



MILWAUKIE

Dogwood City of the West

Advisory Group – Natural Resources Overlay Project Meeting Summary

2nd Floor Conference Room, City Hall
10722 SE Main St

6:30 p.m., Wednesday, April 28, 2010

Attendees

Public: (*affiliation listed in parentheses*)

Jason Howard (*Johnson Creek Watershed Council*)

Christopher Burkett (*affected resident*)

Don Jost (*affected resident*)

Brad Smith (*affected resident*)

Dave Green (*affected resident*)

Ted Evans (*North Clackamas School District*)

Dick Shook (*North Clackamas Urban Watersheds Council*)

Gary Michael (*affected resident*)

Tonia Burns (*North Clackamas Parks & Recreation District*)

Mart Hughes (*natural resources manager*)

Pat Russell (*North Clackamas Urban Watersheds Council*)

Jason Smith (*Blount, Inc.*)

Lisa Batey (*Planning Commissioner, affected resident*)

City Staff:

Brett Kelter (*Planner, project manager*)

Katie Mangle (*Planning Director*)

Nicole West (*Community Dev. Coordinator*)

1. Welcome and Agenda Review

Brett welcomed the group and explained the meeting as a chance for City staff to report back to the group on progress from past discussions, as well as to talk about how the proposed code would affect new development. He presented the updated project timeline, drawing attention to the parallel tracks of the mapping work and the code work. He noted the project's current position along each trajectory and what can be expected in upcoming months.

Katie noted that Draft 2 is not being revised after each meeting but that staff is tracking the changes to be made as well as keeping a list of ongoing issues still to be worked out. Both lists were available to the group as handouts. Draft 3, which may be available by late May, will be a synthesis of comments from the group, follow-up by staff, and ongoing work with the consultant.

2. Report-out on Ongoing Issues

Natural resource management plans

Brett displayed an overhead slide outlining some of the criteria staff had identified for natural resource management plans, establishing different levels of review for different types of plans. The idea was to make it so not every plan would have to go to the Planning Commission for approval, as is the case

with the current Water Quality Resources (WQR) code. The challenge is to ensure that the plans are sound but that the process does not serve as a barrier to restoration and enhancement work.

Katie reminded the group that the idea was to establish criteria for natural resource management plans that would help distinguish between true restoration projects and development. The plans were intended for situations where the property owner's intent was to enhance or restore the Habitat Conservation Area (HCA) or WQR area, as opposed to mitigation projects required as part of development. Restoration examples included the Willow Street wetlands property of Dave Green as well as the Milwaukie Presbyterian Church.

Brett explained the two proposed levels of review. Type I review is similar to the administrative review given to building permits, with no public hearing required and no requirement to provide public notice of the decision. Type I requirements were designed to provide a set of clear and objective criteria, so that you either met the standards or you did not. Someone likened it to an "over the counter" type of process, though Brett noted that Type I review did not function on a same-day timeline. Type I requires concrete thresholds that can be clearly met. Type II review is more discretionary and requires that neighbors within 300 feet of the property be notified of the proposed action but does not require a hearing with the Planning Commission.

Staff requested feedback from the group on the proposed framework for natural resource management plans. There was a quick review of exempted activities that do not require a permit, such as simply placing structures within the designated resource area (such as picnic tables or benches) without permanent anchoring, removal of invasive plants, planting of native vegetation, and regular lawn maintenance. Staff asked the group whether it seemed important to distinguish between permanent and impermanent structures. One participant suggested letting common sense rule the day, with the example of how putting in a bridge could actually reduce disturbance to the resource in some cases.

Another participant expressed concern about the term "native" species and wondered how much disturbance or removal of native species would be allowed in the context of normal landscaping maintenance. Staff explained that the City of Milwaukie (as well as Metro) uses a list of native, nuisance, and prohibited plants that was developed by the City of Portland based on comprehensive scientific review of plant communities that evolved here in the region (instead of being introduced). (Note: A link to the Portland Plant List can be found on the City webpage for this project or directly at <http://www.portlandonline.com/shared/cfm/image.cfm?id=58951>.) Non-native vegetation can be installed as long as it is not a prohibited or nuisance plant and as long as native vegetation is not removed and replaced with non-native vegetation. Brett suggested that the only way that native vegetation should be removed would be in accordance with an approved natural resource management plan.

Keeping in mind the primary goal of protecting the designated water quality resources, there was a question about how to better define "maintenance" as distinct from "disturbance." One participant encouraged the City to think about developing a recovery plan for the City's creeks that would include specific strategies to help direct the public toward more habitat friendly practices. The outright exemption of all maintenance activities was a serious concern for that participant, given the ramifications of chemical contaminants from what could often be considered "normal" maintenance.

Another participant added that there was an important distinction to be made between "native plants" and "native plant communities," asserting that it is possible to install native plants that are inappropriate for a given location. For example, the native "Tall Oregon Grape" can be inappropriate for riparian conditions. A plant's "native" status would not always make it the best plant for a particular location. It was suggested that providing the public with good references could be very helpful for avoiding inappropriate plantings and providing good stewardship education. However, another participant reminded the group that the intent of the code is to regulate impacts to natural resource areas rather than to more specifically monitor how citizens take care of their yards. The

suggestion was that encouraging good stewardship might be more of an educational issue than something that should be handled through a land use process.

Discussion shifted back to establishing criteria for natural resource management plans. In response to a suggestion to keep the process as simple as possible, staff reminded the group that the working draft of the proposed code had already downgraded the required level of review for resource management plans from what is required in the current code. The question was whether there were other ways to further encourage voluntary restoration and get property owners to work with the City and other qualified agencies. How can the City promote restoration without increasing regulation to the landowners? And which types of restoration activities should require higher level review?

In response to the staff suggestion to make “cut and fill” a criterion for bumping a restoration project up to Type II review, it was noted that most cut and fill activities are quite involved and would generally require approval by the Division of State Lands (DSL) anyway. But there could be other cases where the cut and fill was for something small like a septic system issue. It was noted that DSL has a certain disturbance-area threshold that the City could perhaps use to set a cubic-yard trigger for determining what level of review a project involving cut and fill should get. Another suggestion was to use impacts to site hydrology as a criterion.

As for approval criteria for natural resource management plans, Brett indicated that staff still needs to develop approval criteria that define what the City requires the overall plan to consist of for each level of review. One participant wanted to ensure that natural resource management plans could not be used to facilitate something like tree removal without demonstrating a clear intent to enhance the resource area. One suggested approval criterion was that a management plan should demonstrate a net benefit to the resource area, or at worst have a neutral impact.

Should any credit be granted for having a management plan prepared by a qualified resource agency? As an example, Katie noted that the Clackamas County Soil and Water Conservation District has the capacity, expertise, availability, and interest in helping people develop natural resource management plans. The group seemed to agree that it made sense to allow management plans prepared by a qualified agency to be reviewed at the Type I level, even if the intensity of restoration work would normally require Type II review. In addition, Katie stated that she would favor having no fee for Type I review of management plans. There was some discussion about whether watershed councils (such as the Johnson Creek Watershed Council or North Clackamas Urban Watersheds Council) or other planning processes that citizens seek out voluntarily (such as a student planning exercise from Portland State University) could also count as qualified agencies.

Tree removal

To clear up any possible past confusion, Brett reminded the group that the re-vegetation replacement chart in Table 19.322.12-1 is primarily for tree replacement when removal is related to development. The chart was not intended to apply in the case of removal of a single tree on residential property.

Brett explained the review framework that staff drafted for tree removal. He noted that the first thing to do might be to establish clear definitions for “tree,” “downed” tree, “standing” tree, “diseased” or “dying” tree, “significant pruning,” etc. Next, he presented a list of tree removal scenarios proposed to be exempt from review. These included downed trees as long as no earth disturbance was involved in the removal. There was considerable discussion that added to previous conversations about downed trees in the waterway.

Brett summarized some of the major issues with downed trees in the waterway. Considering that woody debris has been deemed crucial for maintaining water quality, the group discussed how to balance this with property owner concerns of flooding and issues of liability. Katie suggested that the regulatory land use process is probably not the most effective way to educate people about meeting the larger goal of recruiting large wood debris in streams.

The group provided some suggestions, including establishing separate standards for tree removal within HCAs and WQR areas versus the larger floodplain. One participant defended the importance of maintaining large woody debris within the floodplain, regardless of HCA or WQR designation. Another participant suggested that there be some consideration for how long the tree has been in the water as an indicator of its habitat function, with the idea that the longer a tree is downed in the stream the higher habitat function it has and thus the greater the loss to the creek when removed. Another participant suggested that the City should consult with state and federal officials about the general position the City might take on large woody debris in waterways.

Nicole described conversations she has had with the Oregon Department of Fish & Wildlife (ODFW) on the issue of large woody debris since the last meeting. ODFW understands the importance of large woody debris recruitment (particularly in degraded urban streams) but also recognizes the contentiousness of this issue in urban areas where hundreds of residential properties abut streams. She also learned that regulating the accidental woody debris that may remain in streams might not be the best place to invest staff energy for positive ecological benefits, particularly in an urban area where the stream is so heavily impacted by urban life. In Milwaukie, efforts might be more effectively spent on activities such as improving stormwater standards or intentional placement of large woody debris in areas that do not pose flooding hazards. She said that ODFW also provided good ideas about best management practices that staff could incorporate into property owner outreach.

Brett pointed to the removal of invasive and nuisance trees as another suggested exempt activity. There was a comment that thickets of invasive trees may be the only thing left on the streambank in some cases. Could some criteria be established for tree replacement in such situations? One recommendation was to plan projects in phases, so that replanting was begun before removing invasive species. Another suggestion was that the City could provide recommendations to property owners about which species are fast-growing (such as alder or cottonwood) and would function well in such cases. One participant noted that the City of Gresham had done a nice study on tree height and its ability to provide shade and decrease temperatures in Johnson Creek. Brett asked whether the group thought that Type I review should be required for removing invasive trees—one suggestion was that perhaps a threshold number could be established for the removal of invasive trees as an exempt activity. The final suggested exemption was for tree removal in emergency situations, about which there was no argument or substantial discussion.

The tree removal situations proposed for the Type I level of review included diseased and dying trees, as well as trees presenting an imminent danger/hazard (but not an immediate emergency). There was discussion over the use of a City-approved arborist versus an arborist hired by the property owner. Brett reported that his limited experience suggested it was possible to find an arborist to approve almost anything, so it might be best to avoid a setup for dueling arborists. The final suggestion for Type I review of tree removal was for landscaping or design considerations where a landowner could demonstrate that they had compensated for the removal through a previous planting.

Mapping (general accuracy, old HCAs vs. new HCAs)

Brett reiterated that staff is interested in cleaning up map inaccuracies before adopting the new maps, though there will be some limitations as to how many detailed changes can be made. The proposed code includes a provision for verifying the resource boundary each time the code is triggered, so even if the maps are not made 100% accurate at this stage the boundaries would be checked and cleaned up as people come to the City for permits and development review.

Brett recalled the group's past discussions about the 100-foot trigger distance, the point at which a property owner would have to at least verify the boundary of the designated resource and then provide a construction management plan to demonstrate that their project will not harm the resource. He acknowledged that the 100-foot distance might be larger than is necessary or appropriate for Milwaukie, given the relatively small size of lots in the city and the density of development. One

participant agreed that reducing the trigger distance could be appropriate for densely developed areas but questioned whether it would work as well in open neighborhoods. Brett displayed an overhead slide with an example of how the 100-foot trigger would function in a highly developed area. It was observed that the 100-foot trigger seemed like overkill on one edge of the sample property where the lots were small and close together but more appropriate on the opposite side of the property where the land was more open and there was some slope.

Brett noted that the trigger distance is significant because it will affect properties that do not have any designated resource but are close to another property that does. He reiterated that the intent of the trigger distance is to require boundary verification and a construction management plan. With a 100-foot trigger, a designated resource on one property that is in close quarters with other properties would certainly affect more lots than with a smaller trigger distance. The group wondered what kinds of costs would be borne by the City and by property owners for the mapping verification, other than time and effort. Katie answered that staff would provide some of the mapping information to the property owner and then the property owner would have to do some of the work to identify and mark out the actual boundary on their property. The fee for boundary verification and construction management plan review is forecast to be approximately \$150; Katie noted that the County is currently charging \$500 for boundary review and \$400 for construction management plan review.

One participant reminded the group that a property owner could affect a designated resource that is not on their property. For example, erosion can travel quickly and has significant negative impacts. Brett asked the group whether there was any disagreement with the concept that, although you might not have the resource on your property, your activities could negatively impact the resource. No one expressed disagreement with the concept.

The group returned to the question of the appropriate trigger distance. There was one suggestion that slope should be a factor and another that questioned whether there should be some consideration of the scale of the activity. One participant wondered whether there were other efforts (besides boundary verification and review of construction management plans) that staff could spend time on with greater effect. For example, in terms of development, the biggest impacts to natural resources from storm water may not necessarily be as related to what happens within the 100-foot trigger boundary as to what happens outside the trigger boundary. As a final suggestion, the group proposed a scenario where boundary verification would be the very first step, followed by construction management plan review if deemed necessary.

3. Issue Discussion: Focus on New Development

Allowed Disturbance (affects of merging High and Moderate HCAs)

Brett reminded the group that Draft 2 of the proposed code would remove the “Low” value HCAs from the map (there is relatively little Low HCA in Milwaukie) and would combine all “Moderate” and “High” HCAs into one general classification of HCA. Brett presented several scenarios to demonstrate how this combination would affect the square footage of HCA allowed to be disturbed. One participant pointed out that, in one example, significantly more HCA disturbance would be allowed under the combined-HCA scenario than if High and Moderate HCAs were kept distinct. Brett acknowledged this and added that the combined-HCA scenario would also allow the disturbance to happen anywhere in the HCA, even in an HCA close to the water quality resource, although the WQR rules would still provide a protective buffer closest to the protected water feature itself.

Subdivisions and partitions

Brett used the Willow Street wetland property of Dave Green to demonstrate how Draft 2 of the proposed code would affect subdivisions and partitions. He noted that the goal of the regulation is to avoid situations where new lots are created with a very high percentage of designated resource area. Given the allowances of the proposed rules, failure to require that the designated resources be

equitably distributed across new lots could result in situations where more HCA was disturbed than would be otherwise. There was a question about whether it would be equitable to allow an existing small lot to disturb some quantity of HCA, while a partition project to create a lot with the same HCA concentration might be thwarted. Brett clarified that the goal of the partition rules is not to stifle projects but instead to challenge the property owner to draw lot lines that distribute HCA across new lots in a more balanced manner. There was a question about whether the City has a planned unit development option; Brett responded that there is a mechanism for creating lots as a Planned Development, which could allow some flexibility for larger parcels with designated resources. Another participant asked whether there might be a point where the HCA constraints would lead to density reductions; Katie responded that it was possible, though the new code might include provisions that would allow transfer of development rights or bonuses for density, in cases where the development made an effort to avoid impacts to designated resources.

4. Next Steps

All members of the Advisory Group were invited to attend the next meeting, which will be a joint meeting with the Planning Commission on **June 8 at 6:30 p.m.** in the Community Meeting Room at the **Public Safety Building** (3200 SE Harrison St). That meeting will be a chance for the Planning Commission to hear directly from the Advisory Group about some of the issues that have been discussed. With that meeting, Brett indicated that the project would begin to shift more to the Planning Commission for further action on the way to finalizing the draft code and undertaking the actual code amendment process.

Brett noted that Draft 3 of the proposed code will be coming soon. Regular updates will be made to the project website and the Advisory Group can certainly convene again to discuss Draft 3 and any remaining issues.

5. Adjourn

Brett thanked the group for its willingness to stay later than scheduled. The meeting adjourned at approximately 9:00 p.m.