

# WILLAMETTE FALLS LOCKS COMMISSION

## Commission Meeting #11 November 13, 2019, 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 (Appointed and Ex Officio) Present:**

Russ Axelrod [*West Linn*], Joe Bernert [*Wilsonville Concrete*], Sam Brentano [*Marion County*], Brooke Brownlee [*Portland General Electric*], Sandy Carter [*Clackamas County*], Danielle Cowan [*Clackamas County Tourism*], MG Devereux [*Oregon Parks*], Rep. Christina Drazen, Jack Giffen Jr. [*Confederated Tribes of Grand Ronde*], Jeff Hicks [*USACE Portland District*], Dan Holladay [*Oregon City*], Karen Homolac [*Business Oregon*], Christine Lewis [*Metro Council*], Rep. Rick Lewis, Joann Linville [*City of Wilsonville*], Rep. Mark Meek, Rick Olson [*Yamhill County*], Rep. Rachel Prusak, Paul Scarlett [*ODOT*], Martha Schrader [*Clackamas County*], Stan Watters [*Port of Portland*].

**Facilitation Team:** Turner Odell [*Oregon Solutions*], Pat Vivian [*Wordsmith*].

#### **Staff and Project Support Team:**

Ayreann Columbo [*John Southgate LLC*], Andy Cotugno [*Metro*], Michelle Giguere [*Summit Strategies*], Lance Heisler [*Coates Kokes*], Lisa Naito [*Naito Public Affairs*], John Southgate [*John Southgate LLC*], Sue Van Brocklin [*Coates Kokes*], John Williams [*West Linn*], Trent Wilson [*Clackamas County*].

#### **Other Attendees:**

Raihana Ansary [*Regional Solutions*], Holly Bartholomew [*West Linn Tidings*], Mackenzie Carroll [*Rep. Salinas*], Amanda Dethman [*USACE*], Audie Huber [*CTUIR*], Michael Karnosh [*CTGR*], Oliver King [*USACE*], Dan Mahr [*Sen. Merkeley's office*], Mark Ottenad [*City of Wilsonville*], Martha Pellegrino [*CTGR*], Ramona Perrault [*Metro*], Valerie Ringold [*USACE Portland District*], Rick Rogas [*Newberg*], Laura Terway [*Oregon City*].

### ***1. Welcome, Agenda Overview and Business Items***

Turner Odell, Oregon Solutions, introduced the agenda for the 11<sup>th</sup> meeting of the Commission and welcomed new Commissioner Joann Linville from the City of Wilsonville. A quorum was present for voting purposes. In response to the Legislature's budget note to HB 5024, the two main action items for Commissioners today were: (1) approve draft legislation to form a public corporation to be filed for the February legislative short session; and (2) approve a preferred alternative for the long-term business plan to be included in the report to the Legislature. The agenda wrapped up with next steps for legislative action and a project timeline. There will be four committee hearings, offering

opportunities for Commission members to testify on the Commission's efforts in response to the budget note.

Jack Giffen Jr., Grand Ronde, asked whether there was any objection to holding off on voting on the proposed action items until the end of the meeting after discussion had taken place on both topics, considering how they relate to each other. There were no objections to this approach.

Copies of several documents were provided:

1. Minutes from the September WFLC meeting, unanimously approved as final today.
2. The Director's report from USACE, which formally documents the disposition study and the FONSI from the environmental assessment.
3. A working draft of legislation to form a public corporation.
4. A Willamette Falls Locks public corporation business plan with supporting materials, e.g. estimated repair costs.
5. The Willamette Falls Locks pre-opening task list, which will become the responsibility of the new public corporation.
6. A letter of strong support for the Commission's work from Jim Mattis, who represents the Willamette Falls & Landings Heritage Area Coalition.
7. A one-page summary of the public corporation concept.

## ***2. Federal Updates:***

### **USACE Disposition Study and Final Director's Report:**

Jeff Hicks, USACE Portland District, gave an update on the disposition study, which was approved in July 2019. He presented a slideshow on Willamette Falls Locks seismic and safety upgrades, including a recommended plan for moving forward with renovations to structures near the paper mill and PGE plant. The upper pool is a key area of concern for the Corps.

The disposition study recommends federal disposal of the Locks with a preferred alternative: transfer ownership of the Locks to a local stakeholder. The recommended repairs include a partial seismic retrofit and safety upgrades to protect the upstream pool, including seismic improvements to gates 6 and 7. A \$500,000 Corps budget for FY19 includes funds for a detailed design report plus plans and specifications. The budget was approved in July, with plans and specifications to be completed this year.

### **Federal Legislation for Transfer – WRDA Update:**

Michelle Giguere, Summit Strategies, reported. In order for the federal government to transfer authority for Locks operation to a local entity, legislation will be required to authorize transfer and disposition of the Locks. This is normally done through the Water Resource Development Act (WRDA), a federal law that authorizes Corps water projects. It does not appear likely that a WRDA bill will get out of the Senate any time soon. If the public corporation legislation passes the short

session in February, that would probably be soon enough to allow the public corporation to be named in the federal WRDA legislation, which will make the transfer of ownership possible. Passage of WRDA will have to compete with other priorities such as the impeachment inquiry and budget deliberations. There is a placeholder in the legislation for a Willamette Falls Locks entity to be named.

Commissioners raised the following concerns:

- Russ Axelrod, West Linn – Dam safety should be included in the recommendation as a component of locks operation. To what extent is PGE responsible? **A:** Any dam will be subject to Oregon’s dam safety law. The upper locks need to be kept safe so PGE can operate its power plant. That was incorporated into the disposition report. Once the local entity takes ownership, it will have financial responsibility. The Locks will be operated under state not federal jurisdiction.

### ***3. Draft Legislation to Establish a Public Corporation***

Michelle Giguere, Summit Strategies, and Lisa Naito, Naito Public Affairs, reported. The Oregon Department of Justice and the Attorney General’s office offered support in developing draft legislation to establish a public corporation, which is more concise than previous iterations. A volunteer work group of Commissioners worked on the legislation; their work is reflected in the current draft. The legislation would exempt the public corporation from some statutes that affect government entities so it can operate more like a business. It will have the authority to issue bonds, work with the Corps and other government entities, take out loans, and form a nonprofit organization. The public corporation will also have very restricted rights to condemn property, a politically sensitive option of last resort.

Commissioners raised the following concerns about the draft legislation:

- Jack Giffen Jr., Grand Ronde – The language on page 2, line 29, which specifies federally recognized Oregon Indian Tribes as potential appointees by the governor, is too broad. Many Tribes have zero historical knowledge of the site itself. The language should be changed to specify that only Tribes with a cultural or historical connection to the property are eligible to serve on the board.
- Rep. Mark Meek – Agreed, but questioned how a cultural/historical connection to the Locks could be established. More objective language may be needed to clarify which Tribes are eligible to serve on the board. **A:** The legislative council can help with this. This Commission will sunset when the public corporation is set up, but until then Commission members will be able to provide guidance to Gov. Brown as she makes board appointments.
- Russ Axelrod, West Linn – Sections 12-14 were added to address the transition from the Commission to the public corporation. Briefly explain the sunset language. **A:** The duties of the Commission will change once it has succeeded with its mission. During the transition

period, public comments will be unnecessary because the Commission will have completed the bulk of its work.

- Karen Homolac, Business Oregon – Who will have access to the property? **A:** We don't have language addressing this in the legislation. Access issues may need to be addressed when the legal property definition is established. The staff will work with the legislative council and DOJ on this as needed. Commissioners need to think about how to finance this aspect of operation. The board of the public corporation will determine who has access to the Locks, but not access to the river channel. The Corps also might need access. There may be various easements across the property (e.g., PGE powerlines and an old sewage pipe that runs underneath the Locks). There may be other property owners in the area who will need access. The project staff added site access to the list of issues that need to be addressed.

There was discussion of the rights and responsibilities of adjacent property owners. Brooke Brownlee said PGE is concerned about coordination of ongoing operations. Joe Bernert, Wilsonville Concrete, suggested that a PGE representative should serve on the board of the authority operating the Locks. Danielle Cowan, Clackamas County Tourism, wanted to steer clear of naming a specific company in the legislation and Rep Mark Meek agreed. The definition could be written like the one for federally named Tribes without designating companies by name. During the transition phase, the Commission can recommend specific companies to the Governor as potential appointees to the board, Russ Axelrod said. This would avoid having to name them in the legislation, which raises a potential conflict of interest. Adjoining property owners are subject to a number of rights that belong to PGE and other entities, Amanda Dethman, USACE, said. Michelle Giguere, Summit Strategies, said the project team will add language to the bill that calls for collaboration with adjacent property owners.

In terms of when the Commission needs to approve the draft legislation and the business plan, the draft legislation should move forward today so it can be submitted to legislative leadership, while budgetary issues could be dealt with at the December meeting, Russ Axelrod said. The legislative budget note requires the Commission to articulate that there is a sustainable business plan for continued operation and maintenance, Michelle Giguere noted. The project team ultimately needs Commission approval of both the legislation and the business plan.

There was a motion to approve the draft legislation with minor tweaks as discussed today and general agreement the Commission subgroup will work out the details. Russ Axelrod, West Linn, and Dan Holladay, Oregon City, clarified the motion to allow the support team to advance the draft legislation as presented and work with the legislative council and DOJ consistent with direction given in today's meeting. The support team was given the flexibility to address issues as they arise in advancing the legislation. The motion was unanimously approved.

#### ***4. Revised Business Plan for a Willamette Falls Locks Public Corporation***

John Southgate reported. The support team has met with several potential funders including the Marine Board and tourism agencies in developing the business plan that was distributed today. It

lays out pre- and post-repair phases of operation in terms of estimated cost and where the funding is projected to come from.

### **Phase I. 2020-2024:**

Operating costs will be lower during these years because the Locks will not be open yet. The executive director of the public corporation would work with funding entities and oversee implementation of an operating plan. The job of executive director probably needs to be full time, given the long list of duties on the last page of the business plan.

Insurance costs during this period will also be low. There's a \$350,000 contingency fund in the phase I budget based on estimates of support from industry, Metro, the Port of Portland, the cities of West Linn, Oregon City, Wilsonville, Lake Oswego, Gladstone, Milwaukie and Newberg, and Clackamas County along with several other counties. Conversations with these entities will ramp up between now and the end of the year. A firm sense of funding commitments is needed by the end of the year in time for the short session next February. Conversations with local entities have been encouraging in terms of up-front (not long-term) funding. At the end of this period, an operating plan will be firmly in place. A lot of work remains to be done to secure state lottery funding.

Comments were as follows:

- Russ Axelrod, West Linn – Add environmental due diligence to the list of duties for the executive director of the public corporation. Also add that the Commission is continuing to pursue \$200,000 in federal funding for the startup phase.
- Rep. Mark Meek – It will be hard to get approval in the Ways and Means Committee for lottery dollars without a solid seed funding commitment. The state is willing to provide capital improvements money but doesn't want to be the primary operational funding source of the first four years. Commissioners need to ask their respective bodies for funding and report back to the Commission quickly so the request to Ways and Means has some substance. Financial backing is critical.
- Joann Linville, Wilsonville – \$45,000 in contingency funds for operating expenses during the startup phase won't be nearly enough.
- Dan Holladay, Oregon City – Most cities could afford \$10,000. We should ask the Tribes and PGE to contribute.
- Stan Watters, Port of Portland – \$350,000 in seed money might not be sufficient. As for the \$150,000 combined ask of Metro, the Port of Portland, and Clackamas County, the Port is facing high expenses for Willamette River cleanup. By law it can't use airport revenue to support the Locks, so it might not be able to come up with its third of the assumed allocation in the budget. Watters suggested asking the city of Portland to contribute funding.

Rep. Rachel Prusak offered to talk to the board of the Port of Portland about the importance of investing in this project.

- Christine Lewis, Metro – Raising \$50,000 in seed funds should be no trouble.
- Danielle Cowan, Clackamas County Tourism – What operational funds would the Commission use to continue this work if the legislative bill doesn't pass? **A:** Funding for Oregon Solutions support ends in June 2021, but funding for the consultant support team ends after the February session.

## **Phase II. 2024 and Beyond:**

John Southgate presented the long-term revenues table for the preferred alternative, which is commercial and recreational use. Full time staff will work evenings and weekends during the summer months. The project team has talked to Wilsonville Concrete about funding for recreation once the Locks are up and running. Insurance costs rise at this point. The revenue projections are based on 35 cents per ton of barging, plus revenue from recreational boats such as the Portland Spirit. Boat owners are enthusiastic about the potential for river tours of wine country. A fee of \$5 per passenger would provide about \$200,000 in annual revenue. However, due to a calculation error, it would probably take twice as much in boater registration fees statewide to produce that revenue as shown in this version of the business plan, so the fee might need to increase. Andy Cotugno, Metro, said the Marine Board just increased the boat license fee last spring. He anticipates going back to the legislature for a follow-on increase in 2025 adding 15 cents per lineal foot.

Comments on Phase II were as follows:

- Rep. Mark Meek – The Marine Board will be on notice that they need to support this fee, but legislators can't guarantee they'll be in office when the time comes to take action. So it is important to outline this now. **A:** If the proposal to add to the Marine Board licensing fee dies, another option is to charge individual users of the Locks. Several businesses in Wilsonville and Newberg will probably take advantage of the Locks; in 10 years the operation could easily exceed the conservative assumptions in this business plan.
- Rep. Rachel Prusak – Supports increasing fees on boats, although lobbyists will make this politically challenging. **A:** If the boat licensing fee increase passes, the \$5 fee for individual recreational use won't be needed.
- Russ Axelrod, West Linn – We should seek ODOT funding, given that river access will move transportation of goods off the roads and onto barges. **A:** Removal of trucks from roads will reduce pavement damage, but over a third of the highway fund is generated by trucks. Displacement of 50,000 trucks per year would actually diminish ODOT resources.

- Danielle Cowan, Clackamas County Tourism – People expect to pay an individual fee. Most communities upriver have boat launches for luxury boats, so participation can be expected.
- Sandy Carter, Clackamas County – Remember that ODOT supported a similar Oregon Solutions project in 2005, which received federal government grants.

The business plan will be updated with additional funding sources identified today and revisited at the next meeting, John Southgate said. Michelle Giguere said the support team didn't need Commission approval of the business plan in detail today but does need to know whether this outline is viable. Final approval will come from the public corporation board, Andy Cotugno said.

The request for approval of a general budget direction elicited the following comments:

- Russ Axelrod, West Linn – In terms of a regional resiliency plan, funding a functional river for half a million dollars a year is cheap insurance on a waterway that could help restructure the region after a seismic event which otherwise would take several years to accomplish. The legislature should set aside \$100,000 a year as a baseline with this aspect in mind.
- Jack Giffen Jr., Grand Ronde – I think we could make this work, but it's based on a lot of assumptions. What happens to the Locks if we fail? We need an exit strategy. **A:** Tour boat companies have been receptive, and the public corporation won't necessarily go bankrupt if we can't meet these costs. It is empowered to be nimble in terms of marketing.

A motion to allow the support team to further develop the business plan presented today and to negotiate with legislators passed unanimously.

### ***5. Next Steps and Project Timeline***

Rep. Mark Meek and Lisa Naito, Naito Public Relations, reported. Next week the project team will brief four legislative committees – the House Interim Committee on Economic Development, the House Committee on Veterans and Emergency Preparedness, the Senate Interim Committee on Labor and Business, and the Joint Transportation Committee. These briefings are all expected to go well. Initial deadlines for filing the draft legislation have already been met. The final iteration of the response to the budget note will be written in December, and the December Commission meeting will include discussion of this. Jurisdictions and businesses have expressed a tremendous amount of support.

The two main goals during the legislative short session are to: (1) get the public corporation legislation passed and (2) secure access to lottery bond funds. By the end of January, the Commission will need letters of support to present to the Legislature.

Rep. Mark Meek, who sponsored the legislation, asked whether it would be possible to send out letters based on this budget requesting specific amounts by next week. The team will start drafting

letters requesting support right away, John Williams, West Linn, replied. As for the public corporation legislation, it will go to one of the four committees to be briefed next week, Meek said.

John Southgate walked the Commissioners through a timeline that assumes the public corporation legislation is passed in February. It focuses mainly on state and local actions, not federal, and covers the transition from the Commission to the public corporation.

The next Willamette Falls Locks Commission meeting will be on December 11, and will include an opportunity for members of the public to comment. Turner Odell pointed out the public is welcome to submit comments at any time. The Commission decided not to meet in January unless absolutely necessary.