

Willamette Falls

◦ LEGACY PROJECT ◦

PARTNERS GROUP MEETING

July 11, 2016

Museum of the Oregon Territory, Tumwater Room 211 Tumwater Drive, Oregon City, OR 97045

10:00 AM-12:00 PM

AGENDA

Time	Topic	Lead Presenter
10:00-10:10	Welcome & Introductions Partner Updates Roundtable	Kathleen Brennan-Hunter, Metro
10:10-11:00	Project Updates <u>Overall Project</u> <ul style="list-style-type: none">• Project Manager hiring process• Rediscover the Falls nonprofit update• Vote on partners liaison to Rediscover the Falls• Budget update <u>Development Strategy</u> <u>Riverwalk</u> <ul style="list-style-type: none">• Program drivers and design principles, discussion with Partners (presentation by Carol Mayer-Reed)• Schedule update• Riverwalk ownership assessment update	Kathleen Brennan-Hunter, Metro
11:00- 11:55	Whitewater Park Work Session <ul style="list-style-type: none">• Summary and evaluation• Discussion amongst Partners, questions to follow up on• Next Steps	Noah Siegel, Metro
11:55-12:00	Next Steps & Adjourn	Kathleen Brennan-Hunter, Metro

Note: Public testimony will not be heard at this meeting; however, written testimony and comments will be accepted through July 25th and may be emailed to Kelly.Reid@oregonmetro.gov.

Willamette Falls

LEGACY PROJECT

Memorandum

To: Willamette Falls Legacy Project Partners Group
From: Kelly Reid, Interim Project Manager, and Project staff team
Date: July 5, 2016
Re: Whitewater Park Proposal work session

Introduction

The purpose of this memorandum is to introduce a proposal for a whitewater park that was submitted to the Willamette Falls Legacy Project, and to provide background information that will help the Partners Group make a decision whether or not to incorporate a whitewater park into the Willamette Falls Legacy Project.

Earlier this year, We Love Clean Rivers, a local nonprofit organization with the mission of cleaning high use rivers by mobilizing the river recreation community in partnership with local environmental, recreation and educational organizations, submitted a proposal¹ to Willamette Falls Legacy project staff for an Olympic level whitewater kayaking channel on the former Blue Heron mill site. We Love Clean Rivers understands that riverwalk planning and design is occurring now and has requested that the proposal be considered within that riverwalk process.

The riverwalk design process is being managed by the riverwalk working group and overseen by the Technical Advisory Committee, as laid out in the Governance IGA approved by all four project partners earlier this year. The Governance IGA stipulates that significant threats or opportunities for the project, along with any major decision that involves tradeoffs between the four core values, be brought to the Partners Group. Staff believes that a whitewater park fits that criteria; it has the potential to involve tradeoffs between the four core values, it was not anticipated in the Vision and Master Plan approved by the Partners in 2014, and it is likely that the incorporation of a whitewater park into the design and

¹ The proposal was formally submitted by Clackamas County Tourism Development Council on behalf of We Love Clean Rivers. The Tourism Development Council funded the development of the proposal through tourism grants, and supports the whitewater park concept as a tourism driver. The Clackamas County Board of Commissioners, which appoints Tourism Council members, has not made any decisions for or against the proposal, and has elected to defer to the Partners Group.

construction of the riverwalk would involve increased design and construction costs over what has previously been reported to the Partners Group.

Project staff have coordinated with We Love Clean Rivers to understand the proposal, investigate technical issues, and flag important questions that would need to be addressed if a whitewater park were to become part of the Willamette Falls Legacy Project. The proposal was shared with the Snøhetta-led design team, discussed with Falls Legacy LLC, and evaluated at length by staff over the past several months.

Description of Proposal

The proposal from We Love Clean Rivers is for an Olympic- level whitewater course built as a concrete channel that weaves through the site, connecting the upper river to below the falls, and taking advantage of the 40- foot elevation change. Such a channel would likely attract both everyday recreational users, along with Olympic athletes and national and international competitions. The submitted proposal includes an example of a whitewater channel (Exhibit 2). The basic requirements of such a facility are:

- A channel must start in the lagoon area (within the riverwalk easement area)
- A channel must spill out into the lower river somewhere along the shoreline (within the riverwalk easement area)
- The length of shoreline impacted would be at least 45 feet, but ideally 200 feet
- The channel must be approximately 2,000 to 2,500 feet in length
- The channel must be 25 to 45 feet wide, with additional areas for spectator viewing
- A user fee or entrance fee would be needed to cover operations costs

We Love Clean Rivers has explained that the exact alignment of a channel is flexible, as long as those basic requirements are met.

Public Versus Private Project

We Love Clean Rivers has introduced the whitewater park as a concept, but has not suggested who might ultimately build or operate it. The partners could decide to incorporate the whitewater park as a public development that is part of the riverwalk and public open space on the site. Alternatively, the park could be seen as a private development project that, with the Partners permission, would cross through the public easements on the site.

Falls Legacy LLC is intrigued by the concept of a whitewater park in general, and has neither included or excluded it in plans for the private development. Falls Legacy acknowledges the easement rights that the public has and will be deferential and collaborative within the riverwalk process, as described in the easement agreement.

For either option – as a public or private development – funding for design, construction, and operations has not been identified. The Technical Advisory Committee’s understanding of the existing riverwalk funding is that it could NOT be used for a whitewater park unless the Partners Group agreed to allow that use.

Urgency of Decision

Now is the time to establish the list of all major programmatic components to be considered within the full 22-acre site. Any major programmatic element introduced after the design team’s submission of the Pre-Concept design alternatives early this fall would cause a delay in the process. A large, Olympic-level whitewater channel constitutes a major programmatic element. If a whitewater programmatic element is to be advanced, it must be considered as part of the current Pre-Concept design phase due to the complexity of the activity requirements, land and river infrastructure, technical issues, and permitting impacts. In other words, the design team is not able to simply insert the channel into the design during a later phase.

Attached to this memo is a decision matrix that the Technical Advisory Committee has proposed as a framework for making a decision. It includes three options – the first two reflect the specific requests from We Love Clean Rivers, and the third option reflects how riverwalk design would proceed in the absence of a formal whitewater park proposal.

Project staff recommend that the Partners Group make a decision by early –to-mid August, in order to provide the direction to the design team so they can proceed with design alternatives and move into the next phase of design, selection of a preferred concept design, this Fall. The TAC recommends that the Partners accept written public comments for the two weeks following the July 11 Partners meeting. Staff will then produce a report for the Partners prior to their final decision that summarizes public comments received, and provides findings and recommendations consistent with the attached decision matrix. Staff also request s that the partners use the July 11th meeting to identify any other questions or information that would be helpful to include in the staff report.

Attachments:

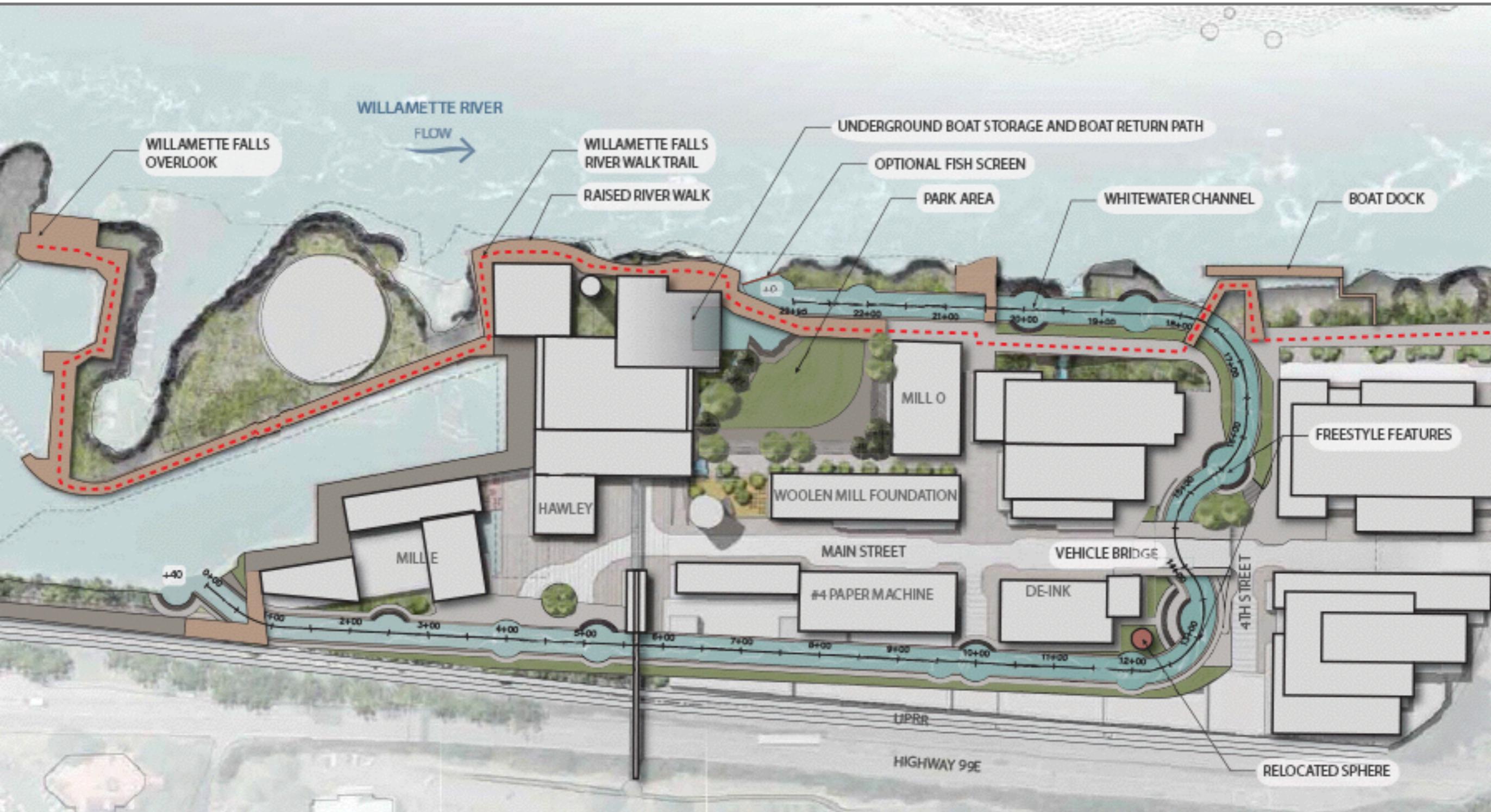
1. Proposed Decision Matrix
2. Example of whitewater channel – Perimeter Channel drawing
3. Formal email request from We Love Clean Rivers
4. Letter from WFLP project staff to We Love Clean Rivers
5. Response to Letter from We Love Clean Rivers

The Technical Advisory Committee (TAC) for the Willamette Falls Legacy project proposes this decision matrix as a way to evaluate the proposed whitewater park concept. The TAC will produce a staff report and recommendation using this matrix for the next Partners Group meeting.

	Evaluation Considerations						
	Current Design Phase		→	Next Design Phase	→	Construction Phase	
	Four Core Values <i>Does this option meet the four core values of Public Access, Healthy Habitat, Economic Redvelopment, and Historic and Cultural Interpretation?</i>	Design Cost and Delay <i>What is the added cost to the riverwalk project in terms of budget and time?</i>		Core requirements <i>If core values and design costs can be addressed, what are the next questions to be asked.</i>		Capital Costs <i>If core requirements can be met.</i>	Operations <i>If core requirements can be met.</i>
Whitewater Park Approach Options	Inputs to include: Tribal opinion, ODFW opinion on fish impact, Snohetta team opinion, Concord Group (Economic Development consultant) opinion, History and Culture consultant opinion, CH2M opinion on hydrology, Stillwater opinion on habitat	Inputs to include: Design team evaluation of cost and scheduling, staff prediction of staff time that would need to be devoted, cost per month of delay in design process, estimate of additional permitting time and costs		Inputs would include: Are necessary water rights in place? Are necessary easements in place? Can the proposal meet PGE dam safety requirements? Does Falls Legacy LLC support?		Inputs would include: What is the funding source or finance plan for the capital project?	Inputs would include: What is the operations and maintenance plan?
Embrace the idea: Incorporate a whitewater channel into the riverwalk design and development strategy plans in partnership with We Love Clean Rivers.							
Keep the option alive: Design the riverwalk in such a way that does not preclude the ability for a whitewater channel to be added in the future, while We Love Clean Rivers conducts additional feasibility studies and develops a finance plan.							
Include the activities of whitewater and flatwater kayaking as potential program elements of the riverwalk as the design team develops design alternatives this summer and fall.							

Note: The first two options reflect the specific requests from We Love Clean Rivers, and the third option reflects how riverwalk design would proceed in the absence of a formal whitewater park proposal.

Preferred concept design: **Perimeter channel**



From: [Kelly Reid](#)
To: [Frankie Lewington](#)
Subject: FW: Willamette Falls Whitewater Park request for consideration & copies of materials
Date: Wednesday, July 06, 2016 9:42:45 AM
Attachments: [image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)

For PDF conversion

From: Austin, Jim [<mailto:jim@mthoodterritory.com>]
Sent: Wednesday, April 20, 2016 1:55 PM
To: Dave Elkin; 'Christina Robertson-Gardiner'
Cc: Sam Drevo; Cowan, Danielle; dholladay; Andy Cotugno; Konkol, Tony; Eric Underwood (eunderwood@orcity.org); Pauli, Carol; Austin, Jim
Subject: Willamette Falls Whitewater Park request for consideration & copies of materials

Hi Christina and Dave,

I'm following up on yesterday's presentation and meeting with a formal request that the Falls Legacy Project Design Team include a whitewater park and/or center in the range of options being considered for the redevelopment of the former Blue Heron site. As noted, Tourism is very supportive of this idea. We see it as being a major potential draw and economic driver for not only Oregon City, but the region and state.

There are a lot of considerations to take into account and questions to be answered, but an opportunity to create a facility such as this in a setting such as this is rare. And to be sure, it would be near impossible to include something like this in the mix after plans are finalized and dirt starts moving. This makes the up-front consideration process so important.

To help the Team in their exploration of this idea, below are dropbox links to several resource documents that provide really good information about the proposal. Please let me know if you experience any difficulty downloading. I can resend as PDFs.

The first is a prospective economic analysis report done by Mark Buckley of ECONorthwest. It was prepared for We Love Clean Rivers Inc. through a development grant from Clackamas County Tourism. It was built on previous work funded in part by Portland General Electric. The report covers scenarios for both a whitewater play park and a whitewater center, with the center scenario obviously providing the greatest positive economic impact.

- 1) <https://www.dropbox.com/s/lscy07yxbwymumx/Willamette%20Falls%20Final%20Report.pdf?dl=0>

The second document is a Site Visit and Conceptual Design Study done by Scott Shipley of S2o Design and Engineering. It too was prepared for We Love Clean Rivers and was funded with grants from Clackamas County Tourism. This study examines the feasibility of creating a water park/center on the site and conceptualizes four possible configuration options.

- 2) https://www.dropbox.com/s/vkvqyuzmniqblsc/04272015_Willamette_sitevisitreport_ss_issue.pdf?dl=0

The third document is a four page executive summary of the above report.

- 3) <https://www.dropbox.com/s/o11rq2ihhkqlll5/Executive%20Summary.pdf?dl=0>

And the fourth document is a copy of the presentation from yesterday's Oregon City Business Alliance meeting.

4) <https://www.dropbox.com/s/xruky07jqcop26g/WhiteWaterPresentationFinal.pdf?dl=0>

Also, here is a link to willamettefallswhitewaterpark.org and a link to the [Friends of Willamette Falls Whitewater Park](#) Facebook page for additional information and context.

Mark (for the economic analysis) and Scott (for the concept design study) are obviously the technical experts, but please feel free send any follow up questions through me as I'll be liaising. Also, please let me know if you feel an additional meeting(s) would be helpful. We want Design Team to have all the information it needs to fully consider and vet this this very exciting idea.

Sincerely,

Jim Austin



[Jim Austin](#)

Community Relations Coordinator
Clackamas County Tourism & Cultural Affairs
Office: 503-742-5901 Cell: 503-706-5449

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Willamette Falls

LEGACY PROJECT

Date: June 3, 2016
From: Kelly Reid, Interim Project Manager, Willamette Falls Legacy Project
To: Sam Drevo, President, We Love Clean Rivers Inc.
Re: Willamette Falls Whitewater Park proposal

The Willamette Falls Legacy project welcomes ideas from the public and interested groups as we move forward in developing a public Riverwalk and Development Strategy. Currently, the design team is developing a base understanding of what activities and uses are desired by the public and what may appropriately fit on the site. By late summer, we aim to complete a draft program for the riverwalk, which means we plan to have solid agreement on the major uses and activities of the riverwalk.

Active recreation through whitewater kayaking is a compelling idea to both the public partners and Falls Legacy LLC. Both of us are interested in exploring opportunities and collaborating with you as we move forward in our project. The concept of a whitewater park, especially one that is an Olympic level facility, is different from most of the other ideas we have heard from the public through our outreach. You have done great work to conceptualize the idea with drawings, costs estimates, and an economic impact study, while most other ideas we have heard are not nearly as refined. We, along with our design collective, have reviewed *Willamette Falls Whitewater Park: A Prospective Economic Analysis* and the *Site Visit and Conceptual Design Study Willamette Falls Whitewater Park*.

Your proposal presents us with an early decision to make – because of the design costs and the physical space requirements of an Olympic-level whitewater park, it is critical that we decide early on whether it will be included in the program. If the project is to incorporate this idea, there are significant up-front costs that will have to be added to our design budget, and there will be immediate tradeoffs with other ideas and uses that are being considered. A whitewater park would constitute a major program activity that we aim to determine by the end of summer 2016 – it is not a minor activity that could be added or removed later in design.

The decision will be made by the Partners Group for the project, and staff is completing due diligence and providing information that will allow the Partners to make an informed decision this summer (a meeting date has not yet been determined). We have identified three areas of investigation of our due diligence work:

1. Budget considerations– Design and construction costs, infrastructure needs, operations and maintenance, future revenue potential, catalytic potential

2. Safety considerations –PGE dam operations, Federal Regulatory Energy Commission requirements
3. Design and permitting considerations –impact on endangered fish species, respect and honor for tribal history and use of the falls, potential benefits and tradeoffs regarding the four core values

Below you will find a compilation of questions culled from the consultant team, public staff and Falls Legacy LLC as part of our due diligence work. We understand the complexity of the questions and that you may not have complete answers at this point, but any additional information you can provide will help inform our analysis of this idea and ensure that we provide a fair and thorough evaluation for our Partners Group.

Ideally, we would like to have your response by Wednesday, June 22, to allow us sufficient time to review and prepare for a presentation to our Partners Group.

Thank you for your time and effort in answering these questions, your thoughtful response is very valuable to our design process. Please copy your response to Christina Robertson Gardiner, Development Strategy Project Manager crobertson@orcify.org and Dave Elkin, Riverwalk Project Manager dave.elkin@oregonmetro.gov.

Budget considerations

1. Your report suggests that soft costs of design and engineering could be more than \$1 million. Do you have any more detailed breakdown of the costs for design that you could share with us? Do you have a suggested funding strategy for design and construction?
2. Are there any special infrastructure needs for such a facility? What are the parking needs?
3. Who do you envision would own and operate a facility? Are they different entities?
4. Do you envision that the facility would be an amenity, free to the general public, or would a fee be charged to use the facility?
5. What type of private money can be brought to the table early on in the process? If private money cannot be brought in early, how could you work with Falls Legacy to ensure that the encumbered properties could be redeveloped independent of the whitewater perimeter channel being built?
6. If this project is the cornerstone of a branded site, what additional businesses would be attracted to locate at the mill property?

Safety considerations

1. It is our understanding that a whitewater facility must avoid contact with any PGE dam structures. Is that also your understanding?
2. Can a whitewater facility meet the FERC requirement to provide some form of barrier in place between the whitewater facility upstream entrance and the dam spillway structure?

3. What would be the provisions for public safety as it relates to an unplanned water release (i.e., dam failure) into downstream areas where the facility would be affected?
4. What are the liabilities involved with public use of a facility in the case of casualty or property damage?

Design and Permitting Considerations

1. Any proposal that involves connecting the “lagoon” or forebay to the lower river through a channel will have a substantial permitting process. We may be exploring a connection as well, but have not begun technical investigations yet. Do you have any insights on the regulatory requirements for this type of proposal?
2. In your proposal, you indicated that channels could be used seasonally for fish passage. Can you provide additional information on this topic and how would it interact with the existing fish passage infrastructure on the West Linn side of the falls especially relating smolt and adult fish migration? What permitting would be required from Oregon Department of Fish and Wildlife and National Marine Fisheries Service?
3. Would any shoreline area be impacted by a whitewater channel or park? How much of that area would be required for a successful channel?
4. Can you provide additional information about the process for acquiring the needed water rights to run such a facility? Are there any seasonal issues with water rights?
5. What is the estimated footprint of such a facility? How would the facility be integrated within the private development (e.g. accesses easements, fee simple)?
6. What existing buildings or new buildings would be needed onsite to support a facility?
7. Have you consulted with any tribes? If so, what has the reaction been?



We Love Clean Rivers

PO Box 14345
Portland, OR 97239

Website: welovecleanrivers.org

Date: June 13, 2016

From: We Love Clean Rivers

To: Kelly Reid, Interim Project Manager, Willamette Falls Legacy Project

Re: Response to questions regarding Willamette Falls Whitewater Park proposal

General Response

Many of the answers to the questions listed below can be better answered once there is a defined starting point and scope of work. The site is an overdeveloped Brownfield with some amount of historic structures requiring preservation, some amount requiring demolition, an uncertain plan, as-of-yet, for site development and Riverwalk development. As such, it is difficult to know whether a whitewater channel project would include demolition, site work, etc. in order to be completed. It is, in fact, difficult to price and design the park in the absence of a total site plan. As such, the answers to some questions below are based upon current assumptions and will need to be adjusted as plans become finalized.

Budget considerations

- 1. Your report suggests that soft costs of design and engineering could be more than \$1 million. Do you have any more detailed breakdown of the costs for design that you could share with us? Do you have a suggested funding strategy for design and construction?**

Soft costs are estimated as a percentage of construction costs. Currently we project these to be 11% of total costs. A typical project for a specialty design would see 9-10% for these costs, but given the salmon/lamprey design accommodations and the site complexity, we have allowed a little more.

A funding strategy depends on many variables and should be developed in support of the larger development. In many communities where a whitewater park has been developed, the local community has seen the value of the park and contributed to the construction and maintenance through bond measures, fundraising events, and private donations.

Bend's whitewater park is different in scope and scale, but presents some important considerations for the design and community funding opportunities for a whitewater park at Willamette Falls. The Bend community showed support for the Whitewater Park by passing and funding a \$28M Parks and Recreation bond measure. Approximately \$20M was used to build an outdoor ice-skating rink, and \$8M was used for whitewater park development (originally referred to as hazard mitigation and water front redevelopment). To further support the park, the Bend Paddle Trail Alliance has been hosting "Picking and Paddling events" throughout the summers for the past 5 years to raise money for the whitewater park. Those events have

raised \$10-50k each. In addition, the whitewater community in Bend has raised over \$1M in addition to the bond funds to purchase the necessary hydraulics and bladders needed for a successful whitewater park.

Another venue for support funds is through grants. There are some large state and federal grants that the Whitewater Park could apply for including the new tourism development grant program from Travel Oregon that was instituted in the 2016 Legislative Session. This new grant program is specifically for large development projects and is funded through a large increase in the state lodging tax.

2. Are there any special infrastructure needs for such a facility? What are the parking needs?

The infrastructure costs depend on the preferred operational model.

The channel system will require a powered head gate to turn flows on and off according to operational needs and water rights.

If operated as a commercial rafting facility, then pathways and conveyors would be needed to move rafts and people from the downstream to the upstream end of the channel system. Other needs could include lighting if used at night, trail access along the entire channel, and parking.

Parking depends on the operational model, but if commercially operated, approximately 200-300 designated parking spaces plus overflow would be needed based on other facilities of this scale. Ultimately, though, the parking needs and supplies for the overall site need to be taken into account, and it is likely that some set of spaces can and will serve multiple user groups.

3. Who do you envision would own and operate a facility? Are they different entities?

There are a couple of options for ownership and operations. In one set of options the facility is owned by the City or Falls Legacy and operated by the same entity. As the channel is controlled and man-made, it would be limited in access to ensure lifejackets and helmets are used and the facility overall is managed for safety. The Owner in this case may choose to run commercial operations. Should it be a publicly controlled operation, then it could serve as a revenue generator for the government entity. An example of this is the county owned Stonecreek Golf Course which has been a huge benefit to the county and has helped support county parks and other needs.

In another variation the site could be owned by the City or Falls Legacy and leased to an operator at a yearly cost. The Operator would be responsible for commercial operations, safety, and possibly maintenance.

As with many of these questions, the final determination of the best funding strategies, ownership options, size and costs will be largely identified through a professionally conducted financing plan/strategy that will provide the pros and cons to a variety of approaches before final decisions are made. Any of the options under consideration will be dependent on the ultimate placement and size of the Whitewater Park.

4. Do you envision that the facility would be an amenity, free to the general public, or would a fee be charged to use the facility?

This is also an operational question and may affect what funding is available and so details for this will need to adjust as the project is formulated. A fee-based model is typical for most heavily maintained outdoor activities and sites whether it be whitewater centers, climbing gyms, campgrounds, park fees, ski resorts and Nordic ski centers, lift-served mountain bike parks, etc. However, if the Whitewater park is developed more like a community park paid for out of public funds, then conceivably it could be of free access to the public or like was mentioned in the earlier example of the golf course, golfers pay to play, but the public gains the financial benefit from the course's revenue stream to help fund other community assets. Even if it is developed primarily as a profit-generator for the public or private ownership, certainly some free public access could be considered like "cheap Tuesdays" or "kid's day," for instance.

5. What type of private money can be brought to the table early on in the process? If private money cannot be brought in early, how could you work with Falls Legacy to ensure that the encumbered properties could be redeveloped independent of the whitewater perimeter channel being built?

The project thus far has been funded by a series of local grants from Clackamas County. There are larger national grants available that We Love Clean Rivers will pursue once the project has been green-lighted. Additionally, We Love Clean Rivers will mobilize the local recreational community to support the project. Until the costs, timeframes, other development design and funding are known, it is a bit challenging to know what amount would be needed early on and for what types of work. Although the ultimate design costs could be in the range of \$1-3 million, that is not likely required at the early stages of the process. In any case, we plan to seek funds and in-kind services from every available source, including the property owner.

6. If this project is the cornerstone of a branded site, what additional businesses would be attracted to locate at the mill property?

Similar facilities have shown that this type of amenity is a regional attraction. The economic impact study commissioned by We Love Clean Rivers indicates one million or more annual visitors would require general restaurant/retail/hospitality facilities as well as potential lodging. In addition, this type of facility would support specialist retailers such as pro-shops focused on whitewater and outdoor equipment. The viewing opportunities for patrons of adjacent businesses are likely to both attract traffic but also increase demand for tables at restaurants with views of the whitewater. Also, apparel manufacturers, outfitters, equipment designers/manufacturers, engineers, and other like cluster businesses would be attracted to this place. Creative industries in video, marketing, design, etc. will also be drawn to the site because of the Whitewater Park. Additionally, support businesses such as accountants, insurance, banking, finance, lawyers, etc. will also locate in the area to provide their services. Lastly, and perhaps most importantly, this type of amenity is unique and powerful attractor to millennials who want to live and have jobs in places that have outdoor recreational opportunities, gathering places, restaurants, breweries, etc. that improve the quality of life.

Safety considerations

1. **It is our understanding that a whitewater facility must avoid contact with any PGE dam structures. Is that also your understanding?**

Yes, subject to further discussions with PGE. The perimeter design does not affect PGE structures and also does not cause additional flooding to the site. It is also worth noting that existing water surface elevations could be easily maintained as necessary with no operational change to existing structures or usage. Only the smaller park designs would impact PGE property.

2. **Can a whitewater facility meet the FERC requirement to provide some form of barrier in place between the whitewater facility upstream entrance and the dam spillway structure?**

Yes. The park can be designed with either buoys delineating a no-boating area or by simply only allowing boating traffic to enter the channel downstream of the headgates (this latter one is likely in any event).

3. **What would be the provisions for public safety as it relates to an unplanned water release (i.e., dam failure) into downstream areas where the facility would be affected?**

The channels would be designed such that a failure of the headgates are contained by the channel and therefore flooding would be routed down the whitewater channel and back into the river below the dam. This would be addressed operationally by pulling recreationalists off the water as the event happened or from the pool below the channel.

4. **What are the liabilities involved with public use of a facility in the case of casualty or property damage?**

The facilities would need to be operated per Oregon Department of Labor requirements, including inspections, and a waiver of liability would need to be signed by users. The Operator would need to carry insurance and maintain the channels such that leaking did not affect adjacent properties. Liability at this site would be normal for any outdoor activity.

Design and Permitting Considerations

1. **Any proposal that involves connecting the “lagoon” or forebay to the lower river through a channel will have a substantial permitting process. We may be exploring a connection as well, but have not begun technical investigations yet. Do you have any insights on the regulatory requirements for this type of proposal?**

A general understanding of permitting was outlined in the previous study but would include, at a minimum, consultation with Tribes, Oregon Department of Fish & Wildlife, US Fish and Wildlife (for endangered species), a water right, and all of the typical permits required for in-stream or construction work including,

404 and 401 permits. The permitting process at this site would be pretty much the same process as any other river work that has salmon and steelhead species.

- 2. In your proposal, you indicated that channels could be used seasonally for fish passage. Can you provide additional information on this topic and how would it interact with the existing fish passage infrastructure on the West Linn side of the falls especially relating smolt and adult fish migration? What permitting would be required from Oregon Department of Fish and Wildlife and National Marine Fisheries Service?**

A full understanding of this requires a detailed design consultation with Oregon Department of Fish and Wildlife (ODFW). In prior meetings with ODFW, they recommended We Love Clean Rivers research Willamette Falls as a potential site among others because it could be helpful with fish migration issues currently present at the falls. Design considerations would include the need to provide a channel for fish to migrate while the channels ran at a lower level (there is an approx. 49 cfs water right with the site currently that could be used for full-time fish passage). The channel would also need to provide a pathway that was conducive to fish passage.

- 3. Would any shoreline area be impacted by a whitewater channel or park? How much of that area would be required for a successful channel?**

If, by shoreline, you mean the direct boundary between wetted surface and riverbank then, at a minimum, the channel system will require an inflow and an outflow. Presumably, on the downstream side, this outflow would need to be pointed downstream. In this instance the required shoreline impacts at the upstream end would be approximately 45' in linear bank-width and the downstream side could, at a minimum, have the same width, but would desire to impact 200' of shoreline. In this area the shoreline is bedrock and the channel would mimic this morphology.

Can you provide additional information about the process for acquiring the needed water rights to run such a facility? Are there any seasonal issues with water rights?

The Oregon Water Resources Department (WRD) is responsible for administering the water rights program in Oregon. As Oregon is a "prior appropriation" state, previously-filed and/or vested water rights almost always have seniority over newer (aka "junior") water rights. In practice this means that, in times of drought, holders of older water rights are allowed to fill their quota of water usage/volume before the junior water rights holders are allowed to use any water. Operating within this system of "first come, first served," the WRD decides whether there is enough water to satisfy existing water rights before issuing permits for new water rights. If there is not enough water to satisfy existing water rights, the WRD will deny applications for new withdrawal permits, or may constrain the terms the new permits based on time of year and/or instream water flow.

As a proposed new water right, the water diversion for a whitewater park at Willamette Falls would be subject to all prior existing water rights in the Mainstem Willamette Subbasin (the WRD's classification for this geographic location). The limitations imposed by the pre-existing

water rights would be a significant problem during summer and/or drought conditions if the proposed new use of water was for *consumptive* use (that is, a use that removed the water from the river for use off-site). However, the proposed use of water for the whitewater park is not consumptive because the water diverted from above Willamette Falls will almost immediately be returned to the river just downstream of the falls (and therefore the instream flows will be the same both upstream and downstream of the diversion). Accordingly, the major water rights hurdles for a whitewater park at Willamette Falls are characterized by the limitations imposed by the immediately adjacent pre-existing water rights. Those pre-existing water rights are controlled primarily by PGE in the operation of its low-head dam, hydro-electric generators, and the fish ladder. Instream-flow rights for supporting aquatic life are integrated with that flow regime.

Because the water flow for a whitewater park at Willamette Falls would likely be diverted from above Willamette Falls, that water flow would not pass through the main dam spillway, the fish ladder, or the electric generators. However, because those uses are associated with pre-existing water rights, operation of the Whitewater Park could not legally interfere with those uses. In order to avoid this conflict, there would need to be water flow at Willamette Falls in excess of the needs of the pre-existing water rights located there. During most of the year this would not be a problem, but during low-flow periods (either because of low precipitation or because of reduced spill from upstream dams, or both) the vested water rights at the falls could leave little water flow left for the whitewater park (for example, during July, PGE's vested water rights can exceed the actual flow of the river, though PGE does not exercise their full rights during those events). Low-flow scenarios would require the cooperation of the vested water rights holders, as explained below.

A large portion of the pre-existing water rights at Willamette Falls are so-called "instream flow rights." That is water flow dedicated to supporting aquatic life. Because the whitewater park would require a relatively small amount of water flow, and because the diverted water would immediately return to the river after flowing through the whitewater park, a portion of the instream water rights could run through the whitewater park instead of through the main falls spillway. Alternatively, an agreement could be reached with PGE to allow for minimum whitewater park streamflow during low flow periods despite PGE's superior water rights (again, the whitewater park's flow requirements would be minimal). Either of these options would require approval/cooperation from PGE and/or ODFW.

In any case, the first formal step for acquiring a water right is to submit an application to the WRD. If the WRD believes there is enough water available for the proposed use, then it issues a permit. Once a permit is issued, the applicant normally has five years to "prove-up" their water right by building the infrastructure and actually using the water (in volume and purpose) as described by the permit. Extensions of time to prove-up the claim are available on a case-by-case basis. If the WRD finds that the applicant has successfully proven their use of the water pursuant to the permit, then the WRD issues a water rights certificate, which represents a fully-vested water right.

The Blue Heron Paper Company also has a relatively small amount of water rights at the site which were transferred to Falls Legacy LLC as part of the property sale. With the permission of the WRD, those rights may be permitted for use in the Whitewater Park.

It has been suggested that the above-described water rights are no-longer valid because of the operation of statutory forfeiture (which is an Oregon law stating that certificated water rights

can be cancelled after a showing of non-use for five years or more). However, cancellation of a water right requires affirmative inquiry and cancellation from the WRD. This has not occurred. Further, there are defenses to statutory foreclosure, including bankruptcy, which defense applies to several years of the period of non-use in this case.

Also, the period of time in which a water rights transfer application is pending before the WRD is not counted as part of the period of non-use. Accordingly, if Falls Legacy LLC is not currently able to use its water right, then cancellation may be avoided by initiating a transfer application before the five-year period of non-use expires. Potential transferees include one of the public partners for the WFLP, or a private entity. This approach could preserve the right to use the Blue Heron water right until the time when the water is able to be used in a whitewater park.

4. What is the estimated footprint of such a facility? How would the facility be integrated within the private development (e.g. accesses easements, fee simple)?

The footprint is a variable width between 25' and 45' for channel width, plus trail access on each side (can be minimized or removed in some areas) over the 2000'-2500' linear feet of length. Integration within the private development depends on ownership (City owned or privately owned). If owned by Falls Legacy, then it would ideally be a part of their campus. If owned, or leased, by the City, then the terms would need to be determined. The channel could be included in an easement as it cuts through private property or it could be included in a separate property boundary so that whoever is the "owner" has protection and legal description.

5. What existing buildings or new buildings would be needed onsite to support a facility?

Operations of such a facility typically include a rafting building, or buildings, that accommodate check-in, changing, restrooms, food and beverage (and bar), meeting rooms, offices, and boats and equipment storage. Often boats and equipment storage are separate buildings in order to build them to a lower cost/sqft. Some offices can be run out of this building, if separated. Depending on site plans, additional space could be created/used for water safety and rescue training. For example, Clackamas County Sherriff's office frequently completes swiftwater rescue training. This site could be the Northwest's superior training facility for first responders if a training room is included.

6. Have you consulted with any tribes? If so, what has the reaction been?

Collaboration with tribes is critical and some discussions are underway. As the project moves forward, We Love Clean Rivers will partner with Clackamas County Tourism, who has provided the grants for research on the Whitewater Park, the Willamette Falls Heritage Area Coalition and other entities to work closely with the tribes to design a Whitewater Park that will allow for greater interpretation and storytelling of the history of the place and celebrate its special connection to the tribes. The fact that the Whitewater Park will create a water connection between the lower and upper river will be of interest to the tribes and other river users.