

PORT OF HOOD RIVER COMMISSION
Tuesday, January 24, 2017
Marina Center Boardroom

Carry-overs from
January 10 agenda
are highlighted in
grey.

Executive Session Agenda
4:00 p.m.

1. Executive Session under ORS 192.660(2)(e) Real Estate Negotiations (*Anne Medenbach*)
-

Regular Session Agenda

1. Call to Order
 - a. Modifications, Additions to Agenda
2. Public Comment (5 minutes per person per subject; 30 minute limit)
3. Consent Agenda
 - a. Approve Minutes of November 15, 2016 Fall Planning Work Session and December 13, 2016 Regular Session (*Laurie Borton – Page 3 & Supplemental Packet*)
 - b. Approve Accounts Payable to Jaques Sharp Attorneys at Law in the Amount of \$5,460 (*Fred Kowell – Page 9*)
4. Reports, Presentations and Discussion Items
 - a. FY 15/16 Audit (*Fred Kowell and Tara Kamp, Pauly Rogers and Co. – Page 15*)
 - b. Waterfront Parking Plan Update (*Michael McElwee – Page 25*)

NOTE: Public testimony on the Waterfront Parking Plan will be taken following the staff presentation. Testimony will be limited to 3 minutes per person for a total of 30 minutes. Testimony will also be allowed until the Regular Session is closed.

- c. Lower Mill Development Update and Design Guidelines Review (*Anne Medenbach – Page 17*)
 - d. Port of Hood River Tolling Partnership with Port of Cascade Locks (*Fred Kowell – Supplemental Packet*)
5. Director's Report (*Michael McElwee – Supplemental Packet*)
6. Commissioner, Committee Reports
7. Action Items
 - a. Approve Audit for Fiscal Year Ending June 30, 2016 (*Fred Kowell – Page 45*)
 - b. Approve Property and Liability Insurance Policy with SDIS in the Amount of \$76,644 (*Fred Kowell – Page 47*)
 - c. Approve Bridge Insurance Policy with Durham & Bates in the Amount of \$249,759 (*Fred Kowell and Scott Reynier, Columbia River Insurance – Page 51*)
 - d. Approve Lower Mill Design Guidelines (*Anne Medenbach – Page 73*)
 - e. Authorize Acceptance of Oregon Department of Transportation *ConnectOregon* VI Grant in the Amount of \$1,364,900 and Approve Execution of Grant Agreement for the Aviation Technology and Emergency Response Center at the Ken Jernstedt Airfield (*Genevieve Scholl – Page 81*)
 - f. Approve Resolution 2016-17-4 adopting Resolution Recommending Restoring Recreational Immunity (*Genevieve Scholl - Supplemental Packet*)

8. Commission Call

9. Executive Session under ORS 192.660(2)(e) Real Estate Negotiations and ORS 192.660(2)(f)
Consideration of Information Exempt from Public Inspection

10. Possible Action

11. Adjourn

If you have a disability that requires any special materials, services, or assistance, please contact us at 541-386-1645 so we may arrange for appropriate accommodations.

*The chair reserves the opportunity to change the order of the items if unforeseen circumstances arise. The Commission welcomes public comment on issues not on the agenda during the public comment period. With the exception of factual questions, the Commission does not immediately discuss issues raised during public comment. The Commission will either refer concerns raised during public comment to the Executive Director for a response or will request that the issue be placed on a future meeting agenda. People distributing copies of materials as part of their testimony should bring **10 copies**. Written comment on issues of concern may be submitted to the Port Office at any time.*

**Minutes of November 15, 2016 Port of Hood River Commission
Fall Planning Work Session
Marina Center Boardroom 12:30 p.m.**
[Materials are attached to the bound meeting minutes]

THESE MINUTES ARE NOT OFFICIAL until approved by the Port Commission at the next regular meeting.

Present: Commissioners Jon Davies, Fred Duckwall (excused at 4 p.m.), Rich McBride (by speaker phone), Brian Shortt, and Hoby Streich; Attorney Jerry Jaques; from staff, Michael McElwee, Fred Kowell, Anne Medenbach, Genevieve Scholl, John Mann, and Laurie Borton. Budget Committee members John Benton, Larry Brown, John Everitt (arriving at 1:05 p.m.), Judy Newman, and Rich Truax.

Absent: None

Media: None

President Brian Shortt called the Fall Planning Work Session to order at 12:33 p.m.

- I. **Overview/Objectives:** President Shortt commented the Port's success over the previous 20 years has played a part in the economic growth of the community through wages and number of jobs. Utilizing the 2014-18 Strategic Business Plan as a roadmap, Shortt hopes that economic growth will continue to be a goal of the Commission and Budget Committee. With a new partnership at the airport, there will be development that has not been seen in the past and Shortt said he views this public/private partnership as a model that could be used for other development opportunities that include goals of employment growth and expanded K-College educational benefits. Shortt thanked everyone for their participation and then turned to Executive Director Michael McElwee for brief comments. McElwee said there will be discussion on larger policy items but the intent is not to get into finite details but instead lead staff to specific direction as needed. McElwee also thanked everyone for their participation.
- II. **Financial Summary:** Chief Financial Officer Fred Kowell presented the 10-Year Financial Model noting the Model had been updated with actual as of June 30 and that a toll increase effective July 1, 2017 had been forecast. With regard to a proposed toll increase at the start of the 2017 fiscal year, Bridge Replacement funds would be separated from the Bridge Repair category. In discussing the Model, Kowell commented that capital improvements drive the Port and that assumptions are often driven by opportunities, such as grants. Kowell also led a discussion on the Port's Net Financial Position Regarding Cash Flows commenting that if bridge revenues go away at some point the net position to reserves will be negative in most cases.
- III. **Focus Area/Discussion Topics:**
 - A. Hood River Bridge:
 - Capital Planning—HDR Engineering provided a 5-Year Work Plan and list of Long Term Projects that represent an aggregation of activity, both recent and through 2019, that will allow the Port to look at future assumptions and spending. McElwee credited Facilities Manager John Mann and his crew in becoming more knowledgeable with hands-on experience in bridge operations. McElwee noted the next aggregation of work and expenses will focus on upgrades and support for the tolling system migration and update in the next four months. Because the data provided by HDR was submitted just prior to the meeting and had not been reviewed by staff, McElwee stated that he would request revisions to the HDR information that would be available for discussion at a later date.
 - Toll Increase – Kowell noted customer behavior makes modeling difficult, i.e. estimating how many cash customers will convert to electronic tolling. McElwee said the working assumption regarding

the benefits and consequences of a potential toll increase is that a decision does not need to be made in December for a 2017 rollout. One option discussed was a cash toll increase of \$2; the Port is cognizant this would be very political but potentially necessary if the Port is unsuccessful in funding applications. Commissioner McBride voiced his opinion that he remains opposed to a cash increase for locals who cannot afford an increase or would have the wherewithal to apply for electronic tolling.

- Bridge Replacement – Genevieve Scholl, Communications & Special Projects Manager, provided a summary of actions taken in 2016 and reviewed potential next steps and alternatives. The FASTLane deadline to apply for USDOT funding is December 15 and Scholl stated there are three more years in funding rounds. A local match of 40% is required for approved applications, which Scholl said could be funded through a partnership. In polling the Budget Committee for their opinions the consensus was to keep moving forward on bridge replacement efforts, educate the public on the project, maintain a safe bridge during the interim; there was concern however about continuing to use bridge revenues to fund other assets. The Commission was then polled by Shortt for their opinions, and there was consensus in support of replacement efforts with the Port doing all it can to provide transparency in the process and the other Port assets being sustainable to offset dependency on toll revenues.

President Shortt recessed the Work Session for a break at 2:43 p.m. The meeting resumed at 2:47 p.m.

B. Real Estate:

- Financial Return of Lease Assets – The Port’s portfolio includes nine industrial and commercial buildings totaling 191,624 square feet, excluding the Airport and Marina properties. Medenbach provided 2015-16 budget numbers along with an overhead illustrating goal portfolios that would reduce operating expenses, increase profit net income which would be reinvested in assets. Medenbach commented that she would be looking to maximize recovery by including a new clause in leases regarding maintenance fees and an education component. There was a brief discussion on rolling costs such as utilities and taxes into the monthly rent; however, Kowell commented that some tenants prefer the transparency of the separate billing. Medenbach stated she would provide an updated analysis for discussion at Spring Planning.
- Portfolio Assessment – There has been Board discussions over the past two years regarding building evaluations. A broad scale evaluation tool to assist in moving the conversation forward was provided; i.e. maintain, remodel, redevelop, or dispose. Evaluation criteria considerations include factors such as market indicators, performance, opportunity, available cash for CIP, and estimated return. Medenbach provided a summary of leased buildings in the Port’s portfolio with preliminary evaluation scenarios and commented further discussion will be brought back to the Commission for Spring Planning in 2017.
- Near-term Development Options – Opportunities for new investment have been identified based on market need, land readiness, existing construction projects, available funds, and lease expirations. An offset to focusing on new development will limit remodel projects; however, new development may also allow movement of existing tenants from buildings that need to be redeveloped. Staff will move forward regarding priority next steps and further analysis in preparation for FY 2017-18 budget planning.
- Lower Mill: Next Steps – Projects completed in the past fifteen months since the Port acquired nine acres in Odell were summarized. One item that continues to hinder progress on parcel sales or Port redevelopment is the water line improvement and Crystal Springs Water District updating their SDC and reimbursement policy. There was consensus that to retain one lot for Port

development, and in order to get the land ready for sale there was also consensus on bringing a contractor on board to obtain a better idea on development costs.

- Lot #1: Infrastructure Planning – McElwee reported the Port is working with the City on a subdivision plan for the waterfront property and that funding opportunities may be available through the Waterfront Urban Renewal District. A more specific urban design plan, articulation of specific projects and associated cost estimates, and financial and legal analysis of URA will be necessary. McElwee noted that without some degree of tax increment financing the construction of public infrastructure will take much longer to accomplish and some public amenities may not occur. The discussion consensus was to establish a framework of steps and schedules, including which streets on the 2-1/2 acres of waterfront property would be dedicated to the City and what would remain in Port ownership, and to begin coordination with the URA board.

C. Waterfront:

- 2017 Marina Lease Rates – There was no discussion as this topic was an agenda Action Item in Regular Session.
- Waterfront Parking Plan Implementation – McElwee provided a draft copy of a plan to implement parking on the waterfront, along with a draft copy of an Intergovernmental Agreement between the Port and City for enforcement of Port property parking restrictions and cost sharing of a City parking enforcement officer. Overall there were no arguments regarding the plan. Recommendations included making sure there are plenty of payment kiosks, communicating that parking revenue will be invested back into the resource, and ensuring good signage is in place. Questions about the Plan included why an Event Site pass would not be valid if the vehicle were parked on the street; Event Site passes being oversold in relation to the number of available parking spaces; charging for Lot 1 overflow parking on an unimproved site; and if the Marina boat launch parking lot is included in the Plan (with the same pricing structure as the waterfront so there is no differential) is marine board funding affected. A public meeting will be held mid-December and the Plan and IGA will be brought back to the Commission in January for finalizing.

D. Airport:

- Airport Financial Analysis – Currently, the airport nearly breaks even on operational expenses. The Port has completed very large capital improvement projects over the last three years and will continue to do so over the next three years. Staff will prepare a further financial analysis of increases to revenue and decreases of expenses and an analysis of potential new construction projects, which may require engaging the services of architects in order to obtain preliminary costs.
- Capital Projects Timeline – Medenbach reviewed six projects and the source of project funding that are in motion and set to complete by 2020. These projects represent nearly \$13 million in improvements that will benefit the local economy, support the aviation industry, and move the airport toward self-sufficiency.
- Through-the-Fence Access – There was general support for the proposed residential TTF locations and including them in the Airport Layout Plan, provided there was flexibility in the Plan for future access. As a pilot, however, Commissioner Streich was very concerned with the safety aspect and commented the Port needed to be serious about gates and fences. Budget Committee member Judy Newman commented it was her experience that the children of T-hangar tenants and not residents that adjoin airport property were the worst offenders in not monitoring the activity of children at the airport.

E. Special Projects:

- OneGorge Collaborative Legislative Advocacy – There was consensus from the Commission to support OneGorge advocacy efforts with a \$5,000 financial commitment and administrative support to ensure the group’s continued viability and profile in Oregon, Washington, and federal legislatures.
- Communication Plan and Related Policies – Scholl reviewed priority tasks that had been completed that were tied to the goals and objectives of the 2014-18 Strategic Business Plan. The focus of new priorities will shift to modernizing and improving internal communications systems and protocols. The Commission was informed that public meetings (bridge efforts, parking plan, and airport projects for example) will be a big investment in staff time and hard costs will be dependent on the venue.

F. Economic Trends and the Role of the Port – With limited time left in the Work Session, Shortt commented he would like to continue a discussion about economic trends and the role of the Port at next year’s Spring Planning. In brief, the oil train derailment at Mosier this summer highlighted the effects of bridge crossings that are not under the Port’s control; and he would like to start a dialogue with regard to how the Port can partner with the educational system (i.e. teaching environment, internships, etc.).

President Shortt thanked everyone for volunteering their time and participating in today’s Fall Planning discussions; McBride was thanked for joining the meeting by phone; and staff was thanked for topic preparation and presentation. The Work Session was adjourned at 5:10 p.m. and the Regular Meeting of the Port Commission was convened at 5:20 p.m.

Respectfully Submitted:

Laurie Borton

ATTEST:

Brian Shortt, President, Port Commission

Jon Davies, Secretary, Port Commission

Follow-up items:

<i>Long Range Financial Model Base Assumptions</i> – review/revise CPI of 2.12% that has been used for 2018-2026.
<i>Capital Planning</i> – look further into a seismic study regarding upgrades.
<i>Bridge Planning</i> – Reconsider how bridge revenues are spent on other assets; do lower weight limits need to be considered to safely “keep the bridge going”?; prepare Performa that eliminates commercial vehicle crossings to see what affect this might have on maintenance and insurance costs; consider how the Port can better communicate with potential state and federal partners (if commercial vehicle crossings become limited they may quickly become partners).
<i>Bridge Toll Increase</i> – provide a 9-year history on how revenue is spent; prepare Performa on increase in truck rates.
<i>Lower Mill</i> – create a portfolio proposal with highest and best use narrative for Spring Planning discussion; i.e. look at maximizing existing parcels with build-out forecasts and prioritize what needs to be done.
<i>Role of the Port</i> – President Shortt requested that this discussion be continued.

Commission Memo



[Please insert into your January 10 packet replacing page 25.]

Prepared by: Michael McElwee
Date: January 24, 2017
Re: Waterfront Parking Plan Update

- Staff presented the Waterfront Parking Plan at a public meeting on December 15, 2016 in the Port meeting room. Nine members of the public attended in addition to four elected officials or staff. Five members of the public were opposed to parking fees on Portway Ave. Three were specifically opposed to parking fees at the Marina.
- Based on feedback from the public meeting, staff made changes to the proposed Waterfront Parking Plan, attached.
- City Council discussed the topic of Waterfront parking January 9, and received public testimony. The Council deferred a decision and authorized the Mayor to organize an ad hoc committee to evaluate the issue. A petition expressing opposition to parking fees on the Waterfront was circulated on-line and delivered to City Council. At last count about 700 people had signed the letter. The City and Port have also received other letters of support from downtown businesses.
- The Committee met on January 17. No resolution or recommendation was reached. The Committee did decide to meet again in conjunction with parking consultant Rick Williams. That meeting is now set for January 24.
- The City has determined that installation of meters by May is not now possible because the City will not be able to make a purchase decision by January 27. Recall that if the Commission decides to purchase meters, the Port would order at the same time as the City. If the City does not proceed, then implementation of meters just on Port property would be problematic because of the need for City help with enforcement through an IGA. Staff has discussed the possibility of hiring private parties to enforce meters if they were installed just on Port property with Cale. Although unlikely, staff will continue to explore the merits of this approach.

Following a staff presentation and any Commission discussion, public testimony would be taken and the hearing held open until the end of the regular meeting.

STAFF RECOMMENDATION: For information and discussion.

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Commission Memo



[Please insert into your January 10 Packet after page 36.]

Prepared by: Fred Kowell
Date: January 24, 2017
Re: Tolling System Use by Port of Cascade Locks

The Port of Cascade Locks (POCL), led by their bridge engineer (HDR) has requested the Port of Hood River to open discussions on the use of one tolling system for both entities.

Only one preliminary discussion has occurred thus far, making apparent that the POCL is interested in using the Port of Hood River (POHR) tolling system for both entities. Conceptually, this can be accomplished, but it was discussed that the POCL would need to adhere to the same business rules that the POHR uses to keep any programming costs from escalating and to assist in troubleshooting that occurs on a monthly basis. Examples of these types of business rules would include, but not be limited to the following:

- No tickets
- Minimum auto replenishment amount of \$20
- To receive a discount, \$20 would be the minimum amount accepted
- Similar axle amounts per entity
- Dual wheeled pickup trucks with a trailer are charged similar rates
- Transponder rates and types would need to be the same
- Discount rates would need to be equal
- Tolling rates would need to be equal
- Refunds and how the accounts are calculated would need to be similar

While it is possible for the Ports to have different business rules, the programming costs would far exceed any benefit. The Ports could have different rates but the discounts provided and what is considered an axle (dually pickup trucks, drop axles, RV's with a trailer) would need to be the same.

There is no Commission decision that needs to be made at this time, but discussion of whether the Board will want staff to continue discussions with POCL on the matter would be appreciated

RECOMMENDATION: Discussion.

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Executive Director's Report

January 10, 2017 & January 24, 2017

*[Please insert into your January 10 packets, replacing pages 37-42]***Staff & Administrative**

- Thanks to Commissioners and staff for their flexibility as weather events required postponement of the January 10 regular meeting.
- The significant snow & ice events required extraordinary efforts from the Port's Facilities staff over the last few weeks. Sanding and plowing work took place throughout the daytime and overnight periods following recent storms. Crews worked very hard to ensure that roof drains and downspouts were as clear as possible. Some small leaks, frozen pipes, and one burst fire suppression line occurred but we have come through in remarkably good shape. Tenants have generally been very satisfied; however, we did receive a complaint from a Marina tenant regarding snow and ice on the docks. We have purchased two snow blowers to reduce the shovel time, increase efficiency, and enable crews to clear a path on the Marina docks efficiently. The Port allowed the City to use Lot #1 to place snow that had been removed from downtown.
- We have made three reservations for the upcoming SDAO annual meeting March 10-13 in Portland. Any Commissioner interested in attending should let Laurie know. This is always an excellent opportunity for training on a variety of matters that affect the Port and we receive a discount on our insurance premium. It is fine to attend for a day or the entire conference.
- Thanks to Commissioners Shortt and Duckwall for attending the annual staff Holiday party on December 19.
- Waterfront Coordinator Liz Whitmore submitted her resignation on January 13. Her last day will be January 27. Liz accomplished good things for the Port and all staff wishes her well in her new position.
- The January and February Commission calendars are attached. February meetings will return to the regular 1st and 3rd Tuesdays (February 7 and 21).
- The OneGorge sponsored capitol receptions "Gorge-ous Nights" in Olympia and Salem are in the initial planning stages and Genevieve is supporting both efforts. The Olympia event is confirmed for February 15 and the Salem event is tentatively scheduled for March 9.

Recreation/Marina

- We were still experiencing power outages on C Dock North through early January. The system has held for blocks of days - 5 days in one period and 7 in another - but power went down 7 times on 12/31 and 3 times on 1/1. Over the holiday period poor weather

intervened and the electrician was unavailable. I reached out to find an ABYC certified electrician and found the name of a national expert in Scappoose; Kevin Ritz. I contacted him and went over the past six months in detail. Kevin is interested in helping but has other commitments. He gave me the name of an electrical engineer, Fred King, with extensive marine experience. Mr. King agreed to meet with us and Gorge Electric. However, with the extremely bad weather forecast, we were unable to meet. Mr. King did suggest disconnecting the GFCI from C Dock North altogether on Thursday, January 5. The power has been on continuously since then. Some GFCI protection is provided by the pedestal breakers set at .3 Amp. We will reschedule a meeting with Mr. King and a Gorge Electric electrician will be on the docks again to do that and to begin the last phase of megger testing once the weather and roads improve for travel.

Development/Property

- The Port's public meeting to discuss the waterfront parking plan occurred on December 15. There was some concern expressed by representatives of waterfront businesses that they had not had adequate time to address their issues to the City. City Council discussed the issue and took testimony on January 9. At that time, they agreed a committee should assess the issue. The Committee met on January 17. Staff will provide a status report and opportunity for public comment at the meeting. The City's decision about how they wish to proceed will be a significant factor for the Commission's decision.
- The Sheppard building is closed in. Ben Sheppard has again extended an invitation to any Commissioner to tour the building.

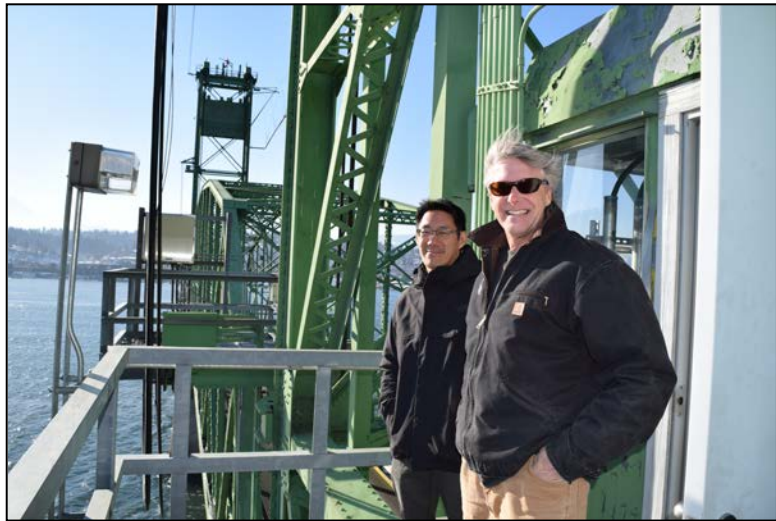
Airport

- Significant plowing work occurred frequently at the Airport during the recent storms. The Port hired a private contractor to do additional plowing on January 20, but the grader was unable to break through the consolidated ice on the runway. The facility is effectively closed now and has been for several days although the main runway may be used for emergency landing.
- I will present the North Ramp project to the County Commission on January 23. We will request that the Windmaster Urban Renewal Board consider a plan amendment that would provide up to \$200,000 to help meet the local match for the Connect VI grant.
- An Airport Advisory Committee meeting has been scheduled for 2:00 p.m. on Thursday, January 26. The meeting will be held at WAAAM.
- The North Ramp development continues in parallel with updates to the Master Plan under CenturyWest. This includes an Environmental Condition Inventory list prepared by BergerAbam for the Airport Master Plan.

Bridge/Transportation

- We experienced significant challenges with bridge operations during the recent storms. Some toll staff experienced trouble getting to work but were able to find replacements or work overtime. Closures of I-84 and/or SR14 caused unexpected increases in diverted traffic, including trucks. We were very pleased at the frequent communication with ODOT throughout. They took many steps in an attempt to decrease the use of the bridge by trucks and alert us to road closure decisions. The Port made Lot #1 available for overflow truck parking and an ODOT contractor kept it plowed and accessible.
- SBE has prepared two reports related to their work on the lift span. The first addresses the skew system upgrades that were installed last year. The second describes the strain gauge and mag particle testing carried out in the fall. Staff will discuss the highlights from these reports at the meeting in February.
- The tolling system was shut off Christmas Day and it started up without any issues. However, over the New Year holiday weekend there was a power outage which caused a disruption in the transfer of data between the lanes and the office regarding payments on account. This has since been rectified by PSquare.

- Senator Merkley's Field Representative, Phil Chang, visited the Port for a tour of the bridge and discussions regarding our pending FASTLane application. Senator Merkley submitted a letter in support of the application along with other members of our regional delegation and has been supportive of the bridge replacement project. Genevieve and John gave Phil a tour and took him into the control room.



- The Port's bridge replacement efforts were highlighted in PNWA's email newsletter, *The Nor'Wester*, highlighting the project's importance to marine traffic on the federal waterway. Media mentions of the need to replace the Bridge have included this article from OPB: <http://www.opb.org/news/article/washington-oregon-donald-trump-infrastructure/>
- The Port's application to the FASTLane program was successfully submitted on December 15. The Port's request is for \$5.05 million, with a \$3.66 local match pledged. We received letters of support for the application from Senators Jeff Merkley and Ron Wyden, Representative Jaime Herrera Beutler, Senator Maria Cantwell, Washington

state Senator Curtis King, WSDOT Secretary of Transportation Roger Millar, SW Washington RTC Director Matt Ransom, the Columbia River Gorge Commission, MCEDD, the cities of White Salmon, Bingen and Hood River, the Columbia River Steamship Operators' Association, PNWA, the Hood River County Chamber of Commerce, and the Port of Cascade Locks as well as local private businesses. Since submittal, Senator Patty Murray has also sent a support letter. We heard from Senator Merkley's office on January 19 that Secretary Foxx will defer award decisions to the incoming Secretary of Transportation, Elaine Chao. No date has been set for award decisions.

- The 14-week lock closure on the Columbia/Snake river system has begun. Please see the attached PNWA flyer for details.

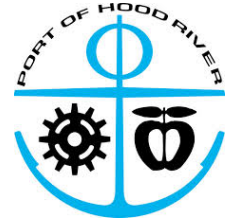
Commission Calendar - January 2017

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1 New Year's Day	2 OFFICE CLOSED	3	4	5	6	7																																																																																				
8	9 City Council mtg re parking (MM)	10 Commission Mtg 4pm Work Session	11 Legislative mtg-Salem (MM)	12 USCG permitting class Salem (MM)	13	14																																																																																				
15	16 ML King Day Office Open	17 County Work Session re Airport URA	18	19 Marina Committee 8am Shortt OPPA Mtg (MM) MCEDD CEDS-Mtg 1	20	21																																																																																				
22	23	24 Commission Mtg 5pm	25 OneGorge (MM, Gen) (unless date changes)	26 Airport Advisory 2pm Streich, Duckwall at WAAAM MCEDD CEDS-Mtg 2	27	28																																																																																				
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Commission Calendar - February 2017

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Commission Memo



[Please insert after page 102 in your January 10 Packet]

Prepared by: Genevieve Scholl
Date: January 24, 2017
Re: Resolution 2016-17-4 Recreational Immunity

As a result of a recent Oregon Supreme Court case (Johnson v. Gibson), all special district types in Oregon could face diminished legal protection from lawsuits regarding injuries or damages from recreational users of district properties. Recreational immunity extends immunity from liability to landowners that provide recreational access on their lands to the public free of charge. As the Special Districts Association of Oregon (SDAO) explains in the attached informational brochure, the ruling has a significant effect on special districts, “Since public employers are statutorily required to represent and indemnify their employees, agents, and volunteers, it exposes them to an increased risk of liability.”

In response, SDAO recommends that each special district adopt a resolution formally supporting a legislative fix to the issue. The attached resolution is derived from SDAO’s recommended template. Upon adoption, SDAO requests that each district share the resolution with local legislators.

RECOMMENDATION: Adopt Port Resolution 2016-17-4 recommending restoration of recreational immunity by the 2017 Oregon legislature.

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**RESOLUTION NO. 2016-17-4
A RESOLUTION OF THE PORT OF HOOD RIVER**

RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS

WHEREAS, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

WHEREAS, recreations purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

WHEREAS, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

WHEREAS, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner's employees agents, and volunteers, and;

WHEREAS, in *Johnson v. Gibson*, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner, otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

WHEREAS, this ruling effectively undermines a landowner's recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

WHEREAS, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision.

NOW, THEREFORE, let it be known that the Port of Hood River supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore recreational immunity to

landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so to allow Oregonians to access their lands for recreational use and enjoyment.

ADOPTED by the Board of Directors of the **Port of Hood River** on **January 24, 2017**.

|

Brian Shortt, President

Attest:

Fred Duckwall, Vice President

Jon Davies, Secretary

Rich McBride, Treasurer

Hoby Streich, Commissioner

House Bill 2483

Sponsored by Representative BENTZ (at the request of Bruno Jagelski) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Extends recreational immunity to employees and agents of owner of land when acting within scope of duties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to recreational immunity; amending ORS 105.672; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 105.672 is amended to read:

105.672. As used in ORS 105.672 to 105.696:

(1) "Charge":

(a) Means the admission price or fee requested or expected by an owner in return for granting permission for a person to enter or go upon the owner's land.

(b) Does not mean any amount received from a public body in return for granting permission for the public to enter or go upon the owner's land.

(c) Does not include the fee for a winter recreation parking permit or any other parking fee of \$15 or less per day.

(2) "Harvest" has that meaning given in ORS 164.813.

(3) "Land" includes all real property, whether publicly or privately owned.

(4) "Owner" means:

(a) The possessor of any interest in any land, [*such as*] **including but not limited to** the holder of [*a fee*] **any legal or equitable** title, a tenant, a lessee, an occupant, the holder of an easement, the holder of a right of way or a person in possession of the land; **and**

(b) An officer, employee, volunteer or agent of a person described in paragraph (a) of this subsection, while acting within the scope of assigned duties.

(5) "Recreational purposes" includes, but is not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, waterskiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project.

(6) "Special forest products" has that meaning given in ORS 164.813.

(7) "Woodcutting" means the cutting or removal of wood from land by an individual who has obtained permission from the owner of the land to cut or remove wood.

SECTION 2. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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**RECREATIONAL
IMMUNITY
CALL TO ACTION**

Restore Recreational Immunity

In the July/August 2016 issue of News and Risk Management Review, we brought you information about a recent Oregon Supreme Court case (Johnson v. Gibson) that has threatened recreational immunity. Recreational immunity, derived from the Public Use of Lands Act, extends immunity from liability to landowners who make their lands available to the public free of charge. It was designed to protect landowners, both public and private, from liability should a person become injured while using the land for recreational purposes.

The Oregon Supreme Court ruled that when the Legislature passed the Public Use of Lands Act, it only immunized the actual landowner and did not extend the immunity to employees, agents, and volunteers who act on behalf of the landowners.

This ruling has a significant effect on special districts. Since public employers are statutorily required to represent and indemnify their employees, agents, and volunteers, it exposes them to an increased risk of liability. It means recreational immunity no longer exists for a district when an employee, board member, or other public official is named on a lawsuit which alleges damages resulting from a recreational activity.

Every member of SDIS provides valuable services to the people of Oregon. Our success directly affects individuals throughout the state. Together we must find a way to create a safe environment for the public while protecting the dollars that taxpayers have entrusted us with.



How Your District is Affected

All 34 types of special districts are affected. More specifically, your district is affected if it owns property that you do not charge the public to access for recreational purposes. This could include areas like parks, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting, etc., lakes/reservoirs used for boating and swimming, and more. As a result of this ruling, your district may face substantially increased insurance premiums for this new risk exposure; thereby resulting in reduced recreational opportunities or services, limiting access, or closing property to recreational use altogether.

What SDAO is Doing

SDAO is a member of a coalition of public and private property owners who worked on a legislative proposal that has been introduced for the upcoming Legislative Session and will amend the Public Use of Lands Act.

How You Can Help

We urge your board of directors to review the sample resolution we have developed (enclosed) and consider its adoption. After the resolution has been adopted, we would simply ask that you speak with your legislators explaining the need for fixing this decision and share the adopted resolution with them. Doing so will strengthen our voice on this important issue. If you need assistance locating your legislators, please visit www.oregonlegislature.gov/findyourlegislator/leg-districts.html.



Frequently Asked Questions

What is recreational immunity?

It is derived from the Public Use of Lands Act that was enacted by the Legislative Assembly in 1995. The driving policy behind this act was to provide more recreational opportunities to the citizens and visitors of Oregon. In order to accomplish this goal the Act extends immunity from liability to landowners, both public and private, who make their lands available to the public free of charge in the event a person is injured while using the land for recreational purposes.

What are recreational purposes?

According to the Public Use of Lands Act, recreational purposes “include, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water skiing, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, gardening, woodcutting and for the harvest of special forest products.”

What has been the outcome of the Act?

The Public Use of Lands Act has increased the availability of land for free recreation by limiting liability to cities, counties, parks, schools and a wide range of private owners, including farmers and timber companies that allow hunters, anglers, hikers, mountain bikers and other members of the public to use or traverse their lands at no charge.

What types of property does this decision impact?

This decision impacts all public and private lands in Oregon that are available to the public free of charge to recreate on. This includes areas like state forests/parks, county parks, open space, playgrounds, recreational facilities, irrigation district easements, public docks, gifted or undeveloped property used for hiking, biking, hunting etc., lakes/reservoirs used for boating and swimming, as well as farms, ranches and private forest lands.

Why is a legislative fix needed?

For more than twenty years the Public Lands Use Act had been broadly interpreted. However, a 2016 Oregon Supreme Court decision, *Johnson v. Gibson*, undermined the immunity by ruling that when the Legislature passed the Public Lands Act it only immunized the actual landowner and did not extend the immunity to employees, agents, volunteers and the like who act on behalf of the landowners.

What has been the result of this decision?

This ruling effectively undermines a public land-owners recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees, agents and volunteers who are acting within the course and scope of their duties. Second, it exposes private land owners to similar liability because they will likely be ultimately found responsible for their employees' negligence.

What are the consequences of not amending the Act?

As a result of this ruling both public and private landowners will likely face substantially increased insurance premiums for this new risk exposure, thereby forcing them to reduce recreational opportunities or services or to limit access or entirely close their property to recreational use.

What about the Constitutional Remedies Clause?

Article 1, section 10 of the Oregon Constitution provides that “every man shall have remedy by due course of law for injury done him in his person, property, or reputation.”

Fixing recreational immunity for public and private property owners will also require modifying a landowner's duty of care toward members of the public who use land for recreational purposes. Specifically, the legislation will expressly state the landowner's duties owed to members of the public in order to satisfy the remedies clause and ensure that the immunity is not illusory.

How will the bill clarify the duties owed to the public?

The bill clarifies that a landowner does not owe a duty to inspect and maintain the land in a safe condition for entry or use by the public for recreational purposes. Therefore, the landowner does not extend any assurance that the land is safe for any purpose and does not assume responsibility or incur liability for injury, death or loss to any person or property.

Will the public still be able to sue landowners?

Yes. Landowners, both public and private, will still be liable for intentional acts.

Sample Resolution

RESOLUTION NO. ____
A RESOLUTION OF THE (Insert Name of Agency)
(Insert Governing body title, e.g Board of Directors, City Council)
RECOMMENDING RESTORING RECREATIONAL IMMUNITY RIGHTS

WHEREAS, in 1995, the Legislative Assembly declared it to be the public policy of the State of Oregon to encourage landowners to make their land available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes, and;

WHEREAS, recreations purposes includes, but are not limited to, outdoor activities such as hunting, fishing, swimming, boating, camping, picnicking, hiking, nature study, outdoor educational activities, water sports, winter sports, viewing or enjoying historical, archaeological, scenic or scientific sites or volunteering for any public purpose project, including the above aforementioned activities, as well as: gardening, woodcutting and for the harvest of special forest products, and;

WHEREAS, the Public Use of Lands Act has increased the availability of land for free recreation by citizens and visitors alike by limiting liability to cities, counties, park districts, irrigation districts, schools and private landowners, including property-owner associations, farmers and timber companies that, by virtue of this act, allow members of the public to use or traverse their lands at no charge for recreation purposes, and;

WHEREAS, for twenty years, the Public Use of Lands Act has been broadly interpreted to extend this immunity from liability to apply not only to landowners but also to the landowner's employees agents, and volunteers, and;

WHEREAS, in Johnson v. Gibson, the Oregon Supreme Court held that when the Legislature passed the Public Use of Lands Act, it intended to immunize only the landowner, otherwise the Legislative Assembly would have included employees, agents and volunteers in the Act, and;

WHEREAS, this ruling effectively undermines a landowner's recreational immunity from tort liability under the Act because public employers are statutorily required to represent and indemnify their employees and most, if not all, landowners who allow access to their lands free of charge will ultimately be responsible for the negligence of their employees that results in injury to a member of the public or property, and;

WHEREAS, landowners will likely face substantially increased insurance premiums for this new risk exposure and/or have to close their property or amenities to Oregonians trying to recreate due to the result of this decision.

NOW, THEREFORE, let it be known that the (Insert Name of Agency) supports legislation in the 2017 Oregon Legislative Assembly promulgated to restore recreational immunity to landowners and their officers, employees, agents or volunteers who are acting within the scope of their employment or duties so to allow Oregonians to access their lands for recreational use and enjoyment.

ADOPTED by the Board of Directors of the (Insert Name of Agency) on (Insert Date).

(Insert Name), (Insert Title)

Attest:

(Insert Name), (Insert Title)

Resolution URL:
<http://ref.sdao.com/landuse/resolution.docx>



Toll Free: 800-285-5461

P.O. Box 12613
Salem, OR 97309

S | D | A | O

SPECIAL DISTRICTS
ASSOCIATION OF OREGON