

Minutes of the River Plan Committee – North Reach

October 16, 2007

5pm – 7:00 pm

Portland Bureau of Planning, 1900 SW 4th Avenue, Room 4a (4th floor)

Committee Members Present: Pauline Anderson, Don Hanson, Greg Wolley

Absent: Jason Graf, Bob Naito, Melissa Powers, Krystyna Wolniakowski

City Staff Present: Brian Campbell, Sallie Edmunds, Deborah Stein, Mindy Brooks, Shannon Buono, Roberta Jortner, Steve Kountz, Grant Morehead, Arianne Sperry, Joan Hamilton (Recorder), Planning; Kate Green, BDS

Others Present: Dan Dishongh, Phil Grillo, Frank Hammond, Wayne Kingsley, Francie Royce, Curt Schneider, Greg Theisen, Pat Wagner, Travis Williams

Don Hanson convened the meeting.

1. Committee Business

Approval of minutes was deferred until a later meeting due to lack of quorum.

2. Updates

Industrial Development and Natural Resource Integration Task Group

Sallie Edmunds reported that the task group has reviewed and continues to discuss areas of agreement. She said Steve Kountz presented to the group an Economic Resource Inventory Overview, and the group participated in a mapping exercise to identify important natural resource and industrial areas. Hanson said the mapping exercise was constructive, and the group identified natural and industrial shoreline areas and where natural resource enhancement might occur as part of mitigation.

National Brownfields Association Recommendations

Steve Kountz reported on results from the National Brownfield Association symposium at which a panel of experts made recommendations on how to redevelop brownfields. He said they recommended that the City, private developer or Real Estate Investment Trust (REIT) acquire about 25 sites to clean up and develop. He said the advantage of a REIT is that investors would buy ownership into a collective body that could put land into active use sooner. He said PDC will assemble a committee to turn recommendations into an action plan in about six months, and there will be a recommendation for the River Plan.

Greg Wolley asked whether the panel reviewed liability issues. Kountz said the main issue the panel was asked to resolve relates to in-water sites, because Superfund sites are already occupied, while brownfields remain vacant or unoccupied. New owners who would acquire brownfield sites would need to clean up their sites and contribute to the harbor cleanup as well. Proposals will try to address that issue.

Willamette River Natural Resources Inventory

Document Distributed: *River Plan Committee Update – October 16, 2007*

Roberta Jortner reported on dissemination of information about the Willamette River Natural Resources Inventory report through e-mail and Web announcements, public events, and River Renaissance publications. She announced that a public comment period on the report has been extended through October 31, 2007. She listed agencies and entities providing comment so far and summarized input received to date. She said staff will respond to some of the expressed concerns about accuracy of underlying GIS data, mapping and modeling methodology, requests for additional or clearer descriptive data, and several site-specific requests for refinements and attention to future replacement of stormwater facilities. Jortner recognized that reliance on aerial photos and remote sources will always produce some errors regarding boundaries, so it is important for the inventory program to be flexible enough for making corrections. She reported there will be further evaluation and refinement based on input as well as site visits to verify or refine data. She concluded with next steps from October through January, that begin with evaluation of comments, response, and an eventual Revised Draft Willamette Natural Resource Inventory Report. Hanson asked if the GIS mapping system can adapt to information retrieved from the field check process. Jortner said certain data can be readily changed, such as reclassification of types of vegetation or boundary corrections.

Development of Draft Code

Shannon Buono reported on efforts to start drafting regulations related to the River Plan. She said staff will start with recommendations developed by task groups, including the River Industrial Task Group, the Contaminated Sites Task Group, and the Mitigation Task Group. She said they've referred to the Developing the Code Plan for advice and direction on issues. She said staff will defer some work until the Integration Task Group completes discussion and comes to agreement on Policies and Objectives related to natural resource conservation and enhancements, applicability of setbacks from the river, and specifics regarding a mitigation fee schedule and bank.

Buono said staff will approach the structure of the updated code with continuation of a series of overlay zones that will be updated to reflect recent work and the multi-objective River Plan concepts. She said the river industrial overlay zone will apply only to the North Reach, and most likely allowances for off-site mitigation or off-site balanced cut-and-fill will apply only to the North Reach. Citywide regulations will include the new process for DEQ-led contaminated site cleanup, trail requirements, and probably revised balanced cut and fill regulations. She said the group has been working with Parks, PDOT, and BDS to develop approval criteria that address legal nexus and proportionality issues involved in land use review for trails.

3. Developing a Mitigation Fee Schedule: Overview and Progress Report **Document Distributed: Power Point**

Dennis Canty, Evergreen Funding Consultants

River Plan North Reach Consultant Dennis Canty provided an overview of his work to analyze potential costs of restoration work in the North Reach area and how those costs could translate into a fee schedule for a fee-based mitigation strategy. He provided background on mitigation programs in the country that were developed in response to

federal, state, and local laws and regulations. He said national regulations and policies are based on the same basic sequencing principles:

- First avoid impact
- If impact cannot be avoided, minimize impact
- If neither avoidance nor minimization is possible, compensate for the impact

Canty said little evaluation of mitigation sites is performed after permits expire, so there's little analysis of various programs. However, there's general recognition that on-site mitigation has produced too many small, isolated environmental projects with a failure rate as high as 50-to-80 percent. He described current initiatives to:

1. Locate mitigation in ecological hot spots with ecological value.
2. Design and construct work to current ecological restoration standards, with applications to both publicly and privately financed mitigation projects.
3. Manage and maintain sites to provide permanent benefits, which requires oversight.
4. Develop easier permitting processes that coordinate agencies' requirements.

He described four alternatives for mitigation programs, including mitigation and conservation banks, fee-based and in-lieu-of fees programs, and ecosystem markets. He said all alternatives require demand for mitigation from new development and redevelopment, supply of good restoration and cleanup actions, permitting standards and processes conducive to alternatives, and appropriate pricing for alternatives.

Canty reported there is potential for the North Reach program to allow riverfront landowners to pay into a restoration fund, which would be especially useful for Superfund response if a local program could be addressed through federal and state regulations also.

Canty described his firm's role to help establish a fee structure for Portland as follows:

- identify upcoming development activities and likely restoration needs
- identify costs of likely restoration project types
- determine relationship between development and restoration work
- identify non-capital costs such as planning, design, and permitting
- develop and refine the fee structure.

Canty explained that the permitting agency would need to specify mitigation conditions to which the developer must comply or pay into a fund, fund managers would construct or contract for the restoration project, and then third parties would need to monitor and maintain the sites. **Comments:** Hanson noted that a sufficient amount of money would need to be raised before funding would be available for restoration and asked how timing would be managed. Canty noted there's a big issue in temporal loss (loss of the value of a resource over time). He suggested options for precapitalization of the fund, public investment in acquisition and restoration projects in advance of others, or require a ratio of compensation that factors in restoration over time.

Canty noted issues in projecting restoration costs, including removal of existing structures and pavement and cleanup of contaminated land. He noted cost and policy issues:

- How much restoration is appropriate?
- What constitutes sufficient compensation (1 to 1, or requirements for more compensation based on temporal loss)?
- Should site acquisition be included in the fee schedule?
- Should the program start with land in public ownership?
- How can the program ensure long-term responsibility for performance
- How will liability for contamination be factored into fees?
- How can fees be set so as not to be too low to provide sufficient funds or so high as to inhibit anyone using the program?
- How will the program compete on the market?
- What other public agencies can contribute to the market?
- How can the transaction between suppliers and those who need credits be accomplished?
- Can monitoring establish whether the program is accomplishing what has been anticipated?

Comments:

Don Hanson asked why federal agencies resist the alternative concepts. Melissa Powers said Federal agencies question why someone ought to be able to escape a clear mandatory requirement in favor of an activity that so far has proven to be wholly ineffective.

Hanson, asked if a fee could be established that ensures some level of maintenance. Canty said that's tricky because conventional mitigation agreements tend to last no longer than 10 years, and permanent protection might require replacing a project every 10 or 15 years. He said it's a challenge to keep the program competitive, so that a maintenance program ensures success but does not drive the program out of market.

Curt Schneider asked if failure rates relate to projects or natural areas. Canty replied that rates relate to project specifics and whether permit requirements are met.

Schneider asked whether agreement and approval from federal agencies is likely. Canty acknowledged the problem getting the same answer from a wide group of permitting agencies, and that the mitigation program becomes an added expense if every other agency maintains a conservative strategy.

Phil Grillo noted that cleanup will be an important factor in pricing. He suggested that different cleanup standards might apply depending on the type of intended development, whether industrial or for public access.

Canty acknowledged difficulty loading cleanup costs into the system. He noted that most banking occurring nationally involves greenfields, not brownfields. He said he'll try to develop a multiplier based on extent of contamination on a project site, but that is complicated because the full extent of contamination is not yet known. He suggested it

might be worthwhile for Portland to break new ground by combining NRDA and mitigation banking.

Kate Green , BDS, asked how permit closeout will relate to a fee-based system and how changes in ownership or use could affect a program on a site. Canty said there will likely be a finite period to which the administrator can commit because of potential long-term liability, but it is presumed there will be a finite period of performance under the alternative strategy. Canty said typically there is a required permanent dedication or easement. Hanson confirmed that permanent land control and open space could be ensured. Canty added that third party organizations and land trusts can get involved, replacement pools can be established, and insurance could cover potential loss and replacement.

Melissa Powers stressed that federal regulations for wetlands ensure compliance of requirements through regulations, so that federal permit applicants must demonstrate a project cannot be constructed except through a wetland. Applicants have a duty to show impact can't be avoided or minimized, and the Corps of Engineers investigate to document what is asserted. She said the idea is that mitigation is a last step.

Dan Dishongh noted that federal projects require alternatives analysis to minimize impacts. He recommended looking ahead 20 years and providing fees or money in a bank that provide for future needs.

4. Public Comments: None.

5. Committee Member Items

Sallie Edmunds said the December date will be on December 5 or 11. She said Dennis Canty will discuss the report in detail with the with the Industrial and Natural Resources Integration Task Group at a meeting on Oct. 17, 8:00 a.m. Planning Bureau.

The meeting adjourned 7:40 p.m.