.9M which doesn't include value of WHI land.

Marla continued by stating that this group has to make some sense out of it, and she appreciates the tough job we have. She has tried to take the bias out of her summary, and simply evaluate what kind of credits could be generated and costs. They also had Pacific Habitat Services do a feasibility summary.

Mike Rosen: wants to object to Marla's characterizing that there is no objective view. The City is not paid, we used the best science available to evaluate.

Sam Imperati: in fairness, I think Marla was simply trying to point out that there is no truly objective view and that reasonable people can disagree.

Audubon Mitigation Proposal Summary

Mindy provided a brief overview, noting the Audubon proposal is perhaps too vague to do a complete comparison, but the City agrees with their approach. In general, their proposal is to fully protect and enhance WHI OS areas, give the land to a 3rd party and provide \$30M in funding to a 3rd party for a large scale mitigation project. Micah from Audubon is here for questions.

Sam Ruda: \$30M in addition to state and federal?

Mindy Brooks: yes.

BREAK

Eric drafted the chart, below, to illustrate the current understanding of how the proposals compare. As the negotiations continue, they will continue to drill down and figure out what assumptions go into the costs; then we can see how close or far away we really are.

	City	Port
Shallow Water	\$5M	\$600K – 1.8M
Wetlands	\$3.5M	\$1.4 – 8.3M
Grasslands	\$1.5	0
Forest Protection (WHI)	~ \$4M	~ \$9M
Enhancement (WHI)		\$0 - no mitigation actions on WHI
First 5 years	\$1.2	
Next 25 years	\$900K	
Next 75 years	0	
Land Cost	-- (accounted for in protection)	
Re-establishment on GI	\$10.2M	\$13.8M total for GI work
Enhancement on GI		
First 5 years	\$2.5M	
Next 25 years	\$1.8M	
Next 75 years	0	
Land Cost	---- (not yet determined)	

In Eric's view, there are two big issues to continue talking about:

- 1) Continue to talk about land value
- 2) What does invasives control cost and how are you doing it

The numbers will keep evolving because as we continue to have the functional conversations, the dollar figures will change slightly. The City updated the costs of enhancement/invasive species. They had been using the same costs for both, and that was an error. We had been applying the wrong cost figure to an action. It was an error and correcting it narrowed the gap for real reasons.

Chris Hathaway: to Andy, question regarding Metro property on Government Island (Metro has the eastern tip by bond measure approved by voters): is the Council going to allow mitigation? The principal of the policy is enhancement activity would have to be fully paid for; you cannot use land paid for by tax payers to subsidize the degrading of other open space. As long as there is good public purpose, it meets the policy intent. But, we would have to apply the policy and evaluate it as to what does full compensation mean.

Marla Harrison: has talked to Metro and they do want commitments for on-going care, maintenances and stewardship.

Eric Engstrom: to Metro, Chris, others – are there other numbers to consider for this?

Mindy Brooks: has a document from the River Plan we could look at

Emily Roth: to Marla, when you talked to Metro, did you get any sense of cost?

Marla Harrison: no, just talked at the concept level.

Sam's chart from the Finance session was handed out. He explained the challenging process of assembling the chart. It has been updated because the conversation has continued about how to best evaluate the cost.

There was discussion and questions about the current cost estimates.

Andy Cotugno: comment regarding the discount factor to bring back present value; are all numbers in present value terms?

Mindy Brooks: yes.

Marla Harrison: the Port is using a 3% discount rate.

Eric Engstrom: I am not sure that the City and the Port are using the same discount rate.

Marla went over a new spreadsheet that the committee has not yet seen, providing some updated numbers.

Brian Owendoff: negotiations are tough; he wants to see the City and Port get in a room and backward engineer this; you have to figure out what the buckets are and who pays for what.

Emily Roth: also wants to figure out who pays for what, the Port will not pay for everything. Can the AC give a recommendation to you as to what methodology we want you to use as you negotiate? We have spun our wheels on costs. Maybe we can suggest some borders and parameters to use for discussion?

Sam Imperati: you have heard the City's and Port's analysis and framework. At the end of the day, each will use the methodology of their choice, and you'll have a political point of view to which you are entitled.

Victor Viets: models differ, but, the big number differences are in implementation. Thinks the need for 100% has to be on the table. The community needs a net positive here. We are getting nothing.

Mindy Brooks: and, as a reminder, we cannot even agree on what it means to be at 100%.

Sam Imperati: if the City goes forward with 100%, what is the specific proposal?

- Restoration of lands on EHI
- More invasives work on City parks
- Terminal 5 protection/enhancement
- Marine Drive cross with WHI Drive
- Multnomah Channel work

And what's a reasonable ETA to surface details on these?

Eric Engstrom: we want direction and to know if that is what the committee wants considering function, value, what's being lost, community issues, no recreation money, \$5-7 million range, site prep costs; can't look at environmental costs in a silo.

Sam Imperati: thus, we need to look at all the silos together (environmental, development, etc) and step back and see if it works.

Marla Harrison: to get to 100%, we are stuck on the categories in the chart. As a group, we said we would look outside the box (e.g., habitat trading, etc.) and we are not.

Eric Engstrom: the committee can weigh in on this; and also, do we want to develop a list of projects? The cap conversation may come in as we structure the agreement.

Chris Hathaway: this is where you consider expanding the geography for potential sites.

Andy Cotugno: the two suggestions to get the last 12% that seem logical to him are 1) DSL lands and 2) the suggestion Emily made about Smith and Bybee Lakes; both could yield dozens of different approaches.

Mindy Brooks: we have not included DSL because they would be done as mitigations for something else (related to NRDA); those things need to be reserved for other mitigation actions.

Marla Harrison: we have more than enough credits in the North segment.

Andy Cotugno: he has supported using mitigation as meeting NRDA credits; if it only uses half credits, let's use those. Also, does reserving the south meet the mitigation credits?

Marla Harrison: we do not know what will meet NRDA credits until we were there. They came up with some ideas. WHI will figure prominently for NRDA credits for superfund sites.

Mindy Brooks: that is a difference in City and Port proposals.

Emily Roth: we are trying to replace the function and value of habitat of what is being disturbed. When she looks at Port's proposal, and sees that only 52% is going to be replaced, it is not sufficient. She goes back to Susan's letter. ODFW says HEA is not an appropriate model for a development model. (She read some parts of the letter.) It is a very strong letter that says it is important to replace what is being lost. Let them hold off on other credits, not those on WHI. Mitigation has to be in-kind and on-site first, and secondly, in-kind and off-site. The Port wants to be treated differently than every other developer in the City. If by chance we cannot get to 100%, if the only other way to get there is by creating shallow water habitat, then we should consider it.

Brain Owendoff: the City is banking on job growth; if we cannot provide opportunities for that, the whole region loses. Port development on West Hayden Island impacts everyone in our region; this is different than a park.

Marla Harrison: the thing that makes this different is that it is unique; so it requires unique thinking.

Mindy Brooks: in-kind, on-site, or as close to those standards as possible. Then ask how much it costs. Then have the policy decision. Brian is right – if it costs too much, project will not happen.

Chris Hathaway: there are a lot of jobs other than Port jobs; there are a lot of restoration jobs.

Victor Viets: takes issue that this project creates jobs. It is a middle man for others, because of the truck cap. The Port has allowed us to squeeze it down, so this project is a marginal value project for the community and jobs. It does not make sense to take our most valuable environmental resource for a marginal value.

Eric provided a summary of the current status of the mitigation proposal (for clarity, in some cases “we” is the City, and in others it is the Mitigation Subcommittee)

- 1) We as group evaluated significance of natural resources, and the policy discussion will be what we require mitigation for and what we do not; we agreed to not include shrub land mitigation.
- 2) We also made a decision about how to handle flood plain.
- 3) We also made a made decision about Port’s success rate of implementing, based on the Port’s argument that they have a successful track-record
- 4) Group agreed not consider mitigation sites beyond a certain limit of distance; and there’s a multiplier for City’s proposal (e.g., penalizing GI site because its farther)
- 5) Goals for invasives

All these things went into the framework to create the 88%; this means we could be at 120% or 66% if the Advisory Committee felt other parameters should be considered. This is to say that there are policy decisions embedded in “88%,” and that different policy decisions would lead to a different number.

Sam Ruda: we are trying to be responsive to City Council resolution. To achieve all those things costs \$X. The island residents have spoken loud and clear – they support trees but have many other needs. Everything left has major policy trade-offs. It is good to get a clear understanding of what it will take to get from 88% to 100%, and also what assumptions have gone into the numbers.

Victor Viets: suggests we make it clear that it is our intention to adopt the City’s acreage. We want on-site mitigation of the forest; and we want the next best thing, which seems to be GI. It’s the City’s call. The Port is the applicant, the City is the reviewer, and they have to make the call. We do not have time to spend dinking around trying to come to the last couple percentage points in an uncertain world.

Andy Cotugno: the City has almost maxed out the two islands; if you can get a few credits from “habitat trading,” add in the north shore. Then we will have maxed out the two islands.

Victor Viets: trying to develop shallow water habitat on a sandy beach (north shore) is not a good idea and expensive for maintenance. We have got to get numbers straightened out.

Sam Ruda: wants to emphasize two things – the Port will not be in agreement with 145 acres on WHI because we are looking to use that land as part of the NRDA. This is not a new development, it is one of the reasons the Mayor came to the Port because there was a convergence of planning issues. When the Port talks about NRDA, it is not a slight of hand, it is not new information. The City and Port felt the timing was right.

Mindy Brooks: yes, we know that, but when we take the 145 out, it becomes very challenging when we are looking for forest. But the City understands the Port’s perspective.

Andy Cotugno: what's puzzling is why the Port is so willing to remove Shallow Water Habitat (SWH) from NRDA consideration to use for WHI, but not willing to use the forest habitat on the island?

Marla Harrison: described Port's thinking regarding the availability of SWH and the overall values of the habitats. The Port's modeling shows a lot of credit for NRDA coming from forest enhancement.

Andy Cotugno: if it is the same mitigation value for either WHI or NRDA, then let's use the 145 of forest for WHI and look for NRDA acres elsewhere. Otherwise, the Port will be responsible for finding a larger number of forest acres elsewhere to account for WHI, potentially 500 acres to cover discount.

Eric Engstrom: the problem is we are getting priced out of the mitigation market. The end result is the forest gets enhanced, we are arguing about which bucket.

Victor Viets: expressed concerns about double counting acres for mitigations. He said to keep it simple and look for trees; go forward with City's plan.

Sam Ruda: is uncomfortable with the issue of "double counting." He does not think City Council cares if it comes from mitigation for this project or from NRDA.

Mindy Brooks: if you do fewer actions to mitigate, then there is a loss and you are no longer achieving that goal. We do not see it as double counting; the methodology looks at it as a loss in that column.

Victor Viets: I'm concerned with ending this with this gap and issues up in the air.

Eric Engstrom: Moving forward, we can use the City's proposal with resolution of some issues and verify the costs.

Public Comment

Micah Meskel, Audubon Society, referred to Susan Barnes' / ODFW letter; it is very important and should be discussed. She could not be here today because of the last minute schedule changes.

Mindy Brooks responded that the City agrees. ODFW's feedback is very important to this process. We are trying to do what she pointed out; we are not at 100% and that's what we are trying to achieve.

Meeting adjourned at noon.

Notes respectfully submitted by the Institute for Conflict Management, Inc. facilitation team.