

WILLAMETTE FALLS LOCKS COMMISSION

Commission Meeting #10
September 11, 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*], Brooke Brownlee [*Portland General Electric*], Sandy Carter [*Clackamas County*], Rep. Christina Drazen, Jack Giffen Jr. [*Confederated Tribes of Grand Ronde*], Karen Homolac [*Business Oregon*], Rep. Rick Lewis, Rep. Mark Meek, Valerie Ringold [*USACE Portland District*], 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*].

Other Attendees:

Jim Mattis [*former legal counsel OHSU*], Michael Paluszak [*CEO, Oregon State Fair*], Lisa Sumption [*Director, OPRD*]

1. Welcome, Agenda Overview and Business Items

Turner Odell, Oregon Solutions, introduced the agenda and noted that a quorum was present. Rep. Rick Lewis, recently appointed to the Commission, attended today for the first time. The big news today was that the Corps of Engineers Washington D.C. headquarters has signed and released the final disposition report, which means the Corps Portland District can move forward with repairs to the Locks. Kevin Brice, Corps, will provide a more detailed update at the October 16 Willamette Falls Locks Commission meeting.

The main feature today was a discussion of the public corporation model led by representatives who have direct experience establishing and/or running public corporations – specifically, OHSU and the Oregon State Fair. This presentation was followed by state and federal updates. The meeting ended with a review of further revisions to the business plan legislators have requested. To accomplish all the work that needs to be done, the Commission will likely meet monthly through the end of the year.

Copies of several documents were distributed:

1. Meeting minutes and an action items meeting summary for the July 10 meeting. These were approved as final with a few small corrections.
2. A summary of the business plan, to be further developed today.
3. A draft report on the public corporation legislative concept.

2. Understanding the Public Corporation (PC) Model

Lisa Sumption [Director, Oregon Parks and Recreation Department], Michael Paluszak [first CEO of the Oregon State Fair], and Jim Mattis [former legal counsel, OHSU] gave their perspectives on how to establish and run a successful public corporation.

Lisa Sumption suggested the Commission think about what the end result should be, particularly whether the entity will be state-owned. State ownership carries with it certain restrictions, starting with competition for dedicated funding from the legislature. When the state fair was operating at a loss, her team proposed turning it into a public corporation. That turned out to be the model that worked despite initial skepticism from legislators.

Michael Paluszak suggested the Commission focus on four areas – contracting, procurement, human resources, and budgeting. These areas can be problematic in the government agency business model. The 2013 legislation that created a public corporation to run the state fair was masterfully crafted to address these problem areas. Michael characterized the state fair as an “entrepreneurial product in a bureaucratic environment.” With a few legislative tweaks since the legislation passed, the public corporation model is working very well – the state fair turned a profit in 2015-18 and made \$1.5 million in capital improvements. One advantage of forming a public corporation, as opposed to a state entity, is that the PC is allowed to self-insure. He urged Commissioners to research all the pros and cons of several business models before selecting one. All of them have advantages and disadvantages.

Jim Mattis suggested the Commission look at what’s going on around the nation in terms of public and private locks governance. Prior to becoming a public corporation 25 years ago, OHSU struggled with lack of public funding and suffered budget cuts every year. The goal of forming a public corporation was to create an entity that could act like a business in terms of earning money but be accountable to the public. Mattis did a comparison of draft legislation for the Willamette Falls Locks Authority with the legislation that formed OHSU and found them parallel in terms of the public corporation aspect. Such an entity has the ability to enter into intergovernmental agreements and is subject to public meeting records laws. There are applicable statutes re: employee rights, collective bargaining, property tax exemption, and alternative pension systems. In these respects, the draft Willamette Falls Locks Authority Act is almost identical to the OHSU legislation, which has worked out well for OHSU. It has accountability provisions but also flexibility.

Commissioners raised the following questions and issues:

- Sandy Carter, Clackamas County – What role does the volunteer staff play in running the state fair? **A:** Michael Paluszak – An estimated 400-500 people volunteer for the fair alone, not counting the volunteers who help run it year-round. Volunteers provide a huge relief to the state fair budget.
- Jack Giffen Jr., Confederated Tribes of Grand Ronde – What about a narrower, low-volume market such as the Locks will be? **A:** Lisa Sumption – Volume is less of an issue than the freedom to be agile as an organization. It might be possible to partner with a foundation. Jim Mattis agreed with this.
- Rep. Christina Drazen – Have you seen other models that aren't public corporations that you would flag for establishing a regional entity like the Willamette Falls Locks Authority? **A:** Lisa Sumption – We used existing statutes and crossed out conditions that we didn't want. There are plenty of models. Michael Paluszak – All of the business models could work for running the state fair, except being a government agency. The Commission is encouraged to research ways of establishing accountability without losing flexibility. Jim Mattis – Opening the Locks would create one river as opposed to what we have now. It would allow development in communities along the river. It has the potential for state funding even if the effects won't be felt statewide.
- Karen Homolac – What is the size of the state fair core administration? **A:** Michael Paluszak – We have seven year-round full time staff, including administrative and maintenance workers. We outsource services and use a lot of part-time seasonal employees.
- Rep Mark Meek – Have you had any liability problems or other problems working with volunteers? **A:** Michael Paluszak – The Oregon State Fair is part of the state self-insurance pool, which includes workers' comp coverage for eight employees. We have a process for documenting volunteer hours. Our volunteers are covered by insurance. Lisa Sumption – You might want to seek a partner to get insurance coverage for volunteers.
- Rep Mark Meek – Does the State Fair have access to state insurance and workers' compensation because it's a public corporation or because it's affiliated with state parks? **A:** Michael Paluszak – The fair is completely separate now from the OPRD. We shopped insurance and found that private coverage costs about half of public insurance but the coverage was not comparable. From time to time we consult with the state Department of Justice but we have our own private counsel.
- Sandy Carter – How does a public corporation stay involved in government? **A:** Jim Mattis – Forming a public corporation gives you the opportunity to build the legislation statute by statute. It's one of the most flexible tools the state has to offer in terms of entering into agreements and meeting all sorts of needs.

- Stan Watters, Port of Portland – What services in addition to insurance does the Fair currently access from the state? What services do you access from the private sector? **A:** Michael Paluszak – It’s cheaper to lease vehicles from the state fleet than commercially, and the Fair is also able to access services of the state Department of Justice and the state police. Not only does the Fair benefit from intergovernmental services, it has intergovernmental agreements with Marion County. We outsource accounting and janitorial services as well as other services.

3. Project Team Updates

PGE Site Update:

Brooke Brownlee, PGE, reported. Building J on the water side of the Locks hasn’t been used for years; it is unstable and will be demolished starting next month. There will be structural supports to hold the building together while it is being demolished. Starting in October, PGE will work with an environmental contractor to remove toxic materials. Brooke will provide the Commission and the project team with a site map.

Federal Update:

Michelle Giguere, Summit Strategies, reported. The Corps of Engineers Washington D.C. headquarters finally signed and approved the Willamette Falls Locks disposition report, which includes Corps cost estimates for needed repairs. This will allow restoration of the Locks to move ahead. The disposition report, which is posted to the Corps website, can serve as a useful resource for the Commission. Lack of a final disposition report has been a major stumbling block to state support of the Locks, so finalizing this report is a big step forward.

Meanwhile, Congress is looking at reauthorization of the Water Resource Development Act (WRDA), which offers the opportunity to add a provision that would give the Corps authority to dispose of the Locks. Jeff Hicks, Corps Portland District, will report in more detail at the October Willamette Falls Locks Commission meeting.

State Update:

Lisa Naito, Naito Public Affairs, reported. The project team has been working hard on developing the governance model to be presented to the state legislature as qualification for lottery bond revenue. Rep. Mark Meek noted that part of the proposal based on the legislative budget note was to figure out what entity will assume ownership of the Locks. A draft legislative concept has been submitted to the legislative council and will be drafted into a bill for submission to the legislature during the short session of February 2020. Every effort is being made to draft the bill in a form that would pose no fiscal impact to the state budget in order to avoid sending the bill to Ways and Means.

Next Steps:

The project team plans to provide draft legislation forming the Willamette Falls Locks Authority by end September or early October. This is a critical step and feedback will be vital. Suggestions or revisions to the draft that was distributed today should be emailed to Lisa Naito or Rep. Meek.

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

John Southgate presented the latest version of a detailed business plan as requested by the legislature prior to authorizing lottery funds for Locks operation. The business plan fleshes out the three phases previously identified.

Phase I (2020-2024, four years from end of Commission to opening of Locks) – This phase starts when the public corporation is authorized and continues for four years until the Locks are repaired and ready to open. This phase assumes the legislature authorizes a public corporation to operate the Locks and the Corps pays for its share of the repairs. There will be negotiations during this phase to set the stage for opening the Locks.

State legislative officials who toured the Locks last Monday were enthusiastic about the project and expressed willingness to help with operating expenses during Phase 1. The project team has talked to the Marine Board about an increase in the boat licensing fee. The Marine Board also offers grants. It's realistic to assume that funds will be available to support the scenario presented today, John Southgate said. Once phase I ends and the Locks are open, costs will increase significantly.

Questions and comments regarding Phase 1 were:

- Stan Watters, Port of Portland – We won't have a seven-member board during this phase because the entity has yet to be approved. A timeline showing who does what and how things will come together needs to be part of the business plan. **A:** Lisa Naito – The project team raised this question in drafting legislation for a public corporation. At this stage, there are still unknowns.
- Stan Watters – When the transfer happens, will the Corps transfer environmental liability to the public corporation? If so, funders will want to ensure that liability doesn't transfer to them. **A:** Lisa Naito – The project team will follow up on these legal concerns. Michelle Giguere – The legislation will be detailed in terms of what happens when. Environmental concerns were covered under the EIS and incorporated into the Corps final disposition report. Once the Corps transfers the asset, the public corporation will be the owner.
- Rep. Mark Meek – It's important that board members of the public corporation be good negotiators because all of these legal terms will be negotiable.
- Russ Axelrod – We learned today that all other public corporations in the state had staff to begin their efforts. Legislators need to think about providing seed money from the state during the startup years for the Locks.

- Stan Watters – Regarding the \$300,000 estimate of annual revenue in Phase I, do we actually have commitments from the cities, Clackamas County, Metro and the Corps? Going forward, we need to ensure local government entities are on board with giving us the funds we have budgeted. Stan proposed an assumption of \$225,000 annual funding from local governments. The amount the Port of Portland will contribute needs to be approved by the executive director.
- Stan Watters – Regarding the proposed activities of 2020-24, what if the funding anticipated from a number of entities suddenly dries up? We need funding for the period after initial seed funds run out. **A:** Lisa Naito – Yes.

Phase II (2025-29, first five years of operation), and Phase III (2030 and beyond) – The project team laid out three potential scenarios for the first five years the Locks are open for river traffic. The three scenarios are commercial use only, restricted commercial and recreational use, and full commercial and recreational use. The public corporation will have the authority to certify vessels for commercial use of the Locks e.g. the Portland Spirit.

John Southgate described the first two scenarios as “de minimus” models that would at least get the Locks open for business, although they are not sustainable long-term. The first de minimus model has no funding for five-year maintenance or a long-term sinking fund, while the second de minimus model includes additional funding to cover modest commercial and recreational use. An increase in the boat license fee could help fund recreational use. The third scenario requires a higher Marine Board boat license fee to fund full commercial and recreational operation of the Locks.

Andy Cotugno, Metro, said a rate per ton for heavy freight, a 5-10% surcharge on tour boat ticket sales to the public, and recreational user fees would help pay for Locks operation during Phase II. In lieu of user fees, the project team believes the Marine Board might be willing to add on an additional 5-20 cents to the boat license fee. Lisa Naito said the project team’s goal is to come up with a 20-year plan that justifies the economic potential of the project but doesn’t necessarily maintain the facility. John Southgate noted that a local company transports heavy goods by rail to Portland harbor and could reap a huge cost savings from reopening the Locks. The economic potential of the Locks is substantial.

Comments and questions regarding Phase II and III were:

- Jack Giffen Jr., Confederated Tribes of Grand Ronde – Compared to the original O&M estimate of \$1.1 million, the high-cost scenario is about 35% lower than originally projected. What will be sacrificed if the O&M budget drops to \$700,000 per year? **A:** John Southgate – The 35% decrease is because the team has sharpened their pencils since making the original estimate. Also, the de minimus model doesn’t include funding for maintenance.
- Sandy Carter, Clackamas County – A multi-layered timeline that shows the Corps transfer of ownership and state revenue bonds, along with staffing and hiring, would be desirable. **A:**

John Southgate – The team will provide such a timeline for the October Commission meeting.

- Brooke Brownlee, PGE – How will the staffing component work? Will the Commission have to fundraise to pay for staff? **A:** John Southgate – Once the Locks are open, a lot of the work will be done by operators. The project team will be looking more closely at this.
- Stan Watters, Port of Portland – Regarding scenarios 2 and 3 for Phase II, given that the state created the Commission to do a job but hasn't provided long-term funding, is there good legislative support for the Marine Board licensing fee increase when one scenario projects costs of \$432,000 per year? **A:** Lisa Naito – This is why the project team also provided a scenario with no long-term funding. The team is building into the plan sustainable financing to operate the Locks. Regarding the boat licensing fee increase, the Commission will need to work with the Marine Board.
- Russ Axelrod, West Linn – Russ and PGE share concerns about funding in Phase I. It's difficult to imagine raising sufficient funds from user-based sources, and we're not on board yet with outreach to community funding sources such as the Port of Portland and the city of Portland. He would like to see tighter estimates of funding sources combined with outreach for longer term commitments. **A:** John Southgate – We need to pin down these funding issues, but that won't necessarily be resolved by the time the legislature meets in February.
- Jack Giffen – There's a sense of urgency because elected officials could be gone tomorrow. The plan is based on many assumptions, and we need to be on solid ground if we're going to propose to the legislature a way of accomplishing our mission. **A:** John Southgate – Maybe by the October meeting, and certainly by the end of the year, there will be a higher level of clarity on the commitment from local governments.
- Sandy Carter – What is the connection between transfer of Locks ownership and formation of a public corporation? **A:** Valerie Ringold, USACE – Once the private corporation is set up, the process should take about 6-9 months. There will be a budget for design and construction. Michele Giguere – It also might take the Governor some time to appoint individuals to the board of the public corporation.
- Karen Homolac – If we form a public corporation, would we still be able to form a foundation? **A:** John Southgate – Yes. Lisa Naito – She is committed to continue working on establishing an entity for the transfer of ownership until it is done, even if that work continues after the current contract for support team funding ends on March 1, 2020. If the Commission presents a proposal to the legislature with general funds in the budget, it won't pass. However, the state is willing to contribute millions in lottery bond funds to restoration of the Locks – an enormous contribution. The Commission has been instructed to look at other funding sources such as the potential continuation of the current transient lodging tax

increase. Locks restoration has significant bipartisan support from legislators and we need to build on that. Getting legislation passed to establish a public corporation will be critical.

Turner Odell said the project team seeks the Commission's blessing to bring more certainty to the business plan, including reaching out to regional and local entities to put a finer edge on Phase 1 funding.

Andy Cotugno reminded everyone that funding for the current support team ends March 1, 2020. By then, hopefully there will be an intergovernmental agreement in place to provide adequate funding for the Locks throughout Phase II. Commission leadership help will be needed in getting legislative action. There was discussion of project team involvement given that funding ends soon. Funding for the project team has come from Clackamas County, Metro, and other supporters.

Martha Schrader said we need to start a conversation now on partnerships. Stan Watters expressed concern that the project will have no paid staff going forward, except for Lisa Naito's participation in the short legislative session. There was general agreement that Phase I starts on March 1, 2020, after funding for the project team expires. Russ Axelrod agreed with Jack Giffen that 0.5 FTE is probably insufficient for handling the Corps transfer of ownership and the public corporation startup. At least \$500,000 is needed in seed funding for Phase I.

Turner Odell said it would be helpful to have a formal vote from a quorum of voting members that the staff team will reach out on behalf of the Commission to engage various members in outreach to partners to secure funding for Phase I. A motion was made and seconded that staff and leadership together move forward with outreach to gain funding commitments for Phase I and to form a public corporation. The motion passed with unanimous approval.

The next Willamette Falls Locks Commission meeting will be October 16.