

WILLAMETTE FALLS LOCKS COMMISSION

Commission Meeting #5 September 5, 2018, 1:00 – 4:30 PM

*West Linn City Hall Council Chambers
22500 Salamo Road, West Linn, Oregon 97068*

Meeting Minutes (Minutes: Pat Vivian)

Commission Members Present:

Russ Axelrod [*City of West Linn*], Brooke Berglund [*PGE, ex officio*], Sam Brentano [*Marion County*], Sandy Carter [*Willamette Falls Heritage Foundation*], Betty Dominguez [*Metro*], Dan Holladay [*City of Oregon City*], Karen Homolac [*Business Oregon*], Rep. Bill Kennemer, Rep. Mark Meek, Rep. Julie Parrish, Stan Primozech [*Yamhill County*], Bill Ryan [*Department of State Lands, ex officio*], Rep. Andrea Salinas, Martha Schrader [*Clackamas County*], Stan Watters [*Port of Portland*].

Facilitation and Project Team:

Andy Contugno [*Metro*], Kristine Evertz [*Summit Strategies*], Michelle Giguere [*Summit Strategies*], Caroline Mellor [*Oregon Solutions*], Lisa Naito [*Naito Public Affairs*], Turner Odell [*Oregon Solutions*], John Southgate [*John Southgate LLC*], Pat Vivian [*Wordsmiths*], John Williams [*City of West Linn*], Trent Wilson [*Clackamas County*].

Other Attendees:

John Leitz [*staff*], Mark Mathews [*City of Wilsonville*], Marcus Cis [*Rep. Meek's office*], Laura Terway [*Oregon City*].

1. Welcome, Agenda Overview and Business Items

Turner Odell, Oregon Solutions, introduced the agenda including the objectives for the Commission process and for today's meeting. He welcomed Rep. Bill Kennemer who joined the Commission today for the first time. He also noted that Commissioners are always welcome to abstain from voting on a particular topic. Any future abstentions will be reflected in the minutes.

Copies of the agenda and eight documents were distributed at the meeting:

1. A letter dated 8/6/18 from Mayor Axelrod addressed to Metro council, requesting that repair and reopening of the Willamette Falls Locks be included in the strategic list for the 2018 Regional Transportation Plan (RTP).
2. A memo from John Southgate that refines governance and funding options via five scenarios.
3. A flow chart that breaks the five scenarios into steps.

4. A fact sheet on Oregon special districts.
5. A fact sheet on Oregon intergovernmental agencies (ORS 190).
6. A calendar and outreach update for the 2019 legislative session from Lisa Naito.
7. An action items memo for the 7/18/18 Locks Commission meeting.
8. Minutes for the 7/18/18 meeting, which were finalized today. The minutes capture public testimony in detail, some of which was oral only. All written public comments to date have been combined in a PDF file which is available on the Willamette Falls Locks Commission website.

Today's agenda consisted of several updates, with the main focus on governance and finance options in light of the September 28 deadline to request a measure from the Legislature during the long session.

Mayor Russ Axelrod, City of West Linn, said the Commission's leadership thinks it's time to start narrowing the opportunities and direction for the Commission's decision regarding the Locks. At the same time, we're in the due diligence phase where we need to collect all background information regarding the vision and financial picture, including breaking out the costs of restoration vs. ongoing operations and maintenance.

By the next meeting on October 17, a report from the independent engineering firm hired to perform a cost analysis should be available. This is critical information for the Commission in its decision making process. Kevin Brice, deputy district engineer for the Corps Portland District, introduced Valerie Ringold, who is temporarily replacing Pat Duyck until a new project manager is selected. She said the Corps would welcome an opportunity to review the draft report and provide feedback before the next meeting.

Russ Axelrod, West Linn, said any clarity the Corps can provide on remediation costs, especially environmental concerns (e.g., pursuant to the Corps' Section 106 obligations), will help inform the governance selection process. He urged Commission members to make attendance a priority, given the need for a quorum to make crucial decisions at upcoming meetings. He also publicized the Commission's interest in hearing from the public. The next oral testimony will occur at the December meeting, but comments are welcome at any time and should be sent to Turner Odell, whose address is on the website.

The project team is scheduling a meeting with the Department of Justice in the next few weeks to complete some legal investigation, Turner said. It is hoped the DOJ will send a representative to future Commission meetings.

2. Corps of Engineers Update on Disposition Study

Kevin Brice and Valerie Ringold provided an update on the Corps disposition study. The District has volunteered the Willamette Falls Locks for USACE Headquarters in Washington D.C. to use as a pilot nationwide for the disposition process. The Portland District report has elicited an exchange of questions and comments from Headquarters staff. District staff were asked to compile a

director's report, which Headquarters has now. Once it's approved and finalized, the Corps will be able to make decisions about turning the Locks over to another entity and funding repairs.

Is Congressional action needed to turn the Locks over to another entity? This is an unknown. While the report recommends repairs to the Locks along with seismic stability work, the Corps does not intend to repair the Locks to full operational status. The seismic work needs to be done no matter what. Is it possible to combine Corps funding with other funding secured by the Commission? This question also remains to be clarified.

The Corps is committed to a smooth transition. The formation of this Commission has sent a strong message to Headquarters that Oregon is serious about preserving the Locks, Kevin said. Russ Axelrod said the Commission views this process as a partnership with the Corps.

Valerie described the "Section 106" process. The Corps recently met with the State Historic Preservation Officer (SHPO) who recommended continuing with transfer of the Locks. If Congress must make a decision for the Corps to transfer ownership of the Locks, that would probably trigger a new Section 106 Memorandum of Agreement (MOA) governing the transfer process. Russ asked about the timing, and about funding resources for the transfer. Kevin said restoration would probably happen next year, linked to the disposition study. He was not sure when the seismic work would occur. As for funding the transfer, the Locks could compete for a grant under a Corps program that provides technical assistance to local entities for engineering and operations. The typical grant is around \$100,000 which the Corps would use to hire expert staff to facilitate the transfer.

Some Commissioners wondered how the current Administration would be likely to view a public-private partnership. The current climate is favorable to the idea of having a local entity take on responsibility in partnership with a federal agency, Kevin said.

Commissioners raised several questions:

- **Q. Brooke Berglund, PGE** – What about federal funding for repairs to the Locks? **A.** That would depend on Congressional appropriations. The soonest it might happen is FY 2019.
- **Q. Stan Watters, Port of Portland** – How will the Corps be involved from a regulatory standpoint after the transfer? **A.** That's covered in the draft report, which says regulatory power will rest with the state.
- **Q. Russ Axelrod, West Linn** – When will the Commission get a copy of the final director's report? **A.** Once it's approved and the district commander has authority to sign a FONSI, it will be posted on the Corps website.
- **Q. Sandy Carter, Willamette Falls Heritage Foundation** – Will the COE protect its investment upriver after the transfer, or will that be part of an IGA that has responsibility

for the river? **A.** The main federal concern at this point is fish passage. There are a number of ways it could be handled.

- **Q. Andy Cotugno, Metro** – What is the ongoing Corps regulatory role once disposition occurs? What kind of oversight of dam safety would apply? **A.** The Locks would need a permit to avoid or mitigate damages to wetlands under Section 404 of the Clean Water Act. The purpose of a Section 10 review is to issue a permit for any structure that might affect the federal navigation channel. The 408 process requires a permit to ensure the work will not have a negative effect on levees in the area. If any of these things are triggered during ownership and maintenance of the Locks, permits might be required. Dredging would be likely to trigger a federal review.

3. Legislative Update and 2019 Legislative Session Timelines

Lisa Naito, Naito Public Affairs, gave an update on advocacy and outreach the project team is doing in preparation for the 2018-19 Oregon legislative session. She distributed copies of an outline and a calendar of legislative deadlines.

All legislative members are committed to following a bipartisan approach, she reported. Outreach efforts include legislative presentations as well as connections with Gov. Kate Brown's office, tribal and local governments, and other stakeholder organizations. Next steps involve following the Commission's recommendations and communicating with the delegation.

Questions and comments followed:

- **Q. Russ Axelrod, West Linn** – Are we coming up with an ask for the Legislature? **A.** That will depend on the direction the Commission takes. The project team will meet after today to look at a strategy based on the Commission's direction. The Commission can also submit a legislative request for bills to be drafted.
- **Q. Russ Axelrod, West Linn** – What is the current status of PGE's due diligence? **A.** PGE has hired a consultant to look at how the island and waterfront might be repurposed in future, Brooke Berglund said. PGE is also looking at transportation access to the site, which is the biggest concern in redeveloping the island. The consultant will report in early October.
- **Q. Dan Holladay, Oregon City** – How much power does the PGE dam produce? **A.** Eighteen megawatts, which is not much in terms of power supply, but it provides crucial habitat benefits and fish passage upriver, as well as being the first dam in PGE's history.
- **Andy Cotugno, Metro**: – If you're going to ask voters in May 2019 to fund capital improvements, we need to start that process now.

- Dan Holladay, Oregon City – The private side of the Willamette Falls legacy project will have a new owner after closing in the next 30-60 days. The change is expected to be positive.
- Russ Axelrod, West Linn – ODOT is moving the I-205 widening project forward including improvements to the Abernethy Bridge. This will have a major effect on the transportation network in the West Linn-Oregon City area.

4. Governance and Finance Options and Scenarios

The main focus of today's meeting was John Southgate's August 27 report presenting five governance options for the Locks (single government agency, a new special district, an intergovernmental agreement [IGA], public-private partnership [PPP], or private ownership) along with a sixth (and unlikely) option, the Corps receives Congressional funding to repair the Locks.

Copies of the report and a flow chart depicting basic steps for development of the options were distributed. All meeting materials will be available on the Willamette Falls Locks Commission website.

Today's discussion was pivotal because the Commission's direction will inform the legislative request, with the Commission facing a September 28 deadline to ask the Legislative Council to draft a measure to be included in the 2018-19 budget. If several options are being considered for the Locks, they could all be combined in the legislative ask. By the end of the year, the request would have to be refined for pre-session final consideration.

Brooke Berglund, PGE, recalled discussion at the last meeting of a potential earmark in Oregon funding for the Metro open spaces bond. The driver will be the kind of entity the Commission selects to operate and maintain the Locks, Rep. Mark Meek said. Funding to keep the Locks operating has bicameral support in the Oregon Legislature. This is a great opportunity to combine maintenance of the Locks with a Metro bond ask.

The Commissioners discussed the governance options with a goal of narrowing down priorities:

Option 1. The Corps conveys ownership of the locks to an existing public agency. At this point, no single agency has expressed willingness to assume financial responsibility for the Locks. John Southgate plans to have conversations with several agencies about the conditions under which they would consider taking it on.

Option 2. The Corps conveys ownership of the locks to a special district. The report lays out several ways to approach this option. It could be a small district, but one that only covers the Locks would probably be too small to secure a permanent funding base. A larger district that includes Wilsonville, Newberg, Yamhill and Marion counties has more potential for success. Commissioners commented:

- Stan Primozich, Yamhill County – Large vessels like the Spirit of Portland probably couldn't access that portion of the Willamette Valley without dredging the river. Dredging has tremendous potential for tourism and even transport of agricultural products down the river. Improvements to 99-W will increase tourist access to the wine industry.
- **Q.** Dan Holladay, Oregon City – Asked Rep. Bill Kenemer about the likelihood of getting a permit to dredge the Willamette River. **A.** Kenemer didn't know, but noted that emergency preparedness is an important angle in terms of acquiring resources.
- **Action.** Russ Axelrod requested that staff look into dredging for emergency preparedness as an action item.

Because there are shoals south of Newberg, we need to know whether boats would be able to navigate to the future port of Newberg without dredging the river, John Southgate said. Kevin Brice said the chance of getting federal dollars for dredging is slim, although the Locks are on a federal channel. The Corps would need to issue a permit for dredging and is willing to work with the Commission on it. There was discussion of whether dredging the Willamette, which hasn't been done in decades, would uncover toxic materials and involve ESA requirements.

- **Q.** Dan Holladay, Oregon City – How long would it take to get a dredging permit? **A.** That depends on whether ESA protections are triggered.
- Stan Watters, Port of Portland – Dredging will require sampling for contaminants that might need to be taken to certified landfill locations. The Port is finding these hauling costs can make a project 8 to 10 times more costly than planned.
- Russ Axelrod, West Linn – A special district would need to be large in order to succeed, but it might be difficult to convince voters in more distant locations that they have an economic stake in the Locks.

A special district can be formed without a vote, but voting is needed to establish a tax base, John Southgate said. To get the votes, it would help to have a track record, say in 3-5 years, that operation of the Locks is helping to create jobs.

Option 3. The Corps conveys ownership of the Locks to an IGA (under ORS Section 190).

This option allows a lot of flexibility. Different agency departments could join and participate in governance, either initially or long term. The entity could contribute to the project or form an agency with its own authority. Nonprofits can be members of an IGA. Commissioners responded:

- **Q.** Rep. Julie Parrish – Would a loosely organized entity such as this qualify for the Corps to turn over ownership of the Locks? **A.** Yes, there could be two different entities, one that owns the land and a different entity that operates and funds the Locks. Because this is a pilot

project for the Corps, the requirements are unclear, especially if Congressional action is needed to transfer ownership.

- Q. Karen Homolac, Business Oregon – Could the boundaries of a special district be altered after it's formed? A. It's possible to annex territory to a special district, Russ Axelrod said.
- Dan Holladay, Oregon City – He's reluctant to form yet another government agency in the metro region.

An ORD Section 190 agency, or a single agency, could take over the Locks as an interim solution, John Southgate said.

Options 4 and 5. The Corps conveys ownership of the Locks to a public/private partnership (PPP) or to a private company. This could take a number of forms, such as having different entities operate the Locks on a seasonal basis. A private company could operate them in exchange for free or reduced access. A company such as Wilsonville Concrete could take it on as an interim measure, which might preclude public access but would at least keep the Locks operating until a special district can be formed. The Corps would be willing to convey ownership to a private entity.

Commissioners had a lively discussion:

- Russ Axelrod – A way of comparing the options (e.g., a matrix) according to certain criteria would help the Commission narrow down the choices at the October 17 meeting. The absence today of Joe Bernert, Wilsonville Concrete, and tribal representatives with Native American treaty rights hinders discussion of a private or public/private partnership.
- Stan Watters, Port of Portland – We need to know who assumes liability if, for example, operation of the Locks damages PGE's dam. Insurance will be needed.
- Stan Primozych, Yamhill County – Solid cost estimates are needed for repair, operation and maintenance of the Locks before any entity would be willing to accept responsibility.
- Karen Homolac, Business Oregon – There are people in the community who could write a check for this if the tax breaks pencil out.
- Rep. Julie Parrish – Early on, this group agreed that conveying ownership to a private entity was off the table, but a public/private partnership would be acceptable. The statutes governing OHSU could serve as a model. We should look at a public corporation model.
- Sandy Carter – Transfer to a nonprofit might not be feasible, so a public/private partnership should be considered. How would that affect access to grant money? The Eco Northwest report could serve as a guideline for cost estimates. We have enough financial information now to make a legislative budget request.

- Stan Primozich, Yamhill County – Why is private ownership considered less desirable, given that most companies would probably use the Locks to generate revenue from the public? A private owner would be more likely to sell the Locks than close them.
- Dan Holladay, Oregon City – A private owner could shut the Locks down in future with no public input if they don't turn out to be economically viable. Such a valuable historical asset shouldn't be turned over to a private company. Public television could serve as a model for funding and governance via a private nonprofit.
- Stan Watters, Port of Portland – A public entity seems like the way to go, but if that doesn't work, private ownership would be preferable to decommissioning. The Commission needs answers to financial questions that a bank would ask before approving a loan. This entity will need fiscal support until it starts generating revenue and a backup plan if it's not self-financing within a few years. The model the Commission develops for funding and governance will influence the pool of agencies willing to participate.
- Bill Ryan, Department of State Lands – Management of the Locks would be in alignment with the Department's mission to manage state waterways, but it would be a new assignment requiring new staff. It would have to be revenue-neutral for the Department of State Lands to assume responsibility.
- Rep. Julie Parrish – It's hard to imagine a private entity taking on \$14 million in repair costs. A budget request of the Oregon Legislature needs to happen in the long session, such as funding for community colleges. Bond money is needed for repair of the Locks and should come from a different source than funding for operations and maintenance.
- Rep. Mark Meek – It's important to set up a governance structure before seeking bond funding. Funds should not be dedicated until the project is refined.
- Q. Rep. Julie Parrish – For how long does the Commission have statutory authority over the Locks? **A.** Four biennium, with funding for one biennium.
- Q. Rep. Martha Schrader – Would a public corporation be the way to go? **A.** The support team will try to clarify that option.
- Q. Stan Watters – What's the difference between a special district and a public corporation? **A.** Public corporations don't have taxing authority.
- Sandy Carter – Expressed concern that the Commission isn't scheduled to meet in November. Turner said a November meeting could be scheduled if necessary.

- Rep. Bill Kennemer – We have fairly good cost estimates and need to act within the window of opportunity. Now is the time to save the Locks. It might not be possible to fund repairs and clarify governance at the same time. We should make a placeholder request that the Legislature allocate \$10-15 million for repairs and a seismic upgrade.

Rep. Parrish advised that the Commission request \$13 million to restore the Locks, with the stipulation that a governance structure will be selected later. Lisa Naito agreed that the time to seek funding is during the long session. There was discussion of whether it would be possible to set up a governance structure over the next six months in step with the legislative calendar.

Turner Odell observed that preferences were emerging from the conversation. Closure of the Locks is seen as least desirable, followed by limited private ownership with limited public access. Public ownership is preferable but would involve political challenges and possibly legislative action, especially if a special district with taxing authority is formed.

There was discussion of the timing of repairs vs. the transfer. Michelle Giguere reminded everyone it could take 2-3 years for the Corps to get approval for the transfer. That gives the Commission time to establish a governance structure, Turner said. A request for legislative action would send a signal to the Corps to start the transfer process, Rep. Parrish said.

- **Action:** Lisa Naito will refine the details of legislative timing.

Turner asked the Commissioners to give the support team direction and priorities in developing the comparison/matrix as requested, especially in light of issues raised today by the Port of Portland and the Department of State Lands.

- Stan Watters – Focus on how to form a public corporation, the option favored by Dan Holladay and Rep. Martha Schrader. Because the Department of State Lands considers care of the Locks to be in alignment with its public mission, that option should be studied. An IGA could be formed to obtain state funding without becoming the owner/operator.
- Rep. Julie Parrish – Consult with the OHSU board on how they develop their budget.
- Russ Axelrod – Assess the questions that need to be answered to facilitate transfer to either the Department of State Lands or Parks and Recreation. The responsible agency should work in partnership with the Corps.

5. Wrap Up and Adjourn

The project team will pursue the priorities Commissioners expressed today. Nothing is off the table at this point, Turner said, because the Commission hasn't eliminated any options.

The meeting ended at approximately 4:30 pm. The next meeting will be on October 17.