

River Plan / North Reach: Industrial Development and Natural Resources Integration Task Group Meeting #10
Thursday, March 20, 2008

Facilitator: Don Hanson

Integration Task Group Members: Ann Gardner, Susie Lahsene, Nancy Munn, Bob Sallinger

Bureau of Planning Staff: Mindy Brooks, Shannon Buono, Brian Campbell, Sallie Edmunds, Eric Engstrom, Diane Hale, Roberta Jortner, Matt Lustig, Steve Kountz, Arianne Sperry

Other City Staff: Sean Burgett, Douglas Hardy, Seth Hudson, Chris Prescott, Kaitlin Lovell,

Audience Members: Greg Theisen, David Gormen, Dan Dishongh, Robin Bellanca, Jan Secunda, John Shaw, Wayne Kingsley, Phil Grillo

Handouts: Agenda, Draft notes from meeting #9, River Plan North Reach Regulatory Concept – 03/17/08 Clean Draft (Port/ Working Waterfront Coalition (WWC) Proposal), River Plan North Reach Regulatory Concept – 03/13/08 (Port and WWC Proposal diagram), River Environmental Regulations: Draft Concepts (Staff Proposal, 3/14/08), Proposals within the North Reach River Overlay Zones

Introduction

Don Hanson convened the meeting at 10:05 and reviewed the agenda:

Approve February 25, 2008 meeting notes
Review revised Natural Resource Inventory (NRI) maps
Review and discuss a River Environmental Overlay Zone
Discuss direction for 3/21 meeting

Hanson asked if everyone had a chance to look at the meeting notes. After no reply, he suggested they approve the meeting minutes later in the meeting.

New Draft NRI map Discussion

Sallie Edmunds introduced Roberta Jortner to talk about NRI revisions. The revision process included a meeting of technical experts representing the Port of Portland, Schnitzer Steel, Metro, Oregon Department of Fish & Wildlife (ODFW), U.S. Fish & Wildlife Service (USFWS), National Oceanic & Atmospheric Administration (NOAA) Fisheries, Audubon Society of Portland and the City of Portland Bureau of Environmental Services (BES) in January, 2007, to consider if unique conditions exist in the North Reach that warrant criteria revision.

The main revisions include (details and comments outlined below):

- lower combined rankings for highly cultivated landscaped areas
- beaches are included as part of the river channel
- non-vegetated hardened riverbanks now rank low
- removing the special habitat area from West Doane Lake

- extending the special habitat area along the bluffs on the east side of the river

Data suggest that highly cultivated landscape areas, such as a lawn with a tree, have different functions than other vegetated areas. Staff conducted additional site visits in the North Reach to assess vegetation, and created refined classifications resulting in lower combined rankings for some highly cultivated landscape areas.

Brooks reviewed the revised NRI map. Beaches provide function for habitat and have been included as part of the river channel for the model. They will continue to be classified as special habitat areas.

Jortner reviewed changes related to the river bank criteria resulting in lower ranks. Specifically, some criteria were changed that lowered the overall aggregate ranking, such as contribution of large wood and control of sediment. Sallinger asked why hardened bank in other areas of the region contribute differently than hardened banks in the North Reach, and indicated that exempting the hardened landscape is a massive change that does harm to the regional inventory. It is important to be consistent throughout the region if the functional value of the hardened bank is the same. He also said that this had been hotly debated at Metro and asked how many river miles were changed from medium to low. Jortner indicated that the North Reach is a unique situation in the region and this revision should apply only in this area, although some of this may also apply in the Central Reach.

Other changes to the NRI and map include removing the special habitat area from West Doane Lake and extending the special habitat area along the bluff for connectivity. Staff is not proposing to change the rank of vegetation near the river, remove the riparian areas or change the rank of flood areas, although developed flood areas have a low rank.

Jortner indicated that this will need to be approved by Metro. She will suggest to Metro that a smaller patch size should rank in Portland, as fragmented areas provide a function in the context of the river by providing important functions for wildlife.

Gardner asked about the next steps in the process. Jortner indicated staff would continue to refine the maps and definitions and write up a draft report. Gardner asked if outside consultants still disagree with parts of the inventory and how there can be such uncertainty in science. Munn explained that it takes a long time for scientists to come to agreement in general, and especially in this situation because the river is highly manipulated. Lahsene thanked Munn for pointing out that there are no absolutes and indicated they can continue to have a scientific conversation in the future. She also commented that they are headed toward a policy based direction with some foundation in science, which is good because it allows the dialogue to continue and they can bring forward additional information to inform the inventory. Jortner indicated that the NRI is heavily grounded in scientific literature.

Munn disagreed with some of the revised NRI criteria, such as presence of large wood. Seawalls still provide function. There is insufficient study of the functions of large urban rivers. Each piece in isolation diminishes the understanding of the functions as a whole. Hanson asked if Munn was suggesting they use a case by case method instead, and she agreed. Hanson indicated he hoped that this framework will provide the basis for case by case evaluation in the future.

Sallinger indicated that the revised NRI map changes large areas of bank from the high/medium category to the low rank category, which is dangerous because these sections may not fall under review or protected status, the entire bank is needed to provide ecological function and this decision may have implications outside the North Reach by setting a precedent. Brooks indicated that staff is proposing to change the ranking, but it is up to the task group to decide what to do with the information.

Sallinger indicated the new map completely changes the conversation at the end of the process by changing a foundational assumption of the discussion. He stated that Lahsene and Gardner didn't want the purple/green approach, so they went back to an environmental overlay (e overlay), and this map has greatly different implications for an e overlay approach. Lahsene said the Port was not against the purple/green concept, rather it was the proposed fee calculator they found problematic. Sallinger pointed out that they also had assumptions changed at the last minute in a previous process involving Metro. Gardner agreed it is difficult to absorb draft changes and new information right before or during a meeting. Lahsene agreed to attend another meeting.

Munn indicated that staff would receive written comments from NMFS about the revisions to the NRI. Ranking designated critical habitat as low is not acceptable, especially since there are likely to be additional listed species in the future (e.g. sturgeon). Brooks said staff used critical habitat as the basis for the special habitat area, and their understanding was critical habitat included water and beaches, but not the bank. Brooks asked Munn to provide accurate information to update the maps, if necessary.

Kountz noted that the change in the Time Oil ranking from low to medium will have significant economic impacts as most of the site is now ranked medium and Time Oil is an important redevelopment site. The vacant site ranks medium because it is vegetated and in the 100 year floodplain, but Kountz argued that the only reason the site is vegetated is because the site has been vacant for some time now and vegetation has grown up. The rankings have a temporal quality to them—the rankings will change over time as vegetation grows or is removed. Jortner agreed with Kountz's point, saying that the NRI is only meant to provide a snapshot in time and it is hoped that it will be a living document, continuously updated to reflect the changing reality on the ground.

River Environmental Overlay Zone

Buono introduced draft concepts for river environmental regulations for the North Reach. The i, r and g overlays would remain, but would no longer have the greenway review as it stands today, and a new e overlay would be created. Within the e overlay there would be a two track system: standards and review. These regulations would apply in the high and medium ranked areas on the NRI map. There would be a setback for non-river related development. Development beyond 50' from a wetland or stream would be exempt from regulations, but the river is not a stream. Development standards are written to encourage development in areas that are already developed or disturbed. Hanson asked how we define disturbed, as some people think the entire area is disturbed. Buono suggested we could differentiate based on the kind of vegetation. Development would have to be setback 50' from the river and in water development would require a review. Tree removal requirements would be consistent with environmental overlay zone regulations. The review criteria would be similar to the environmental conservation zone review to minimize the

impact of development. Regulations that would apply to every proposal include a 50' setback for all non river-related/dependent development, enhancement requirements, balanced cut and fill, erosion control and storm water management.

Munn stated that this program option is an insult. She said it is a 20 year step back. Sallinger agreed that the areas will be less protected than they are today and this is a weak approach. Edmunds stated that staff is trying to use an environmental overlay zone approach, but it doesn't apply very well to the North Reach which is why they went with the purple/green approach previously. Sallinger said there are not enough areas mapped and too many exemptions, exactly what they were trying to avoid. This is like the purple/ green approach without the fee calculator. Exemption #10, low-impacts dock standards and the 10% disturbance area allowance without review are recipes for incremental loss. There is no opportunity for ecological improvement. There is no string and no pearl. Lahsene stated that she is somewhat confused and that we are trying to work through the different opinions, but the goal posts keep getting moved. Munn indicated there isn't funding in the proposal to do restoration. Sallinger agreed that we aren't going to get the funding for the pearls, and this method doesn't have adequate protection for the strings. Lahsene indicated she thought the environmental side liked the purple/green approach. Munn responded that she has said all along the map wasn't sufficient for restoration; it is the bare minimum and this approach provides no revenue for restoration. Sallinger indicated that high cost mitigation is not acceptable to the business side of the table. This approach streamlines development in the purple areas, but what does the environmental side get out of the approach? Lahsene asked if we can add a percentage of project costs to fund restoration. Campbell indicated this approach was intended to be a compromise and that we have not incorporated the fee. This is what a base e overlay approach would look like, but it can be tweaked to achieve restoration of the pearls. Campbell indicated that this would possibly shorten the permit process. Lahsene indicated there are two options; the purple/green (big fee) approach and the environmental zone approach. She suggested we get the Port proposal on the table, then brainstorm and figure out what will get us to a solution. Hanson suggested Lahsene present the Port proposal, so the group can discuss the pros and cons of all the proposals on Friday. It was agreed.

Port /WWC's Proposal

Lahsene stated that this is a draft proposal trying to address three things:

- identify and provide revenue for restoration sites (pearls)
- reduce redundancy in regulations and permitting (no City review for activities below the ordinary high water mark (OHW) because there are reviews from other agencies)
- simplify the program

Lahsene explained the diagram on the handout. No City review below OHW with an enhancement fee (0.5% of project cost). Above OHW there would be no review on hardened surfaces, with a fee (0.5% of project cost for river related/dependent uses, 1.0% of project cost for non-river related/dependent uses). On non-hardened surfaces there would be a review with mitigation or a mitigation fee in lieu of review (1.0% of project cost with a \$200,000 cap). Above 75' beyond the top of the bank there would be no review or fee.

Hanson asked how the Port arrived at the fees. Lahsene said they analyzed fees for a select set of Port projects in the Greenway and Environmental zones and observed a range of <1.0% to 1.6% of project cost. The fees include hard and soft costs associated with development of a project. Hanson asked how the Port arrived at 75' and why they capped the fee at \$200,000. Lahsene indicated that the current code requires review at 75' and the fee cap level is negotiable.

Sallinger asked about projects that are split to avoid regulation and fees. Lahsene used Terminal 5 as a phased project, and asked for clarification. Munn indicated that she does not see the Port doing this, but a lot of people choose to do piecemeal projects to avoid fees, such as putting a low cost project on a regulated area then following up with substantial related development upland out of the regulated area. Sperry asked if Munn was concerned that the fee is not related to the impact. Munn agreed, stating you could put in a truckload of riprap that has a large impact completely cutting off groundwater, but because it has a relatively small project cost the fee would be small. Sallinger indicated the heavy impact can come upfront and then the development would not have to pay, but with purple/green there were heavy fees upfront for development. Munn and Sallinger stated that the issue is that there could be ways around paying substantial fees with development and the fees should be tied to impact to account for environmental costs and to recognize the value of the resources. Lahsene indicated that the Port would probably choose review over the fees.

Lahsene stated that the purple/green fee calculator could discourage maintenance, which is not wanted, and Gardner agreed, adding that development should not be discouraged in the North Reach. Sallinger stated that we are starting to assess fees on development in all zones to account for environmental impact as a reality of doing business. We are looking for simplicity and fee neutrality, but you need to buy simplicity. Gardner stated that it is not just buying simplicity but also about encouraging desired investment in preferred locations. Munn agreed that predictability and certainty are needed. Currently they are lost during the review process.

Gardner said when we meet tomorrow that we should really clarify our objectives; this is only one component of the overall solution and we may be overly concerned with this part. Hanson indicated that we have three ideas on the table and checking our objectives will help us evaluate our proposals. Sallinger said we should consider dedicated staff for the North Reach because of the complexity of the issues. Dedicated staff would have expertise to understand the issues, make the process more efficient and come to decisions quickly. Gardner agreed, adding that the complexity makes it hard to invest and operate in the North Reach. Lahsene also agreed, stating we need a problem solver for the North Reach. Audience members agreed with the group. Sallinger added he thought the River Renaissance was supposed to be this mechanism. Grillo agrees with Sallinger, calling for an ombudsman for hearings. Dishongh suggested that a way to incent desired development would be to start with a high fee and discount the fee for "good" actions. Hudson agreed. Sallinger indicated a fatal flaw in the River Environmental Overlay Zone proposal is exemption #8, no review and no fee.

3/21 Meeting Agenda

Edmunds indicated staff will take the suggestions and organize the discussion within the objectives outlined at the initial task group meeting. Topics will include prioritization of "pearl" acquisition, the objectives and the pros and cons of each option. Gil Kelley has reserved time to meet with the group at the end of the meeting.

Hanson adjourned the meeting at 12:35 pm.