

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING THE	)	RESOLUTION NO. 15-4606
CHIEF OPERATING OFFICER TO EXECUTE A	)	
DECLARATION OF COOPERATION IN	)	Introduced by Chief Operating Officer Martha
SUPPORT OF THE COLUMBIA RIVER LEVEE	)	Bennett in concurrence with Council
REPAIR AND ACCREDITATION OREGON	)	President Tom Hughes
SOLUTIONS PROCESS	)	

WHEREAS, in 2013, Governor Kitzhaber asked Portland Mayor Charlie Hales and Multnomah County Chair Marissa Madrigal to convene an Oregon Solutions team of stakeholders, including representatives of Metro, to address the potential de-certification and de-accreditation of the Columbia River levee system in the Peninsula 1 and Peninsula 2 Drainage Districts in Portland; and

WHEREAS, de-accreditation and de-certification of the levee system would have negative economic consequences in the area protected by the levee, including potential loss of federal flood insurance, loss of access to assistance from the Army Corps of Engineers in the event of a damaging flood and loss of access to commercial financing for development of levee protected properties and projects; and

WHEREAS, the Metro Council adopted Resolution No. 14-4525 authorizing the Chief Operating Officer to execute an intergovernmental to commit up to \$300,000 plus interest toward the cost of a levee analysis in the Peninsula 1 and Peninsula 2 Drainage Districts; and

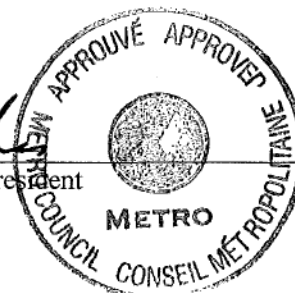
WHEREAS, the Oregon Solutions team with support from the Multnomah County Drainage District and Cornforth Consulting has made significant progress in identifying levee system deficiencies and increasing public awareness and has proposed execution of a Declaration of Cooperation to guide continuation of the process; and

WHEREAS, levee analysis and re-accreditation process needs to be extended to include the Multnomah Drainage District and the Sandy River Drainage Improvement Company; now therefore,

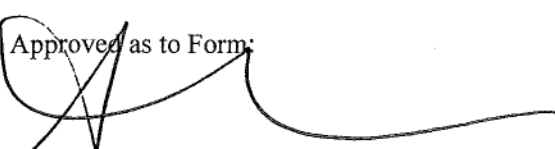
BE IT RESOLVED that the Metro Council authorizes execution of a non-binding Declaration of Cooperation in the form approved by the Metro Attorney with the intent to continue Metro's participation in the assessment process.

ADOPTED by the Metro Council this 11 day of June 2015.

  
Tom Hughes, Council President



Approved as to Form:

  
Alison R. Kean, Metro Attorney

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO. 15-4606, FOR THE PURPOSE OF AUTHORIZING THE CHIEF OPERATING OFFICER TO EXECUTE A DECLARATION OF COOPERATION IN SUPPORT OF THE COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION OREGON SOLUTIONS PROCESS

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Date: January 27, 2015

Prepared by: Andy Cotugno (ext. 1763)

## BACKGROUND

In 2013, at the request of Governor Kitzhaber, Mayor Charlie Hales and Multnomah County Chair Marissa Madrigal co-convened the Columbia River Levee Repair and Accreditation Oregon Solutions Project Team with Metro as a stakeholder on the Team. Since then, with the election of Jules Bailey as a Multnomah County Commissioner, the Oregon Solutions Team is co-convened by Mayor Charlie Hales and Commissioner Jules Bailey. In May 2014, the Metro Council committed up to \$300,000 (plus up to \$85,000 interest across 7 years) as payment toward the cost of an evaluation of the levee system for Peninsula Drainage Districts 1 and 2. See Attachment 1 for delineation of the four drainage districts with levee system responsibilities.

Metro's involvement with the process is tied to Metro's interest as a property owner for Expo and Blue Lake Park and the broader regional policy interest in industrial lands and the natural habitat characteristics of the Columbia Slough and associated water bodies and wetlands. If the levee system is not addressed and the region's supply of industrial lands is decreased, it may trigger Metro growth management obligations to provide an adequate supply of developable lands. Metro staff obligations include participation on the Oregon Solutions Project Team, the Steering Committee and the Technical Advisory Committee. In addition there will be a need to coordinate with their public outreach efforts and review and comment on any assessment of natural habitats.

During the past year, there has been substantial progress in evaluating the adequacy of the Peninsula 1 and 2 levee system (see Attachment 2 for engineering factors to consider in the certification and accreditation process) and public education about the deficiencies and potential solutions. In addition, the Declaration of Cooperation (See Attachment 3) spells out agreements on a governance structure for the continuation of the process including the consensus building role of the Oregon Solutions Team, the decision-making responsibilities of individual participating jurisdictions, establishment of a Steering Committee to guide the process, establishment of a Technical Advisory Committee with representation from the participating governments to advise on the technical sufficiency of the assessment and establishment of a Public Outreach Team to guide public involvement.

Key to the stakeholder understanding of the issues has been dissemination of information about the complexities of the following federal laws and regulations:

- Federal Emergency Management Agency (FEMA) Federal Flood Insurance Program: At present, the lands within the levee protected drainage districts are not identified as a Special Flood Hazard Area (SFHA) on the FEMA Flood Hazard Boundary Maps (FHBM). As such, there is no requirement that the property owners purchase flood insurance through the National Flood Insurance Program (NFIP). As long as the levee systems maintain their accreditation, this status remains in effect. However, if the levees become de-accredited and FEMA maps them as a SFHA, provisions of the NFIP become effective. (Note: the accreditation for Peninsula 1 & 2 expired in 2013) Under this change, the local government would need to adopt special restrictions

for building in the floodplain and property owners would need to purchase flood insurance. Since the area would be vulnerable to a flood, the cost of this insurance would be very high and potentially unavailable. Without flood insurance in a designated SFHA, property owners would lose access to commercial credit for development investments. In short, de-accreditation leads to severe economic consequences to existing developed property and severe impact on ability to develop property.

- Army Corps of Engineers criteria for certification and accreditation: The Army Corps of Engineers establishes minimum engineering criteria for a levee system to be certified by a licensed professional engineer on the adequacy of a levee system to meet a 1% annual chance of a flood (also known as a 100-year flood). If the levee system can be documented to meet these criteria, the professional engineer can certify that the levee system meets the standards. Upon inspection by the US Army Corps of Engineers, the levee system can be accredited resulting in the continued designation by FEMA as an area not mapped as a flood hazard zone. The primary beneficiary of this levee accreditation and FEMA flood hazard mapping is the developed and developable properties behind the levees.
- Army Corps of Engineers Rehabilitation and Inspection Program (RIP): In addition to federal flood insurance through FEMA, the adequacy of a levee system is also controlled by the Army Corps of Engineers RIP Program. Under this program, as long as the levee system itself, as well as the operations and maintenance plan for the levee system, are deemed adequate, the Army Corps of Engineers will provide federal assistance in the event of a flood event. This assistance includes flood fighting assistance during the flood event and federal assistance to repair any part of the levee system that fails during an event. However, it is the discretion of the Army Corps of Engineers to determine the level of protection that is adequate based upon the degree of loss in the event of failure and the cost effectiveness of improvement required. In other words, a sufficient level of protection may be for a 200-year or a 500-year flood event (as compared to the FEMA flood insurance program that is tied to a 100-year event. For example (and only as an example) it may be deemed sufficient to protect farmland for a 100-year event but protect an international airport for a 500-year event. Those decisions remain to be made. The primary beneficiary of this levee evaluation system are the owners of the levee system (for federal assistance for repairs in the event of a failure) and for the community protected by the levee system if the process concludes that a higher than 100-year level of protection is warranted.
- Endangered Species Act (ESA): The National Oceanic and Atmospheric Administration Fisheries branch has responsibility for management of the Endangered Species Act as it relates to 11 listed fish species in the Columbia River. Under the ESA, NOAA Fisheries has responsibility for issuing a Biological Opinion for any federal action on whether the proposed action will *jeopardize* the continued existence of a listed species. The Corps levee accreditation process and the FEMA flood plain management program are both considered federal actions requiring a successful biological opinion to be issued by NOAA Fisheries. As such, the flood control plan is not limited to actions required to protect life and property from flood hazard but to do so in a manner that does not also jeopardize the continued existence of listed species. In addition, for lands designated as a floodplain, NOAA Fisheries requirements to preserve and enhance natural floodplain features will apply as well. With the levee system, these lands are not designated as floodplain. However, should the levee accreditation lapse resulting in areas being designated as floodplain, new ESA restrictions will apply.

The process that is underway involves an engineering assessment of the levee system to inform policy choices by the community and the responsible jurisdictions on the level of protection that is needed and considered affordable. Through this evaluation there will also be consideration of funding responsibility and implementation responsibility. At this time there is no preconceived conclusion on the degree to which funding will be sought from federal, state, regional, local government or drainage district sources.

State and federal funding approaches may be involved and regional support for proposed legislation will be essential.

There may be attention to the governance and funding structure of the drainage districts themselves which could impact Metro as a land owner. The four districts were created under different state enabling legislation at a time when their purpose was related to agricultural lands. In that respect, the governance and financing structures are tied to acreage and may be more appropriately tied to value.

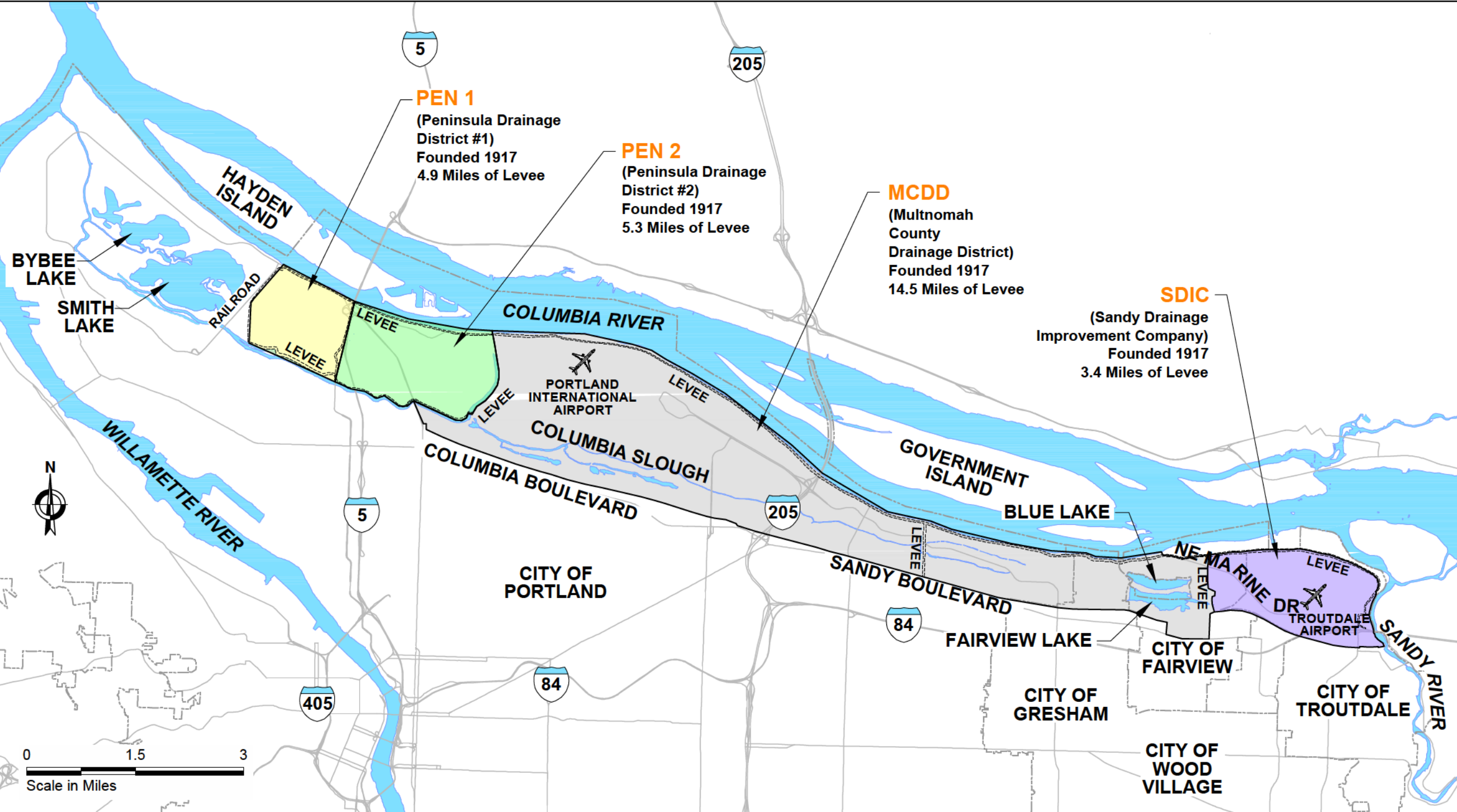
This Declaration of Cooperation proposes to expand the scope of the effort from the Peninsula 1 and 2 Drainage Districts to also include the Multnomah County Drainage District and the Sandy River Drainage Improvement Company. This allows for the broader area to take advantage of the process and increased understanding resulting from the initial work program which focused on Peninsula 1 and 2. In addition, integrating the work across all four drainage districts provides for increased efficiency in the process and would allow for consideration of re-accreditation of the entire area as a single system. This would alleviate the need and cost to address cross levees separating each district. There will be a subsequent intergovernmental agreement (IGA) to provide funding commitments for the expanded scope of work. It is anticipated that a second Oregon Infrastructure Financing Authority loan will be obtained to provide low cost financing for this work. The future IGA will establish the specifics of Metro's funding contribution tied to the approved scope of work but it is anticipated to be roughly comparable to the \$300,000 Peninsula 1 & 2 contribution from Metro.

#### **ANALYSIS/INFORMATION**

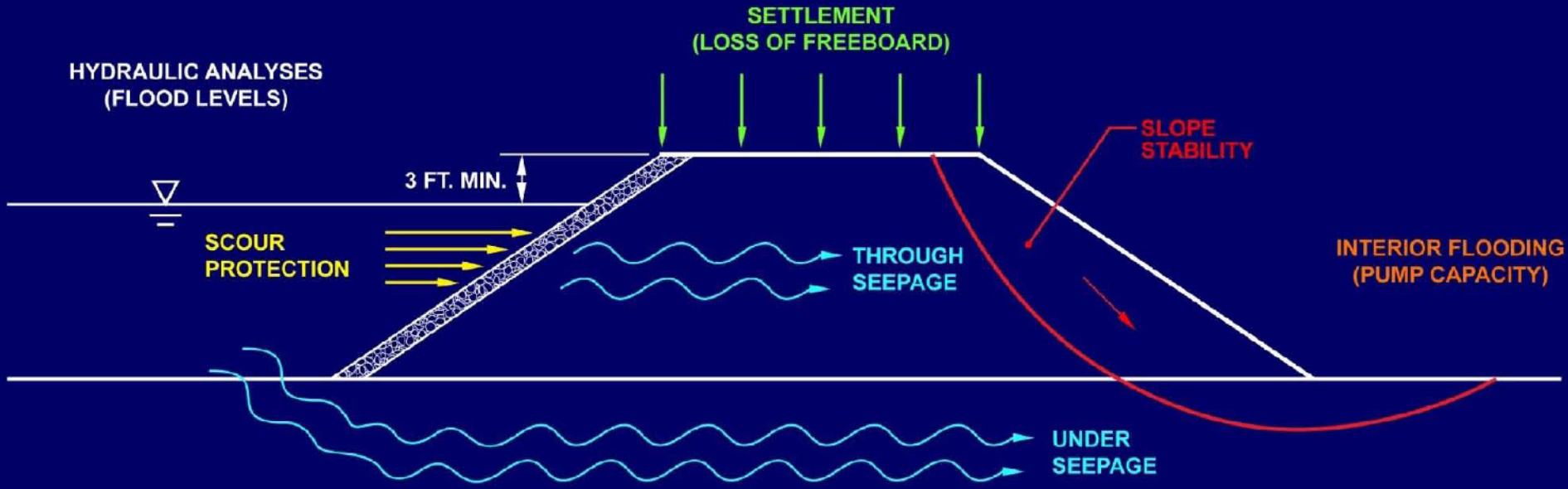
1. **Known Opposition:** At this time there is no known opposition. However, there are many stakeholders involved with the Oregon Solutions Team and decisions about the scope, cost and funding responsibilities for levee improvements could bring controversy.
2. **Legal Antecedents:** Metro has no legal obligation to pay for the levee repair, except for any assessments due to ownership of property within the drainage districts. Signing onto the Declaration of Cooperation and participation in this process is voluntary.
3. **Anticipated Effects:** Though nonbinding, executing this agreement represents a good faith pledge to participate in this process. Any future decisions remain the responsibility of the parties that will implement agreed upon actions. If any action is needed from Metro, there is nothing in this agreement that delegates that responsibility to others. By signing onto the Declaration of Cooperation, after having contributed to the engineering study, the expectation of the other parties to the Declaration of Cooperation may be that Metro will continue to be supportive and possibly contribute to future solutions. However, any future commitment of Metro funding contribution remains the prerogative of the Metro Council.
4. **Budget Impacts:** Metro has already committed up to \$300,000 (plus \$85,000 in potential interest cost) toward the consulting costs of Phase 1 of this project. This funding commitment is intended to be used as part of the loan payment schedule for a Business Oregon Infrastructure Finance Authority loan. Additional staff involvement under the Declaration of Cooperation can be accommodated in the current budget. An additional financial contribution of a similar amount will be requested for Phase 2 which will be dealt with through a separate resolution.

#### **RECOMMENDED ACTION**

Recommend approval of Resolution No. 15-4606



## 44 CFR 65.10 CERTIFICATION REQUIREMENTS



### ALSO

- CHECK CLOSURE STRUCTURE DESIGNS
- OPERATION AND MAINTENANCE MANUALS
- ENCROACHMENTS

**COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION**  
**Phase I to Phase II**  
**DECLARATION OF COOPERATION – DRAFT 6/09/15**

**Introduction and Purpose of this Declaration**

The Columbia River Levee Repair and Accreditation Oregon Solutions Project Team is a cross-sector regional team working together to address the FEMA accreditation, U.S. Army Corps of Engineers (USACE) approval, and safety of the Columbia River levees.

The first phase of the Oregon Solutions process (Phase I) , which began in December of 2013, focused on identifying what issues or shortcomings in the levee system need to be addressed in Peninsula Drainage District No. 1 (PEN 1) and Peninsula Drainage District No. 2 (PEN 2). The Oregon Solutions Team participants also engaged in a learning process, about both the FEMA accreditation requirements and USACE Rehabilitation and Inspection Program (RIP).

Over the next 12-18 months our next phase of work (Phase II) will expand our geographic scope to complete similar assessments for the Multnomah County Drainage District (MCDD) and the Sandy Drainage Improvement Company (SDIC), and also complete physical inventories that will set the stage for evaluating alternative solutions to the issues and shortcomings identified in all four districts. We will also incorporate similar work in the Sauvie Island Drainage Improvement Company, as all five districts are likely to be mapped as a unit by FEMA.

This is an appropriate time for the Oregon Solutions Team to ratify its goals for the next phase and how it wants to work together. A Declaration of Cooperation that all parties sign will help clarify expectations for this next phase, including the following:

- Overall goals, principles, and commitments for how we will work together
- Geographic scope
- Interim governance structure – how decisions will get made
- Public outreach and involvement
- Funding issues and tasks

While this document is *not* a legally-binding agreement, it is intended as a good-faith representation of the intent and commitments of the signing parties at this time, to help facilitate the regional collaboration on this important project. However, in *no* event shall this document be used as the basis for any claim by one party against the other.

More importantly, it is intended to serve as a guidance document as the parties move forward to collaboratively make decisions related to levee repair and accreditation.

### **Phase I Accomplishments**

1. The Columbia River Levee Repair and Accreditation Project was designated as an Oregon Solutions project by the Governor. While the primary focus of this project has been the levee systems in the PEN 1 and PEN 2 drainage districts in Portland, the initial intent was to utilize lessons learned from this process for subsequent flood safety efforts for others statewide.
  
2. A primary focus of Phase I was to identify the minimum requirements for Certification pursuant to FEMA accreditation of the levee systems in PEN 1 and PEN 2. Cornforth Consultants were retained to conduct an engineering assessment, and identified four areas requiring attention in order to meet the minimum acceptable standards for accreditation by FEMA:
  - The BNSF and UP railroad embankments form the west side of PEN 1. Although limited access to the railroad embankments prevented thorough analysis of soil stability, historical data shows that soil removed from the St. Johns cut covers the original trestle system supporting the railroad. While the USACE has recognized the embankment as serving a levee function and has improved or reinforced the embankment over the years, both railroad companies have stated it is against their national policy to sign the required operation and maintenance agreement to achieve accreditation.



- Two low spots near the Interstate 5 interchange at North Marine Drive. These do not meet the required height at the northeast corner of the cross levee for PEN 1 / PEN 2.
  - A low spot at the northeast corner of PEN 2. This spot fails to meet the required height. This low spot is located on vacant Port of Portland property.
  - The Peninsula Drainage Canal Cross-Levee that forms the east side of PEN 2. Instability due to narrow, steep embankments on this levee could cause the levee to fail during certain high water events. The cross-levee is narrow in width and has steep walls.
3. Cornforth Consultants subsequently completed an additional modeling analysis of the levee systems using the (USACE) authorized design level flood analyses. (i.e. a more protective, higher flood level standard)

In general, the new analyses using the USACE "authorized design" water surface elevations did not find any significant problems beyond those identified in the earlier FEMA 1-percent-annual-chance flood event analyses. For many of the levee sections in PEN 1 and PEN 2, the design water surface elevation approaches a 0.2-percent-annual-chance flood event elevation (500-year flood). The bottom line: addressing the issues identified under the earlier analyses in PEN 1 and PEN 2 could result in those levees being protective at the higher level, exceeding the minimum FEMA accreditation standards.

The only notable exception was in PEN 1, Reach 1-11, along the Columbia Slough, which protects the Portland International Raceway. In this reach, the levee has a calculated Factor of Safety (FS) of 1.3, slightly below the USACE's minimum FS of 1.4. However, because the FS is still significantly above a value of 1, USACE representatives stated that a reasonable approach to Reach 1-11 would be to note it as a 'focus area' during a high water event in the District's operation and maintenance manual in order to provide extra inspection and reconnaissance to this section of levee. Additionally, the

analysis found that the PEN 1 floodwall met USACE stability standards under the USACE authorized design water surface elevation.

4. The Oregon Solutions Team brought in a representative from NOAA to better understand the potential impact on levee repair options that the NOAA Biological Opinion may have on the National Flood Insurance Program in Oregon.
5. The USACE has indicated the key levee repairs or actions needed to keep the PEN 1 and PEN 2 districts active in the Corps' Rehabilitation and Inspection Program (RIP).
6. In June of 2014, the Oregon Infrastructure Finance Authority provided a 7-year low-interest loan for \$1.4 million, to complete the Cornforth engineering evaluation of the flood control systems in PEN 1 and PEN 2. Commitments were received from the PEN 1 District, PEN 2 District, City of Portland, Port of Portland, and Metro to pay off the loan. The City of Portland acted as the recipient of the loan and provided the administrative support.
7. The USACE and MCDD initiated a Planning Assistance to States (PAS) study for \$200,000 to develop alternatives and initial design of a solution to the railroad levee issues.
8. The Oregon Solutions Team has sponsored several opportunities to learn from other communities that have been through this. A panel discussion was held on May 20, 2014 and Scott Shapiro from Sacramento spoke to a statewide audience in November 2014. Both sessions were videotaped and are posted on the project's Oregon Solutions website.

### **Next Phase principles and commitments for how we will work together**

We agree to the following principles and commitments to guide our efforts during the next phase of this project (in addition to the attached Oregon Solutions Team Ground Rules, attached, adopted in December 2013):

- a. Commitment to move forward. We commit to work together to keep the accreditation process moving forward in a way that is expeditious and timely yet

sensitive to the impacts that levee repair and accreditation decisions will have on many and varied stakeholders.

- b. Recognize the area's regional economic importance. We will work as regional partners to achieve a level of flood protection that recognizes the economic importance of the area protected by the levees to the metro region, while also being economically prudent.
- c. Importance of public outreach. We understand the critical need to inform and frequently update and hear from the public and community groups about repairs and the accreditation process, and the impacts they may have (both positive and negative).
- d. Ecological valuation. We will identify and explore levee system solutions that recognize and either enhance or minimize negative impacts to the ecological potential for the area.
- e. Historical Significance. We will also work to engage all communities with historical ties to the system in a collaborative discussion through public outreach and communication.
- f. Early collaboration with regulatory agencies. We will work proactively with federal, state and local agencies to identify and address regulatory concerns.

### **Next Phase Project Goals**

In Phase I, the Oregon Solutions Team investigated the issues and deficiencies in meeting minimum FEMA accreditation standards for PEN 1 and PEN 2 through the Levee Engineering Assessment. Additional modeling was conducted to assess the USACE authorized design and existing levels of protection.

In the next phase, our work will focus on the following objectives:

- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Complete engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2. .
- Maintain active status in the USACE's Rehabilitation and Inspection Program (RIP).

- Initiate work to develop longer term governance options
- Initiate discussion on longer term funding and financing of levee and drainage system options.
- Review potential impacts of climate change on Columbia River elevation levels and the safety of the levee system, including the evaluation of potential solutions.
- Implement a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Develop a process and criteria for evaluation and selection of preferred solutions. That process will include at least the following considerations for how best to meet the goals:
  - i. Impacts to surrounding public and private property owners including recognition of historical community impacts of the levee system
  - ii. Ecosystem function including environmental, wildlife and habitat values
  - iii. Consistency with existing neighborhood and community plans
  - iv. Current and future economic stability
  - v. Broader community benefits such as recreation, transportation and access
  - vi. Protection of key public (and other) infrastructure

By the end of this phase we will be ready to outline solution alternatives in each of the districts.

### **Expanding the Geographic Scope.**

We will begin during the next phase to incorporate other districts or drainage companies in Multnomah County into a larger regional effort, as Multnomah County Drainage District, Sandy Drainage Improvement Company, and Sauvie Island Drainage Improvement Company will soon be facing similar needs for re-certification and accreditation.

A major consideration in taking this step is the indication by FEMA that accreditation and mapping is likely to be done for all five Multnomah County drainage areas at the same time. In addition, there are potential cost savings through coordinating remediation alternatives including

consideration of certifying and accrediting the perimeter levee of a single system and not include the cross levees between the separate districts.

We are expanding the geographic scope of the project to also benefit from potential administrative savings, cross-district learning, and relationships with federal agencies. At the same time, we will be sensitive and make every effort to not have the expansion result in unnecessary delays to action for specific districts or alternative solutions.

### **Next Phase Governance**

We recognize that longer-term and more formal governance-structure changes may be required for governance on future levee issues and that revisions to *this* interim governance structure may even be required as we learn more. Nevertheless, for purposes of being able to move forward without costly delays, we believe agreement on the interim governance structure is critical.

a. **The Columbia River Levee Oregon Solutions Team**, designated by the Governor and which has been co-convened by Multnomah County Commissioner Jules Bailey and Portland Mayor Charlie Hales, will continue to be the main forum for regional collaborative recommendations to the appropriate jurisdictions on levee repair alternatives and related policies.

b. **Individual jurisdictions** have, and shall retain current authorities and responsibilities ( e.g. the City of Portland is the jurisdiction officially recognized by FEMA to request re-accreditation for levees within the Portland City limits; and the drainage districts and improvement companies shall retain the primary responsibility to maintain their levee systems and continue in the USACE's RIP program).

c. **A Technical Advisory Committee** shall provide review and advice on technical matters to the Oregon Solutions Team. It will not make decisions, but may be asked to provide technical information and recommendations. This Technical Advisory Committee may in turn charge sub-committees with membership that will be

designed to provide the needed technical expertise and perspectives. Among the specific tasks for the Technical Advisory Committee in Phase II will be:

- Providing technical review and vetting of consultant work (including development or review of Scopes of Work for consultants)
- Helping frame technical issues or technical aspects of programmatic/policy decisions that will be before the Oregon Solutions Team
- Developing and reviewing alternatives for levee improvements

d. **A Communications and Outreach Sub-Committee** shall be charged with designing and implementing strategies for communicating with the general public and specific stakeholder groups, as necessary. This team will include communications staff from each of the government agencies on the Columbia Levee Oregon Solutions Team and will be open to equal participation from members of any other Oregon Solutions Team partner. The team will coordinate communications across agencies and direct the communications and engagement work of the Oregon Solutions Team.

e. **An Administrative Sub-Committee** will be formed to deliberate on administrative matters (meeting agendas, budgets, contracts, etc.) and at times make recommendations to the larger Oregon Solutions Team. Meetings of the Administrative Committee are open to members of the Oregon Solutions team and the public. Among the tasks for the Administrative Sub-Committee will be:

- Framing questions for the Technical Advisory Committee
- Framing policy issues for decision-making by the larger Columbia Levee Oregon Solutions Team
- Helping identify who has regulatory or legal responsibility/authority on a particular issue.
- Making some purely administrative decisions to move the project forward
- Delegating, for purposes of administrative efficiency, certain tasks such as review of contractor change orders, to one of the participating jurisdictions.

- Note: Any policy decisions or recommendations affecting multiple stakeholders will be reserved for the full Oregon Solutions Team, rather than the Steering Committee.

Participants in the Administrative Sub-Committee can be revised by the Oregon Solutions Team, but will initially include:

1. Bridgeton Neighbors Assn.
2. City of Fairview
3. City of Gresham
4. City of Portland
5. City of Troutdale
6. East Columbia Neighbors Assn.
7. Metro
8. Multnomah County
9. Multnomah County Drainage District #1
10. Peninsula 1 Drainage District
11. Peninsula 2 Drainage District
12. Port of Portland
13. Sandy Drainage Improvement Company
14. Sauvie Island Drainage Improvement Company
15. State of Oregon Regional Solutions Center

### **Public Outreach and Involvement**

Effective public outreach and public involvement will be critical to the success of next phase(s) of this project. Property owners, residents, business owners, employees, recreationalists, environmentalists, and tax payers are a just a sample of the varied audiences that may be interested in, and affected by, the Levee Repair and Improvement project. The Columbia Levee Oregon Solutions Team intentionally includes representatives from many of these groups but will need to also make a collective effort to communicate with and provide opportunities to hear from both the general public and affected groups. This effort will include communication and public involvement tasks such as:

- Identification of community values to be used in evaluating levee repair or improvement alternatives
- Creating and maintaining partnerships with neighborhood associations, community groups, community leaders, business groups, conservation and environmental groups,

- Ensuring communication and engagement efforts are inclusive of historically underrepresented groups
- Developing and implementing communication strategies including installation of signage, earned media strategies, social media strategies, and public events
- Partnering with non-partisan, academic, or otherwise independent policy and research organizations
- Implementing public involvement strategies such as surveys, design charrettes, and/or focus groups
- Managing communications and outreach contractors to assist with media relations, design, and branding

### **Funding for Phase II**

Major additional budget expenses anticipated for the next phase of the project include:

- Develop inventories of the specific economic, community, and environmental resources protected by the regional levee system.
- Complete engineering assessments in MCDD, SDIC, and SIDIC consistent with those done for PEN 1 and PEN 2.
- Begin development and evaluation of solutions throughout the levee system to meet FEMA and USACE requirements.
- Maintain active status in the USACE's Rehabilitation and Inspection Program (RIP).
- Identify specific anticipated effects of climate change that will impact the safety of the levee system and identify which effects should be considered in evaluating specific levee system solutions.
- Implement a communications strategy with the general public and targeted audiences such as neighborhood groups about the project.
- Oregon Solutions process management and facilitation
- Comprehensive economic study of the drainage areas and the impact of losing accreditation



Signature to this document does not constitute commitment of financial resources for the activities listed above. During the next phase we will develop separate Intergovernmental agreements or memorandums of understanding between the major jurisdictions for how to fund the necessary activities. We anticipate applying for State IFA assistance.

**Legal authorities, constraints, and responsibilities**

This interim governance approach has been informed by the current legal context, summarized in the attached Legal Subcommittee report: *Background on Flood Protection*. The Legal Subcommittee Report has been reviewed by the affected jurisdictions and, while not inclusive of *all* legal authorities and responsibilities related to levee accreditation or maintenance, it is generally accepted as providing an appropriate context for the interim governance approach outlined in this Declaration of Cooperation.

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City of Portland,

\_\_\_\_\_  
Multnomah County

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Peninsula 1 Drainage District

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Peninsula 2 Drainage District

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Bridgeton Neighborhood Association

\_\_\_\_\_  
East Columbia Neighborhood Assn.

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Metro

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Port of Portland

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Audubon Society of Portland

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Columbia Slough Watershed Council

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Oregon Governor's Office

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Multnomah County Drainage District

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Oregon Dept. of Environmental Quality

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Oregon DLCD

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Columbia Corridor Association

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Jubitz

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Federal Emergency Management Agency

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U.S. Army Corps of Engineers

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City of Gresham

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City of Troutdale

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City of Fairview

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Sauvie I. Drainage Improvement. Co.

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Sandy Drainage Improvement Co.

**OREGON SOLUTIONS COLUMBIA RIVER LEVEE REPAIR AND ACCREDITATION  
PROJECT**

**LEGAL SUBCOMMITTEE REPORT: BACKGROUND ON FLOOD PROTECTION**

**PURPOSE**

The Portland metropolitan area that borders the Columbia River, commonly known as the Columbia Corridor, is currently protected from flooding through an extensive system that includes a 27-mile levee running along the Columbia River, Sandy River, and the Columbia Slough, interior drainage components, and pump stations ("Flood Protection System"). The primary purpose of the system is to ensure the continued safety of the people, businesses, and other assets of the region.

The purpose of this document is to provide background on flood protection in the Columbia Corridor. It is an informational tool on flood protection authorities, standards, and tasks upon which decision-makers may rely as part of their policy analysis. Also, it can provide a framework within which decision-makers may agree to work cooperatively and collaboratively to address flood protection issues in the Columbia Corridor.

**This document does not constitute a legally-binding commitment by any entity—nothing in this document is intended, and may not be construed as intending, to commit any entity to any tasks specified herein ,or otherwise, concerning flood protection.**

The governmental jurisdictions are:

- a. Multnomah County Drainage District No. 1
- b. Peninsula Drainage District No. 1
- c. Peninsula Drainage District No. 2
- d. Sandy Drainage Improvement Company
- e. City of Fairview
- f. City of Gresham
- g. City of Portland
- h. City of Troutdale
- i. Metro
- j. Multnomah County
- k. Port of Portland
- l. State of Oregon—Oregon Water Resources Commission

## **FLOOD PROTECTION AUTHORITY**

1. Peninsula Drainage District No. 1 ("PEN 1"), Peninsula Drainage District No. 2 ("PEN 2"), Multnomah County Drainage District No. 1 ("MCDD"), and Sandy Drainage Improvement Company ("SDIC") (collectively, "Drainage Entities").

1.1 PEN 1, PEN 2, and MCDD are drainage districts formed under ORS Chapter 547 and are subject to ORS 548, "for the purpose of having such lands reclaimed and protected by drainage or otherwise from the effects of water, for sanitary or agricultural purposes, or when the same may be conducive to the public health, convenience and welfare or of public utility or benefit." (ORS 547.005)

1.2 SDIC is a drainage improvement corporation ("DIC") organized under ORS 554 and is directed by its articles of incorporation to construct, operate, and maintain flood control facilities and a system of sloughs, canals, ditches, and waterways to drain benefited properties and make water available for irrigation of benefited properties, for both sanitary and agricultural purposes. ORS 554.080; ORS 554.110.

1.3 The Drainage Entities are special purpose entities under ORS 198, are creatures of statute, and have only those powers enumerated in the statutes.

1.4 PEN 1, PEN 2, and MCDD lack the authority to expand upon or enhance their statutorily-enumerated powers through police-power regulations with the force and effect of law.

1.5 SDIC is a public corporation, but has it been held to be more akin to private non-profit corporations and to have no police powers in the usual sense, although a DIC can enact regulations applicable to its members. ORS 554.080(6).

1.6 The sole funding method available to the drainage districts for operations and debt is via assessment of property owners with the districts. ORS 547.455-.510. Such assessments are levied and collected in the same manner as property taxes. This is also the primary method available for funding DICs. ORS 554.080(8); ORS 554.130. DICs are also authorized to enact and enforce "rates, tolls, fees, fines, and chargers" for the maintenance and operation of the corporation (although SDIC has never done so). See ORS 554.080(7).

1.7 PEN 1, PEN 2, and MCDD are authorized the issuance of general obligation bonds payable from assessments for not more than 40 years. ORS 547.555-580. Such bonds are

"subject to approval by the electors of the district." ORS 547.555(1). There is some question as to whether a property owner is an "elector" within the meaning of the Ballot Measure 5 exception applicable to bonded indebtedness approved by the electors.

1.8 DICs may also issue bonds backed by assessments. ORS 554.160, 554.220. DIC assessments are not subject to compression under Measure 5.

2. City of Fairview, City of Gresham, City of Portland, and City of Troutdale (singularly, "City" and collectively, the "Cities").

2.1 Each City is a municipal corporation operating under a home rule charter pursuant to Or. Const. Art. IV, section 1(5); Article XI, Sec. 2. Each City has broad authority over all matters that it determines to be of municipal concern, except as expressly preempted by state statute and as limited in their home rule charters.

2.2 In addition to its broad home rule authority, each City has authority over land use planning, zoning, and development review within its jurisdictional boundaries, subject to compliance with state and regional requirements. See ORS Chapter 227. Cities also have express authority to assume the assets and responsibilities of any drainage district through annexation or partial annexation. ORS 222.510 to 222.580, as applied by ORS 547.755. (Before a City may withdraw territory from a drainage district, however, it must obtain approval from three-quarters of the district voters in the area to be annexed to the City.)

2.3 Each City has multiple funding sources and capabilities, subject to state preemption and regulation and the specific restrictions in their home rule charters.

2.4 The City of Portland owns Portland International Raceway and Heron Lakes Golf Club in PEN 1.

3. Metro.

3.1 Metro is a metropolitan service district operating under a home rule charter pursuant to Or. Const. Art. XI, Section 14. Metro has broad authority over all matters that it determines to be of metropolitan concern, except as expressly preempted by state statute or as limited by its Charter.

3.2 In addition to its broad home rule authority, Metro has authority over the Metropolitan Urban Growth Boundary ("UGB") and certain functional planning matters of regional concern.

3.3 Metro has broad funding authority under its Charter, but the Charter also contains certain limitations on that authority.

3.4 Metro owns the Portland Expo Center in PEN 1.

4. Multnomah County.

4.1 Multnomah County is a political subdivision of the State of Oregon established pursuant to ORS 201.260 and operating under a home rule charter pursuant to Or. Const. Art. VI, sec. 10. Multnomah County has broad authority over all matters that it determines to be of County concern, except as expressly preempted by state statute or as limited by its Charter.

4.2 In addition to its broad home rule authority, the County has authority over land use planning, zoning and development review within its jurisdiction boundaries outside of city boundaries, subject to compliance with state and regional requirements. See ORS Chapter 215. By intergovernmental agreement, the County has delegated that authority to cities for unincorporated areas within the Metropolitan Urban Growth Boundary ("UGB"). (All of the Drainage Entities are within the UGB.) In addition, the County has express statutory authority to exercise the powers of a diking district (ORS 551.160) and to exercise authority over drainage and flood control under ORS Chapter 549.

4.3 Multnomah County has broad funding authority under its Charter, subject to state preemption and regulation and the specific restrictions in their home rule charters.

4.4 Multnomah County owns roads and structures within MCDD and SDIC.

5. Port of Portland (the "Port").

5.1 The Port is a port district operating under its own enabling act, ORS Chapter 778. In addition, it may exercise most of the powers of port districts generally under ORS Chapter 777. See ORS 778.008. The purpose of the Port is to "promote the maritime, shipping, aviation, commercial, and industrial interests of the port" and is granted the power to "do any other acts and things which are requisite, necessary or convenient in accomplishing the purpose described or in carrying out the powers granted to it by law." ORS 778.015.

5.2 The Port may levy taxes and issue general obligation bonds pursuant to ORS 778.030 to 070 and revenue bonds per ORS 778.145 to 778.175. The Port also receives significant revenues from its commercial port operations. See ORS 778.025.

5.3 The Port owns real property in PEN 1, the Portland International in MCDD, and the Troutdale airport in and SDIC, which impacts the nature of the authority that it may have exercise with respect to these districts.

6. Oregon Water Resources Commission

6.1 The Water Resources Commission has general authority over state water resources pursuant to the authorities of ORS Chapter 537.

6.2 The Water Resources Commission has authority to participate in federal flood control projects pursuant to ORS 549.605 through ORS 549.645.

7. Intergovernmental Authority.

7.1 Intergovernmental Agreements. Pursuant to ORS 190.010 to 190.030, any unit of government may enter into an intergovernmental agreement ("IGA") with one or more other units of government for the performance of any functions or activities that the units of government has the authority to perform. A unit of government performing the functions or activities of another is "vested with all powers, rights and duties relating to those functions and activities that are vested by law in each separate party to the agreement." MCDD, for example, administers all of the Drainage Entities pursuant to IGAs with PEN 1, PEN 2, and SDIC.

7.2 Intergovernmental Entities. Units of government can create an independent entity by IGA to perform certain functions and services. ORS 190.080. Such an entity can issue revenue bonds and enter into financing agreements, but may not levy taxes or issue G.O. bonds. ORS 190.080(2).

### **FLOOD PROTECTION STANDARDS**

1. U.S. Army Corps of Engineers ("USACE").

1.1 Under the federal Flood Control Acts of 1936 and 1950, the Drainage Entities are obligated to operate and maintain the levee system in accordance with USACE's flood control regulations. In addition, PEN 1 is contractually obligated to USACE to do the same.

2. Federal Emergency Management Agency ("FEMA").

2.1 FEMA implements the National Flood Insurance Program ("NFIP"), which designates flood-prone areas as Special Flood Hazard Areas and requires flood insurance for properties in those areas as a condition of receiving any federal funding and assistance.

2.2 The NFIP applies to a "Community," which is defined as a state or a political subdivision that has "zoning and building code jurisdiction over a particular area having special

flood hazards" and, specifically, "authority to adopt and enforce floodplain-management regulations in the areas within its jurisdiction." 42 USC § 4003(a)(1); 44 CFR § 59.1.

Accordingly, the Cities and Multnomah County are Communities under the NFIP. The Drainage Entities, Metro, and the Port of Portland are not Communities under the NFIP.

2.3 If a Community relies on a levee system to avoid the Special Flood Hazard Area designation, then such a levee system must be accredited by FEMA as providing the appropriate level of flood-protection. The accreditation can be sought by a Community or "other party seeking recognition of such a levee system." 44 CFR § 65.10(a). As part of this accreditation process, either the Community or the Drainage Entities (as the levee system operator) could provide levee data that has been certified by a qualified engineer or by USACE. Under the NFIP, and to the extent an accreditation is sought, the only affirmative duty of the Drainage Entities is to provide a maintenance plan to FEMA. 44 CFR § 65.10(b).

### **MAJOR FLOOD PROTECTION TASKS**

Flood protection in the Columbia Corridor faces a complex and changing regulatory landscape at local, state, and federal levels. This section describes aspects and tasks that are essential to an effective and efficient operation of the Flood Protection System in order to ensure the continued integrity of the system and the safety of the public and in light of the changing regulations. It is an informational tool that decision-makers can rely on in their policy analysis and evaluation of participation in a cooperative and collaborative process to address flood protection issues in the Columbia Corridor.

**Nothing in this section or the document is intended, and may not be construed as intending, to commit any entity to any tasks or operational aspects specified herein.**

#### 1. Regulatory Tasks.

1.1 Adopt zoning and building code jurisdiction over a particular area having special flood hazards.

1.2 Adopt zoning and building codes to control development affecting the operation and maintenance of the Flood Protection System.

1.3 Adopt authority to enforce floodplain-management regulations in areas that the Flood Protection System serves.

1.4 Secure additional property rights, including easements and rights-of-way, necessary to operate, maintain, and protect the Flood Protection System.



1.5 Monitor and enforce against violations of the Drainage Entities' property rights, including easements and rights-of-way.

2. Operation and Maintenance Tasks.

2.1 Routinely inspect and investigate the adequacy (informally and formally) of the Flood Protection System by staff, USACE, and FEMA to comply with the standards of USACE and FEMA.

2.2 Dredge interior drainage ways.

2.3 Manage and pump influent stormwater from the interior drainage system.

2.4 Comply with other applicable laws in the operation and maintenance of the Flood Protection System, including but not limited to the Endangered Species Act, the Clean Water Act, the National Environmental Policy Act, and the Rivers and Harbors Act. This may include administrative consultation with the regulating agency, as well as capital improvements to the Flood Protection System.

2.5 Provide adequate administrative staffing for operation and maintenance.

3. Funding Tasks.

3.1 Provide adequate funding to adopt and enforce zoning and building codes, floodplain management regulations, and property rights.

3.2 Provide adequate funding to carry out operation and maintenance.

3.3 Provide adequate funding to investigate and make capital improvements to the Flood Protection System to comply with the standards of USACE and FEMA.

4. **FEMA Accreditation**

The following is a list of general steps to involve in a FEMA accreditation of a levee should a Community, or any other entity, chooses to pursue it.

4.1 Certification of the levee system by a professional engineer or by USACE.

(a) Investigate and evaluate the current condition and identify deficiencies

(b) Design and collaborate on best approaches to address deficiencies

(c) Implement repairs to address deficiencies

(d) Professional engineer or USACE "certifies" that levee meets accreditation

standards and submits certified documentation to FEMA

(e) FEMA accredits the system

- 4.2 Evaluate the cost and benefit of accreditation status
- 4.3 Evaluate financial options to fund accreditation
- 4.4 Evaluate governance options to seek and manage the accreditation process

### **Five Models on Governance From Other Jurisdictions**

Many communities across the country rely on levees for flood protection. A number of these communities have dealt with issues concerning accreditation of their levee systems through various governance structures. The following is a list of a few models for illustrative purposes to inform decision-makers in their policy analysis and consideration. It is not an exhaustive list and does not seek to establish any preferred model.

#### 1. Type I— Existing Structure.

1.1 This is the current structure in which the Drainage Entities are merely "maintenance entities" with limited and narrow statutory and funding authorities.

1.2 There are inadequate statutory and funding authorities to deal with the larger accreditation problem.

#### 2. Type 2 —Joint Powers Authority ("JPA") or Intergovernmental Agreements (IGAs)

2.1 This was the approach taken in the Sacramento area. Pursuant to California's Joint Exercise of Powers Act, entities can agree to form a third party agency that makes use of their overlapping powers. There is lots of flexibility in California about the formation of JPAs, so they are common. This is similar to Oregon, allowing for local government agencies to entered into an IGA to perform " \* \* any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform." ORS 190.010.

2.2 In California, and like the Drainage Entities, local maintenance districts were created without adequate funding or authorities to deal with the larger accreditation problem. JPAs were formed to deal with the issue.

2.3 Example: Sacramento Area Flood Control Agency ("SAFCA") is represented by five entities that include Reclamation Districts, a city, and two counties with representatives on the board of directors.

2.4 The advantage of a JPA is the reduction in distraction by other organizational issues. For example, a focused attention in SAFCA led to \$1 billion in flood control improvements including legislative appropriations, local funds, and bonds passed.

## 2.5 Authorities of JPA.

(a) Powers are limited to those powers held in common by the agencies, including things like funding mechanisms and eminent domain power.

(b) Authorities are not delegated from the participating entities to the JPA, but it is governed by participant entities.

(i) Actions by the JPA do not necessarily require approval from participant boards

(ii) Alternatively, veto power or approval requirements can be designated in the agreement which creates the entity.

(c) Regarding minority veto power:

(i) In the SAFCA example, 4 out of 7 city council members and all of the County Supervisors serve on the board of directors, giving them effective veto power in the JPA .

(ii) Depends on political considerations and how the various entities relate to one another.

## 3. Type III—JPA With Delegated Powers to a Member Agency

3.1 The legal structure is the same as above, but the JPA entity contracts with one of its members for all staffing.

3.2 By example, the West Sacramento Area Flood Control Agency ("WSAFCA") contracts with the City to provide the staffing to carry out the JPA functions.

3.3 This type of entity can lose focus because it is restricted by the limitations of the contracting entity—e.g. people's time and resources.

## 4. Type IV –Legislative Repurposing of an Existing Special District

4.1 An example is Southwest Illinois Flood Protection District in the Chicago area, where three to four cities are involved.

4.2 This district was formed when USACE had revoked certification and FEMA began to talk about accreditation.

4.3 They pursued a legislative fix that gave an old existing district new authority to manage the problem.

5. Type V—Land Use Authority Takes Over

5.1 An example is at the Trinity River Project, which is a flood control project and redevelopment along the river. The City took it over as a redevelopment project and managed in the flood control project.

5.2 The advantage of this model is that it avoided distraction by creating a dedicated department within the City.

6. Type VI – New Legislatively-Created District

6.1 Southeast Louisiana Flood Protection Authority is an example of such a newly created entity.

6.2 The legislature created a third party entity with representation from other existing flood protection entities.

6.3 The original entities still exist but the new entity overlays with new responsibilities.

6.4 The legislature hoped that the other entities would eventually be subsumed by the new one.



## Team Member Ground Rules

The Project partners in the Oregon Solutions process are committed to the following “ground rules” for how they conduct their business with one another:

### ***General Principles***

- We agree to approach problems with creativity and with open minds.
- We each have a unique perspective and contribution to make.

### **Ground Rules**

1. We recognize that the best outcome depends upon cooperation and collaboration by all entities at the table.
2. We commit to openly communicate ideas, potential contributions, and concerns, and also to engage in respectful, active listening to each other.
3. We will focus on the future we would like to create rather than past problems and past history of issues.
4. We will work toward an agreement that is fair and constructive for everyone. When consensus is not possible, we will acknowledge and accept our differences and work toward the best possible outcome.
5. We agree to commit to the agreed-upon solution, in whatever way we can. If we, individually, are unable to make a commitment for our organization, we will work to identify what will make that commitment possible.
6. We commit to building trust by doing what we say we will do.
7. We agree to notify each other before taking outside actions that might impact the process.
8. We agree to attend all meetings or designate an alternate and we will be responsible for keeping the alternate updated. We are responsible for keeping any group entity that we are affiliated with “up to speed.” If we have suggestions for an agenda, we will contact one of the Co-Conveners or project manager well in advance of the meeting.

Note: **Public participation** will be allowed with the consent of the Co-Conveners. Generally, the Project Team will be given priority in all discussion, and in some situations it will be limited to just the Project Team. All meetings are open to the public. Communications with the press and other media are most representative when they come on behalf of the whole Project Team.