



April 6, 2022

Julie Weis  
Portland Harbor Trustee Council Chair  
Haglund Kelly LLP  
2177 SW Broadway  
Portland, Oregon 97201

Dear Ms. Weis,

Over the past few months, the Portland Harbor Community Advisory Group (PHCAG) raised concerns and questions centering around the accountability and transparency of the mitigation and conservation banks currently approved and operating in relation to the Portland Harbor Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) clean-up and habitat remediation efforts. We discussed these concerns and questions with the Portland Harbor Trustee Council (Council) and the Environmental Protection Agency (EPA) in a series of emails and telephone conversations and during a formal presentation to Portland Harbor Superfund cleanup stakeholders during the PHCAG January 12 Public Meeting.

While attending this meeting, you gave assurances that the Council members are aware of the concerns and questions raised and that a collective response to the PHCAG and other stakeholders will be forthcoming in the very near future. We are pleased by your statements on January 12 and wish to express both our gratitude and relief that the preparations for this response are well underway. Please note that because of the on-going efforts of EPA to develop and operate a 'dual-purpose' Federal Clean Water Act mitigation and conservation bank credit-debit accounting system to run jointly and seamlessly with the Superfund clean-up mitigation banks, we are asking that you coordinate the Council and EPA responses to the degree practicable.

In the interest of clear and expedited communication we are itemizing our concerns and questions as follows:

- Trustee Council - RIBITS / EPA Cyber Repository Foundational Documents Accessibility Question: *At a minimum, can the USACOE Regulatory and In-lieu fee Bank Interagency Tracking System (RIBITS) database Cyber Repository for the Portland Harbor mitigation banks be required to contain the same or equivalent documents as all the other mitigation banks in Oregon, with emphasis credit-debit accounting methods, service areas, financial assurances, performance standards, long-term perpetuity protection, and monitoring reports?*
- Trustee Council – EPA Export of Ecosystem Services and Environmental Justice Question: *Can you assure stakeholders the spatial distribution of remedial actions in the Portland Harbor will be protective and restorative to the needs of local fish and wildlife and the needs of neighborhood residents living, working, and recreating in and around these clean-up restoration areas?*
- Trustee Council - RIBITS / EPA Accessibility to Existing Digital Data Question: *In addition to the RIBITS cyber repository held pdf files displaying the mitigation bank's credit-debit assessment methods and monitoring reports validating its performance standard thresholds, can the supporting digital data also include Excel spreadsheets and /or databases for the convenience of stakeholder use in verification of the reported outcomes?*
- Trustee Council - RIBITS / EPA HEA Discount Rate Logic Question: *Can you please provide and explain the logic/arithmetic NMFS used to derive the specific HEA 'discount rate' applied at the Portland Harbor mitigation banks? Also, what is the logic behind dividing the HEA delta by this 'discount rate' to derive the present credit values (aka DSAYs)?*
- Trustee Council - RIBITS / EPA Precautionary Minimum 1:1 Acreage Compensatory Mitigation Constraints Question: *Will the same HEA methods used to derive credits (DSAYs) also be employed to calculate debits and thereby assure acreage replacement equivalency? Will a precautionary principle dictate no less than 1:1 acreage replacement ratios are a constraint on every Portland Harbor mitigation and conservation bank credit-debit transaction?*
- Trustee Council - RIBITS / EPA Debit Site Acreage and Spatial Coordinate Disclosures Question: *Can the RIBITS / EPA ledger(s) display the spatial coordinates and acreages of*

*the debit site(s) and can a data input rule assure the debit site acreage and coordinate fields require data entry in each respective withdrawal?*

- Trustee Council - RIBITS / EPA Ledger Credit Location Question: *Why were 8.29 Credits specifically reallocated as 'dual purpose' credits in the USACOE RIBITS ledger for the Linnton Mill Mitigation Bank? Can the USACOE RIBITS ledgers display the dual purpose account(s), the credits released and withdrawn, and their respective running totals? Can the spreadsheets, databases, or any other digital data repositories used to create the ledgers be available for stakeholder download from the RIBITS / EPA cyber folders?*
- Trustee Council - EPA Portland Harbor Credit Values vs Affordability of Remedial Actions Question: *Given that the Portland Harbor mitigation banks contain very high potential credit values relative to most, if not all, other mitigation banks in the Willamette Valley Ecoregion, can there be more of a conversation / debate between stakeholders and mitigation bank sponsors making claims that certain remedial actions are cost prohibitive?*
- Trustee Council - EPA Reference Sites to Determine Performance Standard Thresholds Question: *Were reference sites used to determine performance standard pass / fail thresholds? If so, where is the reference site data? Where are the supporting spreadsheets, databases, and / or any other digital repositories used to calculate the vegetation performance standard thresholds?*
- Trustee Council - RIBITS / EPA Transparency on Performance Standard Evaluations Question: *How were vegetation performance standards evaluated and used in making decisions about credit releases for the mitigation banks? For example, where are the reports by the IRT staff who field verified the results in the monitoring reports and recommended the releases of mitigation bank credits to the IRT Chair? Where is the coordinate data for the vegetation transect starting points? Where is the bearing data for the vegetation transect starting and sample points? Were vegetation sample units delineated and mapped? If so, where is this data?*
- Trustee Council - RIBITS / EPA Database Design Questions (e.g., unique identifier field, primary to foreign key one-to-many relationships, normalization to 3<sup>rd</sup> normal form, etc.) Question: *What is the procedure for stakeholder input considerations for defining the primary queries of interest, schema design, and user interface?*

- Trustee Council - RIBITS / EPA Conventional Wisdom on Independent Reliable and Accountable Data Stewards Question: *Stakeholders have an interest in assurances that those with oversight responsibility of our trust resources have consistently verifiable and enforceable checks and balances established. Synchronized redundancy of data repositories may help increase stakeholder confidence that Portland Harbor clean-up and remediation goals and objectives are tracking toward accomplishment. What are the views of the Council and EPA on this matter?*
- Trustee Council - RIBITS / EPA Relational Database and Enterprise Geodatabase Accessibility and Data Download Question: *What is the procedure for stakeholder input considerations for defining the primary queries of interest, schema design, and user interface?*
- Trustee Council - RIBITS / EPA Standardization of Data Collection and Reporting Protocols Question: *Is there a standard field data collection and reporting protocol applied for all the mitigation banks in the Portland Harbor? If so, where is this standard protocol document?*

Thank you for taking our concerns and questions under consideration. We look forward to receiving your written and/or verbal responses. As stated earlier, we believe if established and managed with proper oversight and enforced transparency, mitigation banks can be very valuable tools for natural resource recovery. But if managed without proper oversight and with a lack of transparency, they can be potentially misused and become a major impediment to natural resource recovery. We know you understand and share this concern and look forward to collaborating with you to help assure the rule of the day becomes the former condition and not the latter.

Sincerely,

Michael Pouncil

Chair, Portland Harbor Community Advisory Group

Approval of PHCAG letter to Julie Weis on 4-4-22. Douglas E Larson, Board Member.

John Marshall

Technical Advisor, Portland Harbor Community Advisory Group

Sarah Taylor

PHCAG Board Member

cc: Courtney Johnson, Exec. Director Crag Law Center