

UPDATE ON NORTH REACH COURT RULINGS AND THE PATH AHEAD

Background

In April 2010, the Portland City Council adopted the River Plan / North Reach; a plan for the industrial Willamette River. The plan was the result of an extensive and collaborative process that sought to strengthen the industry sanctuary, enhance the environment, create better access to the river, and improve interagency coordination.

While the River Plan struck a delicate balance among its various objectives, three industrial entities were not satisfied. They wanted a plan that tipped the balance more in their favor, so Gunderson, Schnitzer and the Working Waterfront Coalition appealed to the River Plan.

Legal proceedings have been underway at the Land Use Board of Appeals, the Court of Appeals, and the Oregon Supreme Court for over two years. Here is an update on the rulings received so far and the City's response:

Land Use Board of Appeals

LUBA's January 2011 ruling supported the City on many counts, however they ruled that the City's adopted economic opportunities analysis was out of date and that the City could not rely on an unadopted draft analysis being developed for the update of the City's Comprehensive Plan. The City Council formally adopted the updated EOA in fall 2012.

Court of Appeals

The Court of Appeals ruled on June 22, 2011, and rejected most of the issues appealed to them by Gunderson, et al. However, the Court concluded that LUBA overlooked industries' argument concerning the need for additional Goal 15 inventories and sent that issue back to LUBA to address.

Significantly, the Court of Appeals rejected industries' argument that the River Plan / North Reach was inconsistent with Goal 15's requirement to protect lands committed to urban uses. The Court cited legislative intent and concluded that "the legislature's purpose in establishing the Greenway that is the subject of Goal 15 is to preserve the natural, scenic, and recreational qualities of land and historical sites, rather than to preserve industrial and other urban uses of land, along the Willamette River. ORS 390.314(1)." The Court recognized that

Goal 15 does not preclude the City from regulating urban uses within the Willamette River Greenway, as long as any changes or intensifications of uses are consistent with the goal.

Oregon Supreme Court

The Oregon Supreme Court ruled on November 8, 2012. The Court affirmed the Court of Appeals and rejected industries' argument that Goal 15 limits the City's authority to regulate development in the Greenway. The Court agreed with LUBA and the Court of Appeals that "nothing in the text of Goal 15, its relevant context, or its adoption history supports the conclusion that the goal unambiguously expresses an intention to preclude local governments from regulating developments of industrial and other urban uses that do not constitute 'intensifications' or 'changes' to those uses." The Court remanded the case to LUBA for further proceedings.

Land Use Board of Appeals II

The final court ruling for the North Reach / River Plan came in April 2013 when LUBA determined two things related to the Goal 15 inventories:

1. If the City expands the Greenway boundary the the City must amend the Goal 15 inventory to include the new land; and
2. The current River Plan / North Reach legislative record does not contain sufficient information to determine that the City satisfied the Goal 15 inventory requirement. The LUBA explained that the City must update its Goal 15 inventory if portions of the inventory were used to develop the new code, or the City must adopt findings to explain why the Goal 15 inventory did not need to be updated.

The Path Ahead

River Plan staff will circle back with stakeholders representing industry, the environment, and the community. Together we will review the implications of the EOA analysis on the River Plan / North Reach, craft potential solutions that comply with state law, and support environmental restoration and mitigation and the needs for a healthy, working river.

Meanwhile, the City has launched the River Plan / Central Reach as part of the update of the Central City Plan.