GUNDERSON
A GREENBRIER COMPANY

Gunderson LLC
4350 Northwest Front Avenue
Portland, OR 97210

December 1, 2010

VIA E-MAIL, THEN HAND DELIVERED
Mayor Sam Adams
Commissioner Nicholas Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman
City of Portland
1221 SW Fourth Avenue
Portland, OR 97204-1995

Subject: **Comments on River Plan North Reach, Gunderson LLC, Portland, OR**

Gunderson LLC appreciates the opportunity to provide comments on the proposed River Plan North Reach ("Plan"). We would like to comment specifically on four areas of continued concern:

1. Cost-effective maximization of habitat restoration
2. Proposed fees consistent with other successful projects
3. Utilize input from the City's Science Panel
4. Validity of the Plan's effective date

This letter will serve as an executive summary with supporting documentation attached.

Cost-effective maximization of habitat restoration. We are, once again, urging you to consider a responsible approach to the River Plan that maximizes benefit to habitat. We are confident we can restore 3,000 to 5,000 salmon for every 1,000 restored under the City's current plan. Supporting Portland's working harbor results in more funding for restoration and implementing an effective and efficient Plan, including optimizing resourcing, can restore more habitat value for less cost.

Proposed fees consistent with other successful projects. Despite comments to the contrary at the Nov. 17 City Council meeting, the Thea Foss and Hylebos Waterway Sites provide excellent benchmarks in cost-effective habitat restoration. Restoration costs for those projects, based on discounted service acre-year (DSAY) units, were $60K/DSAY, vs. the City's estimates of $201K/DSAY for the Portland Harbor. We are also confused as to why the City of Portland has endorsed cost estimates that include 165% "soft" and contingency costs, while estimates developed in conjunction with, and for, the US Army Corps of Engineers use only 73%. Recommend implementing a program similar to what the Water Bureau has done in the Sandy River basin.

Utilize input from the City's Science Panel. We commend the City in convening a Science Panel, but are concerned the Panel's recommendations have not been incorporated into the Plan. For example, the Panel has advised that small, isolated patches (which would be the result of the City's continued preference for on-site mitigation) is not conducive to providing a significant upgrade in habitat value. The Plan should place greater emphasis using the recommendations and addressing the concerns of their own Science Panel.

Validity of the Plan's effective date. With respect to the effective date, unfortunately, the City has not properly followed state law in processing the proposed River Plan and, thus, LCDC could not process the requested change within the City's target time frame (assuming they would approve it). Gunderson agrees that the River Plan/North Reach ordinance is unlawful in its current form, including the effective date; having said that, the City cannot change the effective date while the ordinance is on appeal.

Conclusion

We at Gunderson believe it is in the best interests of the City, salmon recovery and habitat restoration to continue working on a usable version of the River Plan. We urge you not to approve the documents provided for your review, and to not pass the ordinance(s) currently under your consideration.

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We hope for an opportunity to constructively work together to resolve the listed issues.

Sincerely,

David J. Harvey

David J. Harvey
Environmental Director

Enclosures

36831

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184276

Enclosure: Tetra Tech Cost Estimates Use General Markups for Conceptual Design Restoration Site Cost Estimates of 73%, NOT 165% (when the Cost Estimate is Developed in Collaboration with and for the US Army Corps of Engineers*). All factors are equivalent, same consultant and same type of site.

Kelley Point Park

Line Item	Quantity	Units	Unit Cost	Cost	Notes/Assumptions
Site Preparation	1	LS	$906,613	$906,613	Standard markups (see cost appendix)
Construct Footbridge	1,600	SF	$100	$160,000	Fabricate, deliver, and install 2 footbridges, 100' length, 8' width, including abutments and superstructure
Barge Excavation	175,733	CY	$12	$2,108,800	Lay back existing 2:1 riverbank to 5:1
Excavate and Haul	21,244	CY	$25	$531,109	Create channels
Erosion control fabric	-	SF	$1	$0	Place erosion control fabric on exposed bank
Plant Riparian Vegetation	10.9	AC	$12,000	$130,711	Remove invasives and plant native species, including soil treatment
Plant Upland Vegetation	5.3	AC	$9,500	$50,302	Remove invasives and plant native species, including soil treatment
Place Boulders	14.0	TN	$80	$1,120	Place boulders as habitat features among large woody debris clusters
Place Large Woody Debris	50.0	EA	$800	$40,000	Place buried, non-anchored logs with attached rootballs
General Markups	1	LS	$2,867,918	$2,867,918	Standard markups (see cost appendix)
Total Cost				$6,796,573	Total cost of design, construction and maintenance

$2,867,918 represents a 73% markup.

Cathedral Park

Line Item	Quantity	Units	Unit Cost	Cost	Notes/Assumptions
Site Preparation	1	LS	$116,915	$116,915	Standard markups (see cost appendix)
Install Culvert	50	LF	$300	$15,000	Fabricate, deliver, and install 18' dia culvert, incl. earthwork and headwall
Construct Footbridge	800	SF	$100	$80,000	Assume 100' span x 8' width bridge
Install Grating	100	SF	$60	$6,000	Subsurface concrete drainage swale with metal grating, assume 50' length x 2' width bridge
Excavate and Haul	4,867	CY	$25	$121,667	Excavate for detention basin
Install Outlet Structure	2	LS	$75,000	$150,000	Concrete outlet structure
Plant Wetland Vegetation	0.6	AC	$15,000	$9,050	Remove invasives and plant native species, including soil treatment
Plant Riparian Vegetation	-	AC	$12,000	$0	Remove invasives and plant native species, including soil treatment
Place Large Woody Debris	10	EA	$800	$8,000	Place buried, non-anchored logs with attached rootballs
General Markups	1	LS	$369,841	$369,841	Standard markups (see cost appendix)
Total Cost				$876,472	Total cost of design, construction and maintenance

$369,841 represents a 73% markup.

Doane Creek

Line Item	Quantity	Units	Unit Cost	Cost	Notes/Assumptions
Site Preparation	1	LS	$894,146	$894,146	Standard markups (see cost appendix)
Traffic Control	1	LS	$300,000	$300,000	Supplemental traffic control (beyond accommodations for construction vehicles) - full closure and detour, 6 days
Utilities	1	LS	$200,000	$200,000	Supplemental utility work beyond standard markups, assume OH electric, gas, water, sewer, telecom
Demolition	1	LS	$25,000	$25,000	Demo and haul existing 36" dia (?) culvert, 60 lf
Temporary Shoo-Fly	1	LS	$300,000	$300,000	Temporary railroad bridge during construction (or phased construction)
Bedding, Ties, and Track	120	LF	$1,000	$120,000	Construction of bedding, ties, and rails, including compaction and reconnecting to existing tracks
Replace Highway 30 Culvert	250	LF	$2,800	$700,000	Fabricate, deliver, and install 10' span replacement culvert, including utilities, earthwork, road work, wingwalls, and headwalls
Construct Two Culverts	100	LF	$800	$80,000	Assume approx. 72" dia culvert
Cut Back Willamette River Bank	138,296	CY	$12	$1,659,556	Lay back existing 2:1 riverbank to 5:1
Erosion control fabric	-	SF	$1	$0	Place erosion control fabric on exposed bank
Excavate Channel	14,326	CY	$25	$358,152	Demo existing culvert and construct composite channel approx 2000 lineal feet, average width 20 feet, average depth 8 feet
Plant Wetland Vegetation	2.2	AC	$15,000	$32,953	Remove invasives and plant native species, including soil treatment
Plant Riparian Vegetation	10.5	AC	$12,000	$125,825	Remove invasives and plant native species, including soil treatment
Place Large Woody Debris	30	EA	$800	$24,000	Place buried, non-anchored logs with attached rootballs
General Markups	1	LS	$3,518,331	$3,518,331	Standard markups (see cost appendix)
Total Cost				$8,337,961	Total cost of design, construction and maintenance

$3,518,331 represents a 73% markup.

*Cost estimate for River Plan North Reach Cost Estimates taken from US Army Corps of Engineers and Bureau of Environmental Services Report: Lower Willamette River, Oregon, Ecosystem Restoration General Investigation Study, February 2008

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Enclosure 2: Cost-effective Maximization of Salmon Recovery and Habitat Mitigation

We are, once again, urging you to consider a responsible approach that maximizes benefit to the habitat. We are confident we can restore 3000 to 5000 salmon, for every 1000 restored under the City's current plan.

The above claim can be proven in a number of ways. The simplest way is to use the DSAY cost between the equivalent types of offsite mitigation performed in Puget Sound versus the proposed City costs.

Comparing effectiveness of Puget Sound efforts to Portland BES proposal:

DSAY cost for City of Portland = ($235,100 + $168,000)/2 = ($403,100)/2 = $201,550, on average
DSAY cost in Puget Sound = (Hylebos cost + Thea Foss cost)/2 = ($52,000 + $65000)/2 = $58,500

Using the above estimates, Puget Sound regulators will restore salmon and habitat at a rate of 3.4 times higher than what Portland BES estimates it can do.

Other departments in the City of Portland, particularly the Water Bureau in the Sandy River watershed have recognized the need for cost effective implementation of mitigation and restoration; the contracted with a non-profit, The Freshwater Trust to perform their mitigation work. The Sandy River Watershed Partners provides an excellent model for what should be done in the Lower Willamette.

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MEMORANDUM

To: David Harvey, The Greenbrier Companies

From: Jenny Buening and Ron Gouguet, Windward Environmental, LLC

Subject: Comparison of Restoration Site Complexities between the North Reach of the Willamette River and the Thea Foss and Hylebos Waterway Superfund Sites

Date: November 30, 2010

INTRODUCTION

The City of Portland (City) has recently issued a report outlining in-lieu fees to be implemented as part of their River Plan/North Reach mitigation program (City of Portland 2010a). The document provides per-unit costs for restoration of various habitat types. It is useful to compare the in-lieu fees proposed by the City to the estimated per-unit costs of restoring similar habitat types at locations comparable to the North Reach. The Hylebos and Thea Foss Waterways of the Commencement Bay Nearshore/Tideflats Superfund Site and the Lower Duwamish Waterway Superfund Site provide good examples for this type of comparison.

DISCUSSION

For the Hylebos Waterway of the Commencement Bay Nearshore/Tideflats Superfund Site, the Commencement Bay Natural Resource Trustees (Trustees) conducted natural resource damage assessment (NRDA) for impacts to marine sediments, benthic organisms, salmonids flatfish species, and birds caused by hazardous materials releases to the Commencement Bay environment (Floyd | Snider 2010). The Trustees used a benthic injury model and Habitat Equivalency Analysis (HEA) to calculate the amount of habitat restoration that would be required to compensate for the natural resource damages in the Hylebos Waterway, and they estimated that the cost for this restoration, on the basis of discounted service acre-year (DSAY) units, would be $52,000 per DSAY (Floyd | Snider 2010). Estimates of the anticipated cost per DSAY for NRD restoration on the Thea Foss Waterway, also part of the Commencement Bay Superfund Site, are similar ($60,000 to $70,000 per DSAY) (Floyd | Snider 2010). Because restoration

projects usually consist of a mixture of habitat types, these values did not attempt to differentiate between the habitat types restored (e.g., riverine vs. wetland), unlike the City's cost estimates below.

In comparison to these NRD DSAY values, the City has proposed an in-lieu fee program for compensation for impacts to habitat in the North Reach of the Willamette River caused by land development and redevelopment. The basis for this program is to ensure no net loss of ecological function in the North Reach (City of Portland 2010b). The City's in-lieu fee program is also based on DSAY units. The costs per DSAY range from $25,400 per DSAY for wetland habitat to $235,100 per DSAY for riverine habitat (Table 1) (City of Portland 2010a).

Table 1. Costs per DSAY to be used by the City of Portland for different habitat types as part of their in-lieu fee program

Habitat Type	Cost per DSAY
Riverine	$235,100
Stream	$220,700
Riparian	$168,000
Upland	$59,000
Wetland	$25,400

Source: City of Portland (2010a)

The estimated costs in Table 1 raise some concerns. The costs for stream and riverine habitat DSAYs are more than double and up to four times the cost per DSAY as those estimated by the Trustees for restoration projects on the Hylebos Waterway and Thea Foss Waterways, even though both riverine and stream habitat restoration would be expected to be conducted as part of NRD compensation for these sites. These costs are also higher than preliminarily estimated DSAY costs for the commercial restoration bank in Lower Duwamish Waterway. However, the nature of the proposed restoration sites on the North Reach of the Willamette River is similar to those on the Hylebos, Thea Foss and Lower Duwamish Waterways.

The per DSAY cost for wetland habitats seems unusually low; wetland restoration would generally be expected to cost more than upland restoration as wetland projects usually involve alterations to site hydrology requiring complex planning and construction techniques, among other factors. Such cost discrepancies might be expected if the types of restoration projects to be conducted were very different in nature. Based on review of existing information, few emergent wetland restoration opportunities exist in the North Reach.

The City has identified several priority restoration sites (referred to as "pearl sites") within the North Reach (City of Portland 2010a). Kelley Point Park, Willamette Cove, Sauvie Island and Saltzman Creek are some of the proposed project sites. The types of habitat restoration proposed at the priority restoration sites include removal of fill

material and excavation of off-channel habitats and wetland areas, levee removal, regrading river and stream banks, remeandering creek channels, creation of stormwater swales, removal of invasive vegetation, installation of native vegetation, and large woody debris placement. Similar types of restoration activities are being conducted within the Hylebos Waterway and Thea Foss Waterway systems to achieve NRD compensation.

The costs per DSAY proposed by the City include a 90% markup on hard costs (the costs of materials, labor, equipment, etc.) as an estimate of the project planning, design and permitting costs (referred to as "soft costs"). They also include a 75% markup for contingency costs; it is stated that the practice of adding a 75% contingency cost markup is a typical practice used by the City of Portland Capital Improvement process (City of Portland 2010a). A total 165% markup on hard costs seems extraordinarily high, especially for mitigation banking projects that will be created up-front of many of the impacts for which they will mitigate. In cases of up-front mitigation, many contingencies disappear due to increased certainty about the success of the project.

Another main factor considered when generating the per DSAY costs of riparian and riverine restoration for the in-lieu fee program was that regrading steep shoreline slopes to achieve design bank slopes of 5:1 or 7:1 would require a significant amount of material excavation and off-site hauling (City of Portland 2010a). Existing bank slopes in the North Reach are expected to be typical of those in other industrialized waterway systems like the Thea Foss, Hylebos, and Lower Duwamish Waterways where shoreline banks have been highly modified with fill material, bulkheads and armoring. For example, existing bank slopes along the Duwamish Waterway are as steep as 1:1 to 2:1 (AHBL 2009); design slopes for marsh restoration projects completed in this system have ranged from 10:1 to 20:1 (NOAA and USFWS 2009).

Other factors that could cause differences in the cost of restoration projects include site setting and surrounding land use. These factors affect property values and the cost of acquiring property for restoration. They are also related to the regulatory environment and the complexity of the permitting process for a restoration project. Site setting and land use influence the likelihood that contamination may exist at a property. The presence of contamination at a site to be restored can also significantly increase project costs as hazardous materials must to be cleaned up prior to on concurrent with restoration activities. However, it is important to note that the cost per DSAY in-lieu fees calculated by the City assume that restoration sites are clean when restoration work begins and therefore they do not include costs of cleaning up contamination (City Portland 2010a).

The restoration sites identified within the North Reach are located within an industrialized, mixed-use landscape in the middle of a large urban center. The site settings and land uses are similar to those that would be expected for restoration sites in the Thea Foss, Hylebos, and Lower Duwamish Waterway systems, as these water bodies are also located within industrialized urban centers. In addition, like the North

Reach Commencement Bay and the Lower Duwamish Waterway are also used for commercial shipping operations. Property values in the Commencement Bay area (Tacoma, WA), the Lower Duwamish Waterway (Seattle, WA) and the North Reach (Portland, OR) would be expected to be on the same scale as these sites are located in the same geographic region and provide similar commercial and industrial opportunities.

The types of contaminants expected to be encountered in the North Reach of the Willamette River- located within the Portland Harbor Superfund Site- are similar to the primary contaminants in the Hylebos, Thea Foss and Lower Duwamish Waterway Superfund Sites (these chemicals include PCBs, PAHs, and heavy metals). Given the similar industrial histories, contamination issues, and current site uses of the Thea Foss Waterway, the Hylebos Waterway, the Lower Duwamish Waterway and the North Reach of the Willamette River, the nature of restoration projects within each of these systems would be expected to share similar challenges and complexities.

A large contributor to the costs of restoration projects conducted for mitigation is the time and energy required to obtain all necessary permits, as indicated in the "soft cost" estimates for the in-lieu fees. Generally in the case of Superfund NRD restoration projects, permits must be acquired from permitting agencies on the federal, state and local levels (often Trustee agencies are involved in the permitting process). In the case of some of the restoration projects proposed by the City for the North Reach and conducted strictly to satisfy the requirements of the River Plan, the permitting process may be much more simplified, possibly requiring permission from the City alone for projects that involve only upland habitat restoration. In this way restoration projects conducted in the North Reach would be expected to be less complicated to permit, and overall less costly than projects conducted to satisfy NRD liability.

SUMMARY & CONCLUSIONS

The nature of the restoration projects proposed for the River Plan/North Reach is similar to those that have been and will be conducted for NRD mitigation within the Hylebos, Thea Foss, and Lower Duwamish Waterway Superfund Sites. Given the similar environmental, geographic and industrial settings of all of these systems, the costs of restoration would be expected to be on the same scale for each. However, in the case of riverine and stream restoration, the in-lieu fee costs proposed by the City are significantly higher than those estimated for the other systems, while the costs for other habitat types, such as wetlands, seem unusually low. The in-lieu fees may need to be further refined with additional research and/or input from experienced restoration practitioners such as the experts who participated on the North Reach Science Panel.

REFERENCES

AHBL. 2009. Port of Seattle/Duwamish: Lower Duwamish River habitat restoration plan: an inventory of Port of Seattle properties. Final draft. Seaport Planning Group, AHBL, Seattle, WA.

City of Portland. 2010a. How to calculate River Plan/North Reach in-lieu fees.

City of Portland. 2010b. The City of Portland's initial responses to the Science Panel. July 26.

Floyd | Snider. 2010. Memorandum from Jessi Massingale and Matt Woltman, Floyd | Snider, to David Harvey, The Greenbrier Companies, re. preliminary summary of Puget Sound DSAY approach.

NOAA, USFWS. 2009. DRAFT Lower Duwamish River NRDA programmatic restoration plan & programmatic environmental impact statement. Prepared for the Elliott Bay Natural Resource Trustee Council. National Oceanic and Atmospheric Administration, Silver Spring, MD.

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Memorandum

To: David Harvey, The Greenbrier Companies
Copies:
From: Jessi Massingale and Matt Woltman, Floyd|Snider
Date: November 19, 2010
Project No: GND-OnCall
Re: **Preliminary Summary of Puget Sound DSAY Approach**

The purpose of this memorandum is to provide a brief, preliminary summary of the Puget Sound Trustees' Natural Resources Damage Assessments (NRDA) approach to quantifying natural resource damages on a cash-damages basis, allowing parties to resolve their liability via cash settlements.

HYLEBOS WATERWAY

The Trustees began assessing natural resource damages in the Commencement Bay environment in October 1991 by finding that hazardous substances had been released into the Commencement Bay environment and that public trust natural resources had likely been injured by the releases (USDOJ 2007). For the Hylebos Waterway of the Commencement Bay Nearshore/Tideflats Superfund Site the Trustees damage assessment focused on impacts to marine sediments, benthic organisms, flatfish species, salmonids, and bird species (USDOJ 2007).

The Trustees' settlement relied on the use of the habitat equivalency analysis (HEA) to determine how much restoration activity parties needed to undertake to resolve their natural resource damage liabilities. The Trustees quantified natural resource injuries for settlement purposes in terms of affected habitat rather than numbers of individual species impacted. To determine how much habitat restoration needed to be developed to compensate for contaminant-related injuries to marine sediments, the Trustees used the concept of *ecological services*. The Hylebos HEA calculated the amount of ecological services lost as a result of contamination, and the amount of ecological services that would be gained from example restoration projects, making past and future losses and gains comparable by applying a discounting factor. The results of the calculations are stated in terms of discounted service acre years (DSAYs; NOAA et al. 2002).

For parties who prefer settling on a cash-damages basis, the Trustees reviewed data from existing restoration projects and estimated it would cost $52,000 per DSAY if the Trustees themselves constructed the required restoration projects (USDOJ 2007).

THEA FOSS WATERWAY

Thea Foss Waterway is one of the inlets of Commencement Bay, with similar public, commercial, and industrial uses as the Hylebos Waterway. The Trustees' natural resource damages settlement for the Thea Foss Waterway has not at this time been released to the public. Based on the similar waterway uses, similar habitat types and values, similar key species, and spatial proximity to the Hylebos Waterway within Commencement Bay it is anticipated that the cash-damage settlement value for the Thea Foss will be calculated using the same methodology of that of the Hylebos Waterway. Based on industry knowledge and project discussions, it is estimated that the cash-damage settlement value for the Thea Foss will be on the order of $60,000 to $70,000 per DSAY.

Additional technical review will be required following the release of the Trustees' settlement proposal for the Thea Foss Waterway.

SUMMARY

The Trustees' NRDA cash-damage settlement values per DSAY for the Hylebos Waterway, and expected for the Thea Foss Waterway, were derived using the HEA approach for affected habitat, in terms of their importance to key species, including flat fish and salmonids, if the Trustees themselves constructed the required restoration projects. The cost per DSAY values are summarized below in table 1.

Puget Sound Commencement Bay NRDA Sites	**Cash-damages Settlement Values**
Hylebos Waterway	$52,000 per DSAY
Thea Foss Waterway	$60,000–70,000 per DSAY

Natural resources damage assessments are being evaluated for both the Lower Duwamish Waterway and the Portland Harbor Superfund Sites. At this time Trustees settlement proposals have not been completed for these two Superfund Sites. However, cost per DSAY values have been prepared and published as part of the City of Portland's River Plan/North Reach program as in-lieu fees for off site mitigation to be conducted by the City of Portland. Cost per DSAY values for various habitat types were developed, including riparian and riverine habitats. The River Plan/North Reach mitigation in-lieu fees for riparian and riverine habitat impacts are $168,000/DSAY and $235,000/DSAY, respectively (City of Portland, 2010).

On preliminary review of the City of Portland River Plan/North Reach habitat restoration cost per DSAY methodology and the Hylebos Waterway methodology, they appear to be similar in terms of using the HEA approach for affected habitat assessment, use of multiple key species, including salmonids, and both costs being based on non-PRP construction of the restoration projects, but rather the restoration being performed by the City or Trustees.

REFERENCES

City of Portland. 2010. The River Plan, North Reach. *How to Calculate River Plan/North Reach In-lieu Fees.* November.

National Oceanic and Atmospheric Administration (NOAA), Washington State Department of Ecology (Ecology), Puyallup Tribe of Indians, Muckleshoot Indian Tribe. 2002. *Hylebos Waterway Natural Resource Damage Settlement Proposal Report. A Habitat Restoration-Based Approach For Resolving Natural Resource Damage Claims Relating to the Hylebos Waterway Of the Commencement Bay Nearshore/Tideflats Superfund Site Combined With a Proposal For Allocating Liability for Settlement Purposes. Public Review Draft.* 14 March.

U.S. Department of Justice (USDOJ). 2007. *State of Washington Through the Washington Department of Ecology; Puyallup Tribe of Indians; Muckleshoot Indian Tribe, Plaintiffs, v. United States of America, Defendant. Civil No. 06-05225RJB. Consent Decree.* NOAA GC-DOJ DARC.

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MEMORANDUM

To: David Harvey, The Greenbrier Companies

From: Ron Gouguet, Windward Environmental, LLC

Subject: Review of North Reach Science Panel Video Record in light of previous comments submitted regarding the City of Portland's development regulations and the River Plan

Date: November 29, 2010

INTRODUCTION

Windward has reviewed various elements of the City of Portland (City) River Plan proposed under development regulations for the North Reach of the lower Willamette River (LWR). We have focused our evaluation on the City's proposed approach to crediting and debiting methodology to determine the ecological impact and value of a proposed development and subsequent mitigation requirements.

In previously submitted comments Windward and others recommended that the City convene an independent panel of scientists to review its proposals and provide advice to address weaknesses in the methodology.

On June 18, 2010, City convened a brief (2.5 hour) North Reach Science Panel (Panel) meeting to hear concerns and advice of 'regarding the accounting system it had proposed for the North Reach of the Willamette River. Only invited habitat experts and city employees participated in the 'blue ribbon' panel. However, a brief public comment period was allowed before the doors were closed, and the proceedings were videotaped with copies made available upon request.

SYNOPSIS

There appeared to be a basic disconnect during the science committee meeting. City staff presented their proposals as a working product, ready to implement. However, the scientists assembled expressed grave concerns with the approaches and appeared to disagree with that general conclusion. During the session it became clear that Staff did

not appreciate many concerns about the City's approach to valuation of both the impacted habitats and restoration areas. Several times questions raised by the Panel were 'explained away' by City staff as policy issues or otherwise and the underlying question was not answered. Unfortunately, the summary of the Panel's discussion did not appear to fully capture concerns raised by members of the Panel and suggested more of an accord among the Panel and Staff that was actually observed.

DISCUSSION

The current proposal, as presently understood, continues to raise a number of concerns and questions regarding implementation. Several issues were raised by Panel members that were not properly considered by City staff. Significant issues are identified below:

Small habitat patches, "on site" restoration preference and existing conditions

- It remains undefined what the City wishes to accomplish with this program. The stated goal is "Ensure no net loss of natural resource function from development in the North Reach". The goal stated by Staff was that past 'damage' due to development in the "50s and 60s" would be restored or that the "restoration potential" of riverside parcels be compensated. To maintain consistency with the Trustees' requirement that only for injury due to hazardous substance releases is compensable (the "but for" condition), the City should evaluate the "baseline" condition of the riverine habitat and seek compensation. However, Staff recognized that due to the low quality of remaining habitat patches in the N Reach, little loss of ecological value would be expected. Staff admitted that the fees that would be collected would constitute only a small fraction of that needed to build the identified restoration projects. Thus, little mitigation would be expected to be required.
- The majority of the money needed to establish a mitigation bank is needed up-front (i.e., acquiring land, permitting, and construction) and it is unclear how will sufficient funds be available at the outset to acquire land and design, permit, and construct the mitigation bank in advance of the impacts being mitigated. When asked, senior City staff stated that 'mitigation' may not be the best descriptor of the program's goal because too little habitat value remains and thus too little compensation would be required to "enhance' existing areas.
- Science panel members were concerned that existing onsite "target species habitat" patches would not be of sufficient size and connectivity to allow meaningful use by target species. In these cases, "baseline" ecological service levels are very low or nonexistent due to past or current industrial/commercial use. As such, onsite restoration would not be particularly valuable.
- The scientists pointed out that based on present scientific knowledge, small scattered habitat patches are not very valuable and as such on site restoration would not be particularly useful. On site restoration was generally not

supported by the Panel. They suggested that restored habitat should be aggregated in an appropriate way

Why is the City focused on the N Reach?

- The Panel suggested that some sort of restoration plan that considers the landscape context of the patches on the landscape is needed to be able to value the patches. Staff pointed out that the "Pearls" list is not such a plan; if all were built, it is not known if N Reach restoration needs had been achieved
- The City made a decision to 'force' mitigation to go into the "most expensive" area to restore (N Reach) without understanding the values. It's applying a 'common sense' approach of forcing mitigation to occur where the impacts occur. The NRDA trustees are indicating a similar approach in requiring 50% of restoration to occur in this reach. However, the actual habitat value of following this approach is unknown.

What is the value of such a complex habitat evaluation system?

- Individual user subjectivity of the HSI/HEP evaluation process was noted by the Panel. One member related that when NRCS soil scientists had used the tool, results were all over the map. The City staff suggested that this could be addressed by training. The panel member stated that in his experience, even with these highly experienced trainees, extreme variation due to subjective observations of the input conditions could not be eliminated. Basically, it will be hard for applicants and the city (or any other pair of users) to obtain similar results or to reach agreement.
- Use of individual species HSIs was not supported by the Panel, in fact the Panelists pushed back not to use species at all. They recommended that indicator metrics similar to those underlying HSI developed in the 1970s (e.g., temperature, substrate, etc not HSI itself) be selected to consider the range of habitat characteristics in question.
- The Panel was concerned that too little information on aquatic habitat was captured to characterize impacted parcels. Only 3 or 4 variables are captured with the salmon/trout metrics the City has selected. The panel asked if the Willamette Partnership's Salmon Calculator, which uses nearly 30 habitat characteristics, had been considered. Windward also suggested this in a previously comment letter. Staff stated that they hadn't looked at it in a while and had to be made familiar with it by committee members. Clearly, only a perfunctory consideration of this state of the art ecological services accounting tool was made by City Staff.
- The indices for each species should reflect all key attributes that may affect habitat suitability. A number of the indices included in the City's proposal have been simplified and omit important habitat requirements.

- The procedures allow value judgments about the relative importance of species and habitats. These value judgments are currently not incorporated into the City's proposed approach; rather species and habitats are treated as equally valuable and do not reflect natural resource management mandates or societal values.
- Rather than develop a complex, subjective system one panelist suggested calculating mitigation requirements up front. Knowing what the loss of function is going to be on a parcel would give business predictability early in planning so it could "avoid and minimize" rather than mitigate and thus better control transaction cost. "You want to build a dock right there, have enough spatial data now to determine its value they've studied the heck out of this area".

SUMMARY & CONCLUSIONS

The Panel raised a number of potentially fatal flaws in the proposal that still need to be addressed before implementation. To allow more time for the Panel's advice to be incorporated into the proposal, such a science meeting should have occurred early in the development process, not at the "11th hour". Additionally, not enough time was available for the invited scientists to even establish the scientific parameters in question, establish goals, talk/exchange ideas, much less issue a final recommendation. The rushed effort that was conducted suggests "railroading" or a rubber stamp. At best, the Panel fulfilled a *pro forma* role for the City by appearing to provide meaningful scientific input to the process.

The 'debit and credit' mitigation value calculation system continues to be a 'pig in a poke'. If the North Reach mitigation bank and its associated code amendment regulations go forward as now envisioned these and other outstanding issues will result in tremendous inefficiency, subjectivity and arbitrary decision making by City staff.

The City has proposed to provide additional information about the ecological value, historical functions, and landscape context of the North Reach, as well as habitat prioritization methods within the North Reach in relationship to the envisioned mitigation banking program. There include:

- ongoing development of the ecological functional models, including further consideration of landscape-scale and patch size and shape factors
- mechanisms of project monitoring and adaptive management
- prioritization of in-kind vs. out-of-kind mitigation, and decision factors to be used in determining which choice is best for mitigating individual impact sites
- landscape context considerations for both impact sites and mitigation sites
- the goals and objectives of the restoration program need to be better defined so that success can be adequately ascertained.

The City needs to further develop and refine the issues raised by the Science Panel and outside reviewers. It seems that there are many important issues that need to be further explored prior to implementation of the North Reach mitigation banking program. Based on the useful discussion and recommendations generated by the Science Panel, these issues would likely best be explored in conference with a panel of experts, including scientists nominated by the regulated community. Having the key components of the mitigation program vetted through such a process would ensure the most successful start possible to the program.

At minimum, the City should reconvene the Science Panel, allowing them sufficient time to review and consider the current proposal and its changes. It would also be instructive to have the panel run two or three sample projects through the valuation process to identify implementation issues before the rating system is codified. This would also allow the City to refine the parameters, and determine if any functional values are under served.

184276

Moore-Love, Karla

From: Lundgren, Christina (Perkins Coie) [CLundgren@perkinscoie.com] on behalf of Pfeiffer, Steven L. (Perkins Coie) [SPfeiffer@perkinscoie.com]

Sent: Tuesday, November 30, 2010 5:13 PM

To: Adams, Sam; Commissioner Saltzman; Commissioner Fritz; Commissioner Fish; Leonard, Randy; Moore-Love, Karla

Cc: Beier, Ann; Zehnder, Joe; Edmunds, Sallie

Subject: River Plan/North Reach Effective Date

Importance: High

Attachments: Letter.pdf

Please see attached letter for submission to the City Council.

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November 30, 2010

VIA HAND DELIVERY

Mayor Sam Adams
Commissioner Nicholas Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman
City of Portland
1221 SW Fourth Avenue
Portland, OR 97204-1995

Re: River Plan/North Reach Effective Date

Dear Mayor Adams and Commissioners:

This office represents Schnitzer Steel Industries, which has been deeply involved in the development and recent adoption of the River Plan / North Reach and related implementing regulations. It has come to our attention that on December 1, 2010, City Council will consider a proposed ordinance to establish July 1, 2011 as the new effective date of the River Plan / North Reach. We understand that the purpose of the proposed ordinance is to modify the effective date of the River Plan / North Reach in order to accommodate the greenway boundary amendment process currently pending before the Land Conservation and Development Commission (LCDC).

We acknowledge and appreciate the practical need to delay the effective date of the River Plan until LCDC has resolved the greenway boundary amendment issue. However, we also understand that a local government does not retain jurisdiction to modify or otherwise act upon an adopted ordinance while an appeal of such ordinance is pending. Accordingly, and without regard to policy considerations, the City likely lacks jurisdiction to consider and approve the proposed ordinance to modify the effective date of the River Plan. For this reason, we believe

that the Council must defer consideration of any modification to the River Plan, including its effective date, until the pending appeals process is complete.
We would like to reiterate that Schnitzer Steel Industries remains committed to working with the City and other interested stakeholders in the development of a River Plan that achieves the necessary balance between environmental considerations and continued project development in the working harbor. To this end, we applaud the Council's direction and the work undertaken by staff to date. We also believe, however, that while appeal of the River Plan is pending, the City has little choice but to refrain from modification of the River Plan as adopted.

Thank you for the opportunity to present these comments, and we look forward to working with the City as this matter moves forward.

Very truly yours,

Steven L. Pfeiffer

SLP:crl
Cc: Ann E. Beier (via email)
Joe Zehnder (via email)
Sallie Edmunds (via email)
Client (via email)