

United States Department of the Interior

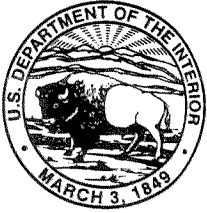
FISH AND WILDLIFE SERVICE

Oregon State Office

2600 S.E. 98th Avenue, Suite 100

Portland, Oregon 97266

(503) 231-6179 FAX: (503) 231-6195



December 30, 1996

Emily Roth, Wildlife Refuge Manager
Metro Parks and Greenspaces Department
600 NE Grand Avenue
Portland, Oregon 97232-2736

Dear Emily,

The U.S. Fish and Wildlife Service (Service) has reviewed the grant proposal for the Smith and Bybee Lakes restoration project that has been submitted to the National Fish and Wildlife Foundation (Foundation). Although the Service supports the project and would like to see it accomplished as outlined in the proposal, we strongly believe this project should not be funded by the Foundation. The Service cannot support Foundation involvement in the project due to outstanding wetland mitigation issues between the Port of Portland (Port) and regulatory agencies which are directly linked with the proposal.

As you know, the Port has not yet completed mitigation obligations for filling 235 acres of wetlands at the Rivergate Industrial District (Rivergate). Creating a water control structure to manage the water level at Smith and Bybee Lakes while maintaining the ability to allow tidal influence was one of the original mitigation requirements for the Rivergate fill. Conceptually, this project was specified in a Cooperative Agreement developed in 1988/89 and signed by the Port and regulatory agencies involved in the U.S. Army Corps of Engineers Section 10/404 permit process.

The Port estimated that the total cost for completing mitigation projects to compensate for fill at Rivergate would be approximately \$500,000 (figured in 1988 dollars). This figure was derived based on preliminary engineering estimates for several proposed mitigation projects. Although this estimate is mentioned in the Cooperative Agreement, the Service does not consider this figure to be the cap for the cost of appropriate compensatory mitigation for the 235 acres of wetland fill. In addition, the Service has never considered the cost of mitigation to take precedence over the actual on-the-ground compensation needed to replace wetland losses. In Metro's grant proposal, the budget shows a total of \$254,000 to be contributed by the Port, making up the majority of the challenge fund contribution. This figure has been derived by the Port based on their determination of funds remaining from their original \$500,000 estimate of mitigation costs. The Service feels the project described in the proposal should be funded

entirely by the Port as intended under the Cooperative Agreement and as required under the authority of the Clean Water Act. We do not believe the federal funding awarded by the Foundation under various grant programs is intended to be used to fund or subsidize mitigation projects.

Please understand that the Service concurs with your assessment of the need for the project and the value of the expected benefits to fish and wildlife, and we are confident in Metro's ability to carry out the proposed project as a capable and responsible organization. But, due to the Port's responsibility to fulfill outstanding mitigation requirements, including the proposed project, combined with the need for restoration projects elsewhere where no other funding sources are available, we feel we must recommend to the Foundation that this project not be funded at this time. We would, however, be pleased to work with Metro, the Port, and the Foundation on a revised project to enhance habitat conditions at Smith and Bybee Lakes above and beyond the Ports mitigation responsibility.

Please be assured that the Service will work with the Port, Metro, and other regulatory agencies involved with the Section 10/404 permit process to complete the mitigation project in its entirety. We regret that we could not support your grant proposal, but we look forward to continuing to work with you on this project. Like Metro, the Service is also anxious to see this project carried out, and we appreciate your commitment to benefitting fish and wildlife species through on-the-ground habitat restoration and enhancement. Feel free to contact Ron Garst, Pat Wright, or Jennifer Thompson of my staff at (503) 231-6179 if you have any questions or comments.

Sincerely,



Russell D. Peterson
State Supervisor

cc: National Fish and Wildlife Foundation
Judy Linton, U.S. Army Corps of Engineers
Joe Pesek and Holly Michaels, Oregon Department of Fish and Wildlife
Ralph Rogers, Environmental Protection Agency, Portland
Jerry Hedrick, Oregon Division of State Lands
Rollie Montagne, Port of Portland



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January 10, 1997

Brian Campbell, Planning Manager
Port of Portland
Box 3529
Portland, Oregon 97208

Dear Mr. Campbell,

Thank you for the opportunity to review the November 20 meeting summary (Summary) notes, dated Dec. 24, 1996, concerning the Rivergate Fill Agreement and Government Island Management Plan. The U.S. Fish and Wildlife Service (Service) would like to add these comments to the Summary and clarify the Service position on several related mitigation issues.

GENERAL COMMENTS

In the Summary, it would be helpful for documentation purposes if the Port would include notes on activity updates. For instance, Rollie mentioned that the repair of the outside fence on Government Island was going to be completed by November 23, 1996; that cows trespassing within the Government Island mitigation area were removed September 20, 1996; and that the monitoring report would be available the week of November 25, 1996- incidentally, we have not yet received a copy of the report. We are looking forward to our copy, and recommend that a follow up meeting with agencies be scheduled to discuss the results within a month after the report is sent out. We would also like to request that all relevant materials be sent out *at least* two weeks prior to meeting dates to help prepare for the meetings and more adequately address agenda items.

SPECIFIC COMMENTS

Rivergate Fill Agreement (Agreement), Mitigation Options

The Service concurs with your notes on the Agreement. We would just like to add, for the record, that we do not support the third project option listed for fulfilling mitigation obligations. That option was described as follows:

To set up a mitigation fund, in an amount equivalent to the remainder of the originally allocated Port funds, to be used in the lakes area, administered through Metro but controlled by the signatory agencies to the fill agreement.

The existing Rivergate Fill Mitigation Agreement is not based on a monetary figure. Further,

the Service does not support this mitigation option, as it is based only on a monetary figure. Mitigation alternatives should be focused on on-the-ground actions adequate for compensating for wetland impacts. Once agencies agree on the appropriate mitigation actions under the Agreement, the necessary funding to accomplish the project(s) should be provided entirely by the Port. The Port funds which were originally identified were based on preliminary engineering estimates calculated by the Port in 1988 dollars. That dollar figure may or may not be adequate to complete the mitigation, and it should NOT be used as the only basis for concluding mitigation projects.

Our reasons for not supporting this option are similar to those which were explained in a letter sent to Emily Roth at Metro on December 30, 1996, with copies to the Port and the regulatory and resource agencies. The Service submitted this letter in response to a request from Metro to review a grant application which Metro had submitted to the Fish and Wildlife Foundation to fund a portion of the water control structure project at Smith and Bybee Lakes. The Service did not support Foundation involvement in the project because it mirrors mitigation required under the existing Rivergate Agreement; and, if this project is appropriate to partially fulfill Port mitigation obligations, the Port should fund the project in its entirety.

Rivergate Fill Agreement, Revegetation between the slough and Ramsey Lake

The Service recommends that the Port develop a specific timeline for completing the revegetation plan mentioned in the Summary for the upland area between the slough and Ramsey Lake. This project was specified in the Agreement as one of the original mitigation components. According to the Port's March 1996 status report, this area had been revegetated, but very few of the plants survived. A contingency plan should be developed and implemented as soon as possible to fulfill this mitigation component. A timeline should also be developed to address removal of material from the islands in Ramsey Lake.

Rivergate Fill Agreement revisions

The Service requests that the Port develop a timeline for revising the Rivergate Fill Agreement. Metro is potentially prepared to move forward with one of the water control structure project options at Smith and Bybee Lakes as soon as this August. A timeline would be very helpful to keep all agencies and the Port on track with reviewing the mitigation alternatives and working towards consensus. It is feasible that if consensus could be reached to implement the project Metro has proposed in their Fish and Wildlife Foundation grant application, the project could potentially be implemented in 1997.

Government Island Management Plan

Regarding the notes on the Plan, the Service strongly agrees that management policies should be developed for the Government Island mitigation area. The Service would like to add that the Port should develop clear objectives for all SW Quad mitigation sites, including not only Government Island but the Buffalo and Elrod sites as well. At this time, it is difficult to determine how successful mitigation projects have been because there are no clear objectives to use as the basis with which to compare monitoring data. Objectives should be developed for agency review and concurrence to ensure mitigation is adequately compensating for the impacts

of the original wetland fill.

Buffalo and Elrod Mitigation Sites

Mitigation plans which have been submitted to the Service for the Buffalo and Elrod sites are conceptual only, and do not contain detailed information such as the prior site condition, numbers of various species planted, densities planted, the exact location and dimensions of the slough bank which was graded, etc. In addition, monitoring of these sites has been insufficient. The Service is not confident that mitigation which has occurred on either of these sites is adequate. In the U.S. Army Corps of Engineers permit for the SW Quad, Section E. Mitigation Requirements, 1. c.) states that:

Prior to the creation of the riparian and/or wooded wetland habitats at the NE Elrod Road and Buffalo Street sites, final design details will be provided to the Corps of Engineers for review and approval. As part of the review process, the Corps will coordinate with the Oregon Division of State Lands, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, U.S. Fish and Wildlife Service, Environmental Protection Agency, and the National Marine Fisheries Service.

The Service has no record of reviewing & approving final design plans.

Thank you again for summarizing the meeting notes and requesting comments. We look forward to continued discussions and implementation of mitigation for these two agreements. If you have any questions or comments, please call Ron Garst or Jennifer Thompson of my staff at (503) 231-6179.

Sincerely,



for Russell D. Peterson
State Supervisor

cc: Rollie Montagne, Port of Portland
Judy Linton, U.S. Army Corps of Engineers
Emily Roth and Jim Morgan, Metro Parks and Greenspaces
Jerry Hedrick, Division of State Lands
Ralph Rogers, Environmental Protection Agency
Joe Pesek and Holly Michaels, Oregon Department of Fish and Wildlife