



**CITY COUNCIL MEETING  
STAFF REPORT**

<b>Meeting Date:</b> September 8, 2016	<b>Subject: Resolution No. 2601</b> Willamette Falls Locks “Section 106” Memorandum of Agreement (MOA) <b>Staff Member:</b> Mark Ottenad, Public/Government Affairs Director <b>Department:</b> Administration
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable <b>Comments:</b> City Council reviewed MOA at August 15 work session and indicated support to advance to September 8 meeting Consent Agenda.
<b>Staff Recommendations:</b> Adopt Resolution No. 2601 to approve the MOA under Consent Agenda.	
<b>Recommended Language for Motion:</b> I move to adopt the Consent Agenda.	
<b>PROJECT / ISSUE RELATES TO:</b>	
<input checked="" type="checkbox"/> Council Goals/Priorities <input type="checkbox"/> Adopted Master Plan(s) <input type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL**

At the August 15, 2016, City Council work session, Council indicated support for adopting the Willamette Falls Locks “Section 106” Memorandum of Agreement (MOA) as a concurring party via resolution to be presented on the September 8 City Council meeting Consent Agenda.

**EXECUTIVE SUMMARY**

The City—along with other local governments, businesses and nonprofits—has been participating for the past four years as a “concurring party” in the ongoing process of Section 106 of the National Historic Preservation Act (NHPA) pertaining to the closure of the Willamette Falls Locks. The City is now invited to sign as a concurring party to the Memorandum of Agreement (MOA) between the U.S. Army Corps of Engineers and state and federal historic advisory bodies pertaining to the 2011 closure of the Locks.

Signing as a concurring party is primarily a way to express agreement with the contents of the MOA and acceptance of the outcome of the process. Concurring parties do not have the rights of signatories; their approval is not needed to execute, amend, or terminate the MOA. In essence, being a concurring party provides the City with opportunities to be notified and included in future meetings and the decision-making processes pertaining to disposition of the Locks. Signing the MOA does *not* obligate the City to any set funding amount or specific course of action.

Based on City Council priorities, the City has participated in local, state and federal activities designed to advance efforts to repair and re-open the Willamette Falls Locks to river traffic. Repairing and reopening the Willamette Falls Locks is a component of the City’s State and Federal Legislative Agendas.

The proposed MOA is required by federal regulations to accomplish the goal of mitigating adverse effects created with closure of the Locks. As required by the Section 106 under the NHPA, the Corps has developed an MOA in conjunction with the State Historic Preservation Office (SHPO) and the President's Advisory Council on Historic Preservation (ACHP). Under normal circumstances, this consultation and development of an MOA would have occurred prior to the emergency closure of the Locks in 2011.

Staff members of the U.S. Army Corps of Engineers, Portland District Office, have indicated a preference and willingness to assist in studying and funding repairs to the closed Willamette Falls Locks in order to facilitate transfer of ownership and operation to a new entity. A number of stakeholders known as the One Willamette River Coalition coordinated by the Willamette Falls Heritage Foundation and the National Trust for Historic Preservation, and now the Locks Working Group and Locks State Task Force are advancing efforts to actuate the proposed transfer of ownership and to restore and reopen the Locks.

The MOA in essence provides a “road map” forward for all parties regarding the Corps’ obligations in the process of documenting conditions of the Locks and advancing efforts to repair and re-open the Locks. The City Attorney’s legal review found:

“The MOA is odd in that it states, effectively, as a concurring party, the City agrees with the contents but is not an actual signatory with any rights thereunder, and the City agrees to all of the processes set forth in the agreement.

“Bottom line is that this MOA an odd legal document, but appears fine to sign as long as the City does intend to make some reasonable contribution at some point to the project, understanding that the City would have to find it reasonable and the document contains no set obligation.”

The City understands that a majority of the concurring parties intend to sign the MOA; tribal governments are likely to seek a different avenue to participate:

- |                             |   |  |
|-----------------------------|---|--|
| Local Governments           | · Wilsonville Concrete / Marine Industrial Construction LLC | · Willamette Falls Heritage Foundation     |
| · Clackamas County          | · West Linn Paper   | · Willamette Falls Heritage Area Coalition |
| · Metro                     | Nonprofits  | · Restore Oregon                           |
| · Oregon City               | · National Trust For Historic Preservation                  | · [PS1]Clackamas County Historical Society |
| · West Linn                 | · One Willamette River Coalition                            | · Willamette River Keepers                 |
| · Wilsonville               |   |  |
| Businesses                  |   |  |
| · Portland General Electric |   |  |

## BACKGROUND INFORMATION

The Corps of Engineers recognizes that the 140-year-old Willamette Falls Locks is a historical asset that can provide a number of benefits for various river users. However, due to the severe reduction over time of “tonnage” being transported through the Locks coupled with the costs of operations and maintenance and declining federal support, the Corps was having difficulty in continuing to operate or maintain the Locks.

In December 2011 the Corps closed the Locks indefinitely to river traffic and placed them in “non-operational” status due to finding a “life safety emergency” with key components used to operate the Locks. Normally, however, the Corps would have first conducted a Section 106 analysis under the National Historic Preservation Act (NHPA) and a “NEPA” review under the National Environmental Policy Act to study and disclose to the public and decision-makers the adverse effects of the proposed action to close the Locks. Both of these processes develop potential binding mitigation measures that can be either broad and all-embracing or narrow with incremental steps.

Over the past three years, the Corps has conducted the required NHPA Section 106 process to examine the impacts of the current decision to close the Locks.

The Portland Corps leadership has indicated a preference for reopening the Locks; however, to do so, the Corps anticipates transferring ownership and/or operations to another entity that is yet to be identified. The Corps states that “deauthorizing” the Locks as a federal project and transferring the facility to a new owner/operator would take two-plus years.

The Corps has received funds from the Office of Management and Budget to conduct a “disposition study” that would provide a complete, detailed assessment of the Lock’s condition and Analyze disposition options, including transfer or removing.

A coalition of businesses, local governments and nonprofit organizations known as the One Willamette River Coalition believes that the Lock facilities are vital for a wide range of river uses that include commercial, industrial, recreational, tourism and marine patrols. Clackamas County has convened a Willamette Falls Locks Working Group of stakeholders that is negotiating with the Corps and pursuing all options for repairing and reopening the Locks. The state legislature created a State Task Force to look at long-term solutions.

Because Wilsonville could benefit from an operational Locks, especially as it relates to the City Council’s goal for a vital multi-modal transportation network and economic development opportunities, the Foundation requested City support for funds for an economic study on the potential benefits for reopening the Locks. The City Council approved in January 2014 a \$2,500 contribution to the study conducted by ECONorthwest, which was released on September 30, 2014 as the *Willamette Locks Economic Potential Report*.

Subsequently, the City Council adopted Resolution No. 2496, “A Resolution of the City of Wilsonville Supporting the Reopening of the Willamette Falls Locks,” in November 2014. Similar resolutions were adopted by many local governments and organizations, including those that are now listed as concurring parties to the MOA. Additionally, the City Council adopted Resolution No. 2515, A Resolution of the City of Wilsonville Supporting Efforts to Create a Willamette Falls National Heritage Area and Urging Designation of Such By Congress in 2015.

In adopting the City’s 2015-16 State Legislative Agenda in January 2015, the City Council prioritized efforts to re-open and maintain the Locks in an operational status. Working in conjunction with the One Willamette River Coalition and Locks Working Group, the City assisted in successfully lobbying the Oregon Legislative Assembly to allocate \$500,000 for study and repair efforts. Concurrently the parties are working with Offices of U.S. Senators Ron Wyden and Jeff Merkley to obtain federal funds to match the state funds.

In addition to the direct and immediate river-based transportation objectives, operational Locks could provide additional benefits. Officials from Wilsonville Concrete, Inc., and Marine Industrial Construction, LLC, have indicated that 15–30 total jobs could be impacted if the Locks are not re-opened on a permanent basis. Wilsonville Concrete and Marine Industrial Construction, which has used the Locks for 127 years, currently conducts extensive work along the Willamette and Columbia Rivers for various businesses and agencies for marine repair and dredging operations, and historically have moved substantial amounts of aggregate to Wilsonville from down river. Each barge carries the volume of aggregate equivalent to 30–35 loaded dump trucks. On an annual basis, regular use of the river to transport aggregate to Wilsonville could reduce truck traffic in the city by more than 5,000 dump-truck trips and more than 360,000 truck miles annually on the Oregon roads systems.

Operational Locks would also allow the City to consider establishing a “port,” which could be eligible for various state and federal funding programs. Eventual development of a port at Wilsonville, the second highest navigable city on the Willamette River, could add to the sustainable logistics hub that Wilsonville is known for historically, while creating additional employment by attracting logistic firms to the area.

The Locks being open would also support the US Coast Guard-required maintenance schedule for the Canby Ferry at roughly 10% of the cost structure needed without the Locks being open. Additionally, state and local law enforcement would have additional capacity available for movement along the river if the Locks are operational.

As the City develops a tourism strategy, recreational access to and use of the Willamette River continues to rise as an issue deserving of further study and consideration. In addition to activities such as float trips on the Willamette River Water Trail, river cruises from Portland to Oregon wine country are a potential tourist attraction that could be developed if the Locks were operational.

**CURRENT YEAR BUDGET IMPACTS**

No current fiscal year budget impacts are anticipated.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: S Cole                      Date: August 1, 2016

No material budget impacts are known at this time.

**LEGAL REVIEW / COMMENTS**

Reviewed by: B Jacobson                      Date: August 1, 2016

See specific legal comments in the Executive Summary of this report.

### **CITY MANAGER COMMENT**

Support for reopening of the Locks appears to be in alignment with City Council goals and City policies.

### **ATTACHMENTS**

- A.** Resolution No. 2601, A Resolution of the City of Wilsonville Adopting as a Concurring Party the Willamette Falls Locks “Section 106” Memorandum of Agreement (MOA) and Exhibits.
- B.** Willamette Falls Locks “Section 106” Memorandum of Agreement (MOA) and Exhibits: *Memorandum of Agreement Between the U.S. Army Corps of Engineers, Portland District and the Oregon State Historic Preservation Officer, and the Advisory Council On Historic Preservation Regarding the Interim Closure of the Willamette Falls Locks, West Linn, Oregon*

ATTACHMENT A

RESOLUTION NO. 2601

**A RESOLUTION OF THE CITY OF WILSONVILLE ADOPTING AS A CONCURRING PARTY THE WILLAMETTE FALLS LOCKS “SECTION 106” MEMORANDUM OF AGREEMENT (“MOA”) AND EXHIBITS**

WHEREAS, the U.S. Army Corps of Engineers, Portland District (“Corps”), has invited local governments, businesses and nonprofits—including Clackamas County; Metro; the cities of Oregon City, West Linn and Wilsonville; Portland General Electric Company; Wilsonville Concrete LLC; Marine Industrial Construction LLC; WCP, Inc.; Clackamas County Historical Society; National Trust for Historic Preservation; Willamette Falls Heritage Area Coalition; Willamette Falls Heritage Foundation; Restore Oregon—and other stakeholders to participate as concurring parties in a Memorandum of Agreement (“MOA”) between the Corps and the Oregon State Historic Preservation Officer and the Advisory Council on Historic Preservation regarding the Interim Closure of the Willamette Falls Locks (“Locks”), West Linn, Oregon; and,

WHEREAS, the Corps acknowledges that since 2011 when the Corps, under emergency operational authority closed the Locks to vessel traffic (the “undertaking”) due to life-safety concerns related to the potentially unsafe physical conditions, there has been continued impact on certain cultural, economic, and recreational goals of the proposed Willamette Falls National Heritage Area, the 2015-designated State Heritage Area, the 2012-designated National Water Trail, and the 1999-designated American Heritage River; to all of which the Locks is a significant and contributing resource; and,

WHEREAS, the Locks are a historic property that was listed in the National Register of Historic Places in 1974, and therefore, pursuant to 36 C.F.R. § 800.5(1), the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), the Corps notified the Oregon State Historic Preservation Officer (SHPO) on May 15, 2014 that the undertaking posed an adverse effect to the features and qualities that made the Locks eligible for listing, (MOA Appendix A) to which the SHPO agreed; and

WHEREAS, the Corps acknowledges that the undertaking has eliminated the potential of commercial navigation through the Locks, resulting in a loss of economic opportunity for some

sectors of the community, and that the concurring parties and others endorse the repair and reopening of the Locks in order to achieve potential cultural, economic, commercial and recreational goals of state and local stakeholders; and,

WHEREAS, the Corps has received initial funding to conduct an investigation for the final disposition/divestiture report, and in accordance with 36 C.F.R. § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effects determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and,

WHEREAS, the parties to the MOA acknowledge additional Section 106 consultations are required prior to a future decision regarding the permanent long term disposition of the facility, and that the Corps is committed to conducting regular informational meetings no less than twice a year with signatories and concurring parties to report on progress made toward accomplishing stipulations under the MOA; and,

WHEREAS, the Corps is committed to conducting a meeting with signatories, concurring parties, and other Federal and non-Federal stakeholders a minimum of every two months, or as required, to discuss possible options for the long term disposition of the Locks, and that such a meeting would be with local interests that have organized under the leadership of the Clackamas County (identified as the Willamette Falls Locks Working Group) to study issues relating to repair, reopening and operation of the Locks; and,

WHEREAS, within twelve (12) months of execution of this MOA, the Corps plans to have investigated and discussed the results of an investigation of the Locks with the Willamette Falls Working Group the need for the Locks to be repaired and operational prior to transfer; and,

WHEREAS, being a concurring party provides the City with opportunities to be notified and included in future meetings and the decision-making processes pertaining to disposition of the Locks; and signing the MOA does not obligate the City contribute to any set funding amount or to undertake a specific course of action; and,

WHEREAS, the City of Wilsonville has a vested interest in the outcome of the Section 106 consultations and resulting disposition study and long-term operational future of the Locks, as evidenced by prior City actions, including adoption of Resolution No. 2496, A Resolution of the City of Wilsonville Supporting the Reopening of the Willamette Falls Locks (2014);

Resolution No. 2515, A Resolution of the City of Wilsonville Supporting Efforts to Create a Willamette Falls National Heritage Area and Urging Designation of Such By Congress (2015); and inclusion of reopening of the Locks as a priority issue for the City in both recent State and Federal Legislative Agendas;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City of Wilsonville adopts the Willamette Falls Locks “Section 106” MOA as a concurring party; and
2. The City of Wilsonville thanks the Corps of Engineers for working with local stakeholders to assess and mitigate the adverse effects of the closure and urges the Corps to expedite the needed repairs and craft a plan for sustainable operations of the Locks.
3. This resolution is effective immediately upon adoption.

ADOPTED by the Wilsonville City Council at a special meeting on September 8, 2016, and filed with the Wilsonville City Recorder this date.

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TIM KNAPP, MAYOR

ATTEST:

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Sandra C. King, City Recorder, MMC

SUMMARY OF VOTES:

Mayor Knapp            \_\_\_\_\_  
 Councilor Starr        \_\_\_\_\_  
 Councilor Fitzgerald \_\_\_\_\_  
 Councilor Stevens    \_\_\_\_\_  
 Councilor Lehan        \_\_\_\_\_



**MEMORANDUM OF AGREEMENT  
BETWEEN  
THE U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT  
AND THE  
THE OREGON STATE HISTORIC PRESERVATION OFFICER,  
AND THE  
ADVISORY COUNCIL ON HISTORIC PRESERVATION  
REGARDING THE INTERIM CLOSURE OF THE WILLAMETTE FALLS LOCKS,  
WEST LINN, OREGON**

**WHEREAS** on December 1, 2011 the Dam Safety Officer for the Portland District, U.S. Army Corps of Engineers recommended Gates 2, 3, and 4 be red-tagged for use until the gudgeon anchors are replaced; and subsequently on December 5, 2011 the U.S. Army Corps of Engineers, Portland District (Corps), under its emergency operational authority, closed the Willamette Falls Locks (Locks) to vessel traffic (the “undertaking”) due to life safety concerns related to the potentially unsafe physical conditions of the gudgeon anchors on Gates 2, 3, and 4; and,

**WHEREAS** the repairs to address the immediate dam safety and operational safety concerns has been estimated to cost between three to five million dollars; and,

**WHEREAS** the decline of commercial tonnage through the Locks from 1990 to 1997 caused more than a 99% decline in navigational benefits causing in a commensurate decline in funding for Operations, Maintenance, Repair, Replacement, and Rehabilitation activities to support the navigation authority of the Locks which led to Caretaker funding for minimal maintenance activities of the facility starting in 2006; and as the decline in commerce has persisted for more than 15 years, the repairs to the underground gudgeon anchors at Gates 2, 3 and 4 are deemed not economically justified; and,

**WHEREAS** the Locks are a historic property that was listed in the National Register of Historic Places in 1974, and therefore, pursuant to 36 C.F.R. § 800.5(1), the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), the Corps notified the Oregon State Historic Preservation Officer (SHPO) on May 15, 2014 that the undertaking posed an adverse effect to the features and qualities that made the Locks eligible for listing, (Appendix A) to which the SHPO agreed; and,

**WHEREAS** the Corps has defined the undertaking's area of potential effects (APE) as the Locks, associated structures, and environs, to include the Lock Operator and Administration buildings, dock, and park easement along the west side of the Locks chambers (map of APE is attached as Appendix B); and,

**WHEREAS** the undertaking resulted in adverse effects to historical associations, specifically, associations with transportation and navigation history, and with tribal access to the Willamette Falls via the Locks to conduct traditional cultural practices; and,

**WHEREAS**, although no immediate or additional adverse effect to the physical engineering qualities of the Locks was realized by the undertaking, further examination of materials and operating components of lock walls and gudgeon anchors on Gates 2, 3, and 4 would be necessary to determine if, and to what degree, further decline may have occurred since closure; and,

**WHEREAS** the Corps acknowledges that, since 2011, there has been continued impact on certain cultural, economic, and recreational goals of the proposed Willamette Falls National Heritage Area, the 2015-designated State Heritage Area, the 2012-designated National Water Trail, and the 1999-designated American Heritage River; to all of which the Locks is a significant and contributing resource; and,

**WHEREAS** the Corps acknowledges that the undertaking has eliminated the potential of commercial navigation through the Locks, resulting in a loss of economic opportunity for some sectors of the community; and,

**WHEREAS** the Corps considers the undertaking to be an essential and immediate response to an emergency condition threatening both life and property; the Corps has, through this consultation, notified SHPO, the Council, and the tribes within the time and resources available (36 C.F.R. § 800.12 (b)(2)) so that comments and suggestions on how to appropriately mitigate for the subject undertaking could be provided. Stipulations provided in this agreement address adverse effects that resulted from the undertaking in 2011, although the last vessel permitted through the Locks occurred in July 2013. No data or information has been identified or presented to demonstrate that the mitigation needs have changed since the date of closure; and,

**WHEREAS** the Locks chambers and environs are no longer publicly accessible on a regular basis due to safety concerns and budgetary constraints, the Corps has provided supervised, infrequently scheduled opportunities for on-site viewing to requesting parties and has supported various events such as the Willamette Falls Heritage Foundation's Lock Fest; and,

**WHEREAS** the Corps invited participation of the Confederated Tribes of Grand Ronde (CTGR), the Confederated Tribes and Bands of the Yakama Nation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Confederated Tribes of Siletz Indians who attach religious and cultural significance to lands within the Willamette Falls Locks and around the Willamette Falls; and,

**WHEREAS** the Corps has invited the West Linn Certified Local Government, National Trust for Historic Preservation (NTHP), Willamette Falls Heritage Foundation (WFHF), Clackamas County (CC), Clackamas County Historical Society, Willamette Falls Heritage Area Coalition (WFHAC), Metro, Oregon Marine Board, Oregon City, Portland General Electric Company, Wilsonville Concrete LLC, Marine Industrial Construction LLC, WCP INC, Pacific Northwest Waterways Association (PNWA), Restore Oregon, City of Wilsonville and other identified stakeholders to participate as concurring parties; and,

**WHEREAS** many of the consulting parties endorse the repair and reopening of the Locks in order to achieve potential cultural, economic, commercial and recreational goals of state and local stakeholders; and acknowledge since closure of the Locks, the Corps' annual requests for Congressionally appropriated funding for repairs have not been successful because the costs of rehabilitation outweigh the commercial navigation benefits to the nation and therefore, agree, although not part of the current undertaking or this Section 106 consultation, the most viable long term disposition of the Locks may be through a transfer of ownership to another agency or via alternative management of the facility through cost-sharing of repairs, leasing the facility, or other arrangement; and,

**WHEREAS** the Corps serves as an ex-post participant in the Senate Bill 131 Task Force whose purpose is to: 1) compile information related to the Willamette Falls Locks and Canal; 2) consider means of facilitating the repair and reopening of the facility; 3) develop a plan for its sustainable operation; and 4) deliberate the future disposition of the facility via either the future lease or transfer from the Corps to a specified non-federal entity. It is anticipated much of the future Federal investigation described in Stipulation III below will be helpful to the Task Force when developing the future governance model and funding mechanism for the long term repair and operation of the facility.

**WHEREAS** the Corps has received initial funding to conduct an investigation for the final disposition / divestiture report.

**WHEREAS** in accordance with 36 C.F.R. § 800.6(a)(1), the Corps has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effects determination with specified documentation, and the ACHP has chosen to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and,

**WHEREAS** the parties acknowledge additional Section 106 consultations will be required prior to a future decision regarding the permanent long term disposition of the facility;

**NOW, THEREFORE**, the Corps, SHPO, and the ACHP agree that the Corps will implement the following stipulations in order to mitigate adverse effects to the Locks caused by the undertaking:

### STIPULATIONS

The Corps shall ensure that the following measures are carried out:

- I. Conduct regular informational meetings no less than twice a year with signatories and concurring parties to report on progress made toward accomplishing Stipulations III-V.
- II. Conduct a meeting with signatories, concurring parties, and other Federal and non-Federal stakeholders a minimum of every two months, or as required, to discuss possible options for the long term disposition of the Locks. Such a meeting would be with local interests that have organized under the leadership of the Clackamas County (identified as the Willamette Falls Locks Working Group) to study issues relating to repair, reopening and operation of the Locks. The goal of the process is to develop a report described in Stipulations IIIA or IIIB. This meeting can be accomplished during one of the meetings described in Stipulation I.
- III. Future investigations, which shall include but not be limited to:
  - A. Beginning in Fiscal Year 2017, will conduct a three year, 100% federally funded engineering investigation of the Locks' essential operating materials and components in order to identify the condition of the facility and/or repairs needed to meet standards established by the Corps that would support either the deauthorization, decommissioning, and divestment of the Locks or a complete change in management of the facility, whereby reopened operations result from contributed funds and provide the future owner and/or operator guidance in mid and long-term capital needs. This investigation may include the following:

1. A forensic investigation of the operating components (gudgeon anchors, masonry, and wood materials of the lock walls) using minimally invasive techniques and technologies to probe non-visible conditions and substrates;

2. An updated technical condition of the facility;

3. An updated economic analysis to identify the least cost alternative to decommission the facility; an environmental condition of the property to assess the presence, abundance and cleanup requirements resulting from hazardous and toxic materials exposed within the locks and ship canal.

4. Pertinent structural repairs to the locks so that the locks are returned to a safe and operable condition

5. May include pertinent assessments identified in Stipulation IIIB.

**B.** Will pursue with the Willamette Falls Locks Working Group a 50/50 cost share study to identify the necessary analysis and administrative steps necessary for alternate ownership or management of the Locks. The study, if pursued, may include the following:

1. An updated technical condition of the facility to assess the rate of deterioration, the risks and potential liabilities associated with the facility, and the need, if any, for dredging and proper disposal of dredge materials;

2. Consideration, including an economic assessment, of transfer of ownership and/or operations of the facility to an identified transferee;

3. An economic evaluation of potential reauthorization of the facility to a different mission;

4. An economic analysis of the status quo closure condition;

5. Evaluation, including economic assessment, of de-authorization, decommissioning and divestment of the facility;

6. A current cost estimate to repair and return the Locks to safe operability;

7. An economic opportunity analysis of reopening and continued operation;

8. A full investigation of all environmental and regulatory requirements, including addressing NEPA and Section 106 requirements of both repair and final disposition options;

9. An assessment of the real estate title and boundary issues, resulting in a detailed scope, schedule, and budget to resolve any potential real estate issues;

10. An environmental condition of the property to assess the presence, abundance and cleanup requirements resulting from hazardous and toxic materials exposed within the locks and ship canal; and,

11. Assessment of any continued Corps regulatory oversight requirements that may transfer to a new third-party operator.

Should a cost shared study be of mutual interest, the Corps shall execute a separate agreement with the appropriate non-federal sponsor.

**IV.** Continue current caretaker activities commensurate with obligations under Section 110 of the National Historic Preservation Act to preserve and protect significant character defining features of the property, defined herein as the inspection and monitoring of the Locks' status through scheduled operation of gates to identify mechanical changes in performance; surface observation and monitoring of condition and potential deterioration of gudgeon anchors and lock walls; removal of intrusive objects or plant material that may cause harm to operating components; the monitoring of any geophysical activities that may pose harm to the resource; and the prevention of public access that may result in vandalism or other deliberately imposed harm.

**V.** Continue support of public outreach endeavors, including, but not limited to:

**A.** In cooperation with any volunteers, permit public tours of the Locks concurrent with Corps personnel on-site inspections and minimal maintenance activities, and continue to support local endeavors to heighten public awareness and appreciation of the Locks, as exemplified by the Willamette Falls Heritage Foundation's Lock Fest.

**B.** Upon requests and invitations, the Corps shall provide public presentations of the Locks' Past, Present and Future to interested organizations.

**C.** Corps shall conduct on-going conditions assessment of interpretive displays and shall inventory historical items, photographs, archives, and artifacts on display at the Lock Operator's Building and Museum, and seek professional services within the USACE or other curation facilities to inventory and conserve artifacts, archives and photos, and upgrade interpretive exhibits, so long as the Locks is in caretaker status. SHPO shall be afforded 30 days to review and comment on revisions and/or layout and content when interpretive elements are modified or replaced. The Corps shall review requests and facilitate the temporary loan of historic artifacts and resources to qualified local museums for public education purposes.

**D.** In consultation with signatories to this agreement, the Corps shall contract the development of a book, website, or video documentary to commemorate the history of the Willamette Falls Locks.

**E.** The Willamette Falls Locks and Navigation Canal will be documented for submittal to the Historic American Engineering Record (HAER) by a qualified professional meeting National Park Service Standards (36 C.F.R. part 61) in coordination with appropriate NPS staff. HAER documentation will incorporate, expand upon, and complete HAER documentation previously prepared for the Willamette Falls Locks Chamber No. 1 (completed in 1980). Draft documentation will be submitted to Oregon SHPO and the NPS for review and approval. The Corps will assure that any required modifications or revisions necessary for NPS approval of the HAER submittal are accomplished in a timely manner. Once NPS has reviewed and accepted the final documentation, it will be duplicated in either digital or hardcopy as preferred and supplied to NPS, SHPO, University of Oregon and the Oregon Historical Society. Proof of submittal of the NPS-approved HAER documentation to each of the above repositories will be provided to SHPO, completing this stipulation within four years of the final signature of this Memorandum of Agreement (MOA).

**F.** Within one of year of execution of this MOA, the Corps will further consult with the tribes to develop a mutually agreeable plan to enable means for conducting traditional cultural practices at Willamette Falls Locks.

**G.** Within twelve months of execution of this MOA, the Corps will have investigated and discussed the results of their investigation with the Willamette Falls Working Group the need for the Locks to be repaired and operational prior to transfer.

## **VI. ANTI-DEFICIENCY ACT**

**A.** The Corps shall make reasonable and good faith efforts to secure the necessary Federal funds to implement this MOA. The parties agree that any requirement for obligation of funds arising from the terms of this agreement shall be subject to inclusion in the President's Budget and the availability of congressionally appropriated funds for that purpose. This agreement shall not be interpreted to require the obligation or expenditure of funds in violation of the Anti-Deficiency Act.

**B.** If compliance with the Anti-Deficiency Act alters or impairs the Corps' ability to implement the stipulations of this MOA within the term of this agreement, the Corps shall conduct supplementary consultation with the signatories and concurring parties in accordance with Stipulations VII and VIII below.

## **VII. DURATION**

This MOA will expire upon completion of requirements in the above Stipulations, or if its terms are not carried out, within ten years from the date of its execution. Prior to such time, the Corps may consult with the other signatories and concurring parties to reconsider the terms of the MOA and amend or renew it in accordance with Section IX below.

## **VIII. MONITORING AND REPORTING**

Each year following the execution of this MOA until it expires or is terminated, the Corps shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in the Corps' efforts to carry out the terms of this MOA. In addition to an annual report, per Stipulation I above, the Corps will conduct meetings as required with signatories, concurring parties and other stakeholders to report on progress made toward accomplishing the terms of this agreement.

## **IX. DISPUTE RESOLUTION**

Should any signatory or concurring party to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the Corps shall consult with such party to resolve the objection. If the Corps determines that such objection cannot be resolved, the Corps will:

1. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories, and concurring parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.

3. The Corps shall carry out all other actions subject to the terms of this MOA that are not the subject of the dispute.

#### **X. AMENDMENTS**

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

#### **XI. TERMINATION**

A. If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Section IX above. If, within thirty (30) days (or another time period agreed to by all signatories), an amendment cannot be reached, any signatory may terminate their interest in the MOA upon written notification to the other signatories.

B. If the MOA is terminated, and, prior to work continuing on the undertaking, the Corps must either (a) execute an MOA pursuant to 36 C.F.R. § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 C.F.R. § 800.7. The Corps shall notify the signatories as to the course of action it will pursue.

C. Execution of this MOA by the Corps, SHPO, and ACHP, and implementation of its terms evidences that the Corps has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

#### **SIGNATORIES:**

**U.S. ARMY CORPS OF ENGINEERS,  
PORTLAND DISTRICT**

**OREGON STATE HISTORIC  
PRESERVATION OFFICER**

\_\_\_\_\_  
Jose L. Aguilar  
Colonel, Corps of Engineers  
District Commander

Date: \_\_\_\_\_

\_\_\_\_\_  
Ms. Christine Curran  
Deputy

Date: \_\_\_\_\_

**ADVISORY COUNCIL ON  
HISTORIC PRESERVATION**

\_\_\_\_\_  
Mr. John M. Fowler  
Executive Director

Date: \_\_\_\_\_

**CONCURRING PARTIES:**

Signing as a concurring party is primarily a way to express agreement with the contents of the MOA and acceptance of the outcome of the process (36 CFR 800.6(c)(3). Concurring parties do not have the rights of signatories; their approval is not needed to execute, amend, or terminate the MOA.

**CONFEDERATED TRIBES OF GRAND RONDE**

\_\_\_\_\_  
Reynold L. Leno, Chair

Date: \_\_\_\_\_

**CONFEDERATED TRIBES OF THE WARM SPRINGS RESERVATION OF OREGON**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**CONFEDERATED TRIBES AND BANDS OF THE YAKAMA NATION**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_



**NATIONAL TRUST FOR HISTORIC PRESERVATION**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**CLACKAMAS COUNTY**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**METRO**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**OREGON CITY CERTIFIED LOCAL GOVERNMENT**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**WEST LINN CERTIFIED LOCAL GOVERNMENT**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**ONE WILLAMETTE RIVER COALITION**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**WILLAMETTE FALLS HERITAGE FOUNDATION**

\_\_\_\_\_ Date: \_\_\_\_\_  
[insert name and title]

**WILLAMETTE FALLS HERITAGE AREA COALITION**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**RESTORE OREGON**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**PORTLAND GENERAL ELECTRIC**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**CITY OF WILSONVILLE**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**PACIFIC NORTHWEST WATERWAYS ASSOCIATION**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**CLACKAMAS COUNTY HISTORICAL SOCIETY**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**WILSONVILLE CONCRETE / MARINE INDUSTRIAL CONSTRUCTION LLC**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**WEST LINN PAPER**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**WILLAMETTE RIVER KEEPERS**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_

**eNRG KAYAKING**

\_\_\_\_\_  
[insert name and title]

Date: \_\_\_\_\_



DEPARTMENT OF THE ARMY  
CORPS OF ENGINEERS, PORTLAND DISTRICT  
PO BOX 2946  
PORTLAND OR 97208-2946

**MAY 15 2014**

Planning, Programs and Project  
Management Division

Mr. Roger Roper  
Deputy State Historic Preservation Officer  
Oregon Parks and Recreation Department  
State Historic Preservation Office  
725 Summer Street NE, Suite C  
Salem, OR 97301-1266

RE: Continued Section 106 Consultation Regarding the Caretaker Status of the Willamette Falls Locks, Oregon City, Clackamas County, Oregon

Dear Mr. Roper:

The U.S. Army Corps of Engineers, Portland District (Corps) is writing to notify you of its finding, pursuant to Section 106 (16 U.S.C. § 470f; 36 C.F.R. part 800) of the National Historic Preservation Act (Act), regarding the closure in November 2011 of the Willamette Falls Lock (locks), a property listed in the National Register of Historic Places (National Register). Please recall we previously notified you on August 21, 2013 about the potential for this action to cause effects on the resource in order to initiate compliance with the Corps' responsibilities under the Act. We have since determined that the closure of the locks to vessel traffic has had – and may continue to have – adverse effects on the character defining features and qualities that made the locks eligible for listing in the National Register.

Following our initial letter regarding this action, the Corps convened a Section 106 information meeting for consulting and invited parties wherein the Corps outlined the status of compliance, and sought input about the effects of the closure. The meeting took place February 25, 2014 at the Corps' Portland District office. A number of parties identified over the past year were invited to participate, including representatives from the Oregon State Historic Preservation Office, Certified Local Governments, historical organizations, elected officials, tribes, and leaders from the industrial, commercial, and recreation sectors. The Corps asked for comment specifically about the effects of the closure on the aspects of integrity that originally made the locks eligible for listing in the National Register, and also requested suggestions for developing the Area of Potential Effects (APE). Comments were recorded on paper and compiled for the record. At the conclusion of the meeting, the Corps explained that further comments would be received until March 28, 2014, at which time the Corps would communicate its findings of effects to the SHPO.

The following is a summary of considerations made by the Corps in developing an APE, and a rationale for a finding of adverse effects for the locks closure as regards National Register criteria and integrity guidelines.

Area of Potential Effects

Based upon review of comment letters and its own investigations, the Corps recommends that the APE for the closure action is defined by the entirety of the Corps owned resource, including the adjacent park land that includes buildings and structures incidental to the historic period. A map of the proposed APE is attached for your reference. While there are clearly a number of contemporary recreational and commercial uses that have relied upon the locks throughout the years, as well as potential cultural activities that may realize future benefits from a functioning locks, none of these interests – even if potentially historic – has lost measurable integrity due to closure.

The Corps considered whether a potential historic property outside of the locks boundaries, upstream or downstream, would lose its criterion A associations because the locks has ceased to pass vessels. It was determined that such a property would lose critical historical associations only if its eligibility has been visually or functionally dependent upon the operation of the locks. An example would be a river front structure fifty years of age that derived its primary significance from the servicing or outfitting of vessels before they entered the locks. The Corps has not identified properties with such associations that have been compromised by the closure. However, should specific examples of this association be presented, further investigation of property eligibility and effects can be made.

The Corps also did not find evidence that architectural or engineering values of properties located outside of the locks have been affected with respect to design, style, workmanship, or materials, though it can be asserted that the locks itself has experienced a loss of physical integrity, as discussed below.

In developing the APE, the presence of other National Register listed and eligible properties adjacent to or nearby the locks was also considered, including the Sullivan Power Plant and West Linn Paper Company, as well as the potential of a larger historic district that encompasses properties on Moore Island, as well as the locks. However, it was determined that, while certain economic relationships may have changed somewhat with the closure of the locks to vessel traffic, even if listed or eligible, these properties did not lose any critical historical associations or material integrity.

Finally, given the interest in establishing a heritage area in and around the falls, the Corps also considered the potential effects of the closure on a designation of this section of the river. While an operating locks might benefit commercial and recreational interests within a heritage corridor, the aggregate of historic properties – including a contributing, but non-active locks – could easily meet eligibility standards for such a designation. The Corps recommends that the

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closure of the locks does not compromise the potential nomination and listing of a Willamette Falls heritage area. However, it can be anticipated that a broader thematic designation focused around a functioning locks could generate important benefits to the area through heritage tourism and related economic activities.

Navigation/Transportation - Criterion A

The Corps acknowledges the pivotal role the locks have played in the navigational and transportation history of the Willamette River and environs at this locale since its operation began in 1873. Certain vessels no longer congregate before the locks and cannot use the waterway as a viable avenue of transport. The ability to understand and experience the historic function the locks had in moving commerce and people around the falls was best understood by the actual operation of the gates and the passage of vessels through them. The closure has created a degree of isolation of the facility from both vehicle and foot access and thereby reduced the associative and experiential qualities of a vibrant water passage with river traffic moving through the lock chambers. Although the gates are periodically exercised, without the direct association of watercraft an understanding of the locks' mechanical operation and historical role is no longer fully understood or conveyed. It is therefore concluded that a degree of visual association with navigation and transportation history has been lost within the immediate boundaries of the resource where those activities took place and were in display.

Architecture/Engineering - Criterion C

The Corps acknowledges its obligation to meet the standard of preservation of the locks, defined as measures that stabilize, repair, and retain a property's existing form as evolved over time. Toward this goal, the Corps performs basic maintenance and exercises the gates on a regular basis, and conducted an engineering inspection and evaluation of components to identify conditions and associated costs to address critical needs. Reporting has shown the gudgeon anchors may be in decline and should be replaced, although the level of suspected deterioration is not fully known, due to limited funding to fully probe the status of these components. To date, this lack of funding has prevented the Corps from reaching definite conclusions about the condition of the anchors and their ability to support the gates, beyond the finding that safety risks are too high to continue allowing the public and vessels into the locks' chambers.

However, the Corps believes that deferring replacement of the anchors could result in some type of failure of these components at an indeterminate point in time, and that higher costs may be incurred if this work is postponed long term. Other aspects of the locks that may require future repair include the masonry walls and timber components, all of which receive basic monitoring as part of the overall custodial care of the facility. Therefore, although a complete picture of the locks' mechanical and physical status can only be speculated, the Corps recommends that without replacement of the gudgeon anchors some degree of adverse effects to the engineering values of the resource may occur.

Traditional Culture

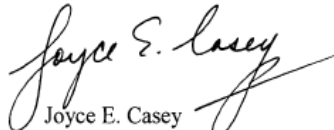
Comments from tribal representatives have shown that the locks were adapted during the historic period for various religious and cultural activities when full access to the falls was cut off by development. Though not cited in the National Register nomination, it has been demonstrated that access above the falls via the locks was essential for the continuance of traditional cultural and educational practices such as the canoe journey. Because the closure prevents native people from conducting these traditions and teachings to new generations, the Corps acknowledges the action has had an adverse effect on the tribes' ability to maintain certain aspects of their traditional culture. Non- native life ways based upon shipping and river transportation may also be viewed as aspects of traditional culture that have been curtailed to some degree by the closure action.

The Corps has determined that the closure of the Willamette Falls Locks to vessels has an adverse effect on the aspects of setting, association, and feeling that originally made the locks eligible for listing in the National Register, and that there is some potential for adverse effects to the character defining design, materials, features, and workmanship of the resource as long as the status of the gudgeon anchors and other materials and components remains partly unknown.

The Corps believes that continued engagement of all consulting and invited parties will be essential in crafting a meaningful resolution of adverse effects. The Corps also anticipates that all parties with cultural, historical, recreational, and commercial interests in the locks will provide valuable input into a separate Section 106 consultation if there is a future transfer of the property out of federal ownership. We look forward to further discussion of the Willamette Falls Locks closure with regard to this finding, and your advisement in developing the most appropriate means of avoiding, minimizing or mitigating the adverse effects of the closure action.

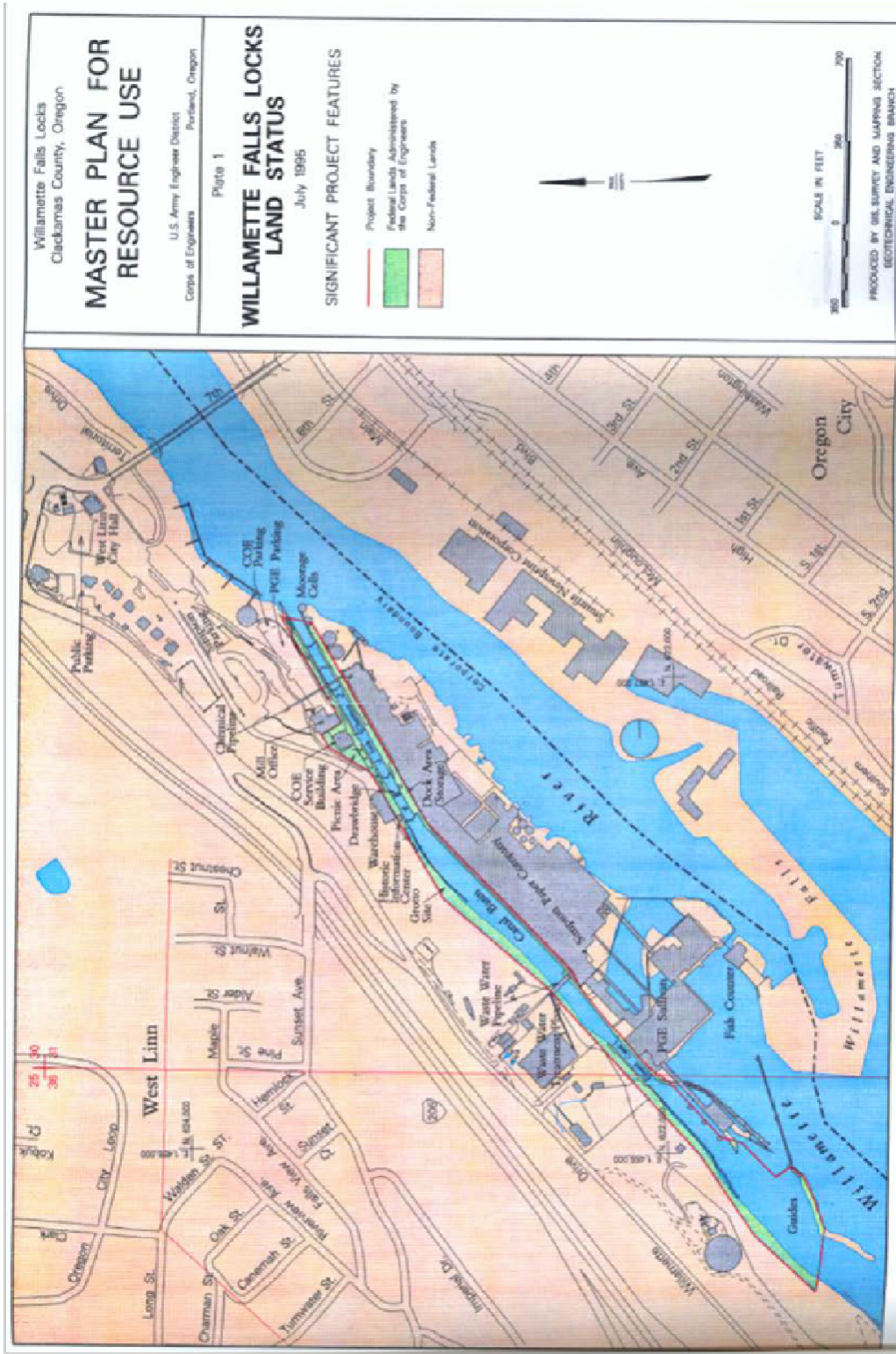
Questions regarding this evaluation may be directed to Ms. Lauren McCroskey, Program Manager, Technical Center of Expertise for the Preservation of Historic Buildings and Structures at (206) 764-3538, or by email at [lauren.l.mccroskey@usace.army.mil](mailto:lauren.l.mccroskey@usace.army.mil).

Sincerely,



Joyce E. Casey  
Chief, Environmental Resources Branch





Appendix B – Boundary for the Area of Potential Effect is the “Project Boundary” outlined in red, constituting the Federal ownership, including the easement right-of-way for the Picnic Area.