COMMISSION AGENDA

Item No: 7A

Meeting: 6/18/20

DATE: June 3, 2020

TO: Port Commission

FROM: Eric D. Johnson, Executive Director

Sponsor: Jason Jordan, Director, Environmental and Planning Services

Project Managers: Tony Warfield, Environmental Senior Project Manager, and Mark Rettmann, Environmental Project Manager II

SUBJECT: General Business: Brief Description on Port of Tacoma Mitigation Bank

A. BRIEFING REQUESTED

Port staff will provide an update on the Port of Tacoma (Port) Environmental Mitigation Credit Bank. No action is requested.

B. SYNOPSIS

The Port of Tacoma's Upper Clear Creek environmental mitigation bank is now in the signatory process and is anticipated to be in place within weeks. This mitigation bank provides the Port with bank credits (assets) that can be used to mitigate the environmental impact of Port projects or that can be sold to other entities that need environmental mitigation. Credit distribution from the US Army Corps of Engineers (Corps) and Washington State Department of Ecology (Ecology) into the Upper Clear Creek bank is expected before the end of the year.

There are important policy and technical considerations to be addressed prior to use of any bank credits. The creation of a mitigation bank establishes assets (environmental mitigation credits) for use or sale by the Port. The Commission will ultimately determine how and under what circumstances those assets may be used. Those considerations are detailed below.

The purpose of the June 18 briefing is to get Commission feedback on the policy and technical questions outlined below so staff can begin drafting and implementing policy and procedures for Commission consideration and ultimate approval.

C. BACKGROUND

Project proposals that impact wetlands and other waters of the US (waters regulated under the US Clean Water Act) and waters that fall under state and local environmental regulations

require compensatory mitigation for those impacts[1]. That mitigation is usually accomplished through reestablishing or creating new habitat to replace what will be lost. Depending on the circumstances, the permitting agency usually requires that more habitat is built than is lost in any given project. Some projects could require mitigation ratio of up to 6:1 (6 acres built for every 1 acre lost).

There are many approaches an organization can take to mitigation from narrow square foot by square foot of onsite mitigation to full watershed-based approaches. The Port's fundamental approach is rooted in the Puyallup Lands Claim Settlement. That approach is to build habitat mitigation in advance of its need (most permits give a project proponent five years after impact to build mitigation) and to focus on salmon recovery as opposed to narrower views of compensatory mitigation such as wetlands with no salmon habitat.

The Port of Tacoma has a 30 plus year history of providing exceptionally high ecological value mitigation. We have built over 20 sites, with 148 acres, and preserved another over 40 acres. Our approach has been used as a template of success by others to enhance salmon recovery in the Lower Puyallup[2]. In 2014, Port Commission memorialized our approach in the Port-Wide Mitigation Strategy (Resolution 2014-02). There are three fundamental tenants that emerge from that Strategy:

1. Do not locate mitigation sites in the path of future development. Protect the working waterfront by viewing mitigation sites as a permanent part of the Port's infrastructure.
2. Build large strategically located mitigation sites where they can do the most ecologic good, particularly in support of migrating salmonids. These large sites are also more cost effective to design, construct and maintain than numerous small sites.
3. Build sites in advance of their need. This both stems from the Puyallup Land Claims Settlement and allows the Port to take advantage of improved mitigation ratios (for example replacing one acre of impact with approximately one acre of mitigation rather than replacing two or three acres if built concurrently) and thus reducing our overall mitigation costs.

An administratively difficult, but financially advantageous way of implementing these tenants is through the use of an environmental mitigation bank. In Washington State, these mitigation banks are approved by the Corps and Ecology in close consultation with other interested governmental bodies, including tribes. Navigating a mitigation bank from inception through establishment is a notoriously difficult administrative process in Washington. Most mitigation banks take more than six years to establish and most private parties drop out of the process before it is complete. Staff from the ports of Tacoma, Seattle and The Northwest Seaport Alliance have worked with the Corps on process improvements that will hopefully allow the

[1] There are four types of compensatory mitigation: proponent provide concurrent, in-lieu fees, advance, and banked. The mitigation ratios are generally worst for proponent provided concurrent and best for bank. The disparity stems from temporal loss (or lack thereof) of habitat and risk of establishing new habitat. Many proponent supplied concurrent mitigation projects fail or don't reach full ecologic value and thus agencies require higher ratios to account for those risks. Bank mitigation poses the least risk and, therefore, has the lowest required mitigation ratios.
[2] This includes Pierce County, Floodplains for the Future, South Puget Sound Salmon Enhancement Group, City of Sumner.

Port of Seattle's bank and any additions to the Port of Tacoma's bank to move on a much faster track.

However, as the Port's Mitigation Strategy makes clear, there are very significant advantages to mitigation banking once a bank is in place. These include:

1. Lower cost of mitigation per acre of development impact because when using a mitigation bank the project usually compensates for impacts at much lower ratios;

2. More certainty in permitting schedule and mitigation cost in that little negotiation regarding project mitigation should be required; and

3. Mitigation bank credits are an asset that can be sold for revenue or used to support development partners' projects.

The Port's Upper Clear Creek mitigation site was built for two purposes. The first was to mitigate for impacts to wetlands on the Blair-Hylebos Peninsula due to invasive snail eradication efforts. The Port faced the choice of only mitigating for snail eradication and leaving more than half of the site forever stranded (unavailable for future mitigation efforts) or build out the entire site as an advance mitigation site or a mitigation bank site. In negotiations with the Corps in 2013, it became clear that going the easier advance mitigation route was not an option for the Port and we thus embarked on the mitigation banking process.

As currently configured, the Port's bank will produce two types of environmental mitigation credits including 12.56 Acre-Credit (the currency for wetland credits) with an associated 273.16 Discounted Service Acre Years (DSAYs) credits (the currency of fisheries credit under the endangered species act [ESA]) when all credits are eventually released over the next 7 years. The Port anticipates it first release of 6.29 wetland credits and 136.8 DSAYs later this year with the remaining 6.27 wetland credits and 136.36 DSAYs released over the next 6 years.

As this is Pierce County's only active bank, it is difficult to provide a precise value of the bank credits. We have been approached by several parties needing mitigation bank credits. One party asked for first right of refusal for all the bank's credits. Prior to the pandemic, Port staff estimated there was at least three times the demand as there were credits in the Port's bank.

The only price point staff has to reference is that of Pierce County's In-Lieu Fee program which sells credits for roughly $1.4 million per wetland credit (acre-credit). That program is based on a Category III wetland with no fish credits (DSAYs). The Port's bank is a Category I (best) wetland with significant fish credits including ESA-listed Chinook. In conversations with prospective buyers, Port staff are clear that if the Commission choses to sell credits, the price will be set by the Commission. No potential credit buyers have expressed concerns at the theoretical price of $1.4 million matching that of Pierce County's In-Lieu Fee program. Using the County's price as the only surrogate, the Port's mitigation bank would have a total value of nearly $18 million in seven years when the remainder of the 12.56 credits have been released. It could be higher if price was set through a bidding process or other cost-basis methods.

The Port spent approximately $8 Million on the bank portion of the UCC Mitigation Site. Thus, the cost of developing each acre credit of wetlands was approximately $637,000. The cost of developing each fish credit (DSAY) was approximately $29,000.

D. POLICY ISSUES FOR COMMSSION CONSIDERATION

The creation of a mitigation bank establishes assets (bank environmental mitigation credits) for use or sale by the Port. The Commission will ultimately determine how and under what circumstances those assets may be used. Questions for Commission consideration include:

1. What decision making process will be established to make use of bank credits? What policy changes are necessary to implement that process?
2. Can the Strategic Plan be used as a framework for the use of bank credits? Should the Strategic Plan outline under what circumstances the Port will invest in more advance or bank credits?
3. If the Port chooses to sell bank credits, will it be on an open market, or will the Port save them for use by development partners such as road and rail providers, warehousing, current or potential future customers?
4. If the Port chooses to sell bank credits, how will the price be set?
    i. Based on an existing program like Pierce County's In-Lieu Fee program?
    ii. Whatever the market will bear? Will the Port attempt to achieve the absolute highest cash return on bank credits or take a lower return for a project that supports the Port's development or transportation needs?
5. Others as raised by the Commission.

Port staff view the June 2020 Commission meeting as an opportunity to present these policy questions and get directional feedback from the Commission. Port staff anticipates a study session the third quarter of 2020 to examine policy options more deeply prior to proposing policy language in the fourth quarter of 2020.

E. ADMINISTRATIVE ISSUES TO BE ADDRESSED

Port staff is working on administrative issues related to how to treat environmental mitigation bank credits as assets. These include:

1. Accounting for bank credits - how will bank credits be recorded?
2. How will bank credits be treated when applied to a Port project? Will the project bear the market value of the bank credit? The internal (design, construction and stewardship) cost of the bank credit? No cost of the bank credit?

F. PREVIOUS ACTIONS OR BRIEFINGS RELATING TO UPPER CLEAR CREEK

The table below reflects all authorizations for the Upper Clear Creek Site. It is important to note that these are for the entire site, with approximately 70% applying to the mitigation bank area and 30% applying to the snail eradication effort mitigation.

Date	Action	Authorized	Actual Spent
July 17, 2012	Design Authorization	$1,175,000	$1,175,000
March 12, 2014	Complete Project Authorization	$7,889,000	$7,791,650
August 13, 2017	Project Authorization for site maintenance (net change)	$2,250,000	$1,186,892
March 15, 2018	Increase Project Authorization for maintenance and legal services	$1,800,000	$1,773,070
	Cost Recovery		($600,000)
TOTAL		**$13,114,000**	**$11,326,612**

Other costs associated with developing the bank include $237,000 in consulting support to complete the administrative process of establishing the bank. The site is currently maintained through the Port's stewardship program.

G. ATTACHMENTS TO THIS REQUEST

- Resolution 2014-02
- Computer slide presentation.

H. NEXT STEPS

1. Study session Q3 2020 to present policy options with analysis.
2. Complete Conservation Easement with Forterra which includes signing of easement and payment of $127,000 to Forterra (authorized by Commission on October 19, 2017) likely Q3 2020.
3. Propose policy updates Q4 2020.
4. Incorporate any necessary language in the Port's updated Strategic Plan Q4 2020.
5. Make any changes necessary to the Master Policy.

Resolution 2014-02

Port of Tacoma

A Resolution of the Port of Tacoma Commission, Tacoma, Washington, superseding Resolution 2012-08, by adopting the Port of Tacoma's Updated 2014 Port-wide Habitat Mitigation Strategy.

WHEREAS, the Port of Tacoma is a major economic engine for the State of Washington enabling more than 113,000 jobs and contributing more than $90 million each year in state and local taxes; and

WHEREAS, the Port is geographically situated for Pacific Rim and Alaskan markets, provides naturally deep water, superior intermodal integration, existing expandable terminal infrastructure, and has re-developable land and waterfront for future expansion; and

WHEREAS, the Port seeks to mitigate impacts to existing habitat due to development; and

WHEREAS, a thoughtful, strategic approach to mitigation is key to maximizing the habitat value of mitigation, controlling costs of mitigation and maintaining future expansion flexibility; and

WHEREAS, the Port's Strategic Plan includes a habitat planning initiative; and

WHEREAS, a central theme of the Port Strategic Plan is to grow the Port responsibly to ensure that the Port and its community continues to be supportive of their shared collective future; and

WHEREAS, the Port Commission approved Resolution 2012-08, adopting the Port-wide Mitigation Strategy; and

WHEREAS, regulatory agencies now require the establishment of mitigation banks for habitat sites built prior to need; and

WHEREAS, regulatory agencies have recently substantially reduced the administrative burden of establishing mitigation banks;

WHEREAS, the Port-wide Mitigation Strategy needs modification to reflect current regulatory direction;

NOW, THEREFORE, be it resolved as follows:

1. Purpose.

The Port of Tacoma, in growing its business and planning for future habitat mitigation will:

1.1. Provide a comprehensive strategy for mitigation planning across the Port.

1.2. Provide specific road map for probable, future Port developments and areas to mitigate for that development.

1.3. Inform the Port's comprehensive land use and public access planning efforts.

2. Port-wide Habitat Strategy Objectives.

The objectives of the Port Habitat Strategy include:

2.1. Preserve and enhance Tacoma's maritime industrial working waterfront.

a. Provide natural buffers between the Port industrial area and Port neighbors.

2.2. Be cost-effective by:

a. Understanding needs and solutions in advance and consolidating mitigation opportunities where practicable;

b. Looking for opportunities to streamline permitting and project development processes;

c. Maximizing habitat value through a coordinated and planned approach; and,

d. Providing a basis for decision-makers to determine when offsite and/or advance mitigation is preferred.

2.3. Look for opportunities to:

a. Maximize ecological and financial return on investment,

b. Partner with other organizations through the community to leverage combined resources to reduce costs,

c. Increase mitigation opportunities and have single efforts serve multiple needs,

d. Leverage natural buffers; and,

e. Leverage public access needs.

3. Tactical Habitat Strategy Objectives.

3.1. Look for opportunities to:

a. Develop large-scale, highly ecologically functioning mitigation sites.

b. Focus habitat objectives on Endangered Species Act (ESA) salmon species, Essential Fish Habitat (EFH) for species of concern, migratory and shoreline bird species, public access and flood control.

c. Build cost-effective, sustainable and expandable habitat sites that meet multiple regulatory obligations.

d. Develop sound mitigation techniques based on ecological processes and best available science that promote long-term habitat stewardship.

e. Strategically locate habitat restoration projects in areas that will not jeopardize the working waterfront expansion opportunities.

4. Habitat Strategy Text.

The 2014 Port of Tacoma Port-Wide Habitat Strategy, as set forth in Exhibit "A" attached to this resolution and by this reference incorporated herein, is adopted for the purpose of establishing the habitat strategy of the Port of Tacoma.

5. Future Updates.

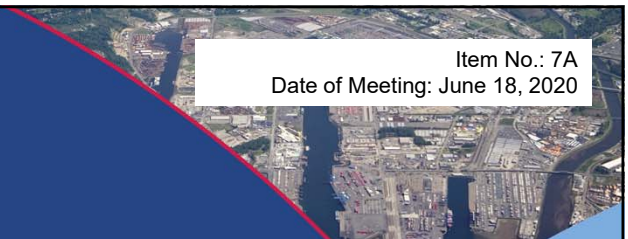
The Habitat Strategy will be a living document that will be amended annually or as otherwise needed based on new information and potential development actions.

ADOPTED by a majority of the members of the Port of Tacoma Commission at a special meeting held on the **twelfth day of March 2014,** a majority of the members being present and voting on this **Resolution No. 2014-02** and signed by its President and attested by its Secretary under the official seal of said Commission in authentication of its passage this twelfth day of March 2014.

Clare Petrich, President
Port of Tacoma Commission

ATTEST:

Constance T. Bacon, Secretary
Port of Tacoma Commission



Item No.: 7A
Date of Meeting: June 18, 2020

General Business Update on Port of Tacoma Mitigation Bank

Tony Warfield
Environmental Senior PM

Mark Rettmann
Environmental PM II

Port of Tacoma
People. Partnership. Performance.

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Briefing
POT Mitigation Bank

Port of Tacoma

Mitigation Bank Update

- History
- Status
- Policy questions
- Administrative questions
- No action requested

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Background
POT Mitigation Bank

What is a mitigation bank?

EPA definition: *A mitigation bank is a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or (in certain circumstances) preserved for the purpose of providing compensation for unavoidable impacts to aquatic resources permitted under Section 404 or a similar state or local wetland regulation.*

Port Definition: A Port asset made up of environmental bank credits that can be used to streamline future Port development projects, support development partners projects, or sold on an open market.

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Background
POT Mitigation Bank

Port of Tacoma

How we got here:

- Puyallup Land Claims Settlement
  - Build mitigation prior to development impacts
  - Focus on fisheries improvement
- Commission Policy 2014-02
- Built Upper Clear Creek larger than needed
  - Began banking process in 2013

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Background
POT Mitigation Bank

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Status
POT Mitigation Bank

- Commission bank authorization 10/19/2017
- Bank will be in place with last few agency signatures
  - Requires wet signatures—difficult in pandemic
- Sign and file Conservation Easement
- First credit release expected Q4 2020

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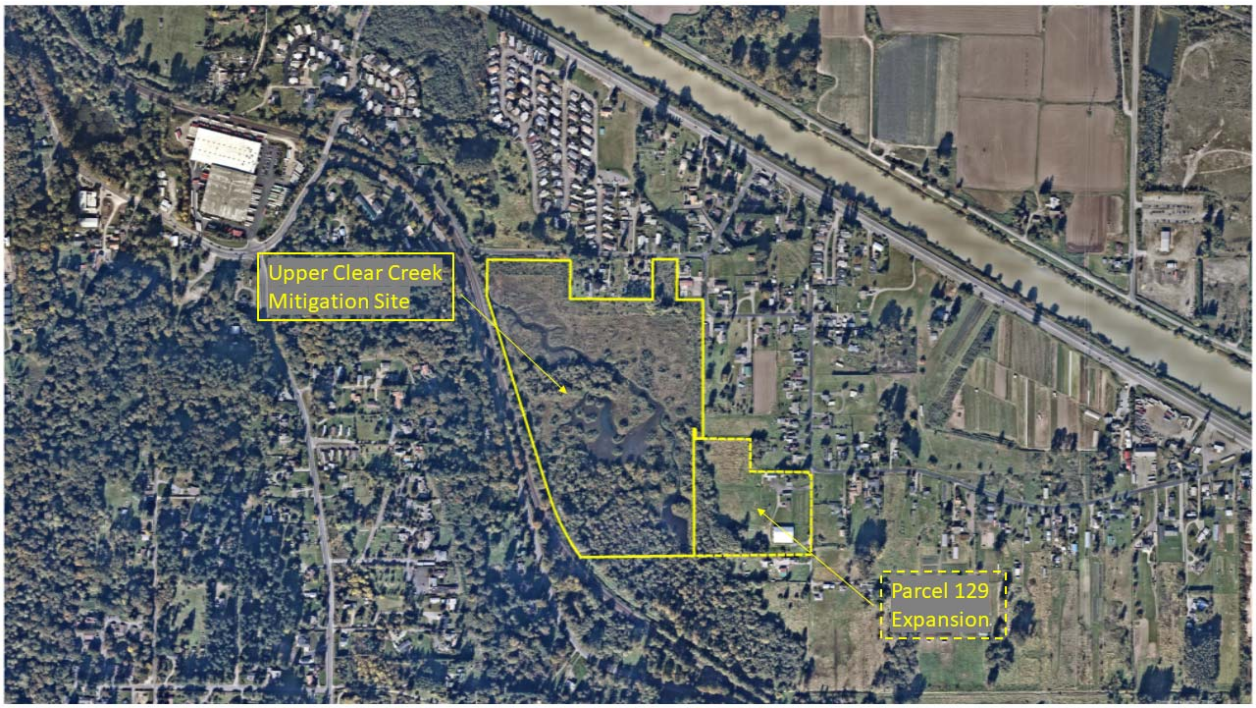
Upper Clear Creek



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Upper Clear Creek – It's Working

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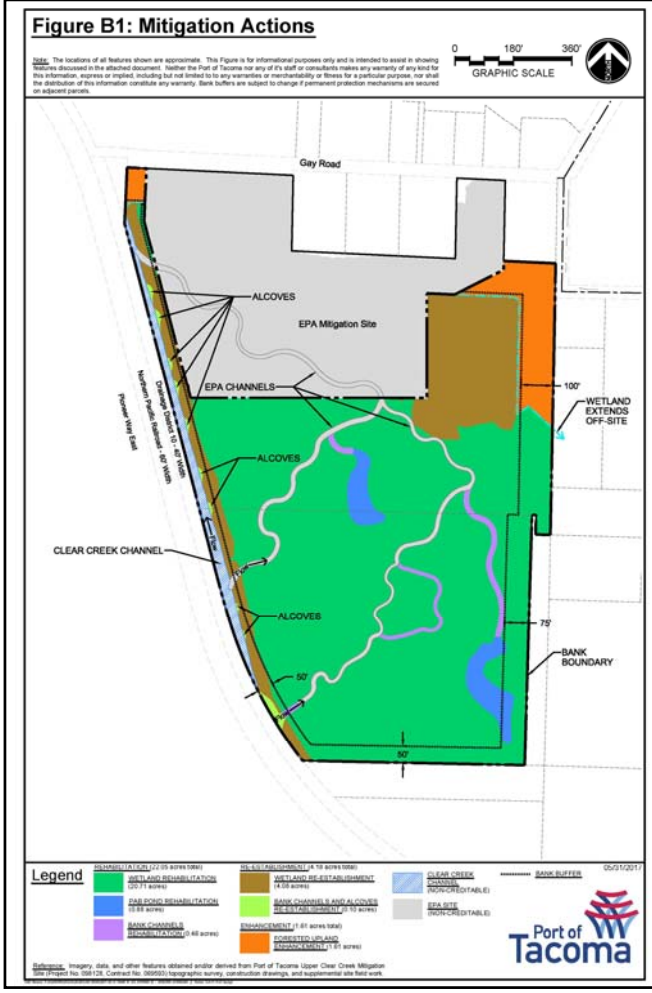

POT Bank Area:

- ~28 total acres
- 12.56 acre credit

Other Mitigation

- ~12 total acres
- ~7.5 acre credit

Green = Wetland Rehabilitation (20.71 ac)

Brown = Wetland Reestablishment (4.08 ac)

Orange = Enhanced Wetland Buffer (1.61 ac)

Purple = Stream Channels (0.46 ac)

Blue = Backwater Ponds (0.88 ac)

Light Green = Alcoves (0.10 ac)

Grey = Separate Wetland & Stream Mitigation Site (12.71 ac)

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Value of POT Mitigation Bank

Item	Quantity	Market Value*	Total
UCC Bank			
Wetland Credits (Acre-Credits)	12.56	$1.4M/AC	$17.64M
Fish Credits (DSAYs)	273.16	$50,000/FC	$13.65M
Parcel 129 expansion area**			
Wetland Credits (Acre-Credits)	~5.5	$1.4/AC	~$7.7M
Fish Credits (DSAYs)	TBD	$50,000/FC	TBD

* Based on Pierce County In-Lieu Fee program and last known FC sale
** Could become part of bank or used for other mitigation purposes

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Unit Cost to Create Mitigation Credits
POT Mitigation Bank

Credit Type	Cost to Create
Wetland-Acre (AC)	~$637,000/AC
Fish (DSAY)	~$29,000/FC

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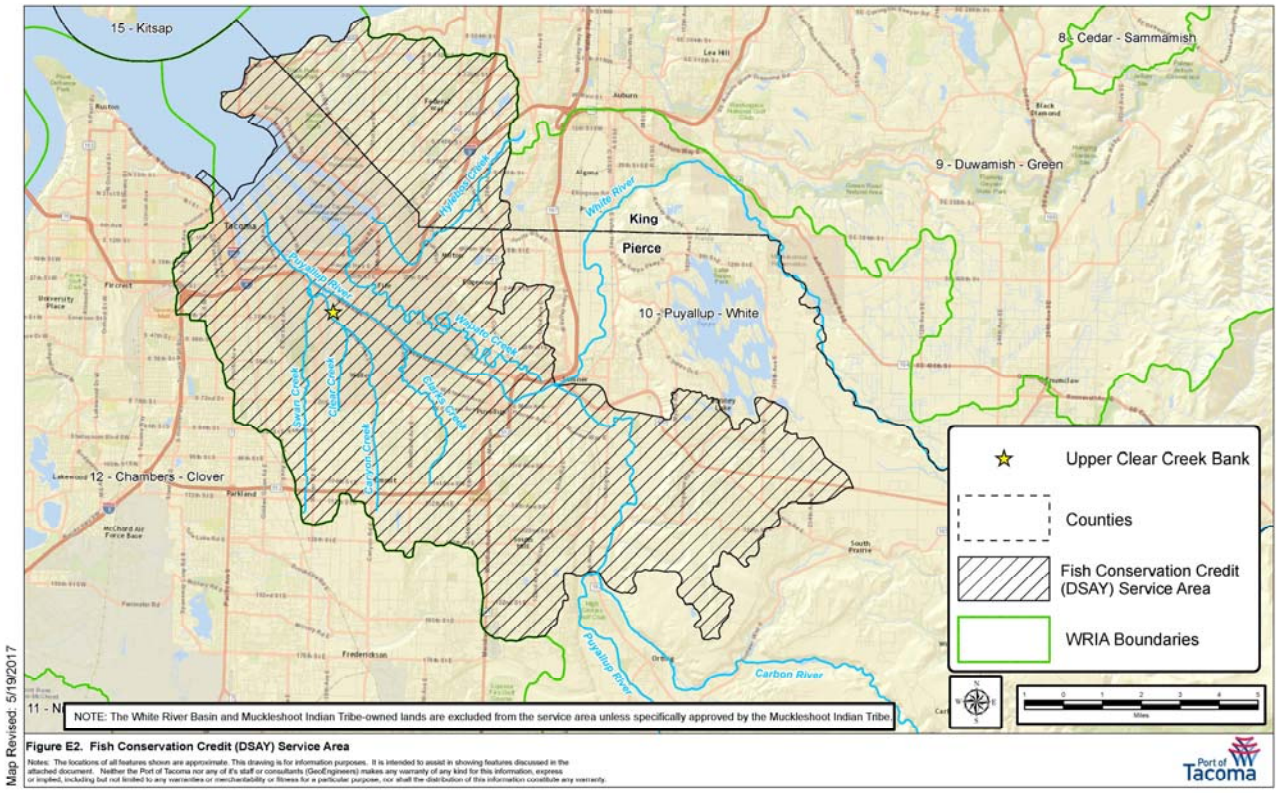
Fish Credit Service Area



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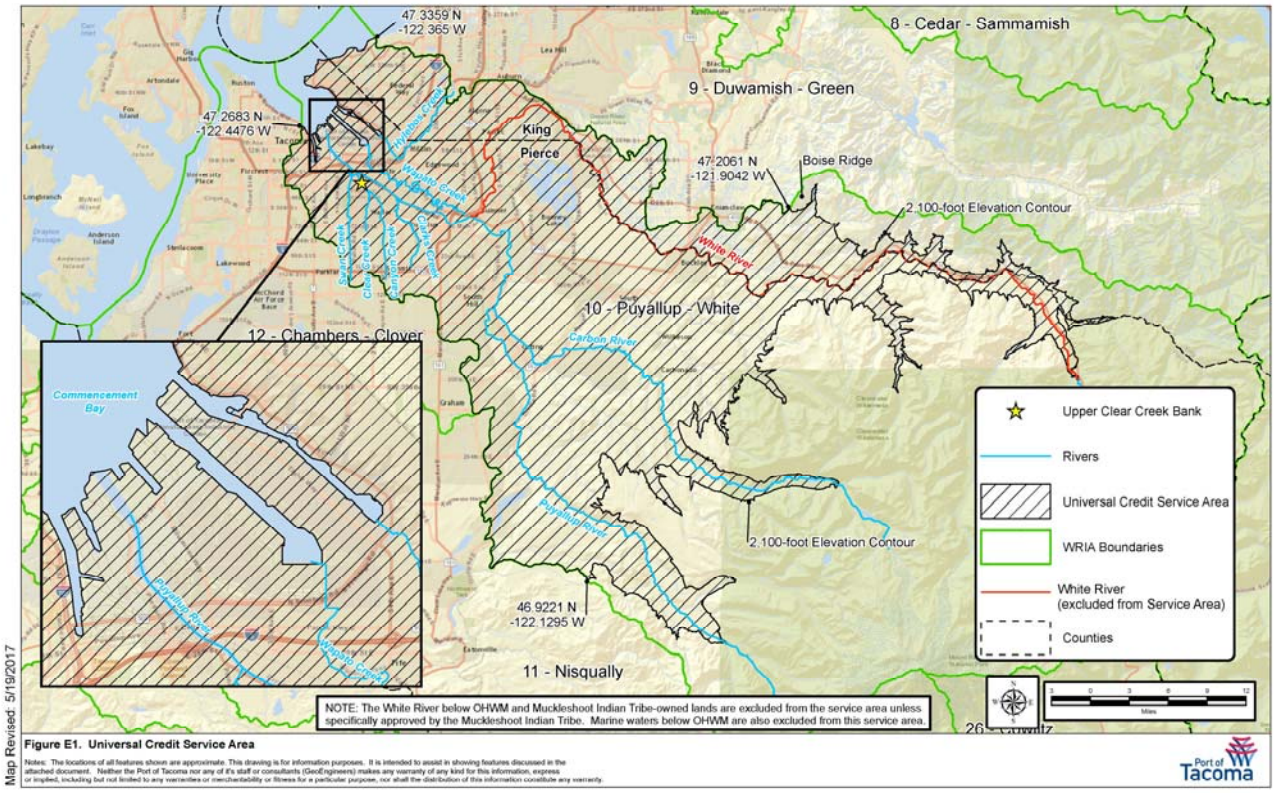
Wetland Credit Service Area



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Policy Questions
POT Mitigation Bank

- **Process for use of credits**
  - Executive Action?
  - Commission Action?
  - Sync with Strategic Plan?
- **Will Port sell credits?**
  - Customers?
  - Development partners?
  - Open market?

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Policy Questions
POT Mitigation Bank

- **Mitigation credit pricing policy**
  - Match county price?
  - Highest price market will bear?
  - Different priority for different buyers?
    - Customer
    - Development partner
    - Open market
  - Other (e.g., cost plus)?

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Administrative Questions
POT Mitigation Bank

- **How will credits be booked as assets?**
- **How will credits be treated when used internally?**
  - No cost to development project?
  - Internal cost to create (design, construction, stewardship)?
  - Cost to replace (internal marginal cost)?

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Next Steps
POT Mitigation Bank

- Complete signature process
- Sign Conservation Easement with Forterra and make one-time payment of $127,000
- Outline policy alternatives during study session Q3 2020
- Present policy language as stand alone resolution or Master Policy changes Q4 2020 or Q1 2021

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Thank you! Questions?
POT Mitigation Bank

Port of Tacoma

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