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February 18, 2015

VIA EMAIL

Planning & Sustainability Commission
c/o Bureau of Planning & Sustainability
City of Portland
1900 SW 4th Avenue, Suite 7100
Portland, OR 97201

Re: Draft 2035 Comprehensive Plan – Additional Comments
Hayden Island Manufactured Home Community

Dear Commissioners:

As you know, this firm represents Hayden Island Enterprises, the owners and operators of Hayden Island Manufactured Home Community (“HIMHC”). HIMHC consists of 440 manufactured home sites, 169 RV sites and 1,500 residents and has been consistently recognized by the City as a vital affordable housing resource. Based on the January 27 and February 10, 2015 work sessions, we are submitting the following additional comments regarding the draft 2035 Comprehensive Plan to supplement our previous written comments, dated October 28, 2014.

A. The Commission should postpone its recommendations for the 2035 Comprehensive Plan until it can consider it concurrently with the Mixed Use Zones Project.

As several of the Commissioners expressed at the January 27, 2015 work session, we share the concern about the City staff’s proposal to complete the Commission process for the 2035 Comprehensive Plan before it considers the Mixed Use Zones Project. In fact, the City staff’s proposed schedule anticipates the Commission completing its process for the 2035 Comprehensive Plan before the proposed mixed use zoning code amendments are even publically released. For the reasons provided below, HIMHC continues to believe that the Commission should postpone its recommendations for the 2035 Comprehensive Plan until it can consider it concurrently with the Mixed Use Zones Project.

Adopting recommendations for the Comprehensive Plan map amendments first will prohibit or significantly restrict the Commission’s ability to reconsider mixed use zoning designations during the Mixed Use Zones Project process. Once the Commission recommends mixed use Comprehensive Plan designations for certain properties, it will be required to recommend mixed

use zoning for those same properties in order to be consistent with the Comprehensive Plan designation. Since the Mixed Use Zones Project will provide far more detailed information regarding the impact of new mixed use zoning on these properties, such as changes to the allowed uses and development standards, it makes far better sense for the Commission to determine the appropriateness of changing properties to mixed use designations and zoning after it has the opportunity to review this more detailed information. The current approach requires the Commission to make these important decisions based entirely on general Comprehensive Plan policies.

The lack of certainty and specificity regarding the effect of mixed use designations and zoning exacerbates the confusion, concern and resistance from the public. It is simply not possible for HIMHC or other property owners to understand the implications of changing the Comprehensive Plan designation to mixed use when the mixed use zones and standards have not yet been created. While we appreciate the Commission's willingness to extend the time period for submitting public comments on the 2035 Comprehensive Plan until March 13, 2015, neither the proposed mixed use zoning map amendments nor the code amendments will be publically released until after this deadline. Considering the Comprehensive Plan Map amendments and Mixed Use Zones Project amendments concurrently will allow property owners to make more informed comments on the City's proposal.

Although it was helpful for the City staff to report on the status of the Mixed Use Zones Project at the January 27 work session, it raised more questions than it answered. The City staff was unable to answer many of the Commissioners' questions because the Mixed Use Zones Project process details have not been worked out. The Commission should have answers to these important questions before it adopts the Comprehensive Plan amendments.

The City staff still has not adequately explained why the Comprehensive Plan amendments and Mixed Use Zones Project cannot and should not be considered concurrently. The City staff noted at the January 27 work session that the City needs to adopt the Comprehensive Plan policies before it can consider new zoning standards, but that is not true. The Portland City Code (PCC) expressly allows for Comprehensive Plan amendments and zoning amendments to be considered concurrently. PCC 33.810.030. In fact, it is common for local governments to consider Comprehensive Plan amendments and zoning amendments concurrently because the two amendments are so intertwined. How can the Commission adopt policies without a better understanding of the implication of those policies?

The 2035 Comprehensive Plan and Mixed Use Zones Project will have long-term, broad and significant effects throughout the City. The Commission should do the right thing and postpone its recommendations for the Comprehensive Plan Map amendments and consider them concurrently with the Mixed Use Zones Project amendments.

B. The Commission should not adopt an industrial map designation or proposed Policy 6.41 recognizing a West Hayden Island deep water marine industrial use.

While HIMHC appreciates the City staff's willingness to propose changes to proposed Comprehensive Plan Policy 6.41 to address concerns raised by HIMHC and others regarding the

future annexation and development of West Hayden Island, these proposed changes are insufficient and overlook significant problems with this approach. We share many of the concerns raised by several of the Commissioners at the January 27 work session and request that the Commission not adopt the City staff's approach. The Commission should not recommend adoption of an industrial designation and supporting policies given that the recent West Hayden Island process demonstrated the marine terminal development is not appropriate or feasible based on the Port of Portland's inability to accept reasonable mitigation measures necessary to mitigate the impacts of such a large industrial development.

Adopting an industrial map designation on West Hayden Island as part of this process is problematic because it will make it easier for the Port of Portland to approve the marine terminal in the future and avoid some of the important mitigation measures previously recommended by the Commission. The Port would not have to address the Comprehensive Plan amendment approval criteria set forth in PCC 33.810.050, which impose important requirements not required for a mere annexation and zoning map amendment, such as the requirement that the proposal "on balance has been found to be equally or more supportive of the Comprehensive Plan as a whole" and that it comply with the Statewide Land Use Planning Goals. PCC 33.810.050(A)(1)&(2). The Port would also use the industrial designation as a justification for zoning map amendment and development proposal since one of the justifications for a zoning map amendment is that it corresponds to the Comprehensive Plan map. PCC 33.855.050(A). Allowing the Port to bypass the Comprehensive Plan amendment process and approval criteria without the scrutiny of the prior West Hayden Island process would make it easier for the Port to obtain approval and avoid many of the Commission's previously recommended mitigation measures.

We disagree with the City staff's assertion that the City is required to designate West Hayden Island as industrial in order to comply with the Metro 2040 Growth Concept Plan and avoid a potential legal challenge. The Metro 2040 Growth Concept Plan was adopted 20 years ago (1995). Although West Hayden Island has not been designated industrial during this entire 20-year period, neither Metro nor any other party has legally challenged the City. If the City has not been previously required to designate West Hayden Island as industrial in order to comply with the Metro 2040 Growth Concept Plan, including last year when the City was considering a specific proposal to redesignate the site, there is no legal basis for compelling such a result as part of this Comprehensive Plan amendment process.

To the extent the Commission elects to recommend adoption of Comprehensive Plan Policy 6.41 notwithstanding these problems, it needs to clarify Policy 6.41 further to more specifically integrate the Commission's previous mitigation recommendations. The Commission conducted an extensive public process for West Hayden Island. Rather than generally refer to the need to address impacts in the future, essentially wasting this prior effort, Policy 6.41 should specifically incorporate the Commission's recommendations and proposed mitigation measures. While it may be too cumbersome to attach the entire Commission recommendations as suggested at the January 27 work session, the City could accomplish the same goal by expressly referencing the Commission's Recommended Draft West Hayden Island Project, dated August 2013, including the mitigation measures, in Policy 6.41.

C. HIMHC opposes the removal of the N. Hayden Island reconstruction project from the Transportation System Plan.

HIMHC objects to the Portland Bureau of Transportation (PBOT) proposal to remove the N. Hayden Island Drive reconstruction project, RTP 11632, as part of the proposed Transportation System Plan (TSP) update. This project proposes to reconstruct N. Hayden Island Drive from the Burlington Northern Rail Bridge to the I-5 Hayden Island Interchange. PBOT proposes to remove this project from the TSP because the “Annexation of West Hayden Island has been withdrawn”. HIMHC opposes the removal of this project from the TSP for two primary reasons.

Since the Bureau of Planning and Sustainability (BPS) and PBOT are proposing to retain references and projects related to the West Hayden Island annexation in the 2035 Comprehensive Plan, the N. Hayden Island Drive reconstruction project should be retained in the TSP as well. The N. Hayden Island Drive reconstruction project was one of the mitigation measures adopted specifically to mitigate the traffic impacts of the Port’s project. As explained in Section B above, the BPS staff is proposing to an industrial map designation and Policy 6.41 which specifically recognizes the future annexation of West Hayden Island for a marine terminal use. PBOT is proposing to retain the West Hayden Island Rail Access and West Hayden Island Rail Yard Expansion projects as part of the TSP update even though those projects are also based on the annexation of West Hayden Island. Unless the City removes all references to the Port’s potential future annexation and development of West Hayden Island, the N. Hayden Island Drive reconstruction project should be included in the TSP update.

Regardless of its connection to the Port’s proposed annexation and development of West Hayden Island, the N. Hayden Island Drive reconstruction project should be retained in the TSP. N. Hayden Island Drive is the main street providing access for the western portion of Hayden Island. The Hayden Island Concept Plan recognized that the level of street connectivity in this area is poor and does not meet City standards. The transportation studies performed as part of the West Hayden Island project confirmed these findings. Therefore, there is a need for upgrades to N. Hayden Island Drive regardless of whether or not the Port’s project is constructed.

D. The Commission needs to ensure that previously recognized nonconforming use protections for HIMHC are incorporated into the draft 2035 Comprehensive Plan and implementing code amendments.

At the January 27 work session, the Commission heard City staff testimony regarding a number of current nonconforming use situations throughout the City that create difficulty for the property owners. The City staff is proposing that the Commission adopt amendments as part of the 2035 Comprehensive Plan to bring many of these properties into conformance.

As we explained in our October 28 letter, HIMHC is a recognized nonconforming development that has unique characteristics because manufactured homes and RVs are moved, replaced and/or change more frequently than traditional nonconforming use structures. As a result, the typical nonconforming use approach does not apply to HIMHC. HIMHC wants to ensure that the City’s 2035 Comprehensive Plan and proposed adoption of new mixed use designations and zoning recognize this unique attribute of HIMHC and provide adequate nonconforming use protections

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as the City has done in the past. It is essential to ensure the long-term preservation of this vital affordable housing resource. Since the Commission is considering other nonconforming situations and attempting to accommodate them as part of this process, we renew our request for the Commission to address HIMHC's nonconforming needs as set forth in the October 28 letter.

We appreciate your consideration of our comments. We look forward to working with the City further on this matter.

Very truly yours,

HATHAWAY KOBACK CONNORS LLP



E. Michael Connors

EMC/df

cc: Hayden Island Enterprises