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.

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

Sincerely,

David J. Harvey

David J. Harvey
Environmental Director

Enclosures

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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, 5 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 3 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.

Windward environmental LLC

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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.

36831

Agenda Item 1506-1508 TESTIMONY 2:00 PM TIME CERTAIN

RIVER PLAN/NORTH REACH IN LIEU FEES, RIVER RESTORATION PROGRAM

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Sebastian Degens	PO Box 3529 Port of PTLD	sebastian.degens@portofportland.com
✓ Walter Stokman	4350 NW Front Ave Portland OR 97210	walt.stokman@gbrx.com
✓ Donna Matrazzo	14300 NW Sauvie Island Rd PDX 97231	matrazzo@msn.com
✓ ALAN SPROTT	5555 N. CHANNEL AVE PORTLAND 97217	ASPROTT@VIGOINDUSTRIAL.com
✓ Pam Allee	7425 N. Portsmouth Ave 97203	biljrat@spiretech.com
✓ Travis Williams	1515 SE Water Ave. PDX 97214	travis@willamettrustwetlands.org
✓ CURT SCHNEIDER	6904 N. CHARLESTON AVE 97203	dreamcj@comcast.net
[redacted]	[redacted]	[redacted]
✓ Jane Hartline	14745 NW Gillihand Rd. Portland 97231	jane@NMSWD.ORG
✓ Barbara Quinn	7034 N. Charleston Pdx 97203	
✓ Bob Sallinger	Audubon	

Date 11-17-10

36831

Agenda Item 1506-1508 TESTIMONY 2:00 PM TIME CERTAIN

RIVER PLAN/NORTH REACH IN LIEU FEES, RIVER RESTORATION PROGRAM

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ Steve Pfeiffer	1120 NW Couch Portland 97209	spfeiffer@perkinscoie.com
✓ Linda Robinson	1115 NE 135th Portland 97230	lrobinspdx@comcast.net
✓ Mara Gross	CLF, 107 SE Washington #239 PDX 97214	mara@clfuture.org
✓ Peter F Fry	2153 SW Main 97205	pfinleyfry@aol.com

Date 11-17-10

URBAN
Greenspaces
INSTITUTE

November 17, 2010

Mayor Sam Adams
City Council
City of Portland
1221 SW 4th Ave
Portland, OR 97204

Dear Mayor Adams and Commissioners,

I am writing on behalf of the Urban Greenspaces Institute to provide our input on the North Reach River Plan, following up on our testimony at the previous public hearing. We are unable to attend today's hearing and wanted our comments to be entered into the record and considered by Council before you act on the following items.

In Lieu Fees:
I have followed the in lieu fees proposal developed by city staff and we are impressed with the work they have done, especially with their scientific approach, methodology and modeling used to develop the proposed fees. We urge that you adopt the in lieu fee structure and supporting reports as presented, in their entirety. We also urge you to reject efforts to weaken this element of the program as suggested by some. We have participated in numerous processes where representatives from the development community have requested more flexibility and then turn around and ask for more certainty at the end of the process. We believe the in lieu fees are a fair approach to meeting industries needs, yet accomplishing the mitigation necessary to truly address lost ecological functions in the North Reach.

Public Subsidies For 50% of In Lieu Fees:
We concur with the Audubon Society of Portland's response to this proposal. We agree that those who develop in the North Reach should pay the real costs of their impacts. Most importantly, this proposal relies on the city's general fund, which will place a burden on already underfunded city programs. The proposal also reduces incentives for development in an ecologically responsible manner.

University of Portland Development Agreement:
We support the Planning Commission's recommendation that the city place P Zone overlays on the bluffs at the University of Portland. I have led field tours to the area for over thirty years and believe the corridor provides critical wildlife connectivity functions that will be very difficult to replace via mitigation strategies. We believe there are alternatives to placing a parking garage in one of the most scenic and environmentally

sensitive sites in the North Reach. Development of a parking garage as proposed by the University notwithstanding, we are supportive of the staff derived mitigation package that would be required should that project proceed.

We concur with the four conditions recommended by the Audubon Society of Portland, should the development agreement with the University of Portland proceed.

Siltronic Easement:
We share the Audubon Society of Portland's concerns about the proposed easement in the Siltronic Agreement. The easement, as proposed, would neither achieve natural resource objectives on this site nor adequately compensate for the removal of environmental overlays from the rest of their property. While the Siltronic agreement calls out for protection of "habitat for grassland associated wildlife species" and "wildlife connectivity between Forest Park", these are the areas that will be least protected by the proposed easement. And, as happens all too often the easement is insufficient to allow for meaningful habitat restoration, provide for habitat connectivity, and allow for a trail alignment. Too frequently the city opts for a setback into which too many functions are crammed, resulting in the watering down of each objective because too many uses are crowded into too small an area.

Respectfully,

Mike Houck,
Executive Director

Peter Finley Fry AICP Ph.D. *(503) 274-2744*

November 17, 2010

MEMORANDUM

TO: **Portland City Council**
FROM: **Peter Finley Fry AICP**
RE: **Comments; "How to Calculate River Plan/North Reach In-Lieu Fees**

As a planning consultant, I provide the following comments. Please have the courtesy to reply.

I am driven by the following principles:

- **Gunderson is a good Portland company that has worked hard to cooperate.**
- **Gunderson does value a clean and healthy river.**
- **Gunderson needs to support the loyalty and vitality of its workforce who produces the products that brings revenue into Portland. Gunderson's work force is one of the most diverse in the state and provides well paying – skills demanding blue color jobs that do not require a liberal arts education.**

How to Calculate River Plan/North Reach In-Lieu Fees
BDS Fee Schedules
Title 17 Code Change
BES Administrative Rules

1. **Goals not clearly stated:** The document requires a goal statement that should include at a minimum:
   - Restoration of the river.
   - Restoration of the watershed.

   The Scientific research presented after City Council's adoption of the North River Plan has only been presented, but not integrated. The research substantially challenges Portland's approach and advocates for meaningful restoration not fragments without continuity.
   - Integration of human activities, particularly those economic activities that are fundamental to the existence of Portland.

2. **Nexus:** The document is not clear as to whether the fee is to address mitigation (fee) or restoration (tax).

2153 SW Main Street, #105, Portland, Oregon USA 97205
Cell (503) 703-8033 • Fax (503) 274-1415 • pfinleyfry@aol.com

Peter Finley Fry AICP
Portland City Council

November 17, 2010

How to Calculate River Plan/North Reach In-Lieu Fees
BDS Fee Schedules
Title 17 Code Change
BES Administrative Rules

3. Control of the Fee in-lieu process: The document is not complete and contains many inconsistencies and omissions. A few examples:

- Inconsistent use of terms and measurements (meters/feet).
- Two different environmental engineering firms independently, for the same project, utilized the habitat evaluation methodology to calculate impact and the in lieu fees and came up with two dramatically different solutions.
- Lack of clarity regarding coordination with federal and state agencies; Portland's goals appear to exceed those of State and Federal agencies and the extent to which credit is given for State/Federal mitigation is not clear. Further, the actual land use and permit approval process critical path has not been laid out. The critical path needs to be identified to resolve the timing and coordination of the approvals of the various regulatory agencies.
- The oversight, disbursement, and auditing of the funds has not been laid out.

4. No choice as to where to mitigate: The City's approach focuses on the most expensive areas and ignores the potential for synergy between private companies that could lead to the creation of an economic opportunity that would drive mitigation independent of the City's regulatory approach.

5. Contingency not properly applied: A primary project goal is to bring the project in at or under the project's budget. Ideally, a contingency is not used. As a project processes through design and implementation, the risk is reduced and thus, should be the contingencies. The proposed contingencies are extremely high and well above the market for even far more risky projects. The City's method leads to two risks; the unspent contingency becomes a windfall to BES and/or a tendency to spend all the money whether required or not.

6. Restoration costs: The upland restoration cost is consistent with Portland Parks and Recreation's estimates for the restoration of Forest Park; however the riverine, riparian, and stream costs appear well above market and exceed the costs that have been encountered by other public and private efforts throughout the Northwest.

Perkins Coie

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November 17, 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 In-Lieu Fees

Dear Mayor Adams and Commissioners:

On behalf of Schnitzer Steel Industries, I want to take the opportunity to offer our comments with regard to the above-referenced matter pending before the City Council. As you know, Schnitzer Steel Industries has been deeply involved in the development and recent adoption of the River Plan and related implementing regulations. We continue to believe that such private stakeholder involvement is essential to ensuring a successful planning effort which enhances both environmental conditions and economic prosperity in the working harbor.

The primary purpose of this letter is to request that the In-Lieu fee proposal pending before the Council today be deferred to allow further consideration by public and private stakeholders to ensure maximum success in its implementation. As the Council knows well, the recently enacted River Plan regulations include a requirement for the development of a fee in lieu of onsite mitigation of unavoidable adverse impacts resulting from new development projects in the harbor. To this end, the adoption of a fee in lieu program which is both directly related to the

actual cost of mitigating such project specific impacts, and which does not represent a significant disincentive to continue investment in the harbor, is critical. Without an in lieu fee which meets both public and private needs, the requirement for onsite mitigation in conjunction with the development of new projects or the expansion of existing facilities may only serve to render such projects infeasible, and, in turn, will offer limited natural resource benefits.

Unfortunately, we find, following careful review, that the In-Lieu fee report provided to us and other stakeholders on November 3, 2010 does not meet this test. Based upon our own experience with offsite mitigation projects in the harbor and elsewhere and our review of similar efforts undertaken in other communities, we believe that the preliminary mitigation costs estimates which serve as the basis for the assigned fees are exceedingly high. Further, our review of the technical information included in the report indicates that these estimates include extraordinary costs allocations including a 75% contingency fee, which we find very difficult to justify under commonly accepted business practices. While we concur with the concept of affording an applicant the opportunity to allow the City to undertake project specific mitigation via a fee in lieu payment, the amount of such fees must reflect the actual mitigation construction and maintenance costs otherwise incurred by the private applicant based upon similar projects. Once again, the fees recommended to Council appear to fail to meet this test, which leads us to conclude that the adoption of the fee schedule as proposed will only serve to discourage rather than enhance continued economic investment in the harbor by Schnitzer Steel Industries and other existing and future industrial stakeholders.

For the above reasons, we urge the Council to defer further consideration of the fee In Lieu report as proposed and convene a working group comprised of public and private stakeholders assigned the task of developing a modified proposal which ensures a more cost effective alternative to onsite River Review mitigation. As noted, we continue to believe that this tool is vital component of a balanced regulatory scheme, which encourages economic investment in the harbor in a manner which also maintains or enhances existing natural resource values in the area.

In addition, we urge the Council to direct the Bureau of Environmental Services and the Bureau of Planning and Sustainability to develop proposed amendments to the River Plan code which provide an applicant with the additional opportunity of mitigation undertaken by the applicant at an offsite location of his or her selection, subject to City review and approval. Under the current regulations, an applicant who is unable to utilize the fee in lieu is limited to offsite mitigation at one of the specific identified City sites or a future mitigation bank, neither of which may prove either available or practical in the near term. Since any alternate offsite mitigation location proposed by an applicant would be subject to review and approval under the River Review process, a complete replacement of any natural resource functions and values lost as a result of project development can be assured. Further, this approach is utilized today for mitigation undertaken for the U.S. Army Corps of Engineers and the Oregon Department of State Lands

permit compliance, and the provision of a similar opportunity under the River Plan can only serve to further the permit review coordination objectives embraced by the Council.

In closing, Schnitzer Steel Industries remains committed to working with the City and other interested stakeholders in the development of a River Plan which 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 the commitment of additional resources and time, including full participation by affected stakeholders, can only serve to enhance the effectiveness of the fee in lieu tool. Conversely, the failure to undertake this additional effort may result in reduced investment in this vital employment area, as well as corresponding reduction in the potential for maintenance and, hopefully, the enhancement of the resource values in the harbor.

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)

Willamette RIVERKEEPER®

November 17, 2010

Mayor Sam Adams
City Council
City of Portland
1221 SW 4th Ave
Portland, OR 97204

Dear Mayor Adams and Commissioners,

I am writing on behalf of Willamette Riverkeeper and our members in the Portland area in regard to the River Plan/North Reach related items that will come before City Council on November 17, 2010.

In Lieu Fees:
The in lieu fees proposal developed by city staff is a good one, and the scientific approach is solid - and is accepted widely. I urge that you adopt the in lieu fee structure and supporting reports in their entirety. I also believe that you should reject efforts to weaken this aspect of the program. It seems to us that in lieu fees are a fair approach to meeting industry's needs, yet making the necessary improvements to ecological function that are now very deficient in the North Reach of the Willamette River.

Public Subsidies For 50% of In Lieu Fees:
Willamette Riverkeeper concurs with the Audubon Society of Portland, and the Urban Greenspaces Institute - that the public should not subsidize reasonable fees that industrial developers should pay. Those who develop in the North Reach should pay the real costs of their impacts. Most importantly, the Industrial Development Subsidy proposal relies on the City's general fund, which will place a burden on already underfunded City programs.

University of Portland Development Agreement:
Willamette Riverkeeper supports the Planning Commission's recommendation that the City place P Zone overlays on the bluffs at the University of Portland. This area is a key corridor that enables wildlife to travel from one area to another, providing much-needed connectivity. We believe there are alternatives to placing a parking garage in one of the most scenic and environmentally sensitive sites in the North Reach. While we are not supportive of the Parking Garage, we are supportive of the staff derived mitigation package that would be required should that project proceed.

Siltronic Easement:
Willamette Riverkeeper shares the Audubon Society of Portland's, and the Urban Greenspaces Institute's concerns about the proposed easement in the Siltronic Agreement. As proposed, this easement would neither achieve natural resource objectives on this site nor adequately compensate for the removal of environmental overlays from the rest of their property.

While the Siltronic agreement calls out for protection of "habitat for grassland associated wildlife species" and "wildlife connectivity between Forest Park", these areas will be least protected by the proposed easement. In fact, the easement is too small, and will not provide the necessary space for meaningful habitat restoration, and will not provide enough connectivity. This is an example of the City of Portland proposing a setback that is too small to adequately accommodate the various functions that are included.

Conclusion
We believe that the City of Portland can help protect and restore the Willamette River in this stretch. The business community that benefits from this stretch of river can continue to benefit greatly, even if they are required to do a bit more for river habitat that has previously been requested. This is a highly degraded stretch of river even if we were to remove the Superfund listing, and the companies that exist there today have been a significant part of that degradation. Given the State of the River today, we need a River Plan that requires action and protects the Public Trust.

Respectfully,

Travis Williams
Willamette Riverkeeper

Working Waterfront
COALITION

36831

200 SW Market St., Suite 150
Portland, OR 97201

November 17, 2010

Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman
City of Portland
1221 SW 4th Avenue
Portland, OR 97204

Dear Council:

The Working Waterfront Coalition sincerely appreciates your willingness to establish an in-lieu fee instead of on-site mitigation for the unavoidable impacts that may result from new business investment in the harbor. Several of the industrial sites in the harbor are fully utilized for business purposes; on-site mitigation would be nearly impossible at these locations. Further, the success of the River Plan simply depends upon this important financial tool. However, the proposed in-lieu fee is exceptionally high, and in our experience well beyond what might be proportional to the impacts that may result from the projects we envision for the harbor.

The proposed in-lieu fee is based on preliminary cost estimates for select restoration projects, which are described in Appendix C to the In-Lieu Fee Report. The preliminary cost estimates start with the estimated hard costs for these restoration projects, and then adds 90 percent to such hard costs for soft costs, and 75 percent as a contingency. While we understand this approach is intended to account for uncertainties, the conservatism of the approach makes the in-lieu fee quite large, and frankly, not very useful since it will kill most projects that require off-site mitigation.

The underlying concept of the in-lieu fee is the cost of the Discounted Service Acre Year (DSAY). Many of our members operate at multiple locations around the country, and some have direct experience with Superfund restoration projects where DSAYs have been applied. Within the region, DSAYs have been developed for areas in Commencement Bay, and are under development for the Duwamish River in Seattle. The DSAY values for these locations provide a point of reference for the values proposed for use in calculating the in-lieu fee.

Within Commencement Bay, the costs of a DSAY for the Hylebos Waterway and the Thea Foss Waterway were set at approximately $52,000 and $67,000, respectively. While the cost per DSAY for the Duwamish River has not been established, the Trustees have indicated each DSAY will be about $125,000. All of these DSAY costs would be applicable to the Riverine habitat as described in the In-Lieu Fee Report. By comparison, the proposed cost per DSAY for the Riverine habitat is $235,000. We do not believe there should be this much discrepancy.

We respectfully request that the Council direct staff to revisit the cost estimates that are the basis for calculating the DSAY, and allow a small group of our representatives to participate in this effort. In the alternative, please amend the River Plan to allow us to mitigate off site on properties of our own choosing so that we can more effectively manage the project costs.

Again, we appreciate your willingness to propose an in-lieu fee instead of on-site mitigation.

Sincerely,

T. Alan Sprott

T. Alan Sprott
Chair and VP Vigor Industrial

Good afternoon,

My name is Walt Stokman and I am the Production Coordinator for Marine Operations at Gunderson. I appreciate the opportunity to speak with you about the second phase of the River Plan.

I am here to represent my associates at Gunderson that I direct and work with everyday; hardworking, skilled, blue collar, and family-wage job holders. At Gunderson the historical number of my co-workers has been 1,000 wage earners and we hope to be able to build back up to at least that level over time. These jobs are not guaranteed and we have to work hard every day to remain competitive.

An example of how fragile these jobs are just occurred in our marine operations where we had to curtail operations earlier this year and have recently reduced direct labor jobs from approximately 400 to 100 due to barge order cancellations. To regain these jobs we have to compete against barge building operations throughout the US in places such as the Gulf Coast.

One of the ways that we have remained competitive is by investing in our operations, with a major expansion having been completed in 2006. Another way we have remained competitive is by improving efficiency in Marine Operations by approximately 40% since that time.

While we are working hard to increase efficiency and remain competitive, we feel beset by an increase in obstacles on the regulatory front, obstacles which many of our competitors do not face. The second phase of the River Plan is another rock in our rucksack which makes us less competitive and less able to modernize or expand our operations as necessary.

Our concerns are:

1. The City did not complete the Action Agenda promised in April and did not follow the collaborative process that was promised at that time.

2. The proposed administrative process will not be able to effectively implement the needed additions to the River Plan in a manner consistent with City ordinances and state law.

3. The proposed fees are dramatically too high and the permitting process is still not well defined enough to predictably implement, creating a competitive disadvantage for our operations, putting the jobs of my co-workers at risk.

4. The fee structure is too expensive by a factor of 3 or 4 and there is no nexus between the revenue collected and the environmental impact of the project or the environmental benefit generated from the fee.

5. The City appears to ignore significant concerns of its own Science Panel and takes only those portions which agree with its pre-conceived notion of what is best for habitat.

What we propose:

A. Do not approve the proposed amendments under consideration.

B. Finish the permitting process as part of the River Plan, where it should be.

C. To ensure a cost effective fee structure have the Bureau of Development Services establish a Willamette North Reach Partners organization to implement restoration activities in a cost effective fashion following the

successful program implemented by the Water Bureau for the Bull Run Habitat Conservation Plan.

Thank you.

Submitted by
Walt Stokman

WindWard environmental LLC

200 West Mercer St. • Suite 401 • Seattle, WA 98119
Phone: 206.378.1364 • Fax: 206.217.0089 • www.windwardenv.com

MEMORANDUM

To: David Harvey, Gunderson, LLC

From: Ron Gouguet

Subject: Comments on the City of Portland's Response to the North Reach Science Panel Following the Open House Meeting

Date: November 17, 2010

On June 18, 2010, the City of Portland (City) held a North Reach Science Panel meeting so that natural resource experts could advise the City regarding the accounting system proposed for the North Reach of the Willamette River. Panel members included Derek Booth of Stillwater Sciences and the University of Washington; Bobby Cochran of the Willamette Partnership; Brent Haddaway of ICF International (formerly ICF Jones and Stokes); Jimmy Kagen of Oregon State University, Portland State University, and the Oregon Natural Heritage Information Center; Mary Kentula of the US Environmental Protection Agency (EPA); Brian Lightcap, retired from the US Army Corps of Engineers; and Randy Moore of Oregon State University.

On behalf of Gunderson, I provided testimony prior to the science panel meeting. I was available, but only city employees and members of the science panel were allowed to participate. However, the proceedings were videotaped and it was possible to review the content of the meeting.

The purpose of this memo is to examine the City's use of the Science Panel's guidance, and to reiterate some of the fundamental questions that, although they have been repeatedly raised even during the Science Panel discussion, have not been adequately addressed by the City. If the implementation of the envisioned 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 .

SELECTED OUTSTANDING QUESTIONS

During the session it became clear that the panel had many concerns about the City's approach to valuation of both the impacted habitats and restoration areas. We have previously reviewed the City's proposals and raised several of these issues. Several were also identified by the science panel and were 'explained away' by City staff.

- The "age" of HSI/HEP as an evaluation tool. One member noted that "everyone who used HEP is retired.
- Subjectivity of the HSI/HEP evaluation process. One member related that when NRCS soil scientists had used the tool, results were all over the map. The City staff pointed out 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.
- City staff stated that they were going to use HEA because the Trustees for Portland Harbor were going to use that technique. The Trustees have stated that they may use Resource Equivalency Analysis. It's unclear what tools the Trustees will use but clearly HSI is not one of them.
- Given current zoning and land use, rarely would a pristine habitat be converted to industrial use in the LWR; rather most properties have been subject to past or current industrial/commercial use. The baseline condition of the properties within the North Reach is likely highly altered with limited ecological function or service. Any approach to evaluating habitat quality must be based on current conditions and the communities that actually exist rather than on historical conditions or prescriptive HSI inputs. The Trustees must evaluate the "baseline" condition of the riverine habitat and seek compensation only for injury due to hazardous substance releases (the "but for" condition). When asked, senior City staff stated that this would not be done because too little habitat value remains and thus too little compensation would be required to "enhance' existing areas. The goal stated by the City 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.
- It seems unlikely that existing "target species habitat" patches would 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. Other ecosystem services such as storm water retention, urban sediment removal, changes in impermeable surface area or water quality from runoff that may be provided by developed industrial properties are not captured by the City's proposed approach. Science panel member also asked these questions and did not receive suitable answers from City staff.

- The science 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. We 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.
- An evaluation procedure to address the areal extent of impacts or functions is currently not included in the approach nor is there any detail on how the models would be applied to each site being evaluated; in order to be effective the proposed approach must consider this.

CONCLUSION

There remain several key elements of the mitigation program that the City needs to further develop and refine, including:

- 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 and the target species to be used (e.g., should salmonids be the target, or should an assemblage of native aquatic species be used instead?)
- the way in which the North Reach mitigation banking program fits with other City programs and activities along the waterway, such as stormwater infrastructure upgrades to enhance water quality

Given all of these ongoing developments, 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.

Submitted by
Walt Stokman

36831

Cost Information for Non-City River Restoration
City Council Hearing, November 17, 2010

Restoration Cost Perspective: South Waterfront Shoreline Restoration and Bioswale

Project: South Waterfront Shoreline Restoration and Bioswale
Sponsor: Private Land Owner
Year: 2003
Construction Cost: $384,300
Soft cost: 9,800 permit consultant+9,500 City + 25,000 Design+ $10,000 CM=$54,300
Total Cost: $438,600
Riverbank: Approximately 250 lf
Dollars/LF of impact $1754

Goals:

- Removed artificial structures including a large overwater pier with creosote pile
- Re-sloped stream banks to increase stability and facilitate revegetation
- Installed large wood in the project area to increase cover, shelter, and refuge potential (large wood complexes encourage formation of scour pools that provide deep, shady, cool refuge areas)
- Revegetated the site to increase habitat complexity and provide shade and overhanging vegetation over the Willamette River

Notes: Monitoring and maintenance was assumed by the City. Irrigation water was cut off during first summer and plantings were damaged. Reestablishment of some plantings has proved to be a challenge.

Special Note: Each project has elements not directly associated with habitat restoration which increase cost. These costs have not been removed as each project will have such elements.

Restoration Cost Perspective: Germany Creek Enhancement and Flood Plain Reconnection

Project: Germany Creek Enhancement and Flood Plain Reconnection
Sponsor: Non Profit (Columbia Land Trust)
Year: 2008
Construction Cost: $69,443
Soft cost: 27,300+10,000 Owner time - Total $37,300
Total Cost: $106,743
Riverbank: 1150 LF
Dollars/LF of impact $93

Goals:

- Remove artificial dikes which limited flood plain migration and connectivity
- Remove 5000 cy of material from flood plain
- Recontour and plant native vegetation over 2 acre gravel parking
- Develop wetland connection to spring
- Reconnect existing ponds and establish flow to enhance off channel refuge
- Introduce large wood structures into main channel to provide velocity and bed load controls

Project includes monitoring by the Wild Fish Conservancy and Columbia Land Trust. Photo point monitoring, fish surveys and other field work will be conducted. No changes or response to natural events are planned. Restoration to be completed by creek/river processes.

Special Note: Each project has elements not directly associated with habitat restoration which increase cost. These costs have not been removed as each project will have such elements.

Restoration Cost Perspective: Terminal 4, Port of Portland

Project:Terminal 4 Port of Portland
Sponsor: Port
Year: 2002-2003
Construction Cost: $2,100,000
Soft cost: $990,000
Total Cost: $3,090,000
Riverbank: 1800 LF
Dollars/LF of impact $1716

Goals:
Project was completed as part of a facility renovation in the working harbor to attract a large industrial business. Restoration elements included:

- Lay back slope to a shallow fish friendly slope
- Introduce structure to encourage additional natural wood structure accumulation
- Install 7.5 acres of riparian plantings

Project includes monitoring as described in the permit conditions issued by COE and DSL.

Special Note: Each project has elements not directly associated with habitat restoration which increase cost. These costs have not been removed as each project will have such elements.

Additional projects not pictured included in the percentage average include, Brownwood, Kelly Confluence, Tryon Confluence, Columbia Slough Confluence, Errol Confluence and Errol Heights wetland.

Mission: To enhance the region's economy and quality of life by providing efficient cargo and air passenger access to national and global markets.

PORT OF PORTLAND
Possibility. In every direction

November 17, 2010

36831

Mayor Sam Adams
City Of Portland
1221 SW 4th Avenue
Portland, Oregon 97204

Mayor Adams and City Councilors,

As you know, the Port of Portland is committed to helping American producers increase their exports to foreign markets. We recognize the higher value that exports generate for producers, their employees, and the communities in which they're located. The most significant constraint that seaports face in increasing U.S. exports is the capacity and efficiency of the infrastructure that transports exports to seaports and to overseas markets, that's why being able to improve and modify our facilities in the harbor is a truly a competitiveness issue.

We appreciate your leadership in working through the complex issues of the River Plan/North Reach. We also appreciate your attention to our request to provide an in- lieu fee option. We have carefully reviewed the basis for the fees and have a recommendation for your consideration

The architecture of the fees creates the foundation for the success of the river plan and as such they need to make sense and be reasonable. The proposed off-site mitigation fees are too high. We fear the result will be that companies that have no other choice but off-site will choose not to invest, discouraging both economic growth as well as habitat restoration.

We suggest a re-examination of the fees. In each of the habitat categories, one of the sites created is a difficult site to develop as proposed, which skews the average cost per square foot. One approach would be to eliminate the high "outlier" and use the other two cost estimates as the basis for the fee. Another approach would be to set the fee based on achieving a baseline habitat for the site as opposed to "full build" as is currently recommended. In either case, the fees would be commensurate with the development impact instead of being based on the sites complete re-build and physical variability.

We would be happy to participate in sharing our mitigation site development costs and approach, if that would help.

Sincerely,

Sebastian Degens
Planning & Development Manager, Marine & Industrial Development
Port of Portland

7200 NE Airport Way Portland OR 97218
Box 3529 Portland OR 97208
503.415.6000

November 16, 2010

Mayor Sam Adams
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Nick Fish
Commissioner Dan Saltzman
City of Portland
1221 SW 4th Ave
Portland, OR 97204

Dear Mayor Adams and Portland City Council,

I am writing on behalf of the Audubon Society of Portland and our 11,000 members in the Portland Metropolitan Area regarding the various River Plan/ North Reach related items that will come before council on November 17, 2010.

In Lieu Fees:

We believe that the City has done an outstanding job developing the in lieu fees as well as the supporting science, methodology and modeling that underpins these fees. We would note that this ground has been revisited many times over during the past several years and has included extensive peer review by independent consultants and independent science panels. The City's methodology and in lieu fee structure has been repeatedly validated through these processes. We strongly urge the city to adopt in its entirety the in lieu fee structure and supporting reports.

We understand that industry is again pushing back on the legitimacy of the in lieu fees arguing that they could accomplish the same work at less cost. The degraded state of the North Reach today stands as testament to just what industries "lower cost" approaches have achieved. In fact most of the mitigation and restoration that has been required under city permits over the past three decades simply does not exist today or exists in a highly degraded state. The in lieu fees were developed at industry's behest in order to provide industrial property owners with increased on-site flexibility while mitigation banks are still in the process of being established. It is reasonable and appropriate to set the in lieu fees at a level that will ensure that natural resource impacts are fully mitigated and which will begin to reverse decades of degradation that accumulated under the existing system. The degree to which industry believes that the same results can be achieved a lower cost will serve as an incentive to either do the mitigation themselves on site or to support the fast track establishment of independent mitigation banks financed in a competitive market.

By establishing in lieu fees, the city is assuming liability for the mitigation obligations of industrial property owners. We believe that the city has gone far beyond due diligence in validating its fee structure to ensure that it is both reasonable and sufficient to accomplish mitigating for lost natural resource functions that result from industrial development.

Public subsidies to cover 50% of industry's in lieu fee obligations:

Audubon strongly opposes the use of public funds to subsidize 50% of industry's in lieu fee obligations over the course of the next two years. This proposal strikes at the heart of the River Plan which has at its core the principle that for the first time, river industries will pay the full costs of their impacts on natural resource function. We do not believe that it is appropriate to ask taxpayers to subsidize industries that profited tremendously from our river over the past decade and which bear primary responsibility for the polluted and degraded condition that the river is in today.[1] Taking funds from the general fund to subsidize the cost of river industry impacts to natural resources perpetuates a culture of degradation in the North Reach fostered by the fact that industry has never had to internalize the real costs of its activities. It also reallocates limited public dollars that could be used to address deficient budgets in general fund programs or to meeting the city's own obligations in the North Reach which are substantial under the River Plan.

The River Plan has already been severely weakened by a series of concessions to industry that have been made over the past two years. A restoration fee which was supposed to help fund ecological improvement of the river, above and beyond mitigation costs, was reduced to the point of being virtually meaningless by the planning commission. A series of weak standards and outright exemptions to the mitigation fees were subsequently added by city council. Analysis by the Planning Bureau conducted since the River Plan was adopted has revealed that many of these concessions went far beyond what was understood at the time they were adopted in terms of reducing the efficacy of the River Plan's natural resource protections. The environmental community accepted the removal of more than 5 miles of industrial waterfront from protected status under the old greenway code in exchange for assurances that industry would fully mitigate for impacts to the highest value natural resources areas that remained. As an organization that has participated in good faith in this process for nearly a decade, it is important to us and to our members to see that the city will not abandon arguably the core principle of the River Plan with no public discussion and at literally the last minute. This decision stands in stark contrast with the extensive delays and additional reviews that have been instituted to repeatedly address industry concerns.

Financing mitigation for industry's impacts on the backs of the taxpayers and the general fund does several things:

- It undermines the core principle of the river plan which is that industry pays the real costs of their impacts;
- It sets a terrible precedent that is likely to be carried forward beyond the two years established in the resolution;
- It places the cost burden on the taxpayer rather than on the industries that profit from developing our river;
- It takes funding away from general fund programs like parks, police and fire which have sustained budget cuts in recent years;

[1] It is worth noting that River Industry has faired far better than the environment under the existing Greenway Code. According to the Draft BPS Responses to Mayor Adam's Questions, January 21, 2010, "Generally marine tonnage, capital investment, and land absorption have significantly grown in the long term." Data in the report indicates that net income for North Reach Businesses more than tripled between 2000 and 2008 (from $54,568,214 to $162,683,366).

- It eliminates an incentive for industry to develop in an ecologically responsible manner by externalizing rather than internalizing the costs of those impacts.

We urge you to reconsider this last minute decision which would fundamentally undermine the integrity of the River Plan process and the substance of the River Plan itself.

University of Portland Development Agreement:

Audubon opposes the development agreement that is being proposed with the University of Portland. We continue to believe that the Planning Commission made the right call in choosing to retain the p-overlays on the bluffs at the University of Portland. The bluffs provide an important corridor for birds and other wildlife as well as distinct sense of place for visitors and residents of North Portland. The bluffs are one of the defining features of the North Reach landscape. We believe that the best outcome would be protect and restore the bluffs as anticipated in the draft River Plan presented to Council in 2009 and locate an alternative site for the University of Portland parking garage. We are disappointed that the City chose to bypass conducting an alternatives analysis for the University of Portland parking garage when it appears to us that alternative locations are in fact available. We believe that placement of a parking garage on the bluffs will ultimately prove to be a highly visible, long-term embarrassment to both the University and the City.

That being said, we do believe that city staff have done a good job developing a mitigation package as part of the development agreement. The quality and quantity of the proposed mitigation at University of Portland stands in stark contrast with the very deficient mitigation package that has been developed across the river at Siltronic. While we disagree with the council's decision at the University of Portland site, the mitigation is consistent with what we expected to see in these types of development agreements. We remain very concerned however about temporal loss of connectivity since the mitigation will take decades to become fully established and also about the University's ability to adequately protect the mitigation area from disturbance and encroachment given its location on the lower portions and base of the bluff and its proximity to very active recreation areas. We continue to believe that protection restoration of the bluff itself would be a practically and ecologically preferable strategy to maintain and improve connectivity.

Should the City choose to move forward with this development agreement there are four issues that we have worked with staff to address and that we would like to reiterate on the record at this time. This does not constitute tacit support for moving forward with the development agreement; it is simply a nod to what appears to be the political reality of this situation:

1. Protection status of the mitigation site: It is important that mitigation sites established as part of development agreements be protected in perpetuity. We do not believe that p-overlays are sufficient to accomplish this objective as they can be removed by future council decisions. We encourage the City and University of Portland to establish an easement or some other legally binding mechanism that will ensure that the mitigation area is protected in perpetuity.
2. Maintenance of the mitigation area: The mitigation being proposed at this site will take decades to reach maturity. Oak restoration in particular can take upwards of 50 years. It is therefore critical that the agreement include a binding requirement to maintain this site in perpetuity. We are satisfied that the City and U of P have in fact met this objective.
3. Bird friendly building design: Collisions with man-made structures are the number one cause of anthropogenic related bird mortalities in the United States. Current building

trends including many designs related to energy efficiency are actually exacerbating this hazard. Audubon is currently working with the city on "bird friendly" building guidelines. We are pleased to see a commitment to adopting bird friendly building standards included in the agreement.

4. C-overlay area to the south of the parking garage: We are surprised to see a large c-zone overlay area retained to the south of the parking garage footprint area. Our understanding is that this area is being maintained as a c-overlay rather than a p-overlay to accommodate changes that may occur with the existing road. Since this area provides critical wildlife connectivity values, we would encourage the city to reduce the c-overlay area to the absolute minimum necessary to accommodate the road and convert the rest of the area to a p-overlay. At bare minimum, we would encourage the city to make it explicitly that future development in this area is limited to road realignments.

Siltronic Easement:

Audubon remains strongly opposed to adoption of the Siltronic Agreement and urges the City not to accept the easement on the Siltronic property. As per prior communications with Council, we do not believe that the easement is sufficient to achieve natural resource objectives on this site. Nor do we believe that the easement adequately compensates the community for the removal of environmental overlays from the rest of the property. The Siltronic Valuation Report produced by the City and dated May 4, 2010 captures the primary flaws with this easement including the fact that it does not meet the minimum widths for a functional wildlife corridor, it does not provide enough space to meeting minimum slope requirements to prevent bank failure or create a functional wildlife corridor, and the allowed uses within the easement will create wildlife disturbance and reduce habitat function.[2] It is ironic that the easement agreement

[2] The May 4, 2010 Siltronic Valuation Report developed by the city states the following:

- **The new easement configuration does not meet the minimum widths for a functional wildlife corridor in some locations.** There is a minimum width required for a functional wildlife corridor depending on the wildlife species at a site. For large mammals, which are currently using Siltronic's site for connectivity between Forest Park and the Willamette River, that minimum width is 300 feet. There are other wildlife species at Siltronic's site that require different widths ranging from 100 ft (reptiles) and amphibians to 200 ft (bird species). Narrow locations, or pinch points, would result in some wildlife species, particularly large mammals, no longer using the corridor.
- **The new easement configuration doesn't provide enough space to meet the minimum slope requirements to prevent bank failure or to create a functional riparian corridor.** A long-term restoration goal is to daylight Doane Creek, at least in part, which would require a minimum width on each side of the creek. Because the piped portion of the creek is next to a railroad berm that can't be moved, if the creek were to be day-lighted it would have to be centered further from the railroad to create stable banks and a functional riparian area. To

City / Siltronic DA –Valuation Rationale 4

achieve a functional riparian area, with a desired bank slope of 1:5 (rise to run), the corridor width would need to be 200ft (100 ft on either side of the creek), at the upstream end; on the down stream end the corridor width would need to be 230ft wide (110ft on each side of the creek). The minimum slope to prevent slumping is 1:3 (rise to run); however, at this slope the riparian corridor functions would be compromised. Based on a 1:3 slope, the corridor width at the upstream end would be 130ft wide (60ft on each side of the creek) and 142 ft at the downstream end (66 ft on each side).

- **The new allowed uses (Exhibit E) create disturbance to natural resources and diminish function.** Ground disturbing activities remove vegetation, modify soil and topography, and create noise and vibration, all of which result in reduced natural resource functions within the easement

specifically cites "habitat for grassland associated wildlife species" and "wildlife connectivity between Forest Park...and the Willamette River" as primary values within the easement area when in fact these are exactly the values that are being traded away in this agreement.

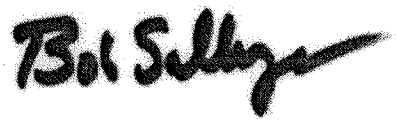
Finally, we are concerned that this agreement completely ignores the trail alignment that is described in the North Reach River Plan at this location. Audubon repeatedly attempted to raise concerns about the need for an easement that is sufficient to provide for habitat restoration and connectivity objectives as well as a critical trail linage between the east and west sides of the Willamette River. By ignoring River Plan trail objectives, the City has set the stage for either further compromising and already insufficient wildlife corridor by encroaching on the already deficient easement with a trail or alternatively abandoning a core trail objective in the River Plan.

On a parcel of this size, we believe that the City and Siltronic could have and should have either done better to meet the multiple objectives of the River Plan or that the City should have bypassed this agreement and retained environmental overlays on this property until a more satisfactory agreement could be achieved.

NoRAC:

Audubon appreciates Council's consideration of our application to serve on NoRAC. We are however struck by the fact that nine out of 20 positions on the NoRAC are filled with representatives of industrial interests and/ or their consultants. This seems to us to be a disproportionate representation of a single stakeholder group. We urge the Council to establish a more balanced representation of community interests.

Thank you for your consideration of our comments.



Bob Sallinger
Conservation Director
Audubon Society of Portland

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area. One-time disturbance activities have a short term affect that can be mitigated by restoring the habitat. Long-term or repetitious activities may result in some wildlife species abandoning the corridor and could also reduce vegetation establishment.