Determining Phase II Costs to Participating Parties
(Based on June 7 Statements of Intent)

The following is a refined estimate of the cost of participating in Phase II of the Portland Harbor Natural Resource Trustee Council's collaborative Natural Resource Damage Assessment process. It assumes that all parties who submitted a statement of intent on June 7, 2010 will enter into Phase II Funding and Participation Agreements and fund a $5.7 million Phase II budget.

Background:

In Phase I of the Portland Harbor Natural Resource Damage Assessment (NRDA), the Portland Harbor Natural Resource Trustee Council (Trustee Council) worked cooperatively with a group of Phase I participating parties who provided funding for the Trustee Council's work. Nineteen participating parties signed a Phase I Funding and Participation Agreement (FPA) to support the Phase I actions. Fifteen of the participating parties had received a general notice letter (GNL) from EPA, but the other four had not. Pursuant to Trustee Council resolution, each GNL-participating party provided a total of $100,000 to the Trustees for Phase I activities; non-GNL-participating parties provided $40,000.

The City of Portland, also a GNL, provided separate funding to the Trustee Council for restoration work, though at a higher level than a Phase 1 GNL. For purposes of this cost estimate, the Trustee Council will treat the City of Portland like a Phase I GNL participant. Thus, we will assume that 20 parties funded the Trustee Council during Phase I, 16 of whom where GNL-participating parties, and four of whom were non-GNL-participating parties. This $100,000/$40,000 ratio equates to GNL-participating parties having paid 2.5 times more than non-GNL participating parties.

Also relevant is the interim funding received from two GNL-participating parties who did not enter into Phase I, one of whom has submitted a June 7 statement of intent. Each of those parties paid $27,777.78 for their interim participation.

The Trustee Council is preparing to enter Phase II of the NRDA. Under the terms of the Phase I FPA, any new participating parties (those who desire to participate in Phase II but who did not participate in Phase I) will be required to pay the Phase I costs – either $100,000 or $40,000 depending on GNL/non-GNL status – plus a 25% premium, in addition to paying Phase II costs. The FPA called for this funding scenario out of fairness to early participants, who have been bearing additional transactional costs associated with the collaborative process. The Trustee Council settled on the 25% premium level in an effort to balance fairness concerns with the collective desire to attract new participants.

The specific amount each participating party will pay in Phase II will depend on whether the party participated in Phase I activities. This is because of: (1) the funding scenario described above, which requires new participating parties to cover a share of Phase I costs; and (2) the FPA requirement that the share of Phase I costs paid by new participating parties "be applied as a credit against the Phase I Participants' share of Phase II costs." FPA ¶ 11.

In summary, this analysis assumes that Phase I included 16 GNL-participating parties who provided $100,000 each, or $1.6 million total. Phase I also included four non-GNL-participating parties who provided $40,000 each, or $160,000 total. The pre-Phase I interim period included two participating parties who provided $27,777.78 each, or $55,555.56 total. The total funding from these three groups, referred to as Phase I monies, comes to $1,815,555.56.

Expressed as a percentage, 88.13% of Phase I monies came from GNL-participating parties, and 8.81% of Phase I monies came from non-GNL-participating parties. (The remaining 3.06% of Phase I monies came from the interim funders who did not sign Phase I FPAs.) The first two percentages – 88.13% and 8.81% – provide the foundation on which the Phase I-associated monies from new participating parties would be applied as a credit against the Phase I participants' share of Phase II costs as required by the Phase I FPA. Specifically, the Trustee Council envisions that 8.81% of any Phase I-associated monies from new participants in Phase II would be credited on a pro rata basis to any of the non-GNL-participating parties (determined as of the date of the Phase I FPA) who continue their participation during Phase II. Similarly, 88.13% of any Phase I-associated monies from new participants in Phase II would be credited on a pro rata basis to any of the GNL-participating parties who continue their participation during Phase II. The crediting scenario does not apply to interim funders who did not sign a Phase I FPA, but an interim funder's payment will be taken into account in determining that parties' cost of participating in Phase II.

The calculations below estimate the current projected cost of participating in Phase II of the cooperative NRDA process.

<u>Estimating the Costs of Phase II Participation</u>:

<u>Assumptions</u>: ♦ Phase II costs are estimated at $5.7 million. ♦ 18 participating parties from Phase I opt to participate in Phase II, 17 of whom are GNL recipients; of those 17, three were non-GNL recipients at the time of the Phase I FPA. ♦ Six new participating parties join the process in Phase II, all of whom are GNL recipients, but two of whom were non-GNL recipients at the time of the Phase I FPA. ♦ The Trustee Council continues the monetary distinction between GNL- and non-GNL-participating parties (2.5X multiplier). ♦ The Trustee Council applies a 25% premium for new participating parties, i.e. those who desire to join the process in Phase II after having not participated in Phase I.

<u>Calculations</u>: Using the above assumptions, we first must calculate the past Phase I costs to be paid by new participating parties and then credited to Phase I participating parties who are continuing on into Phase II:

Past Phase I costs to be paid by the three new parties who were GNL recipients at the time of the Phase I FPA and who were not interim funders:

$100,000 (Phase I costs) plus $25,000 (premium) = $125,000 for each party

Three new parties in this category = $375,000 total coming from these parties

Past Phase I costs to be paid by the one new party who was a GNL recipient at the time of the Phase I FPA but who was an interim funder:

$100,000 (Phase I costs) minus $27,777.78 (interim funding) = $72,222.22
Plus $18,055.56 (25% premium) = $90,277.78 for this party

One new party in this category = $90,277.78 total coming from this party

Past Phase I costs to be paid by the two new parties who were non-GNL parties at the time of the Phase I FPA:

$40,000 (Phase I costs) plus $10,000 (premium) = $50,000 for each party

Two new parties in this category = $100,000 total coming from these parties

► Total Phase I-associated monies coming from new participating parties = $565,277.78

Allocating this $565,277.78 credit to the Phase I GNL-participating-parties continuing on into Phase II would be calculated as follows:

88.13% of $565,277.78 = $498,179.30;
$498,179.30 divided by 14 (for the14 Phase I GNL-participating-parties) = $35,584.24

► $35,584.24 credit for each of the Phase I GNL-participating parties continuing into Phase II

Allocating the $565,277.78 credit to the Phase I non-GNL participating parties who are continuing on into Phase II (current status irrelevant for this calculation) would be calculated as follows:

8.81% of $565,277.78 = $49,800.97;
$49,800.97 divided by 4 (for the four Phase I non-GNL participating parties) = $12,450.24

► $12,450.24 in credit for each Phase I non-GNL participating party continuing into Phase II (regardless of current status)

Because only the parties who participated in Phase I and are carrying over into Phase II are entitled to the benefit of the credit, responsibility for the $5.7 million Phase II budget would be calculated as follows:

The $5.7 million budget first must be divided among all 24 participating parties in Phase II (including the 18 Phase I participating parties and the six new participating parties in this scenario). The 23 GNL participating parties in Phase II (18 carryovers from Phase I plus five new participants) will pay 2.5X more than the one non-GNL party (a carryover from Phase I), with X calculated as follows:

$$23(2.5X) + X = \$5.7 \text{ million}$$
$$X = \$97{,}435.90$$

► This means that **before applying the credit to those who participated in Phase I and are continuing into Phase II**, each GNL-participating party would be responsible for $243,589.75 (2.5 X $97,435.90), and each non-GNL participating party would be responsible for $97,435.90.

► **Now taking into account the credit** called for under the Phase I FPA:

The "old" GNL-participating parties (those who participated in Phase I) who were also GNL recipients at the time of the Phase I FPA would pay $208,005.51 (calculated as $243,589.75-$35,584.24).

The "old" GNL-participating parties (those who participated in Phase I) who were non-GNL recipients at the time of the Phase I FPA would pay $231,139.51 (calculated as $243,589.75-$12,450.24).

The "old" non-GNL participating party (who participated in Phase 1 and is still a non-GNL party) would pay $84,985.66 (calculated as $97,435.90-$12,450.24).

Summary:

Taking into account the Phase I premiums and credits, the parties participating in Phase II would pay the following new money:

Each of the 14 GNL parties who participated in Phase I as a GNL = $208,005.51

Each of the three GNL parties who participated in Phase I as a non-GNL = $231,139.51

The one non-GNL party who participated in Phase I = $84,985.66

Each of the three new GNL parties who was a GNL at the time of the Phase I FPA and who was not an interim funder = $368,589.75 (calculated as $243,589.75 plus $125,000)

The one GNL party who was a GNL at the time of the Phase I FPA and who was an interim funder = $333,867.53 (calculated as $243,589.75 plus $90,277.78)

Each of the two new GNL parties who was a non-GNL at the time of the Phase I FPA = $293,589.75 (calculated as $243,589.75 plus $50,000)

Again, keep in mind that this is new money – the Phase I participants already paid either $100,000 or $40,000 depending on their GNL status. Please note too that the above payments sum to $5.72 million, slightly above the $5.7 million starting budget figure, likely due to rounding.