



Date: February 10, 2020

From: Bob Sallinger, Conservation Director, Audubon Society of Portland

To: US Army Corps of Engineers, PMLS-Feasibility@usace.army.mil

Levee Ready Columbia, Attn:

Re: Portland Metro Levee System Draft Integrated Feasibility Report and Environmental Assessment

Dear US Army Corps of Engineers and Levee Ready Columbia,

Please accept the following comments on behalf of Audubon Society of Portland and our 17,000 members in the Portland Metro Area regarding the US Army Corps of Engineers (Corps) Portland Metro Levee System Draft Integrated Feasibility Report and Environmental Assessment.

Audubon Society of Portland recommends adoption of the NO ACTION ALTERNATIVE as all three action alternatives considered by Corps fail to meet Levee Ready Columbia's mandate to integrate both environmental restoration and environmental justice into the proposed strategies to upgrade the Columbia River Levee System that extends from Portland to the Sandy River. The preferred alternative (Alternative 5) also is predicated on incomplete and inaccurate financial information which could result in massive cost overruns and it fails to adequately incorporate concerns expressed by neighborhoods such as Bridgton that will be heavily impacted by this project. Finally the Corps failed to provide communities with adequate time to review and conduct due diligence on this \$165 million project resulting in a situation where there is an extremely high probability that there will be significant unanticipated challenges, conflicts, errors and impacts.

Background:

Audubon Society of Portland has been engaged with Levee Ready Columbia (LRC) since its inception in 2013. Updating the levee system that extends more than 27 miles from Portland to Troutdale and protects more than 24,000 acres from flooding is of critical importance to our community. However, it also represents an important opportunity to modernize how we manage water in a way that integrates environmental protection, environmental justice and climate resiliency. Historically levee systems have been constructed in ways that ignored and often conflicted with and degraded these values. Too often in recent years, levee systems across the country have failed as a result of their failure to adequately account the importance of floodplains in maintaining a resilient landscape.

The Levee Ready Columbia process was designed to modernize the levee system in a way that allows the system to be recertified by the Corps and reaccredited by FEMA. FEMA reaccreditation is particularly critical because accreditation is necessary to maintain eligibility for the National Flood Insurance Program (NFIP).

As the scope and scale of the project has become better understood, that complexity of the Levee Ready Columbia process has also grown. We would note two very important ways in which this process has evolved since its inception:

1. **The decision to consolidate the four existing drainage districts that manage the current levee system into a single new Flood Safety and Water Quality District:** LRC Recognized that the scale and cost of levee improvements as well as the complexity of ongoing operations and maintenance necessitated a more robust unified management structure. To that end, LRC successfully advocated for creation of a new Flood Safety and Water Quality District in the 2019 legislative session through passage of [SB 431](#). Notable among the expressed purposes of the new district in this bill are the following in Section 3 (purposes of the district) reflecting the broader mandate given to this new public entity by the legislature:
 - 3(e) Contribute to improved water quality, fish and wildlife habitat, floodplain restoration and landscape resilience;
 - 3(f) Promote equity and social justice in all aspects of the district's operations;
 - 3(g) Prepare for and adapt to the impact of climate change in relation to the managed floodplain; and
 - (h) Provide the public with information regarding the cultural history of the territory in the managed floodplain.

As a direct result of this legislation, Levee Ready Columbia and the existing drainage districts will likely begin to hand this project off to the Flood Safety and Water Quality District and its new board sometime during the 2020 calendar year

2. **The Decision to enroll this process in the US Army Corps of Engineers Long-term Disaster Recovery Investment Program in 2018:** As originally conceived, Levee Ready Columbia would have developed a plan to achieve compliance with Corps and FEMA mandates and well as integrating broader community needs and aspirations such as environmental restoration and environmental justice objectives. The decision to enroll this process in the Corps run program came several years into the process. Notably the purpose of the Corps program is not the same as the purpose of Levee Ready Columbia or the new Flood Safety and Water Quality District. Nor does its purpose specifically include meeting the requirements necessary to achieve reaccreditation with FEMA. At the time the decision was made to enroll Levee Ready Columbia in this program, Audubon expressed strong concern that Levee Ready Columbia would lose control of this process and that the Corps would come back with a project plan that was inconsistent with community values and the natural resource, environmental justice and climate resiliency mandates of the new district. Enticed by a 65% cost share potentially provided by the US Army Corps, Levee Ready Columbia decided to enroll in the Corps program despite these concerns. The Feasibility Study (FS) and Draft Environmental Assessment (DEA) that is the subject of these comments is the product of this Corps program.

A. The Corps provided inadequate time for the community and local jurisdictions to review this plan:

The Corps provided a total of 40 days including weekends and holidays (29 business days) for the public and local jurisdictions to review a plan that extends or over 1,000 pages (including appendices) and which will cost an estimated \$165 million to implement. This short review and comment period comes after a Corps process that was remarkably inaccessible in terms of public participation. During the better part of two years that the study was under development, stakeholder organizations such as Portland Audubon that were part of the Levy Ready Columbia were not included in deliberations and workshops to develop the plan.¹ Iterative updates regarding plan development were minimalistic and there was little or no opportunity for feedback. The Corps initially insisted that it could only provide a thirty-day comment period to be completed before December 31, 2019 because of regulatory constraints, but then moved the comment period into 2020 in order to accommodate its own internal process challenges.

40-days is simply not sufficient to engage the public and review and comment on a \$165 million, 1,000+ page plan. Nor is it sufficient for local municipalities who will ultimately be responsible for paying for significant portions of this plan to do their due diligence. This region has seen too many megaprojects, including the CRC, Portland Water Treatment Facility and I-5 Rose Quarter Widening Project, result projects that balloon by tens of millions of dollars due to inadequate due diligence in the early planning phases of the project. We take no solace in vague assurances that there will potentially be future opportunities for input--The Corps has proven itself in this and other projects to be remarkably insular. Once these mega-projects move beyond their initial phases they tend to take on lives of their own and become remarkably difficult to modify. Advancing this plan now will also require that taxpayers continue to invest significant funding resources towards developing a fatally flawed plan and will preclude meaningful investment of resources into developing a plan that more closely aligns with our communities needs and values.

B. The FS/ DEA fails to meet the natural resource mandates of the new Flood Safety and Water Quality District.

The enabling legislation for the new Flood Safety and Water Quality District that will supersede Levee Ready Columbia and the existing drainage districts includes in its purposes section the mandates to “contribute to improved water quality, fish and wildlife habitat, floodplain restoration and landscape resilience” and to “Prepare for and adapt to the impact of climate change in relation to the managed floodplain.” The legislative summary highlighted the legislative intent when it stated that SB 431:

*“Creates urban flood safety and water quality district in portion of Multnomah County within urban growth boundary adopted by Metro, for purposes of acquiring, purchasing, constructing, improving, operating and maintaining infrastructure in order to provide for flood safety **and contribute to water quality, floodplain restoration and habitat and landscape resilience**”² (emphasis added).*

¹ A total of 28 people attended the Corps poorly advertised and inaccessibly located scoping meetings (FS, Section 2.7, page 21) and Corps “kickoff meetings” failed to include any community groups (FS, Section 2.7, page 21).

² <https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB431/B-Engrossed>

The FS and TSP fail entirely to meet these environmental mandates and thus fail to achieve the purposes of the new Flood Safety and Water Quality District.

First the FS begins with a remarkably Malthusian vision of the baseline environmental conditions in the study area. The Corps writes,

Under the Future Without-Project Alternative, biological resources would decline incrementally due to factors related to urbanization, population growth, etc.With this continued development, the small areas of remaining natural habitat will continue to shrink in size and biodiversity, become fragmented and disconnected, sustain increased invasive plant and animal populations, and provide fewer ecosystem functions for the animals that remain. Urban runoff that delivers nutrients to the surrounding vegetation and enters surface water will continue to increase development increases; resulting in further growth of non-native aquatic plants....³

The FS concludes that the natural resource impacts of the TSP basically do not matter since the area was going to degrade anyways. The Corps writes,

The geographic area for biological resources includes the area in which construction would result in water quality and noise impacts or permanent loss of habitat. This area generally includes Columbia Slough and associated riparian zones, the southern half of the Columbia River along the study area, and the levee-protected area. This geographic area has been highly altered by settlement and conversion to agricultural and industrial uses. The TSP, in combination with reasonably foreseeable future actions, will further reduce the habitat available to wildlife in the geographic area. However, most areas that will be modified are already extensively developed and managed and provide minimal habitat value. Where levees are to be widened or raised, floodwalls installed, or systems to be modified, the existing habitat is generally of poor or no value...⁴

The Corps approach to environmental impacts in the FS can be summarized as “we already trashed the place, it is only going to get worse anyways, and so what we do simply does not matter.” In doing so the Corps ignored decades of effort by governmental entities and NGOs to restore natural resources within the study area. It ignores literally billions of dollars of investment in protecting and restoring habitat, access to nature and air and water quality. It ignores local and regional plans that clearly anticipate increased ecological health rather than degradation within the study area. Finally, it ignores its own responsibility for creating much of the environmental degradation we are experiencing today due to its past levee development practices and its responsibility to mitigate for new impacts caused this project.

Specific environmental concerns with the FS and TSP include the following:

a. The FS repeated fails to meaningfully acknowledge an environment component to this project:

For example although the study area includes significant natural resource areas as well as parks and open space, the FS ignores any audiences associated with natural resource

³ FS, Section 4.9.3.1, page 152.

⁴ FS, Section 4.19.3, page 209.

values including visitors to open spaces and natural areas, recreational users, anglers, tribes with treaty rights, and even water users who depend of the well fields located within the study area. Instead the section on intended audiences focuses exclusively on people living and working in the area, businesses and travelers.⁵ This narrow focus perhaps explains the Corps abysmal outreach efforts toward major stakeholder groups associated with the study area. In a section on problems addressed by the FS, the Corps fails to include any natural resource areas in the list of resources that may be impacted.⁶ In a section on opportunities created by the FS, the Corps fails to identify any natural resource benefits that will be accomplished by the project.⁷ In the project planning objectives, environmental benefits are treated as an afterthought: The FS includes five definitive planning objectives related to reduce risks of flooding, human health and safety, infrastructure and then adds “to the extent practicable, provide opportunities for recreation, natural resources, and cultural resources.”⁸ The driver for the Corps FS is maximizing national economic development (NED) rather than the more holistic mandate of Levee Ready Columbia and the new Flood Safety and Water Quality District.⁹

b. The Corps failed to analyze any action alternatives that included environmental benefits:

The FS includes three action alternatives. None of the three alternatives included a single strategy or measure that could be considered an environmental enhancement. This is remarkable since in its “Initial Array of Flood Risk Development Measures” the Corps did include a number of measures that would have significantly improved environmental health including: improved permeability, increased wetlands, setback levees to increase flood areas, increased flood storage in the basin, increasing the size of the floodplain, and reduction of invasive plants in waterways.¹⁰ All of these measures were screened out from further consideration in the initial round of review by the Corps which occurred without any meaningful engagement by Levee Ready Columbia or the public at large.

Remarkably, the initial array of measures did not even reference green stormwater strategies such as trees, green roofs and increased natural areas for addressing precipitation inside the levee system despite the fact the Corps recognized that that “In addition to flood risk posed by levee failure from riverine sources, the PLMS also faces a hazard generated by large precipitation events....Many of the pump stations were designed for lesser flows prior to full development of the drainage area, and have difficulty managing relatively frequent rain events.”¹¹ The Portland Metro Region is a

⁵ FS, Section 1.5-Intended audiences and uses, page 16.

⁶ FS, Section 2.1.1-Problems, page 18

⁷ FS, Section 2.1.2, Opportunities, page 18.

⁸ FS, Section 2.4-Planning Objectives, page 19.

⁹ FS, Section 2.2-Purpose and Need, page 19.

¹⁰ FS, Table 3-13-Initial Array of Flood Risk Reduction Measures, pp49-50.

¹¹ FS , Section 3.2.5-Interior Drainage and Pump Stations, page 36.

nationally and internationally recognized leader in the use of green infrastructure to address stormwater while also achieving multiple other community and environmental benefits. The omission of green infrastructure as a potential measure even in the initial array represents an inexplicable omission and major missed opportunity.

The Corps also eliminate Alternative 2 (Non-Structural Strategies) from further consideration early in the process before Levee Ready Columbia or the general public has a meaningful opportunity for review and input. Alternative 2 included consideration of reconnecting PEN 1 to the Columbia River, a strategy advocated for by environmental interests which would have resulted in by far the most significant ecological lift for the study area and the most effective way to remediate ecological damage done by the installation of the levee system. It also potentially would have significantly reduced the costs associated with this project. Given the interest in this approach and its potential benefits for achieving flood safety and improving ecological health, the decision to remove it from consideration without meaningful analysis and public review represents a fatal flaw in the FS.

Alternative 3 which was carried forward in the FS does include one notable measure which would have helped reduce the risk of future negative impacts to the environment: instituting new zoning regulations for hazardous material tanks and other structures that could cause hazards for the community in the event of a flood.¹² However, this measure was ultimately not included in the TSP either.

Rather than integrating green strategies into the alternatives, the Corps systematically eliminated these measures from further consideration at the outset of the process without meaningful analysis or public participation. Instead the Corps advanced three alternatives that failed individually and collectively to incorporate environmental strategies and then defaulted to its traditional structural approach to water management prioritizing building bigger levees, taller flood walls and larger pump stations.

c. The FS fails to adequately mitigate for negative environmental impacts of its TSP:

We disagree strongly with the Corps assertion that the environmental impacts of the TSP are insignificant.¹³ In fact the environmental impacts of this proposed action are highly significant.

First, we believe that the Corps errs in assuming that it is not liable for floodplain impacts caused by this project. We believe that the scale of this project will trigger mitigation measures outlined in the 2016 FEMA Biological Opinion for the National Flood Insurance Program in Oregon¹⁴ which found that the program adversely impacts federally listed salmonid species. Given the scale of this project and the fact that one of

¹² FS, Section 3.3.2.3-Alternative Strategy 3: Prioritize Public Health and Safety, page 58.

¹³ FS, Section 5.5-Minimization Measures for Adverse Environmental Impacts, page 218.

¹⁴ <https://www.oregon.gov/lcd/NH/Pages/BiOp.aspx>

the primary drivers is recertification by FEMA to remain eligible for the NFIP Program, we believe that it is highly likely that in fact mitigation will be required. The Corps indicates that NOAA Fisheries will provide a Biological Opinion for the proposed action prior to finalization of the Final IFR/ EA.¹⁵ Until the BiOp is produced Corps dismissal is at best premature and misleading.

Second, we believe that the Corps errs when it assumes that this action will not be liable for mitigation requirements required by local environmental codes such as Portland's Tile 11 Tree Code¹⁶ or Portland's environmental overlay zones.¹⁷ The Corps indicates that it can escape liability based on federal preemption. However, the Corps fails to acknowledge that its local partners including the local sponsor are in fact bound by these codes.

Third, the Corps fails to acknowledge the very significant environmental issues associated with contaminated properties that will be directly impacted by the proposed action. The FS states:

*Prior to construction, each of these sites will need to be further evaluated and if warranted, fully remediated. The non-Federal sponsor is responsible for providing all real estate for the project; and all real estate provided for the project must be acceptable and free of substantial concentrations of hazardous material. No construction will occur where known hazardous wastes may be released or exposed and cause a human health risk. In the event that undocumented hazardous wastes are discovered during construction, all further activity would cease until an assessment and any necessary remediation was complete.*¹⁸

The FS anticipates that the project will impact 108 acres including 135 individual parcels, and 48 property owners.¹⁹ Of these, the FS has determined that 23 sites are likely contaminated with two representing a low level of environmental concern, four with a medium level of environmental concern, and 17 with a high level of environmental concern.²⁰ ²¹The FS states that risks from properties contaminated with hazardous, toxic or radioactive waste impacted by the project include "health risks to workers, potential of releases...into the environment, and the possibility of exacerbating HTRW (hazardous, toxic, radioactive waste) contamination or interfering with ongoing remediation."²²

The FS also incorrectly understates the risk of finding additional contaminated sites stating, "It is possible that unreported disposal of waste or illegal activities impairing the

¹⁵ FS, page 232.

¹⁶ <https://www.portlandoregon.gov/citycode/66002>

¹⁷ <https://www.portlandoregon.gov/bps/article/53343>

¹⁸ FS, Section 4.11.2.2, page 164.

¹⁹ FS, Section 5.1.1, page 215.

²⁰ FS, Section 4.11.2.4, page 166.

²¹ Defined as "high impacts on the proposed alternative are likely." FS, Appendix F, page 5.

²² FS, Appendix F-Hazardous, Toxic, and Radioactive Waste (HTRW), page1.

environmental status of properties may have occurred, which could not be identified. Such cases are likely to have been high profile and most likely cleaned up quickly given the proximity to the river.”²³ Such a conclusion is utterly absurd on its face given the long history of contamination in this area and our community’s experience with the proximal 2000+ acre Portland Harbor Superfund site, a process that has already spanned decades and it still at least a decade and a half from resolution. The FS relies entirely on existing data bases and did not include site inspections, analysis of aerial photos, or review of property records.²⁴

It is highly likely that these sites will require both remediation and mitigation and that those responsibilities will fall on local jurisdictions.

d. The Corps does an inadequate job of describing both natural resources in the study area and impacts to these resources by the proposed action:

Descriptions of biological resources in the study area are surprisingly incomplete and inaccurate. Examples include but are not limited to the following:

- The FS significantly understates the habitat value of sites found in the study area. In multiple locations the FS described the habitat within the study area as highly degraded and likely to degrade further in the future. In fact the study area is home to a remarkable array of natural resources sites including Sites such as Vanport Wetlands, the Columbia Slough, Heron Lakes Golf Course, Colwood Golf Course, Broadmoor Golf Course, Catkin Marsh, the Children’s Arboretum, Whitaker Ponds, Blue Lake, Fairview Lake, Big Four Corners Natural Area, Port of Portland Mitigation Sites, the Columbia River and multiple other sites. The Study area sits adjacent to one of the largest urban wetlands in the United States at Smith and Bybee Lakes to the west, directly across from large intact natural areas on West Hayden Island and Government Island to the north and adjacent to the Sandy River and 1,000 Acres Natural Area to the east. This area taken as a whole should be legitimately considered one of the premier urban wildlife complexes in the United States.
- The FS specifically understates the ecological value of golf courses.²⁵ While golf courses can be managed in a manner that limits their ecological value several of the golf courses in the study area are managed in a way that prioritizes natural resource values. Notable for example are the City of Portland’s Colwood Golf Course which includes two arms of the slough and a large restored wetland and Heron Lakes Golf Course, also owned by the City of Portland which takes its name from the large heron rookery located in its northwest corner.
- The FS lists of number of birds in the study area protected under the Migratory Bird Treaty Act as being 15. In fact, this is an area rich in avian biodiversity. There are upwards of 200 avian species found in Portland, most of which are protected under the MBTA and most of which can be found in the study area.

²³ FS, Appendix F-Hazardous, Toxic and Radioactive Waste (HTRW), page 4.

²⁴ *Id.*

²⁵ FS, Section 4.9.1.1-Habitats, page 139.

- Of the 15 bird species actually listed in the FS several including the golden eagle and California thasher are actually not associated with this area.
- The FS repeatedly mentions the state listed sensitive western pond turtle as occurring in the area but fails to mention the state listed sensitive western painted turtle which is also found in the area.

Examples of situations where the Corps fails to accurately or completely describe the natural resource impacts of the proposed action include but are not limited to the following:

- The FS fails to quantify or identify the size or species of hundreds of trees that will be removed at Heron Lakes Golf Course by the proposed action.
- The FS fails to even attempt a cursory description of impacts at other sites such as tree loss along the Peninsula Canal Cross levee and along the Slough.
- The FS did not even conduct basic due diligence on potential impacts on the Great Blue Heron Colony from which Heron Lakes Golf Course derives its name. The FS simply states that the heron rookery appears to be outside the direct construction area when in fact it appears based on the Corps maps that it would be cutting trees and constructing levees. Based on best management practices for heron colonies, the construction appears to be well within the potential impact zone.²⁶

While some of these errors and omissions may seem minor, in fact these types of errors are prolific in the FS and they are the types of mistakes that never should have escaped early internal review. That they made it all the way to a public review draft demonstrates a remarkable indifference to natural resource impacts of this action and undermines the credibility of the entire report.

C. The FS/ DEA fails to meet the environmental justice mandates of the new Flood Safety and Water Quality District

The enabling legislation that created the new Flood Safety and Water Quality District that will supersede Levee Ready Columbia and the existing drainage districts includes in its purposes section the mandate to “Promote equity and social justice in all aspects of the district’s operations.”²⁷ Additionally, the FS notes minorities comprise 40% of the population in the study area, significantly higher than the Metro Area as a whole (26%) and Oregon (23%) and more commensurate with national averages (39%).²⁸ The FS also notes that the study area is home to specific vulnerable populations including seven mobile home facilities, two prison facilities and a shelter facility (Dignity Village).²⁹ The combination of a mandate for the new district to promote equity and social justice in all aspects of its operations and the presence of what appear to be exceedingly high concentrations of communities of color in the study area should

²⁶ <http://m.olympiawa.gov/~media/Files/CPD/Planning/CAO/DraftHeronMgmtGuidelines.pdf?la=en>

²⁷ SB 431 (2020), Section 4(f): <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/SB431>

²⁸ FS, Appendix B-Economics, page 13.

²⁹ FS, Section 4.13.1.1, page 183.

result an amplified focus on environmental justice issues. Instead, the FS and TSP virtually ignore environmental justice issues.

The FS blatantly ignores a long and ongoing history of displacement of communities of color in the Metro region and makes the unsupported assertion that age, sex and race composition of the study area is “unlikely to change substantially from current conditions” over time.³⁰ The FS devotes less than a page to analyzing the environmental consequences of all four of the alternatives under consideration on environmental justice communities.³¹ In Section 4.14 analyzing the environmental consequences of the four different alternatives being considered on environmental justice communities and concludes simply that environmental justice communities would not be disproportionately impacted and would benefit along with the rest of the community from increased flood protection.³² In a section devoted to avoidance and mitigation measures, the FS proposes in its entirety “To the extent practicable, design selected alternative to avoid disproportionate effect on low income communities found in tract 75,” “Design traffic control patterns to protect resident’s access to uninterrupted transportation services,” and “Applying water to dirt surfaces as needed to control fugitive dust.”³³ It is difficult to imagine an environmental justice analysis that is more superficial, cursory and utterly indifferent to environmental justice issues than what is contained in this FS.

Even if environmental justice were not part of the mandate for the new Flood Safety and Water Quality District, the level of analysis of environmental justice issues contained in the FS is far below what we would expect of any federal project of this scope and scale. It is simply unacceptable. Given the new Flood Safety and Water Quality District’s clear mandate to “promote equity and social justice in all aspects of the district’s operations,” we fully expect that the Levee Ready Columbia board members will reject this analysis as failing to meet this core purpose of the new District. The words “promote equity and social justice in all aspects of the district’s operations” were chosen carefully in the enabling legislation to ensure that in fact all aspects of the districts operation would integrate these values. It is therefore absurd and offensive that the FS for the project that was the catalyst for the creation of the new district and which will define the new district for years to come would for all intents and purposes ignore these values.

We expect a full and robust, multidimensional analysis of environmental justice issues in the FS and a TSP that fully achieve the environmental justice mandate of the new district. This includes robust analysis of environmental justice communities located in the study areas, potential impacts to these communities, meaningful inclusion of environmental justice communities in the development of the alternatives, and selection of an alternative that integrates environmental justice into all aspects of the project including but not limited to job training, hiring practices, mitigation for impacts, anti-displacement policies, etc.

³⁰ FS, Section 4.13.2.1, page184.

³¹ FS, Section 4.14-Environmental Justice Communities, pp. 185-186.

³² *Id.*

³³ FS, page 106.

D. The FS/ DEA inaccurately projects the costs of this project in ways that could result in cost overruns of tens to hundreds of millions of dollars

We view the cost estimates included in the FS/EA as overtly unrealistic and unreliable. The Corps chose the most expensive of the three action alternatives that it considered. Alternative 5 (the preferred alternative) costs an estimated \$165,093 million, more than twice the cost of alternative 4 at \$77,129 million and more than three times the cost of Alternative 3 at \$49,581 million.³⁴ Notably, Alternative 5 also has the lowest cost benefit ratio (2.24 for Alternative 5 versus 2.93 for Alternative 4 and 3.24 for Alternative 3).³⁵

Despite the complexity and exorbitant costs of this plan, the Corps gave local jurisdictions which will be responsible for covering 35% of project costs only 40 days to review and comment on the plan. This is inadequate time for local jurisdictions to conduct a meaningful staff review, let alone go through any sort of formal review process that allows decision-makers to hear from constituents and make an informed decision. We are deeply concerned that local jurisdictions will be blinded by the appeal of 65% cost shared by the Corps and allow this process to advance into the next stages with without the type of serious scrutiny that a project of this cost, scale and impact warrants.

We view this as a case study in how mega projects to often result in both mega cost overruns and failure to achieve project goals. Decision-makers fail to exercise adequate due diligence at pivotal early stages of a project and allow concepts that are fundamentally flawed to advance in the hopes that later stages of the process result in needed course corrections. Instead, fundamental flaws become cemented into the foundation of the process undermine the integrity of everything that follows.

There are multiple causes for extreme concern regarding the cost estimates for this project:

- a. **All three of the action alternatives in the FS/ EA fail to evaluate green infrastructure strategies that have significantly increased the benefits and reduced the costs of other large infrastructure projects in our region and across the country.**

In failing to consider green infrastructure strategies, there is strong reason to believe the Corps is pursuing an alternative that on its face has unnecessarily high costs and low benefits.

- b. **The preferred alternative requires that the local project sponsor (in this case MCDD) deliver contaminated properties necessary to accomplish the project to the Corps fully remediated.**

The FS states:

Prior to construction, each of these sites will need to be further evaluated and if warranted, fully remediated. The non-Federal sponsor is responsible for providing all real estate for the project; and all real estate provided for the project must be acceptable and free of substantial concentrations of hazardous material. No construction will occur where known hazardous wastes may be released or exposed and cause a human health risk. In the event that undocumented

³⁴ FS, Section 3.3.11, page 94.

³⁵ *Id.*

*hazardous wastes are discovered during construction, all further activity would cease until an assessment and any necessary remediation was complete.*³⁶

The FS anticipates that the project will impact 108 acres including 135 individual parcels, and 48 property owners.³⁷ Of these, the FS has determined that 23 sites are likely contaminated with two representing a low level of environmental concern, four with a medium level of environmental concern, and 17 with a high level of environmental concern.³⁸ ³⁹The FS states that risks from properties contaminated with hazardous, toxic or radioactive waste impacted by the project include “health risks to workers, potential of releases...into the environment, and the possibility of exacerbating HTRW (hazardous, toxic, radioactive waste) contamination or interfering with ongoing remediation.”⁴⁰

The FS also incorrectly understates the risk of finding additional contaminated sites stating, “It is possible that unreported disposal of waste or illegal activities impairing the environmental status of properties may have occurred, which could not be identified. Such cases are likely to have been high profile and most likely cleaned up quickly given the proximity to the river.”⁴¹ Such a conclusion is utterly absurd on its face given the long history of contamination in this area our communities immediate with the proximal 2000+ acre Portland Harbor Superfund site, a process that has already spanned decades and it still at least a decade and a half from resolution. The FS relies entirely on existing data bases and did not include site inspections, analysis of aerial photos, or review of property records.⁴²

Put simply, the local jurisdictions who will bear the costs of these cleanups have entirely inadequate information about the scale, scope and cost of contaminated sites cleanup operations that they will be directly responsible for accomplishing and which could run in the range of tens or hundreds of millions of dollars.

c. The FS fails to address all of the projects identified by Levee Ready to achieve compliance with FEMA recertification requirements:

It is critical to note that the purpose of the Corps New Start Program under which this FS was developed is not specifically designed to meet FEMA recertification requirements. In fact, of the nine projects identified by Levee Ready and acknowledged by FEMA as necessary to meet recertification requirements, the Corps TSP only includes four. While some within Levee Ready have speculated that the Corps TSP may ameliorate some of the need for some of the additional five projects, there is no certainty regarding this supposition. Of particular concern are low spots proximal to the I-5 Interchange. These

³⁶ FS, Section 4.11.2.2, page 164.

³⁷ FS, Section 5.1.1, page 215.

³⁸ FS, Section 4.11.2.4, page 166.

³⁹ Defined as “high impacts on the proposed alternative are likely.” FS, Appendix F, page 5.

⁴⁰ FS, Appendix F-Hazardous, Toxic, and Radioactive Waste (HTRW), page1.

⁴¹ FS, Appendix F-Hazardous, Toxic and Radioactive Waste (HTRW), page 4.

⁴² *Id.*

projects could add millions and potentially tens of millions of dollars to the cost of this project which would be entirely at the expense of the local jurisdictions. The FS fails to even address these unresolved issues---they simply are not part of the Corps TSP. Despite choosing by far the most expensive alternative under consideration, the Corps TSP based on all the work done to date by Levee Ready would not meet the standards necessary to meet FEMA recertification requirements and would leave our communities at risk of flooding and at risk of becoming ineligible for the National Flood Insurance Program. Before any jurisdiction supports moving this proposal forward it is essential that it be explicitly clear in a legally enforceable manner that in fact the TSP does meet both Corps and FEMA requirements.

d. The FS fails to adequately analyze or incorporate the costs of environmental mitigation required by this project:

Both Levee Ready and the Corps appear to conflate the costs of environmental enhancements (ie environmental projects that can be done in conjunction with the preferred alternative) and environmental mitigation) (ie mitigation for the actual environmental impacts of the preferred alternative). These are very different things—environmental enhancements are voluntary activities while mitigation for the actual negative environmental impacts of the project are largely a legal requirement.

The FS fails in multiple ways in this arena. First, it fails to accurately identify or describe the actual environmental impacts of this project. Review of even the most obvious environmental impacts such as the removal of hundreds of mature trees are barely described and with the exception of jurisdictional wetland impacts, the FS fails to provide either specific mitigation measures or cost estimates for other environmental impacts. In fact the Corps repeatedly in the FS states that it intends to avoid and minimize impacts but fails to even acknowledge mitigation obligations. Among the most significant potential sources of mitigation liability are floodplain impacts covered by the [FEMA Floodplain Biological Opinion](#). We believe the Corps makes a significant and potentially very expensive assumption that the existing levy system can serve as the environmental baseline relative to floodplain impacts.

Further, the Corps errs in assuming that local environmental regulations (for Portland's Title 11 Tree Code) will not apply to this project due to preemption. While the Corps may not be subject to local codes, the local sponsors will not be covered by preemption and will be liable.

e. The FS does not achieve the environmental restoration, environmental justice and recreational goals of Levee Ready or the new Flood Safety and Water Quality District. Levee Ready proposed to address these deficiencies through a parallel process that will add additional costs.

Levee Ready acknowledges that the Corps TSP fails to meet the goals of the new Flood Safety and Water Quality District in terms of environmental restoration, environmental justice and recreational opportunities and has indicated that it will conduct a parallel

process to augment the TSP with supplemental projects designed to achieve these objectives. In fact levee Ready is proposing a series of workshops over the next year to design these supplemental projects. While we agree that the new Flood Safety and Water Quality District vis-à-vis Levee Ready must meet its mandates, these goals should be incorporated and integrated into the TSP, not added like bells and whistles via a parallel process. Achieving the multiple objectives of the Flood Safety and Water Quality District should be a holistic process accomplished in an alternative which achieves these mandates in the most efficient, effective manner possible. As proposed however, these projects, if these move forward at all will generate costs in terms of planning, technical analysis, public outreach and implementation that are entirely outside the scope of the TSP and which will be incurred entirely by the local jurisdictions.

f. The FS fails to account for potential delays that could drive up the project costs and other costs significantly:

While the Levee Ready process to date had flown largely below the radar screen, in large part because it has been focused on process rather than substance to date, we expect that it will generate substantial levels of controversy and opposition as the public becomes more familiar with its contents. The Corps expedited public notices and review process may have effectively muted the public's ability to engage before the public comment deadline, but the substantial impacts on our community and environment and failure to consider other viable alternatives that would better meet community goals and needs will generate ongoing opposition that could significantly delay the project. The lesson from other local megaprojects such as the recent I-5 Rose Quarter Expansion Process and the CRC is that failure to daylight and address legitimate community concerns early in the project ultimately results in significant delays which in turn drives up project costs even further. Continuing forward with the TSP runs a very high risk that jurisdictions will invest tens of millions of dollars on a process that will ultimately fail or require major revisions while simultaneously leaving communities vulnerable to flooding and risking certifications necessary to retain eligibility for the National Flood Insurance Program.

g. Failing to meet the environmental justice and environmental restoration mandates of the new Flood Safety and Water Quality District will make it much more difficult to enact the funding mechanisms that the District will ultimately need to achieve its goals.

One of the primary funding mechanisms identified by Levee Ready to fund the new Flood Safety and Water Quality District is a county wide tax that would need to be passed by the voters of Multnomah County. Passage of this tax is at best and uphill battle in that it will be competing with a raft of new taxes passed in recent years by voters and it will require the district to make a compelling case to voters outside the flood district that they should be contributing to its protection. We believe that the odds of passing this measure go down substantially if the plan for levee upgrades is mired in controversy, balloons in costs in ways that demonstrate a lack of fiscal accountability, results in outcomes that fail to meet the environmental restoration and environmental

justice mandates of the new district and potentially fails to even meet the recertification requirements of FEMA. Levee Ready is flirting with a situation in which it may be simultaneously advancing a project that is far more expensive than it needs to be while also reducing the odds that it will have the resources to pay its share.

In summary, the FS and TSP fails to adequately analyze project costs in ways that are likely to cause actual project costs to increase by tens of millions of dollars and potentially hundreds of millions of dollars. Even with a 65% cost share absorbed by the Federal Government, it is likely the local costs will far exceed the costs that would have been incurred if Levee Ready had stuck with its original plan of developing this project on its own, independent of the Corps, in a manner that actually met the multiple mandates of the new Flood Safety and Water Quality District.

E. The FS/ EA fails to include the railroad embankment in the analysis, an omission that significantly increases both the cost of the project and the environmental impacts.

The cross levee in Pen 1 represents one of the most significant potential weaknesses in the Columbia River Levee System. In a situation that we find both remarkable and appalling, the owners of this cross levee, Union Pacific Railroad and BNSF Railroad have simply refused to engage with the Levee Ready process including allowing access to even test the integrity of this cross levee. In section 2.5 of the FS (Planning Constrains), the document reads:

The railroad embankment will not be considered a levee for purposes of analysis. This segment of the system has been a long-standing vulnerability and an area for past levee failures since it has unknown untested structure materials compounded by railroad ownership and an associated policy that will not allow for routine operation and maintenance consistent with Corps policies. It is assumed to offer some resistance to floodwaters, but the embankment materials are estimated to be relatively weak since little information is available.⁴³

⁴³ FS, Section 2.5, page 20

As a result of the intransigence of the railroads, the Corps is instead proposing to build a second levee immediately adjacent to the existing railroad embankment which cost tens of millions of dollars, and result in the consumption of as much as 16 acres of public land at Heron Lakes Golf Course⁴⁴, the removal of hundreds of mature protected trees, the filling of 0.75 acres of wetland⁴⁵ and the potential disruption/ displacement of the Heron Lakes Great Blue Heron colony.

This situation is simply outrageous. The railroads have been repeatedly allowed to give a stiff arm to the process and the community in a way that puts our community at risk and results in profound increases in the cost and impacts of this process. This situation is so bizarre that it causes us to seriously question what the railroads are trying to hide or what they may be willfully ignoring. Are there contamination issues or additional structural deficiencies that may be putting out communities at risk? If the railroads are able to cloak their tracks in so much secrecy at this site, what other potential risks are going unattended to along the network of tracks that put one out of every four residents in the blast zone of a potential railcar explosion. This situation not only undermines the integrity of the Levee Ready process; it also severely undermines confidence in the regulatory oversight of the railroad system in general.

Given the collective political clout of the parties affiliated with Levee Ready including the congressional delegation, the governor's office and regional, county and local governments, we view this situation as unacceptable. These entities must use their collective clout to force the railroad companies to the table to play a constructive, transparent and good faith role in the Levee Ready Process.

F. The FS/ DEA fails to provide adequate or accurate analysis of the natural resource impacts of the TSP.

Thank you for your consideration of these comments

Respectfully,

A handwritten signature in black ink that reads "Bob Sallinger". The signature is written in a cursive, slightly slanted style.

Bob Sallinger
Conservation Director

⁴⁴ FS, Section 4.12.4.2, page 181

⁴⁵ FS, Section 4.9.3.4, page 156.

Audubon Society of Portland