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Portland Planning and Sustainability Commission

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September 23, 2020

To: Oregon State Marine Board

Re: New rule that “Creates additional boating regulations on the Willamette River in the vicinity of Ross Island”

Please accept this written testimony on behalf of the City of Portland’s Planning and Sustainability Commission (PSC) by unanimous vote. We appreciate the opportunity to, once again, make our case for establishing a Slow / No Wake Zone between the Hawthorne and Sellwood Bridges and at Powers Marine Park and Elk Rock Island. Based on extensive written and oral testimony on recreational use of the river, the PSC unanimously approved an amendment to the City’s River Plan/South Reach, which reads:

“R11D: Ongoing, The City of Portland, to address river recreational safety and ecological health of the river, will petition the Oregon State Marine Board to establish a Slow / No Wake Zone between the Hawthorne and Sellwood Bridges and at Powers Marine Park and Elk Rock Island.”

This recommendation is based on compelling public testimony on how an expanded Slow / No Wake Zone will further:

Equity. Swimming and light watercraft are affordable to a wider range of residents than motorboats. To make use of the Willamette more equitable, an expanded Slow / No Wake zone would prioritize free and inexpensive forms of river recreation – and ensure that lower income users without access to power boats don’t have to sacrifice safety to enjoy the river. We did not have the benefit of demographic data on river users. But if lower income river users tend to be more ethnically diverse than the population as a whole, as is the case more broadly in Portland, then expanding the Slow / No Wake zone might also reduce racial disparities in river use.

Public Safety. When motorboaters, swimmers and paddlers share the same stretch of river, safety risks are not the same for each user. Although anyone can get hurt through user conflict, it is the non-motorized user who is more likely to have their personal safety jeopardized. Examples from testimony included instances where wakes capsized or threatened the safety of dragon boaters and people taking canoe and paddle board lessons. At least as concerning were stories of people who set out to swim or paddle in the river – only to cancel their outing when they realized it wouldn’t feel safe due to active motorboat use and/or heavy wakes at their intended destination.



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Climate. Swimming and human-powered watercraft have much lower carbon impacts than gas fueled motorboats. By all accounts, the level of motorboating and wakeboarding on the river has increased significantly over the past decade. An expanded Slow / No Wake zone could tip river use back towards human-powered activity, furthering the City's climate goals and Governor Brown's Executive Order on Climate Change, EO20-04.

Environmental Health. A significant portion of testimony called attention to the negative environmental impacts of wakes on riverside vegetation and on fish and wildlife habitat – including salmon and steelhead species designated as threatened under the Endangered Species Act. There was also concern that wakes can jeopardize environmental remediation projects that cap and contain hazardous waste located under the river bottom, exposing the river to environmental contamination.

Response to the current OSMB Proposal

Although we don't think it goes far enough, we support the Marine Board's proposed extension of the Holgate Channel Slow No Wake Zone from the north tip of Ross Island to the Oregon Yacht Club. We also feel that the proposed seasonal pass-through zone is an improvement over the status quo.

However, we strongly urge the Board to go further, by putting in place a Slow No Wake Zone between the Hawthorne and Sellwood Bridges and around Powers Marine Park and Elk Rock Island. We offer the following input to support our recommendation.

The PSC's deliberations regarding a proposed Slow No Wake Zone occurred after a River Plan/South Reach hearing. River Plan/South Reach is a 20-year plan that updates the Willamette Greenway Plan (statewide planning goal 15) for the City's southern section of Willamette riverfront area. Key attributes of this section of the river are watershed health and resilience, recreation, and riverfront communities.

The plan was developed over a two-year period with staff holding 63 meetings and events where 960 participants had an opportunity to provide input to City planners. A first public hearing on the proposed draft plan was held on February 25, 2020, where 64 people testified. We heard from 930 people through oral and written testimony at a June 23 public hearing on river recreation in the River Plan / South Reach. A significant amount of testimony focused on safety concerns by non-motorized river users as well as the importance of preserving the area's riparian habitat.

The City of Portland is committed to protecting these species and improving their habitats. In our July 8, 2020 letter to the Marine Board we provided a summary of the testimony we received at our South Reach hearing in June. For the written testifiers, 58% supported a Slow / No Wake zone, consistent with the PSC's recommendation to you in late-April requesting a Slow / No Wake Zone from the Hawthorne Bridge to the Sellwood Bridge. Some testifiers expressed a desire to see a Slow / No Wake zone extended to the city's southern city limits by Waverley Country Club, have it cover Powers Marine Park and the area around Elk Rock Island (outside of Portland city limits). These testifiers were concerned about wave impacts on light watercraft, swimmers, and the environment.

During our earlier written and oral testimony to the OSMB, we presented numerous reasons for our recommendation, which focused primarily on negative impacts of wakes on fish and wildlife habitat, particularly endangered salmonids; on equitable use of the river by non-motorized recreationists, and



on encouraging low carbon recreation. We noted that the Marine Board in its deliberations did not mention any of the three areas we focused on, including natural resources. We expect that those vital considerations will be a focus of your deliberations going forward given recent legislation. Recent legislation directs the Marine Board to: “(4)(a) The [State Marine] board may make special regulations relating to the operation of boats on the Willamette River within the Willamette River Greenway, including the establishment of designated speeds or other methods to manage boat wake energy, as may be needed for the protection of the shoreline, public and private property, fish and wildlife habitat and vegetation. When adopting regulations under this subsection, the board shall take into consideration the statewide land use planning goals and guidelines adopted by the Land Conservation and Development Commission to protect, conserve and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River Greenway. We were surprised that even though the Marine Board has been directed to consider ecological impacts, and state-wide planning goals including Goals 5, 7 and 15, all of which relate to fish and wildlife habitat, endangered species, water quality and the Willamette Greenway, in making its decision there was no discussion regarding these issues. In fact, the public notification for the proposed rule change stated, “These rule amendments are needed to mitigate safety concerns associated with boating congestion on the Willamette River in the vicinity of Ross Island.” There no mention anywhere in the announcement regarding riverine ecology, habitat, or endangered species on public or private property.

The Board’s deliberation after the last hearing did not acknowledge or address the scientific and technical information provided by Kaitlin Lovell, Regulatory Strategy and Remediation Manager and former Science Integration Division manager at Portland’s Bureau of Environmental Services or the National Marine Fisheries Service correspondence, which raised concerns about the legality of the proposed rules under the federal Endangered Species Act. We are providing a transcript of Ms. Lovell’s input in the hope that that the OSMB will use this information to address the legislature’s requirements to consider fish and wildlife habitat and natural qualities of the river when making your final decision regarding a Slow No Wake Zone that is consistent with our recommendation. The maps that were provided as part of the City’s testimony were specifically intended to highlight the localized nature of these impacts on the Lower Willamette River’s most ecologically valuable habitats at the highest risk from boat wakes. The proposed rules do not include any recommended mitigation for those risks.

The Lower Willamette River in Portland, especially in the South Reach area, is of great recreational importance. It is also a significant ecological treasure. There are federally listed threatened and endangered fish species in the Willamette who rely upon shallow water habitat areas for feeding and resting, and cold water refugia for survival. This reach also has one of the only populations of Pacific Lamprey abundant enough to support tribal harvest. Other species of fish, birds and wildlife that live in and migrate through the Willamette River corridor. The South Reach area is also a special place in Portland for its large amount of publicly-owned parks and natural areas, including the regionally significant Oaks Bottom Wildlife Refuge, Ross Island and Holgate Channel ecological complex.

The National Marine Fisheries Service has communicated its concerns over wake impacts on Threatened and Endangered species in their letter of January 16, 2020, to the OSMB in which they stated, “OSMB has focused on boating congestion and private property damage, but has paid little attention to the impacts that wake sports have on aquatic life, including salmon and steelhead species designated as



threatened under the Endangered Species Act, and their critical habitats. Noise and wave actions are frequently a threat to juvenile salmon and steelhead. Therefore, we expect that wake sports are likely to have a significant adverse impact on those listed species and their critical habitats...” NMFS followed up their January 16 letter with voluminous supplemental materials supporting their concern regarding wake impacts on natural resources and Threatened and Endangered species.

The PSC has received a very large amount of written testimony from users of human powered craft regarding impacts on the riverine environment; extreme safety hazards that exist between human-powered craft and motorized craft on the Willamette River; life-threatening events; and property damage associated with high speed, wake-producing water craft among those who have provided written testimony. We have the responsibility to address all state-wide planning goals, including Goal 15, which mandates that the City of Portland address conservation of the riverine environment. It is within the purview and responsibility that the City address these issues in the South Reach Plan. As the Planning and Sustainability Commission we are also responsible for addressing broader issues of sustainability which also influenced our decision.

We feel the expansion of a Slow / No Wake Zone addresses equitable access to the river in that an increased sense of safety will encourage more people, including those of limited means, to recreate in non-polluting, low carbon modes including kayaking, canoeing, stand-up paddling and swimming.

While we received testimony urging us to expand a Slow / No Wake Zone to a much longer reach of the Willamette, we focused our recommendation on a limited reach of the river where the greatest number and density of conflicts exist in downtown, between the Hawthorne and Sellwood Bridges. There is significant interest among those who have sent in written testimony to expand the Slow / No Wake Zone from the Sellwood Bridge to Elk Rock Island. There are 30 miles of river between the confluence with the Columbia and the Oregon City falls. The PSC felt that targeting this limited reach of the Willamette where natural resource impacts and safety were most highly impacted and exhibits the highest level of conflict was the appropriate action.

A Slow / No Wake Zone does not exclude motorized crafts. Motorized craft have access to the entire river. They simply have to slow down to eliminate their wake. Suggestions that a Slow / No Wake Zone be seasonal or even change during the day or days of the week we feel would be unenforceable. The recommended Slow / No Wake between two city bridges will make it much easier to educate river users and easier to enforce.

In addition to these comments please consider the following input from Kaitlin Lovell, based on her previous presentation to the Marine Board:

Transcript of Kaitlin Lovell’s testimony to Oregon State Marine Board

Kaitlin Lovell, Regulatory Strategy and Remediation Supervisor, for the City of Portland’s Bureau of Environmental Services.

Thank you for the invitation to share with you some of the fish, wildlife, and habitat work we have done in the Willamette River in Portland. The Bureau of Environmental Services is the City bureau responsible



for water quality and watershed health through the management of sewage, stormwater and surface water. We are also responsible for the City's compliance with the Clean Water Act, the Endangered Species Act and for the Portland Harbor Superfund cleanup. In support of our watershed health mission and regulatory drivers, we seasonally monitor salmon and steelhead populations and their habitat in the Willamette River in Portland which I will speak to briefly today.

As Commissioner Houck mentioned, our bureau invested over \$1.4 Billion in the prevention of sewer overflows into the Willamette River which has made the river safer for all forms of recreation on the river. However the river is still not healthy for fish and it is designated as an impaired water body by DEQ.

The Lower Willamette River in Portland supports 13 salmon and steelhead populations that are listed as threatened or endangered under the federal Endangered Species Act, and one of the only populations of Pacific Lamprey abundant enough to support tribal harvest. The juvenile life stage of all of these species requires shallow sandy habitat in the Willamette River, which due to a century of dredging, development, and river alterations, is one of the rarest aquatic habitats in Portland (historically 80% of the Lower Willamette River was considered shallow water habitat whereas today it is less than 20%). BES works closely with BPS to ensure that further development including docks and boat ramps along the river avoids, minimizes or mitigates for impacts to these species.

In evaluating impacts, mitigation and restoration, BES relies on scientific studies and is very familiar with the peer reviewed studies provided to the OSMB by the National Marine Fisheries Service. Collectively, these papers identified the following impacts from boats and boat wakes: stranding of fish as a factor of wave height; habitat instability and increases in suspended sediment which is linked to disruption of feeding behavior and predatory avoidance; shoreline erosion impacts; displacement of fish; changes in fish assemblages (diversity, abundances and distribution); changes in the structure, function and service of all ecosystem functions including abiotic and biotic factors, sediment, nutrients, and benthic communities (food base for salmon); predator-prey behavior changes; boat operations including pollution, noise, and as vectors for invasive species introductions; and suppression of emergent vegetation which also dissipates damage from flooding.

We work closely with NMFS, the USGS, EPA, ODFW, DSL and DEQ on collecting and exchanging data on fish, water quality and habitat. BES monitors for salmon and steelhead presence and their habitat annually within the Willamette. We provided a Willamette River Characterization report to the PSC a part of the South Reach Plan that summarized the scientific literature, our own data and the best professional judgement of our government partners. BES has produced maps showing where salmon, habitat and restoration projects overlap and modified those maps for today's meeting to include public recreation access points to highlight the delicate balancing act that occurs in the city around these complex issues. Not included are the DEQ authorized cleanup sites, however those too are of paramount concern to BES to ensure that the durability of those clean up remedies continue to provide long term containment to protect the lower river and future cleanup in Portland Harbor.

Finally, BES has invested millions of dollars and long-term maintenance in restoration along the river, as the map depicts and Commissioner Houck summarized. We are currently in the design planning stages for projects at Tryon Creek/Highway 43, Oaks Crossing at Sellwood Park, and Kelly Point Park that are in



partnership with the US Corps of Engineers and will qualify for over \$20M in federal funding, as well as a partnership with OMSI, the Columbia River Inter-Tribal Fish Commission and the Associated Tribes of Northwest Indians to enhance and restore the riverbank from the Hawthorne Bridge to the Tilikum Bridge on the eastside of the Willamette, including approximately 1700 linear feet of habitat and floodplain restoration.

It is for all the reasons stated above that we urge the Marine Board to adopt a Slow No Wake Zone between the Hawthorne and Sellwood Bridges and around Powers Marine Park and Elk Rock Island to the south of downtown Portland.

Respectfully,



Eli Spevak



Mike Houck

