



MILWAUKIE

Dogwood City of the West

Advisory Group – Natural Resources Overlay Project

Meeting Summary

6:30 p.m., Wednesday, February 24, 2010

(2nd Floor Conference Room, City Hall)

1. Welcome

a. Brief re-introductions by attendees

Public: (*affiliation listed in parentheses*)

Robert Cseko (*Waldorf School*)

Christopher Burkett (*affected resident*)

Dave Green (*affected resident*)

Brad Smith (*affected resident*)

Shirley Stageberg (*Milwaukie Presbyterian Church*)

Nikki Cerra (*Clackamas County Soil & Water Conservation District*)

Pat Russell (*North Clackamas Urban Watershed Council*)

Gary Michael (*affected resident*)

Marshall Johnson (*Wetlands Conservancy*)

Pat Carter (*Milwaukie Presbyterian Church*)

Don Jost (*affected resident*)

Jason Howard (*Johnson Creek Watershed Council*)

Zac Perry (*natural resources manager*)

Scott Churchill (*Planning Commissioner*)

Jason Smith (*Blount, Inc.*)

Mart Hughes (*natural resources manager*)

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

City Staff:

Brett Kolver (*Planner, project manager*)

Katie Mangle (*Planning Director*)

Nicole West (*Community Dev. Coordinator*)

Cathy Corliss (*consultant w/ Angelo Planning Group*)

b. Agenda preview, goals for the meeting, protocols

Two main goals of the gathering: (1) provide an overview of the proposed code and (2) discuss key policy questions with the Advisory Group. Reminders of the meeting protocols, such as being respectful and conscientious that everyone has time to speak.

2. Explanation of Proposed Code Amendments

a. Overview: Combining water quality resource rules with Title 13 (HCAs)

Overall goals for this project:

- Maintain the current high level of protection for water quality resource areas.
- Extend protections to important habitat areas near riparian corridors.
- Encourage restoration and enhancement activities.
- Acknowledge reasonable rights of property owners.
- Be easy to administer and reasonable in terms of review process.
- Provide clear and objective standards for review where possible, with alternatives for more discretionary review as needed.

b. Key elements of the proposed code

Municipal code language is not easy reading. The goal of this Advisory Group is not to become experts in the code, but rather to provide public opinion and insight on the larger policies. Important concepts in this draft of the proposed code are:

1. Allows some development.
2. Requires avoidance and mitigation.
3. Discourages development in water quality Resource (WQR) areas and Habitat Conservation Areas (HCAs).
4. Provides more allowances for development in HCAs than in WQR areas.
5. Sets higher requirements for documenting resource boundaries and for construction management plans.
6. Establishes special flexibility to ensure there will be no economic loss of property.
7. Outlines best practices for stewardship of land.

Highlights of particular parts of the proposed code:

- **322.3 (Applicability)** = One key difference from existing WQR code is that you would be subject to the rules for any activity within or within 100 ft of a designated resource, even if the resource is not on your property. In the current WQR code, the rules apply only if the resource is on your property. As proposed, the new map of resources would be a general indicator for WQR areas and a specific indicator for HCAs.
- **322.4 (Exemptions)** = Part A lists exemptions for both WQR areas and HCAs; Part B shows exemptions just for HCAs. The exemptions list has been expanded significantly, especially with regard to maintaining or altering existing structures. In general, fewer disturbances are tolerated in WQR areas than in HCAs.
- There are 3 basic levels of review that an activity could get if it does not fit into the exempt category:
 - **322.6 (Type I)** = Processed like a building permit (approximately 15-day review). As proposed, construction management plans and boundary verification would get Type I review, as would certain activities allowed within an HCA. Where some activities are listed in the current WQR code as Type I but do not have clear and objective standards, staff has proposed moving them into the exempt category.
 - **322.7 (Type II)** = No hearing is required but surrounding property owners are notified of the proposed activity and have a chance to comment (approximately 7-8 week processing time and \$800 fee). As proposed, “special uses” like public utility improvements, walkways and bike paths, natural resource management plans would get Type II review.
 - **322.8 (Minor Quasi-Judicial)** = A hearing with the Planning Commission is required (approximately 2-3 month process and \$1500 fee). Other base-zone activities that don’t fit into the Type I or II category such as new construction would get minor quasi-judicial review, as would most land division.
- **322.9 (Construction Management Plans)** = This new subsection describes what would be needed to show that a project will not impact the resource.

- **322.11 (Approval Criteria)** = The current code does not have an approval criteria subsection, so the proposed code includes one. The table is intended to be a signpost, pointing to the specific approval criteria for a given activity.
- Specific development standards would apply to various activity types. Highlights include the two following subsections:
 - **322.12 (Non-Discretionary for HCAs)** = These standards would only apply to activities within an HCA that can be processed with Type I review. There is a formula to determine how much of the HCA can be disturbed, as well as development standards and mitigation requirements. These are clear and objective standards.
 - **322.15 (Discretionary Standards)** = This subsection provides standards for activities that do not fit anywhere else. Impact evaluation and alternatives analysis would be key parts of applications involving these standards.
- **322.16 (Variances)** = As proposed, the variance subsection of the existing WQR code would be revised to provide opportunities to adjust some standards of the underlying zone (setbacks, landscaping requirements, lot size, density) to avoid impacts to the resource. Economic hardship would also be an allowable basis for a variance, in contrast to the regular variance process. In general, however, by requiring activities that cannot qualify for a lower category of review to get a higher and more discretionary level of review, the proposed code would significantly reduce the need for “variances” from the clear and objective standards.
- **322.17 (Boundary Verification and Map Administration)** = The proposed code would establish a new requirement to verify the resource boundary so that the location of the resource to be protected is made clear to all involved. For WQRs, one would use Table 17-1, which essentially means going out into the field to make actual measurements. For HCAs, a variety of options would be available for verifying the boundary, ranging from the simple (agreeing with the map, proposing to correct a small inaccuracy) to the complex (challenging the resource designation itself). The proposed code aims to make it easy to correct or update the map without having to go through a full-blown zone change process.
- **103 (Definitions)** = The definitions listed at the end of the proposed code are those related to natural resources. Small modifications are proposed to some of the definitions to make the language more clear. Most of the proposed changes are taken from the Title 13 model code.

3. Group Discussion

Advisory Group members raised questions related to the proposed code and the group discussed them at length.

Q: Can you clarify the “100 ft” number mentioned in the proposed 322.3? Is this 100 ft from the stream, from the HCA, or from the WQR area?

A: The 100 ft figure can be thought of as a trigger for boundary verification and a construction management plan, as it refers to a distance from the designated resource. That trigger distance is measured from the boundary edge of the WQR area or the HCA, whichever extends further into a property where an activity is proposed. (In most cases, the HCA extends beyond the WQR area.)

Q: Where are the boundaries of a “water quality resource” and how are these defined?

A: “Water quality resource areas” and “protected water features” are defined in Section 103 (Definitions) of the zoning code. The definitions are based largely on hydrology. In some cases, it will be fairly easy to determine the “top of bank” of a stream to start the measurement of the vegetated corridor. For wetlands, it will be necessary to identify the official delineated boundary.

Q: What if the map does not capture an existing water feature because it has not yet been delineated?

A: Water quality resources do not necessarily need to be officially delineated, since they are defined by their hydrology in the definitions section of the code. The Milwaukie Presbyterian Church site is a great example of a property that contains some water quality resources (small streams and wetland areas) that are not included in Metro’s inventory but that might meet the code’s definitions of water quality resources. Happy Valley and other cities have conducted their own water resource inventories; Milwaukie has not yet been able to afford a local inventory but aspires to someday.

The HCAs shown on the proposed Water Quality and Natural Resource Area map (WQNR map) are based on inventories and analysis conducted by Metro. The WQNR map would be the driver for determining the location of HCAs. The property owner would have several options for disputing the map’s accuracy, whether to advocate for a habitat area where it has not been mapped as HCA or to argue that a designated HCA does not have significant habitat value. Depending on the degree of complexity of a particular application for boundary verification, the City might collect a deposit from the applicant to cover the cost of hiring a professional wetland scientist to review the technical data.

The proposed 322.2.D states that the City will notify the Division of State Lands (DSL) and the Army Corps when an application for development within streams and wetlands is submitted. This is one way that some resources that are not officially designated on Milwaukie’s WQNR map could still receive protection from other agencies.

Q: Will existing structures within a WQR area or HCA become nonconforming and required to come into compliance by a certain date?

A: Under the proposed code, existing structures in WQR areas or HCAs would be considered legal nonconforming situations, but they would not be required to come into compliance by any particular date.

Brett distributed a process flowchart drafted to outline how the proposed code would work. The flowchart identifies key questions and provides references to specific code sections at various decision points. (The flowchart is available online at the project website, under the “Draft Documents” heading.) Staff intends to make a final version of the flowchart part of the informational materials that would be made available to guide potential applicants through the regulatory process once the new code is adopted. In response to a question from the group, staff will explore the possibility of inserting a simplified version of the flow chart into the code itself.

Q: Can property owners simply go forward with activities listed as “exempt” or are they required to seek formal approval from the city?

A: No approval will be necessary for activities that are clearly listed as exempt in the proposed 322.4 (such as removing invasive species or planting native species). Staff is always available to answer questions about whether or not a particular activity would be exempt.

Q: Will removal of unwanted “weedy” trees trigger the size-based replacement requirements listed in Table 19.322.12-1 (page 14 of the draft code)? Isn’t such tree removal a normal part of yard maintenance?

A: Table 19.322.12-1 provides mitigation standards when tree removal is part of an approved activity; the mitigation requirements and the table do not apply when the specific tree removal activity is exempt. If a tree is listed as a noxious or invasive non-native species, then its removal would be considered an exempt activity. Otherwise, some level of review would be necessary before a tree could be removed.

The table was taken directly from the Title 13 model code provided by Metro, so there is an assumption that the numbers represent a standard tree-replacement formula for mitigation. However, at least one meeting participant with significant restoration experience noted that such standard formulas can result in over-planting. Staff will look more into the reasoning behind the numbers.

Q: How will the proposed code ensure that HCAs remain protected all the time and not just during the development process? Isn’t the goal of the new code to improve the quality of habitat in stream corridors? Will there be any monitoring of HCAs to see if the new rules actually help improve the habitat?

A: The proposed code addresses situations that would bring property owners to the City for permits or applications, so that is one opportunity the City will have to enforce the proposed rules. In addition, the City’s Code Enforcement staff would respond to calls and complaints from citizens concerned about activities related to natural resources (such as tree cutting or grading), just like they do when they get complaints about someone’s grass being too long or inoperable vehicles stored in a front lawn.

But the code is not the only tool the city uses nor is it the only tool in Metro’s Nature in Neighborhoods program. This code amendment process, through the involvement of the Advisory Group and the proposed open house meeting(s), is intended to provide education and information to residents and land owners about the new rules, so that the public is more informed about which activities are allowed and which are not.

The overall goals of the proposed regulations include protecting the existing designated resources and encouraging their enhancement. At this time, the City does not have any plans (or fiscal resources) to conduct an ongoing monitoring program to evaluate the proposed code’s success at improving the resources. There was a suggestion to add language to the Intent section (322.1) that more clearly expresses a shift in public values toward a more habitat-friendly position.

Q: Would the construction of a 10-ft x 10-ft patio—a relatively small project but one that barely exceeds the proposed threshold for allowable disturbance in a resource area (100 sq ft)—require the property owner to go through a review process with the City?

A: The type of review process would depend on the specific location of the patio. The proposed code is very protective of WQR areas but would allow some disturbance within HCAs. If the patio was within a WQR area then it would require review by the

Planning Commission, or it could get Type II review if it was reduced to less than 100 sq ft in size (as per the proposed 322.7.B.2). If within an HCA then the patio would be exempt from review because the disturbance is less than 120 square feet, as allowed by the proposed 322.4.B.2. If outside of the resource area itself but within 100 ft of the resource area boundary, the patio project would require a construction management plan. If within 100 ft of a WQR area boundary or within 50 ft of an HCA boundary, the project would require boundary verification.

There was some discussion about what restrictions would exist and what level of review would be required for pathways, particularly gravel paths. This topic can be discussed further at the next meeting.

Q: What happens if a structure or other development is built but it is later determined that a review process was required? How can this situation be addressed without fostering a culture of doing the work first and paying a fine later? And would the variance process allow an opportunity for a structure built in this way to remain if it is determined to be nonconforming?

A: In such a situation, the City would require the property owner to go through the appropriate permitting and/or application process after the fact in order to demonstrate compliance with the code. If a structure was then determined to be nonconforming, it would have to be removed or altered to bring the situation into compliance. Applying for a variance would be one option to get permission for the structure to remain, but variance requests are not easily or automatically approved and the applicant would have to convince the Planning Commission that the situation meets the relevant criteria.

Q: Is it possible for boundary verification and construction management plans to be submitted to the city only once and then be kept on file for multiple projects? Do they really need to be resubmitted every time, especially if the construction management plan provides temporary measures (essentially best management practices) that will be undertaken every time construction activities occur?

A: As written, the proposed code would require boundary verification for each individual project. But assuming the applicant agrees with the WQNR map after that first verification and/or update, the verification process would be a simple formality as outlined in 322.17.B.1 for subsequent projects. For the most part, boundary verifications should need to be done only once, and the information would be kept on file for future use.

The intent of the construction management plan is project-specific. But perhaps there could be a base plan that outlines the best management practices to be used and that then would only need to be modified for each specific project.

One participant suggested that the proposed 322.4.A.10, which would exempt activities and improvements in the public right-of-way from further review, is too broad and does not hold the City to the same standard as other property owners. Another recommendation was to distinguish between developed and undeveloped rights-of-way. The proposed exemption is actually consistent with the general exemption of activities in the public right-of-way from the entire zoning code. And other titles within the City's municipal code provide standards and guidelines that relate directly to streets and sidewalks. Staff will get more information regarding regulations for the right-of-way to better address these concerns for a follow-up discussion.

Q: Will Metro revisit the Title 13 methodology and/or renew the HCA maps after a certain number of years? Are HCA areas static or will they be reassessed and potentially expanded over time? With this in mind, will being a good steward bring more regulation to one's property (and to one's neighbors) over time?

A: Staff is not aware of any plans by Metro to revise the HCA map in the near future, though that is always a possibility. In the meantime, the City will incorporate a final version of the HCA designations into the WQNR map, which will become the definitive natural resource map for Milwaukee. The City does not plan to re-inventory or reassess HCA resources anytime in the near future, so the map will be updated primarily through the boundary verifications provided by property owners whose activities trigger the proposed code requirements.

As written in the proposed code, the options for making map corrections lie primarily with the property owner (322.17.B). Property owners will obviously have a greater interest in correcting the WQNR map when they believe a resource has been “over-mapped” than when it is “under-mapped.” At this point in time, it is not clear how proactive the City will be in making map corrections when it becomes evident that an existing resource is “under-mapped.”

Several participants asked for more information about the methodology originally used by Metro to designate HCAs. There was a suggestion that someone from Metro come to the group to present the methodology of the mapping designations and discuss the future intent of the Title 13/HCA program. Staff will check with Metro staff to see if they can send someone to a future meeting of the Advisory Group that will focus on mapping issues.

The question about whether a property owner's restoration efforts now could result in increased regulation in the future is a complicated one that needs further consideration. If HCA resources are regularly re-inventoried, then restoration efforts beyond the boundaries of currently designated HCAs could result in expansion of HCAs over time. Staff will flag this topic for further discussion by the group at a future meeting.

Q: Would a property owner need to pay for permits to cut down trees that they planted years earlier in an attempt to be a better steward? Would this type of stewardship subject a landowner to more regulation and therefore perhaps deter restoration?

A: As proposed, some tree removal activities within WQR areas and HCAs would be subject to substantial review. One way to minimize difficulties for tree removal related to restoration would be for a property owner to develop a natural resource management plan that includes a provision for future tree removal as part of the larger restoration effort. With such an approved plan in hand, the owner could then be free to remove trees as needed to enhance the resource area.

One suggestion was to treat “man-made” resources (i.e., those resulting from restoration work) differently than those resources existing when the new standards are adopted. Such a provision might help reduce the potential for good stewardship to invite more regulation and should be discussed further by the group.

There was general discussion about the requirements for a natural resource management plan. The idea behind the requirement for such a plan is to ensure that restoration activities by property owners who mean well but who do not have professional expertise in resource management do not result in harmful impacts to the

resource. Further discussion is needed to determine what specific restoration activities should reasonably trigger the need for a natural resource management plan. And there were questions about what level of review is appropriate for these plans. The group expressed the belief that, however it is configured, the proposed code should encourage good restoration and enhancement work, not inhibit it.

There was one suggestion to add “Soil and Water Conservation Districts” to the list of agencies who could approve a management plan that would be acceptable to the City.

Q: Could the fee be waived if an application meets certain criteria and is essentially a formality?

A: Staff has not yet determined the recommended fees for various levels of application review under the proposed code. Since construction management plans and boundary verification would be the most common applications and would usually require minimal review, it might be appropriate to establish a very low or no fee for those particular activities. Again, some participants expressed a concern that the process and fees for activities related to natural resources could prove to be a deterrent to well-meaning restoration and enhancement projects. This issue merits further consideration and discussion.

4. Next Steps

The group agreed to meet again on **Wednesday, March 10 at 6:30 p.m.** to continue the discussion. The meeting will be held again in the **City Hall Conference Room**.

Beyond March 10, a future meeting of the group will focus on the draft resource maps and potential changes and corrections to the maps. No date has yet been set for that meeting.

The meeting adjourned at approximately 9:00 p.m.