

City Interest in Maintaining Regulatory Authority Riverward of the Ordinary High Water Mark

January 13, 2009

The City's interests could be described as overlapping the interests of the Division of State Lands and the Army Corps of Engineers. However, the overlap is primarily a geographic overlap—all three agencies have jurisdiction over the same space. The City's interests in the area riverward of the ordinary high water mark go beyond the interests of the state or federal agencies because the City evaluates proposals within the context of local policy and regulations that the state and federal agencies do not implement.

The City's greenway regulations currently apply to all land in the greenway overlay zones and to fills and structures in the water. The existing greenway code standards and criteria have been in effect since January 1, 1988. The adopted Willamette Greenway Plan states that "the intent is to limit fills and structures within the Willamette River Greenway to conserve the water surface area of the river, ensure that they will not have a detrimental impact on the use and function of the Willamette River and adjacent land, and conserve, enhance and maintain the natural habitat and scenic qualities of lands along the Willamette River. The regulations for fills and structures parallel Federal and State requirements. City involvement will ensure local input and control over the development of fill structures in and along the Willamette River in Portland." This statement summarizes existing adopted City policy regarding regulation riverward of the ordinary high water mark.

The following points further describe the City's interest in maintaining authority to review projects and proposals that occur in the area riverward of the ordinary high water mark:

- Ecology rather than Biology as Framework. Federal and state agencies often focus their review on the biological impact to specific fish or wildlife species or a specific resource that they have authority over (wetlands, waters of the state, etc.). The City's regulatory authority is unique in being explicitly focused on the whole ecology of a place, not a specific species or resource. This is especially important when thinking about the connection between the water and the upland resources. Because the City's environmental overlay approach encompasses both upland and in-water work, we are able to look at the entire impact of a project and assess the relationship of in-water impacts to upland resources. For example, the City can examine the impact that an in-water dock might have on an adjacent grove of trees that is providing bird and terrestrial habitat. The City can also ensure that adequate mitigation is provided to compensate for all unavoidable impacts to resource functions in the water and upland in a coordinated manner.
- Consistency with Land Use Plans. The City's in-water authority helps ensure that in-water structures and activities are consistent with the land use plans for the area. Without City involvement in the review process, in-water structures could potentially be built that interfere with or preclude the intended use of abutting upland sites. For example, the location and design of in-water docks or structures can impact water access to abutting sites. In the Central City, the greenway regulations are administered in conjunction with design regulations. Looking forward to joint planning for the Central Reach and the Central City Plan, there is a City interest in retaining design control over in-water structures that are in highly visible locations.
- Local Resource Knowledge. City staff are very familiar with the local natural resource sites and often bring information to the table that helps other agencies in their review. For example, the BES Science Fish and Wildlife staff spend a lot of time in the field, in or near the River. The City's natural resource inventories contains a level of detail and description that is appropriate for evaluating proposals at the local level. State and Federal agencies want this information at the table.
- Local Enforcement, Inspection. Although the City does not have direct responsibility to inspect sites for compliance with state and federal environmental laws, the presence of City development services

inspectors on a site does help promote conformance with those laws. The City has many more inspection staff on site than any other agency. The City's regulatory authority over in-water projects exposes that work to more oversight. Large changes that diverge from the approved plans are more likely to be noticed because of the City's involvement.

- Local Appeal. State and federal permitting procedures do not provide easy-to-access appeal options for the local community. The City's land use review process gives local communities more say over the design of a project, because those designs are subject to local appeal and the possibility of a local public hearing.
- Implementation Logistics. If the City's authority ended at the ordinary high water mark, or at some other similar demarcation, there would be some practical problems identifying the precise limits of the City's review. Many structures are built that start on land and extend into the water.